

Rawls' Theory of Justice: A Democratic Reading from Political Participation in Latin America*

[English Version]

La teoría de la justicia de Rawls: una lectura democrática desde la participación política en América Latina

Teoria da justiça de Rawls: uma leitura democrática da participação política na América Latina

Received May 6, 2019. Accepted February 12, 2020.

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› Para citar este artículo:

Diego-Alfonso, Landinez-Guio (2020). Rawls' Theory of Justice: A Democratic Reading from Political Participation in Latin America. *Ánfora*, 27 (49), 219-242.

<https://doi.org/10.30854/anfv27.n49.2020.746>

Universidad Autónoma de Manizales. ISSN 0121-6538 / e-ISSN 2248-6941. CC BY-NC-SA 4.0

Abstract

Objective: this article is a reflection on the possibility of thinking about democratic participation in Latin America, based on Rawls' Theory of Justice.

Methodology: at first, some concepts that the North American philosopher proposed in *Theory of Justice* and *Political Liberalism* were analyzed. Then, the concepts of democracy and participation were problematized based on reflections from Subirats, De Sousa-Santos and Avritzer. In a third moment, the notion of *accountability*

that O'Donnell uses to think about Latin American democracies was examined.

Results: a general evaluation of the basic concepts was made to argue that the idea of the public and the mechanisms of disobedience to unjust laws allow to think critically about democracy in Latin America to ask if it includes the various social actors with their particular struggles and serves as a tool for political control of institutions and

* Article derived from the Research titled "Rawls' Theory of Justice: A Democratic Reading from Political Participation in Latin America". Funding for the project was assumed by the researcher, who declares that there was no conflict of interest in the execution of the research project.

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governments in multicultural countries. **Conclusions:** Rawls' political liberalism can be considered as a theoretical starting point that makes it possible to legitimate the demands for participation, if one begins from a model that distances itself from the concept of political representation, in a plural public setting. This cannot be a hegemonic point of arrival, since the exercise of a participatory democracy can only be effective in considering the social actors that are mobilizing and their demands for political inclusion.

Keywords: Justice; Rawls; Accountability; Democracy; Participation.

Resumen

Objetivo: este artículo es una Reflexión sobre la posibilidad de pensar la participación democrática en América Latina, a partir de la teoría de la justicia de Rawls. **Metodología:** en un primer momento, se analizaron algunos conceptos que el filósofo norteamericano plantea en *Teoría de la justicia y Liberalismo político*. Luego, se problematizaron los conceptos de democracia y participación con base en reflexiones de Subirats, De Sousa-Santos y Avritzer. En un tercer momento, se examinó la noción de *accountability* o rendición de cuentas que O'Donnell utiliza para pensar las democracias latinoamericanas. **Resultados:** se concretó un balance general de los conceptos básicos para argumentar que la idea de lo público y los mecanismos de desobediencia a las leyes injustas permiten pensar críticamente la democracia en Latinoamérica si incluye a los diversos actores sociales con sus luchas particulares y sirve de herramienta para el control político de las instituciones y gobiernos en países multiculturales. **Conclusiones:** el liberalismo político de Rawls puede ser considerado como un punto de partida teórico que permite hacer legítimas las demandas de participación, si se piensa a partir de un modelo que tome distancia del concepto de representación política, en un escenario público plural. Lo que no puede ser es un punto de llegada hegemónico, pues el ejercicio de una democracia participativa solo puede ser efectivo en la consideración de los actores sociales que se movilizan y de sus exigencias de inclusión política.

Palabras-clave: Justicia; Rawls; Accountability; Democracia; Participación.

Resumo

Objetivo: este artigo é uma reflexão sobre a possibilidade de se pensar a participação democrática na América Latina, com base na teoria da justiça de Rawls. **Metodologia:** inicialmente, foram analisados alguns conceitos que o filósofo americano propôs em

Teoria da Justiça e em Liberalismo Político. Em seguida, os conceitos de democracia e participação foram problematizados com base nas reflexões de Subirats, De Sousa-Santos e Avritzer. Num terceiro momento, foi examinada a noção de responsabilidade que O'Donnell usa para pensar nas democracias latino-americanas. **Resultados:** foi feito um balanço geral dos conceitos básicos para argumentar que a idéia do público e os mecanismos de desobediência às leis injustas permitem pensar criticamente sobre a democracia na América Latina, se incluir os vários atores sociais em suas lutas particulares e servem como ferramenta para o controle político de instituições e governos em países multiculturais. **Conclusões:** o liberalismo político de Rawls pode ser considerado um ponto de partida teórico que possibilita legitimar as demandas de participação, se pensarmos em um modelo que se distancia do conceito de representação política, em um cenário público plural. O que não pode ser é um ponto de chegada hegemônico, uma vez que o exercício de uma democracia participativa só pode ser eficaz ao considerar os atores sociais que estão se mobilizando e suas demandas por inclusão política.

Palabras-chave: Justiça; Rawls; Responsabilidade; Democracia; Participação.

Introduction

Reflections on democracy in Latin America face theoretical and practical problems related, among other things, to the consolidation of government systems that mitigate the social inequities suffered by the region during its republican history. Hence, the construction of principles that promote a decent life for citizens and the eradication of corruption is a major concern for political and legal philosophy in the Americas.

In this sense, the work of John Rawls is an important reference for the analysis of democracies and their mechanisms of participation, considering that his thinking examines the foundations of a just social order and is capable of providing the basis for evaluating in practice, any government regime that complies with the principles that underpin it and the legitimacy of the devices that it puts into operation to maintain State control.

Rawls's effort (1995, 1996, 2006) is focused on the design of a political model governed by principles and institutions that ensure the well-being of a well-ordered society. However, its conceptualization raises some concerns, such as the problem of determining what type of society it is applicable to, if historically and sociologically it does not imply more than it makes explicit and, in this particular case, if it is reasonable as a conceptual framework for Latin America.

On the other hand, the democratic evaluation of political institutions is more than an academic exercise, since, as O'Donnell (2007) affirms, this judgment "has moral consequences", given the existence of a generalized consensus "that democracy (...) is the normatively preferable form of government" (p. 23). That such a consensus is the product of a global commitment to the defense of social justice, it is something that can be questioned, such as the pure ideological expression of capitalism.

From an alternative perspective, this democratic "exaltation" could be adopted as a starting point to rethink political participation and as a discursive weapon for the defense of effective social justice, based on the institutional control of the State. Political theory cannot be abstracted from the contexts to which it is intended to apply, since it acquires all its meaning in the dialogue that it manages to establish with them. Thus, it is impossible to ignore some general features of Latin America as a whole if one wants to examine a model that is applicable to it.

In this article, the Rawlsian proposal on well-ordered society is evaluated in light of some problems of political participation in Latin America, raised by De Sousa-Santos and Avritzer (2004) and O'Donnell (2007) in order to

determine its applicability and its limits, from the perspective of a conceptualization of democracy.

The thesis of the present study is that, although the Rawlsian theory of justice assumes the social conditions of the North Atlantic, it also allows us to conceive a series of criteria to evaluate democratic participation in the political regimes of Latin America, especially based on the concept of the public and civil disobedience, to which, however, we should add the notion of *accountability* (which Rawls does not contemplate), and the consideration of non-hegemonic forms of participation, in the configuration of a more inclusive democracy.

Methodology

In this investigation a critical-political approach was applied to allow a critical interpretative reflection on the object of study. To do this, at first, some concepts that the American philosopher John Rawls proposed in his works *Theory of Justice* and *Political Liberalism* were analyzed. Then, the concepts of democracy and participation were problematized based on reflections from Subirats, De Sousa-Santos and Avritzer. In a third moment, the notion of *accountability* that O'Donnell uses to think about Latin American democracies was examined.

Results

A Well-ordered Society

In *Theory of Justice*, Rawls (1995) proposes a hypothesis in which the parameters of the basic structure of a well-ordered society are traced. This theoretical exercise is called “Original Position” and is the ideal construction of a contract made by rational and autonomous individuals on equal terms, in order to stipulate principles that regulate the realization of common and individual projects. It is a political (non-metaphysical) conception of justice, which seeks to establish the minimum parameters of an equitable order of social cooperation in order to provide “a publicly recognized point of view from which each citizen could examine before the others whether their institutions political and social are fair or not” (Rawls, 1996, p. 28). Its purpose is entirely practical.

The original position requires certain circumstances that allow and guarantee the impartial choice of principles: guarantee of equal basic resources for all; equality of information; mutual disinterest; rationality of the parties (that promote common and individual life projects), as well as other formal restrictions. These aspects start from an idea of a citizen (also entirely political) endowed with rationality, a sense of justice, autonomy and equality, which is valid to the extent that individuals think and act "as if" they had agreed in such conditions. In this measure, the original position does not suppose more than what *analytically* is inferred from it, since, as Rawls (1995) argument shows, that it is not "reasonable" that each individual claims for himself a greater amount of "Primary social goods" than an equitable proportion in the distribution thereof, "and since it is not rational to accept less, the most sensible thing is to recognize as a first step a principle of justice that requires an egalitarian distribution" (pp. 147-148).

A central dimension in this approach is the idea of the public. Justice as equity defines its principles in a framework of impartiality that does not subscribe to any particular set of values, nor to philosophical or moral positions (Rawls, 1996, p. 23). The public agreement consists of a set of political procedures that prevent the intervention of beliefs and interests arising from partial positions within the social order. For this reason, the "veil of ignorance" must prevail in the original position, that is, the point of view that departs from the real advantages and disadvantages that "arise within the institutional framework of any society as a product of social tendencies, cumulative natural and historical" (Rawls, 1996, p. 34). This condition of equity ensures that the agreement is advantageous for everyone and not only for a certain sector.

However, the proposal involves a difficulty: if the principles of justice assume ideal conditions of equality and freedom, how can they be applied in conditions of real inequality? Do they change their nature when the veil of ignorance is uncovered? Therefore, a principle is required that measures real inequality as a variable that must be taken into account in the application of the original position. For this procedural problem, Rawls proposes the "difference principle", which serves as a mediator between the concrete social organization and the configuration of the cooperation system.

This principle proposes that the actions that increase the expectations of the most favored individuals should tend to increase, at the same time, those of the least favored. Herein lies its positive character, since it is not a limitation but a *maximization* of expectations (Rawls, 1995, pp. 83-84). Thus, according to Rawls (1995), policies that tend to reduce the capacities of those who are socially more advantaged "do not constitute an advantage for the less fortunate, but, by accepting the difference principle, they will see the greater

capacities as a capital stock to be used for common benefit” (p. 109). The function of this principle is to reach a state of greater equity in the distribution of economic and social goods without violating the principle of equality, in the search for a fairer organization.

The difference principle appeals to the need to take into account the circumstances of the society in which the basic structure is applied, and responds to the problem of how to promote freedom and equality in such a way that real inequalities contribute to this end. Rawls does not take the original situation as a factual condition, but he takes it as a model and starting point from which he can define principles that guide the institutionality of an already existing democratic society (González, 2004; Robledo, 2011). It is, then, about equipping citizens with theoretical tools that allow them to exercise political control over the State. But if the principles of justice are analytically inferred from the original position, in the practical application the method is the reverse, since it starts from these principles and moves to reality without the veil of ignorance.

From their real position in society, the individuals who participate in the original position go through a series of stages that define the application of the established principles. For Rawls, these stages are adapted to the development of the difference principle. Both the choice of principles and the construction of a constitution mainly establish *rights*, that is, primary goods according to the general conditions and needs of a society. In the legislative stage the *duties* are determined, in a legal-normative system that guarantees the fulfillment of the rights and the regulation of the behavior of rational individuals (Rawls, 1995, p. 222). The last moment of practical application of the model is one in which, with full knowledge of the particular situations in their contexts, compliance with the regulations proposed in the previous stage is required.

The "rule of law" is the application of formal justice, it is the moment in which the principles have their real scope of action, in the context of a legislative order (Rawls, 1995, p. 223). The principles of freedom and equality must be applied through the principle of difference and protected by the legislative stage, without which they would have no true use value. In this regard, Bidet (2000) asserts that the Rawlsian proposal establishes a radical difference between the concrete political exercise and the definition of institutions, since, from the configuration of the original position, “the just *structures* are determined in terms of law and fair *practices* in terms of duty” (pp. 97-98). This seems to indicate that, from the Rawlsian proposal, the political participation of individuals has as a fundamental feature the obedience to the current legal order, while the defense of primary goods takes second place this praxis, while

the guarantor of them is the legal system and not the subjects (individual and collective) that make up the social order. In these terms, participation within Rawls' political model would be reduced to the obligation to obey its norms and to a hypothetical right of agency in its definition. The change in the basic structure would not be considered as a real participation right.

The Right Not to Obey

In applying the basic structure, institutions are chosen that are operational in the specific societies; Therefore, a *constitutional democracy* is adopted as a system capable of putting formal justice into operation in non-ideal situations, as it includes procedures that allow "public decisions to be made that affect society as a whole, in accordance with certain principles, values and restrictions" (González, 2004, p. 83). But the establishment of conditions of a real practice is not enough if one does not think about the parameters that allow the legitimate subordination of the actions of individuals to the social order. Rawls (1995) proposes the existence of "natural duties" that "apply independently of our voluntary acts" and that "do not have any necessary connection with institutions or social practices" (p. 115). Such duties are inherent in the nature of the people and do not depend on any contractual action, although they must be recognized as principles of the fundamental agreement.

The most important natural duties are, in Rawls's opinion, obeying institutions and mutual respect. From the latter, it is guaranteed that each one esteems the others in their capacity as moral beings, but how is the principle of obedience justified? First, it is assumed that the principles are applicable to individuals and institutions alike, which is why the most appropriate for their full compliance is unconditional compliance (Rawls, 1995, p. 226). Second, for Rawls (1995) it is inconvenient to condition the duty to obey, since this incites arbitrary contempt and mutual suspicion, phenomena that may end up provoking coercion and repression (p. 309). The principle of impartiality promotes the fulfillment of the duties agreed in the original situation, because it advocates for the balance between benefits and obligations *voluntarily* accepted: to the same extent that it constrains, it ensures the fulfillment of established rights. Its obligation is based on the voluntary and self-imposed nature of the cooperation contract as a counterpart to the benefits received.

Strict obedience is questioned, however, when the possibility of unjust legislation is contemplated, since, in such a case, its condition of possibility is compromised, that is, the presumption of justice. Under what circumstances an unjust law should be obeyed? What situations could make disobedience a right? Rawls (1995) assures that it is wrong to think that the injustice of a

law is enough to disobey it (p. 321). An unjust law, or in conditions "close to justice", is tolerable if it suffers from "common" imperfections of a democratic system, such as the impossibility of a total agreement between the parties, typical of the rule of majorities. For this, a principle of "urbanity" is proposed that promotes the admission of such inconveniences to guarantee mutual trust and acceptance of the democratic game, whose existence, however imperfect, is preferable to its absence (Rawls, 1995, pp. 324 -325).

Given that the problem of the limits of obedience is framed in the legislative moment of the theory of justice, civil disobedience, understood as the legitimate mechanism of resistance to unjust laws, "only occurs in a more or less just democratic state for those citizens who recognize and accept the legitimacy of the constitution" (Rawls, 1995, p. 331). Rawls (1995) defines this concept as "a public, non-violent, conscious and political act, contrary to the law, habitually committed with the purpose of causing a change in the law or in government programs" (p. 332). When minorities resort to disobedience, they can validate their disagreement regarding a majority decision that does not satisfy the application of the principles. Therefore, appeal is made to the public sense of justice that prevails in the original position, within the framework of democratic institutions.

Civil disobedience is justified insofar as it responds to a breach of the principles of freedom and equal opportunities, which are infringed for a sector of society in the construction of the legislative framework; in this sense, it challenges the fulfillment of the established duties in favor of the stipulated rights and the law itself, which individuals accept so that the principle of impartiality is fulfilled (Rawls, 1995, p. 334). Another mechanism of resistance to injustice is the conscientious objection, understood as the possibility that a person has to object to a legislative order for religious or moral reasons, but not political. In this second case, respect for certain ingrained convictions is appealed, which contradict the legal order and generates a sense that a certain order is unjust (Rawls, 1995, p. 337).

Rawls sees in these two mechanisms not a limit for the fulfillment of the principles of justice, but a guarantor of freedom, since justified civil disobedience creates the possibility that individuals can correct unjust social burdens and guarantee the right to Political equality of minorities, as a legitimate exercise of participation, which, although contrary to the law, is "a correct moral means of maintaining a constitutional regime" (Rawls, 1995, p. 349). On the side of conscientious objection, minorities can claim their moral principles as a redoubt of their uniqueness in the face of the inconveniences of the law of the majority. Although these resources must be applied in ex-

treme situations, they are also legitimate practices that extend to democracy in societies that face injustice and exclusion, protected by a legal order that is based on the silence of those represented. For Mejía and Jiménez (2006), for example, these resources make a more authentic and participatory democratic praxis possible in the contexts of authoritarianism and crises of political legitimacy, set by the logic of neoliberalism.

Public in *Political Liberalism*

As in *Theory of Justice*, Rawls proposes in *Political Liberalism* the idea of a public system of cooperation in which each person accepts, in conditions of freedom and equality, benefits and social burdens. Based on this guideline, articulated to the notions of reciprocity and social good, the foundations are laid for the configuration of a constitutional democracy. But this proposal starts from a conception of the moral person that presents three fundamental aspects: 1. Every person has his/her own conception of good; 2. Politically they are conceived free and equal to exercise rights and duties; and 3. Everyone is responsible for the consequences of this idea (Rawls, 2006, p. 5).

These three aspects are based on the existence of a diversity of "reasonable doctrines" that can be protected by liberty of conscience, that is, on the idea of a society made up of heterogeneous elements that, however, can be articulated in a system of cooperation. In this sense, Rawls (2006) proposes "a political conception of justice" to which "those who profess very diverse and opposed, albeit reasonable, comprehensive doctrines" (p. 58) can subscribe. These doctrines are sets of moral, philosophical, or religious beliefs accepted by individuals who make reasonable use of their freedom. Rawlsian theory, therefore, aims to protect such diversity without imposing a particular doctrine: "reasonable pluralism" is the basis of a democratic society that is presumed to be well ordered.

Reasonable pluralism is based on the possibility of reaching a public agreement on the political doctrine that allows social cohesion, whose "stability is possible when the doctrines that form the consensus are affirmed by politically active citizens" (Rawls, 2006, p. 137). For Rawls (2006), the agreement on political values should be characterized as follows: 1. Be accepted with public knowledge; 2. Not be derived from any comprehensive doctrine, no matter how reasonable it is or how true it is considered; 3. Take precedence over any particular point of view; 4. Explicitly propose a principle of tolerance; and 5. To have as an objective the stability of the political system within which the plurality of reasonable doctrines is accepted.

In a democratic society, each individual is free and equal to the others, and, therefore, is guarantor of respect for the law. Rawls (2006) calls this shared responsibility "public reason", understood as "the reason of equal citizens who, as a collective body, exercise final and coercive political power over each other, by enforcing laws and by making amendments to their Constitution" (p. 205). According to him, every type of non-political association has a particular form of rationality that depends on the partial interests of each association, that is, it has what Rawls calls "social reasons", as opposed to private reasons and, of course, to public reason. The latter does not depend on private interests, but is determined by the principles of justice that have been chosen by the members of the social body, as guiding elements of the constituted order.

Requirements for Political Participation

The Rawlsian proposal raises some problems around participation, since what is the position of the citizen in political practice and in the application of his model? What is the real incidence of the different social groups in the definition of the original position and its eventual reconfiguration? For Rawls, obedience to the law prevails, as a guarantee of constitutional order and only in cases of open injustice are conscientious objection and civil disobedience legitimate, although not legal. On the other hand, the idea of consensus that is at the base of the original position seems to reduce social heterogeneity and its inherent conflict to a homogeneous whole in which, as Rancière (2005) thinks, someone is always excluded so that they exercise legitimate community violence.

But these problems extend not only to Rawls' work, but to the very concept of democracy. In this regard, Subirats (2001) evaluates a series of problems inherent in democracies and their participation and decision mechanisms. The first of these is that there is a great distance between representatives and those represented, so that the reduction of the system down to the electoral process implies the submission of the latter to the decisions of the former. The lack of efficient accountability that goes beyond bureaucratic "ritualisms" is also one of the hurdles that democracy faces in assuming itself as a regime of cooperation and not as a veiled relationship of command and obedience. For Subirats (2001), the hegemony of political parties, which reduce popular participation to a marginal rate, as well as the immutability of political ideas, prevents social innovation and an effective change in the political clientele relations that emerge after the electoral paraphernalia.

According to this negative assessment, it seems that the democratic clamor is reduced to a single demand: greater participation. However, a series of

objections have been raised to increasing citizen participation, in terms of the disparity between costs and benefits with respect to the decisions made: "if you want efficiency, if you want decisional quality, do not follow a participatory path. Tradition indicates that consulting people, involving them in collective decision-making processes, only leads to headaches, obstacles and delays" (Subirats, 2001, p. 38). Participation, in this sense, would not be effective for decision-making, since the plurality of divergent opinions and the lack of specialization or interest of citizens become obstacles to social intervention.

The position of Subirats (2001), however, contrasts with the objections; in response, he argues that participation and effectiveness are not antagonistic in today's society. On the contrary, in the case of preferring a "technocracy", the problem of the accountability of the technicians who make the decisions looms, because who would legitimize the decisions if not society itself? Mechanisms must be sought that link participation to effectiveness, because skepticism about this possibility can lead to authoritarianism: "if the basis of social consensus for many decisions is not broadened, the erosion of representative institutions will increase and (...) Supporters of decisional formulas may increase, despite democratic sacrifices" (Subirats, 2001, p. 41). It is, therefore, about encouraging participation to prevent the disintegration of democracy in isolated pressure groups.

De Sousa-Santos and Avritzer (2004) place the democratic process of the beginning of the 21st century within the framework of a problematization of the hegemonic theories of democracy that prevailed in the first half of the previous century. With the imposition of liberal democracy in different waves in the western world, the problem of its nature arises, and this in the form of a crisis in the "central countries". This crisis is presented as a "double pathology": the "participation pathology", which is evident in the decrease in democratic mechanisms, reduced almost exclusively to elections; and the "pathology of representation", in which "citizens consider themselves less and less represented by those whom they elected" (De Sousa-Santos and Avritzer, 2004, p. 38). Thus, questions arise about the structural conditions of democracy, its homogeneous character in different contexts and the possibility of including local and regional variants of participation.

In the second half of the 20th century, two conceptions of democracy were dominant, the Liberal and the Marxist, which faced the problems of bureaucracy and representation. De Sousa-Santos and Avritzer (2004) sustain that for Kelsen, democracy was a set of procedures anchored in a moral relativism and not of precise values that allowed to settle social conflicts. In this same sense, Schumpeter and Bobbio (cited by De Sousa-Santos and Avritzer, 2004) transform "the proceduralist element of the Kelsian [sic] doctrine of

democracy into a form of elitism" (p. 40). The former tries to refute the idea of popular sovereignty to radicalize the conception according to which the electoral mechanics is the essential for the conformation of the governments; for Bobbio (quoted by De Sousa-Santos and Avritzer, 2004) instead, democracy is reduced to the configuration of formal equality. De Sousa-Santos and Avritzer value these post-war discussions as the consolidation of a proceduralist and hegemonic idea of democracy that blocks the way to broader forms of participation.

The problem of bureaucracy lies in the specialization that government functions have in modern states, which, according to Bobbio (quoted by De Sousa-Santos and Avritzer, 2004) causes the citizen to resign from the state administration. The discussion around representation should be framed, in the opinion of De Sousa-Santos and Avritzer (2004), in terms of authorization, identity and accountability, concepts that have been eluded by hegemonic theories since Stuart Mill to Dahl (De Sousa-Santos and Avritzer, 2004) except in the presumption of consensus, from which the rulers arrogate decision-making to themselves under the idea that the general will is condensed in their hands.

De Sousa-Santos and Avritzer's proposal starts from the consideration of non-hegemonic manifestations of political participation, also emerged in the second postwar period, not anchored in the exposed concepts, but rather highlight the plurality of social phenomena, in the commitment for "the creation of a new social and cultural grammar and the understanding of social innovation articulated with institutional innovation" (De Sousa-Santos and Avritzer, 2004, p. 44). In the second half of the 20th century, the democratization of some southern countries took place through the insertion of new actors who rethought the democratic discourse and reconfigured social relations.

For the cases of Portugal, Mozambique, Brazil and Colombia at the beginning of the 21st century, the authors insist on how certain processes of regional mobilization and participation are focused on an expansion of democracy beyond hegemonic conceptions, by including diverse actors and interests. : "Claiming housing rights (...), rights to locally distributed public goods (...), participation rights and claiming the recognition of difference (...), implies questioning a social and state grammar of exclusion and proposing, as an alternative, another more inclusive "(De Sousa-Santos and Avritzer, 2004, p. 49). This leads to a factual and counter-hegemonic expansion of democracy that needs to be recognized and that may be an important instrument in a "multicultural" conception of human rights, if it starts from the ability to complement different conceptions of human dignity (De Sousa -Santos, 1998), and, therefore, plural worldviews.

One of the greatest resistances to the expansion of democracy comes from its tension with capitalism, since redistributive and inclusive "excesses" are not allowed by monopolistic elites, which often leads to the capture of movements by companies (as in the case of Brazil), to openly authoritarian responses (as in the case of Colombia) or, even, to the violent action of the State against marginalized sectors of the population (as in the case of Mexico, according to Julia Monárrez's work, 2017). The critical point for democracies in Latin America is the sharpening of neoliberalism, which has ended up identifying political freedom with free trade and, in this sense, has subordinated the functions of the State to the demands of the global market.

Economic policy has been reserved for a closed group, whose decisions end up outside of any public evaluation: "the paradoxical thing that results from this specialization for economic decision-making is that these are the ones that directly affect development individual and collective of all social subjects" (Mejía and Jiménez, 2006, p. 24). Neoliberal democracy in Latin America inherits the authoritarianism of the regimes of the 1970s and 1980s and takes the market as a reference for the construction of public policies and the administration of State resources. Democratic institutionality becomes a formal and elitist system that not only restricts popular participation and public debate, but also legitimizes social inequities, the product of relations of capitalist domination since the 19th century and its liberal discursive logic (Landinez-Guio, 2013, pp. 86-88).

De Sousa-Santos and Avritzer (2004) propose, then, three "theses" to strengthen democracy: first, to invigorate "demo diversity" in a bid for multiculturalism; second, to strengthen the ties between the local and the global from counter-hegemonic points of view; and third, to promote democratic experimentation that allows the inclusion of local participation practices. Through the articulation of dialogue between the various social sectors, it is possible to promote political participation: "Convergence, which almost always results in forms of cultural hybridization, must be achieved in the practice of argumentation and in the argumentation of practice" (De Sousa-Santos and Avritzer, 2004, p. 60). Despite the fact that each case is different from the others, the fruits that are harvested promote a more inclusive democracy.

Accountability Mechanisms

Political participation is linked to accountability, insofar as this concept supposes a greater balance between rulers and ruled within a democratic order; that is, the possibility of counterbalancing the dominance relations that are woven in representative regimes. O'Donnell (2007) elaborates a theoretic-

cal proposal of the Latin American democracies to analyze their specificities after the authoritarianism of the seventies and eighties of the 20th century; according to him, "a palpable fact in almost all Latin American countries (...) is the great weakness, if not the absence, of the institutional mechanisms of horizontal accountability" (O'Donnell, 2007, p. 16). Accountability refers to the institutional controls that are exercised over positions of power in government. The first of these is vertical and is exercised by the electorate with their vote, but it is not isolated from the system of political democracy or "polyarchy".

Polyarchy is explained by the confluence of three trends of different origins and contributions: from liberalism it takes the assignment of "defensive rights to individuals located in the private sphere"; of republicanism, the adjudication of "obligations to individuals who perform in the public sphere"; and of democracy, the affirmation of the "positive right to participate in the decisions of the *demos*" (O'Donnell, 2007, p. 91). The confluence of these contributions configures the legal limits of the institutions to control their excesses in social and political spheres.

O'Donnell (2007) denies the existence of a finished body of concepts from which it is possible to examine any contemporary democratic regime, abstracting historical assumptions, for which reason its analysis takes Schumpeter's "minimalist" theory as a starting point (cited by De Sousa-Santos and Avritzer, 2004), which reduces democracy to electoral competition. However, the Argentine author argues that this definition, although *realistic*, implicitly implies concomitant aspects without which democracies are *de facto* not possible: fair elections, freedoms and guarantees.

Clean elections are characterized because they are "competitive, free, egalitarian, decisive and inclusive, and in which those who, in principle, have the right to be elected, can vote" (O'Donnell, 2007, p. 32). Freedoms are defined inductively, since each reality is different, but the need is established for the regime, understood as the series of channels and resources that in each case allows access to government offices, to admit the exercise of elections and those freedoms in an institutionalized way, that is, they do not depend on the individual will.

In relation to the State, all democracy must have the existence of "a legal system that promulgates and supports the effective enforcement of rights and freedoms", as well as the "closure' of that system" (O'Donnell, 2007, p. 73), so that no one can be above the law. The guiding idea of the institutions is the presumption of agency, which assumes the autonomy and responsibility of individuals and allows the general application of the law to all those who are considered citizens, since only they can participate politically.

Although these theoretical elements are necessary in a realistic and restricted conception of democracy, they do not necessarily reflect the political dynamics of Latin American countries, regimes that, in O'Donnell's (2007) view, escape legal controls, in which citizenship and the presupposition of agency are not universal and where elections are not even decisive or respected, but behave like authoritarian democracies, to which the title of "delegations" is reserved.

O'Donnell (2007) focuses on the problem of *accountability* in the division of powers, but also in the existence of complementary, autonomous and specialized institutions, such as prosecutors and comptrollers, since the coexistence of one and the other makes it possible to avoid, to some degree of effectiveness, violations of the legal order. Delegative regimes, like openly authoritarian ones, violate these horizontal *accountability* mechanisms to the extent that the executive arrogates authority over other powers and institutions (transgression) or perpetuates criminal political actions (corruption). This type of accountability promotes constitutional legitimacy and legality, in which no one can hold non-subjection to the law (*legibus solutus*).

But there is another type of control: social *accountability*, which refers to the demand for civil rights and freedoms that must be protected by institutions, such as expression, association, among others, without which there can be no conditions for political democracy. O'Donnell (2007) emphasizes the complementarity of horizontal and vertical accountability, since the viability of a democracy that protects not only the electoral participation mechanisms but their concomitant conditions depends on it. In a democracy in which these conditions are not met, the eligible end up constituting a privileged class to hold public office and exclusivity to make decisions, while the great mass of voters ends up reduced, in fact and in law, to suffrage, without no additional political interference.

One of the great problems in Latin America is precisely the ineffectiveness of State legality, which means that the process of political constitution of society is negatively affected by the very choice of the principles and rights that govern it, being configured by pressure groups that tend to block the way for plural political participation. According to the analysis by O'Donnell (2007), the social coverage of this legality is very restricted on the continent and does not reach the regions far from the center, since its clientelistic structure prevents the less favored from accessing it with equal warranties to those who are privileged: "if one does not have the social status or the 'adequate' connections, acting in front of these bureaucracies as the bearer of a right and not as the supplicant of a favor will almost certainly bring about painful difficulties" (O'Donnell, 2007, p. 163).

Model for Latin America?

The Rawlsian model of a well-ordered society, governed by principles of justice, has its practical horizon in constitutional democracies, where the presumption of agency of all the individuals who are part of them, is taken as a starting point. The direct link between the ideality of the original position and the concrete conditions of real societies is the application of the difference principle, the applicability of which requires a rather complex technical and institutional legal mobilization, when considering different socioeconomic variables of the social sectors that make up the political community (Robledo, 2011, pp. 56-59). However, the sphere of citizen participation in the configuration of the cooperation system and its transformation, in the different stages that Rawls contemplates, is not clear, except for the legitimate mechanisms of civil disobedience and conscientious objection. The latter allows the questioning of democracy from the demands of participation to be extended to the Rawlsian model, since it is according to this system that the theory of justice elaborated in the two fundamental works of the American philosopher fits.

At this point, the divergences between the authors mentioned are evident. For O'Donnell (2007), for example, the idea of contract (therefore, the original position) is unnecessary; for him, individuals are doomed to sociability beyond the Rawlsian "as if" of the voluntary acceptance of social obligations. The democratic and institutionalized approach, the presumption of agency for the citizens, are basic contextual assumptions that, for the Argentine, are more realistic, hence he prefers to start from the minimalist assumptions of Schumpeterian democracy, limited to electoral competition, rather than to the general idea of "government of the people". But this is only an approximation.

In another sense, the two approaches have similar starting points. In both cases, there are principles that appeal to equality, freedom and a series of rights that are guaranteed from the constitutional level, rather than that of the governments in office. In both cases, emphasis is also placed on the resources from which citizens can demand participation, within the framework of the acceptance of the constitutional order: civil disobedience, conscientious objection and both vertical and horizontal accountability. In the synthesis of the two positions, the perspective of legitimate democratic participation is strengthened.

On the other hand, both Subirats (2001) and De Sousa-Santos and Avritzer (2004) consider that a general and hegemonic conception of democracy entails problems of inclusion if it forgets, beyond the simple concepts, that there are mobilization mechanisms closer to the particular experience of com-

munities that, in the same way, demand participation and recognition (what in O'Donnell's (2007) terms is called social accountability). At this point, the Rawlsian proposal is less clear, but the ideas of reasonable pluralism and public reason can be rescued to exploit its participative potential. Indeed, the notion of a public conception of justice stands as a formal condition that allows dialogue between reasonable heterogeneous doctrines.

As a principle, reasonable pluralism advocates the inclusion of different ways of conceiving the world in a political community that agrees clear parameters of cooperation. The problem is, precisely, its formality, since the participation that is demanded is concrete, local, regional and mobilizing. In this order of ideas, De Sousa-Santos (1998) contemplates a counter-hegemonic possibility: part of the incomplete character of any conception of human dignity, given the particular places (“*topoi*”) from which every culture (including the western one) operates, and that they can be complemented if a horizontal approach between them is established in a “cross-cultural” dialogue. Here, the political problem is not posed as the possibility of living with another that is tolerated, but with which you can share a space of interaction and mutual learning. In these terms, citizen participation can be conceived as a praxis that intervenes in the construction of the public (definition of principles, constitution and legal framework) and not only as a mechanism of institutional control.

In all the authors cited, a commitment to strengthening the political conditions that make democracy possible beyond suffrage is perceived. In this sense, O'Donnell is more realistic than Rawls in taking electoral powers into account, while the American philosopher appeals to individuals as voluntary and autonomous participants in a hypothetical contract. But the presupposition of agency is a necessary condition, in both, for citizen status. However, the demand for greater participation expressed by Subirats (2001) and developed by De Sousa-Santos and Avritzer (2004), calls into question the idea that the representative system alone, as inclusive as it may seem, is sufficient if one does not think about the real possibility of including plural agents that require more than representation and formal rights. This involves giving a substantial consideration to the demands for equality and autonomy that any conception of democracy has, but which, in practice, has become an “empty formula” (Rey-Pérez, 2016).

Following O'Donnell (2007), it would be possible to affirm that the key to understanding the dynamics of democracies in Latin America lies in the concept of *accountability*, since one of the central problems of regimes on the continent has been the lack of institutional controls to restrict the influence of whoever holds the executive power. In this sense, the Rawlsian proposal seems

less applicable. Their assumptions are designed, as highlighted by O'Donnell (2007) regarding democratic theory in general, for developed countries, which have a stronger institutional framework (although not invulnerable) and less adverse socio-economic conditions for most of the world population.

But we must not lose sight of the fact that Rawls' proposal (1995, 1996, 2006) has a practical purpose, precisely that of exercising political control over institutions, and that, as Fernández (2017) highlights, “takes pluralism as a fact and as a system” (p. 140). The problem is to determine what would be the specific mechanisms that would allow the principles of justice to be applied to a pluralistic reality such as that of Latin America and how to include the practices of resistance in political theory, without falling into moral and political relativism.

Once again, De Sousa-Santos and Avritzer (2004) glimpse a panorama from the democratic praxis, since they do not conceive it as a closed system in itself, but as a field of experimentation that must be open to the participation practices that arise from the local and the regional and that can serve as a reference, or interference, to any democratic system. From this perspective, mechanisms such as accountability, civil disobedience and conscientious objection acquire a dynamic character, as political practices that allow an expansion of democracy, being conceptual and procedural elements that allow different social sectors to demand greater incidence in decisions that concern the public and extend their influence beyond the voting booths.

O'Donnell's (2007) emphasis on accountability shows the institutional weakness of Latin American States to open spaces for participation, and although he does not explicitly question the content of the law but rather its application, it is necessary to highlight that the weakness of the accountability mechanisms, both vertical and horizontal, suggests that the construction of the democratic political community itself is flawed (constitutional and legal order, included) due to a defect in popular participation that makes delegative democracies illegitimate regimes. This radical conclusion could suggest that it is an imperative need to use theoretical and practical resources to promote political participation from below, that is, that in practice it manifests itself in a counter-hegemonic way. Hence, a counter-hegemonic use of Rawls's theory, or at least of some of his concepts, can be envisaged that provides legitimate tools of political struggle to the sectors that have been excluded from the social “consensus”, from the very discourse of liberal democracy.

In this sense, the principle of impartiality and the legitimate limits of obedience (civil disobedience and conscientious objection), allow establishing new mechanisms of vertical accountability, since they point out the principles of justice as limits for legislative action, in the commitment to a "radical" de-

mocracy (Mejía and Jiménez, 2006). In the same way, the concepts of public reason and reasonable pluralism evaluate the possibility of a more inclusive model in which political practice is conceived as the product of a consensus between various rationalities. This may perhaps be Rawls' greatest contribution to Latin American democracy, since it opens the possibility for dialogue between different conceptions of the world in a common public space. It would be effective in the multicultural framework of the continent if one thinks of the different social actors as valid interlocutors, in the configuration of political institutions. Hence the need to articulate a theory of justice with the demand for the extension of democracy to the excluded sectors, in societies that suffer constant institutional crises.

The perspective to be taken has the sense of serving as a counterweight to the application "from above" of Rawls' theory, highlighting the practical spirit that animates it. In this sense, the Rawlsian perspective, which tries to dilute the field of social forces that confront each other in the political sphere, can be reversed and serve as a discursive weapon of those who confront the State to defend their right to participation, appealing to the legitimacy of their demands.

For this reason, it is possible to question, with respect to the concept of veil of ignorance, if it is really possible to assume a perspective that moves away from the great social inequalities to elaborate a theory of democracy, or if the exploitation of some individuals by others is not legitimized in function of the "maximization" of equality and freedom, when the advantages of some are based on the disadvantages of others. The difference principle, in any case, links the model with reality; establishes the guidelines to move from the level of principles to that of rights and from these to that of duties, but it is still insufficient if it is not stated as a principle of participation in which social actors intervene, within the relationship of forces in which they are immersed.

Conclusions

The concept of democratic participation is related to the existence of political, social and procedural mechanisms that allow different sectors of the citizenry to have direct interference in government decision-making, from the definition of the principles and rights that define the social order, up to the legality that the fulfillment of said guidelines demands.

From this broad perspective, an attempt was made to assess Rawls' theory of justice as a conceptual framework that envisioned the extent to which it is possible to open spaces for citizen participation, within the framework of

constitutional democracy in which Rawlsian thought is inscribed. From there, concepts such as civil disobedience and conscientious objection were salvaged, which are shown as important notions for the expansion of democracy, insofar as they are legitimate tools to face the inequities created by the rule of the majority.

However, the Rawlsian experiment of the well-ordered society showed some limitations regarding the expansion of the effective participation of the different social sectors, in the configuration of the political community. Despite this, his practical aspiration to provide tools to evaluate concrete democratic regimes was found to be compatible with the mechanisms of political control proposed by O'Donnell (2007), in terms of accountability, to strengthen democratic institutions in Latin America, which regimes at the beginning of the 21st century have been characterized, in general terms, as delegative.

In this way, Rawls' political liberalism can be considered as a theoretical starting point that makes it possible to legitimate the demands for participation, if one thinks from a model that distances itself from the concept of political representation, in a plural public setting. What cannot be, is a hegemonic arrival point, since the exercise of participatory democracy can only be effective in considering the social actors that are mobilizing, and their demands for political inclusion.

With a controversial air, what we are trying to defend is a “counter-hegemonic” (not to say “Foucauldian”) reading of Rawls, which focuses on the possible reversibility of the power relations that are woven into the democratic discourse, starting from the radicalization of their own principles and the search for new mechanisms of social participation, within the framework of the construction of what is public. In this sense, the contributions of De Sousa-Santos and Avritzer (2004) are invaluable, as they draw attention to the materiality of citizen mobilizations and the mechanisms of participation that they have managed to unleash, in different parts of the world, since the post world war II period. Based on these perspectives, a broader vision of democracy can be elaborated in which the formal elements can be exploited, in terms of legitimacy, by the real social sectors, with their specific socioeconomic, ethnic, ideological and gender positions, in the fight for the construction of a fairer social and political order.

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