

Reflections about deliberative democracy: contributions to health councils in a context of political crisis

Reflexões sobre democracia deliberativa: contribuições para os conselhos de saúde num contexto de crise política

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ABSTRACT The essay reflects upon the deliberative democracy and upon the limits and possibilities of the municipal health councils to become institutions that practice and settle it. It is shown that such councils face a process of institutional delegitimization that can subtract their importance in the decision-making process, a risk enhanced by the political crisis that the country is experiencing. For promoting social participation and deliberation as an organized process in the pursuit of consensus in decision-making and for considering the consensual decision the basis of institutional legitimation, it is concluded that a deliberative turn has the potential to boost the councils in overcoming the risks of delegitimization.

KEYWORDS Democracy. Deliberations. Health councils.

RESUMO O ensaio reflete sobre a democracia deliberativa e sobre os limites e as possibilidades de os conselhos municipais de saúde tornarem-se instituições que a pratiquem e ambientem. Mostra-se que tais conselhos enfrentam um processo de deslegitimação institucional que pode subtrair sua importância no processo decisório, risco potencializado pela crise política que o País atravessa. Por promover a participação social e a deliberação como processo organizado de busca do consenso na tomada de decisões e por considerar a decisão consensual como base da legitimação institucional, conclui-se que uma virada deliberativa tem potencial para impulsionar os conselhos na superação dos riscos da deslegitimação.

PALAVRAS-CHAVE Democracia. Deliberações. Conselhos de saúde.

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Introduction

Societies, to achieve, sustain and refine social justice, face, constantly, a series of challenges. Even those that can be proud of having achieved the main advances in this field have concrete and daily reasons to worry about the retrocession and the increase of social inequalities. In this essay, it is considered that democracy – more precisely, its process of constant improvement and radicalization – constitutes a structuring axis of the struggle for social justice, shaping the most adequate social environment for the improvement of material conditions of life and citizenship.

Democracy, here, will be treated inspired by Robert Dahl (1997), for whom a society is so more democratic the greater its ability to (i) amplify the participation of different social segments in decision-making, especially those which have always been detached and/or removed from these political processes; and, at the same time, (ii) legitimize the institutions that receive these participants, which means, ultimately, to legitimize their decisions.

There are, certainly, others conceptions of democracy. However, for the reflections that is desired to produce in this work, this is considered the most appropriate, because it allows us to insert in the debate the idea-strength that social and individual rights can only be effective and sustainable in societies in which those who are the main interested in the improvement of life conditions and citizenship have a real opportunity to participate, defend their interests and, through political debate, to win them over.

In other words, it is considered that the greater the participation of those directly interested in the decision-making process of a particular policy, the more chances they will have to produce results that meet the needs of those and the less risk they express the interests of political representatives who, often, have tenuous relations with those who they should represent or,

worse, representatives of segments averse to social justice.

In the opposite way of a thought that expresses what Nelson Rodrigues called a ‘inferiority complex’, Brazil formulated, in the Federal Constitution of 1988, new institutions capable of strengthening its democratizing efforts. Among these innovations, public policy management councils – inspired by the councils that emerged in the struggle for democratization in the 1970s and 1980s – emerge as the most important (GOHN, 2003), since (i) they include in the decision-making process of such policies actors who were always repelled by them; (ii) they constitute the arena itself in which these actors compete and articulate with the actors who have always participated in the decision-making process; and (iii) they distribute and decentralize to organized society an important part of the decision-making power.

In these almost thirty years, the deployment of management councils has presented different rhythms and designs, varying according to the characteristics and the democratizing receptivity of the actors who participate in each sectorial policy. Probably, because, more organized in the fight against the military dictatorship (having, moreover, produced a reform proposal for the State whose sectoral aspects were incorporated into the Constitution), the health sector was the one that advanced the most and achieved the best results in relation to its councils: at the federal level, the National Health Council, which already existed, was remodeled, adapting itself to that recommended by the Constitution; at the state level, the 27 Federation Units created their councils; and the same happened in the 5.570 municipalities of the Country, which, when the Municipal Health Councils were created (CMS), congregated more than 72.000 councilors, of which, approximately, 36.000 represent the users, constituting the most important experience

of decentralization and participation of the Country (ESCOREL, MOREIRA, 2014).

Several authors (BATISTA; MOREIRA, 2016; BUSANA; HEIDEMANN, WENDHAUSEN, 2015; MONTEIRO; FLEURY, 2006; MORITA; GUIMARÃES; DI MUZIO, 2006) have studied the social participation and the health councils, converging to a main point; although they have been successful in their inclusive task, CMS still must overcome important problems so that they can effectively influence in the decision process of the municipal health policy.

Moreira and Escorel (2009), in a census study, comprehend that such difficulties occur because CMS, although supported by legal aspects, have not been able to, in political terms, consolidate themselves as institutions of the decision-making process of municipal health policies. For them, CMS face such problem mainly because rulers who represent political actors who have, traditionally, concentrated the decision power have their interests nuanced by ultra-presidential practices (ABRÚCIO, 1998) and tend to identify actions of deconcentration of power as usurpation.

Thus, the problematic operating conditions, resources and infrastructure that most of the CMS faces are analyzed by these authors as reactions, since their provision is the legal responsibility of the municipal executive power. They constitute, therefore, a list of delegitimization indicators in which the most important is that 90% of the CMS of the Country had at least one of its last five deliberations not recognized by the executive power. Such indicators point to a crisis of delegitimization of the CMS by the political institutions that, in Brazil, traditionally, concentrate the decision-making power.

Naming the crisis and assigning it to certain behaviors of managers, although suitable, may produce a different effect from what is intended – the overcoming of the problems –, since it indicates the sterilization of the debates by tending to point to a set of actors as responsible. It is necessary,

therefore, to discuss the motives that lead these actors to act in such a way, not to give them possible reasons, but to understand the bottlenecks of the political process and, also, to discern, since among such actors there are several whose political trajectory in the defense of social and individual rights and social participation deprive a deterministic analysis of the aforementioned indicators.

The present essay intends to contribute to these efforts. Considering that the debate should focus on elements related to the functioning of the CMS, since the external ones have already been well identified, it focuses the deliberative character attributed to them by Law nº 8.142/90 (BRAZIL, 1990), aiming to understand how they are interpreted and practiced by CMS.

It is based on a hypothesis that the deliberative practice of CMS tends to consider them as an institution that has power over other institutions of the decision process (Municipal Health Secretariat, City Council, Bipartite Interagency Commission – BIC), which creates the right environment for them to react negatively. Such reactions, persisting over time and the political process, raise the risk of delegitimization of the councils.

This starting point is in line with Lijphart (2003), for whom the institutions that favor the search for consensus and political articulation are those that have the greatest chances of success in their democratizing tasks, being associated with better and more generous public policies. Because of this, it is intended to reflect on a deliberative praxis that, inspired by Manin (1987) and others deliberationists, invests in the construction of consensus, considering it as the basis of the process of democratic radicalization.

In this reflexive dynamic, it is formulated a simple institutional design, which articulates a set of elements that carry democratizing power, relating it, therefore, to the CMS. Such procedure is not based on a normative posture, aiming, above all, to

promote the debate about the deliberative practice of CMS, its limits and possibilities, to contribute to overcoming the risks of delegitimation, that are extremely marked by the political crisis that Brazil is experiencing in 2016.

Deliberative Democracy

The democratization of a political regime depends on the combination of efforts aimed at the inclusion and participation of new and diversified actors in the decision-making process and the creation and/or consolidation of institutions that settle the political competition among the included actors and those who, traditionally, have always been decision makers.

In regimes of recent democratization, such as Brazil, the trend is that inclusive and participatory efforts have preceded, at least in terms of effectiveness, those of institutional consolidation (liberalization). The sequence of these steps leads such regimes along a difficult path to follow, since the institutionalization of political competition is so much more complex and problematic as greater and more diversified is the number of actors included (DAHL, 1997).

That occurs because many of the new actors represent interests that have historically been usurped by those who previously concentrated decision-making power and who, in the new regime, will largely continue to participate in political competition. Decentralizing the decision-making process, distributing power for the new actors without making them more powerful than the traditional ones is the main institutional challenge, since, at the same time that it can raise in these the insecurity of the revanchism, it can be understood by the newly included ones as insufficient before the long period in which their interests were submitted to those of others.

In such scenarios, the costs of respect for

political competition and its results tend to rise. If, at the same time, the costs of the extra-institutional (imposing and/or violent) responses to the impasses generated by political competition are reduced, their use becomes a concrete option, putting the democratization at the highest risk (PRZEWORSKI, 1984).

To prevent this from happening, it is necessary that the actors involved in the decision-making process legitimize the institutions that set the decision-making process. The articulation between the different actors, the search for the possible consensus and the agreement around policies which, in turn, represent the interests involved without usurping any are, on the other hand, in the essence of political deliberation, which can, in the wider sense, be defined as the decision-making process through the debate between free and equal citizens.

For Jon Elster (2001), the incorporation of political deliberation into the idea of democracy is a very old proposition/attempt, whose origin he places in the Greek polis, more precisely, in Athens of the fifth century before Christ. According to this author, after periods of ostracism, such proposal passes through important processes of renewal and growth, driven, mainly, by the reflections of Jürgen Habermas, for whom democracy is developed by the transformation of ideas and not by their accumulation.

For Habermas (1989), this transformation occurs through discussion and exchange of ideas, constituting a communicative action, that, to assume democratic aspects, must be based, among other things, on an ethics of discourse based on two movements: the use of the principle of universalization as a rule of argument for practical discourses (a reconstruction of the intuitions of daily life in political competition) and the attempt to demonstrate the validity of the universal principle.

Marcos Nobre (2004), when studying the debate between different democratic theories, also emphasizes the importance of Habermas's proposal, but considers that

the first impulse for political deliberation to be recognized again in the democratic debate was given by Bernard Manin, distinguishing two meanings of deliberation – as a process of discussion and as a decision – and by making the latter sense theoretically and practically dependent on the former.

Manin (1987), concerned with the legitimacy of decisions taken by means of political deliberation (since he understands that such legitimacy is responsible for the consolidation of institutions that adopt political deliberation), identifies two politico-philosophical macro trends that, although base their positions on the association between liberty and deliberation, differ in the understanding of these and the relations between them: (i) one of them thinks of deliberation as the decision itself, the choice that a particular individual makes when making a decision. In this context, deliberation is the completion of interests of the individual, and its legitimacy lies in the freedom that this one must make a decision without being influenced by anyone or any institution; and (ii) another, supported by the aristotelian tradition, according to which deliberation is the process of formation of interest, the particular moment that precedes the choice and in which the individual ponders between different solutions. For this, legitimacy lies in the freedom that individuals must debate (in the habermasian term, ‘exchange’) their ideas.

The limitation of the first proposal would be, in Manin’s view, that it starts from the assumption that the individual, in deliberating, that is, in deciding, has constituted, *per se*, convictions and choices. Therefore, any external influence (of individuals, parties or associations) is understood as coercive and threatening freedom, affecting, thus, the legitimacy of deliberation. This way, the exchange, the debate between the different views and the competition about the discussion of ideas, typical of political competition, are eminently problematic.

Manin contests this conception, stating that decision-making is always a choice between uncertainties. For him, it is correct to say that individuals, when making decisions about the directions of society, have information. However, these are fragmentary, incomplete and even contradictory, which does not allow the formation of convictions that underlie decision-making. The confrontation and debate between many views about a proposal, rather than harming it, is essential for individuals to clarify, refine, and select the information they have available, reducing their levels of uncertainty and modeling their preferences, even if it represents a change in their initial vague goals. In this sense, the debate, in addition to increasing and improving the quality of available information, constitutes a political-pedagogical process for decision-makers.

In scenarios like that, freedom consists in the possibility of arriving at a decision through the search, the debate and the comparison between several solutions. Therefore, the legitimacy of decisions would be the very process of discussion and debate that shapes it. For Manin, this process of discussion and debate is, in itself, deliberation. In other words: deliberation – the debate between different proposals - is the criterion that legitimizes the decisions taken.

Since political decisions are generally imposed on all individuals, one of the essential preconditions for their legitimacy is the participation of all or, more precisely, the right of everyone to participate in the deliberation. Thus, a decision will be legitimate not because it represents the interest of all, but because it results from the deliberation of all or, more precisely, the right of all to deliberate.

When the deliberation is concluded (which happens not because certainties have been formed, but because the stipulated deadline for decision-making is over), it is possible, in case of doubts, to decide which

point of view should be chosen. This choice is mediated by voting, which is not seen as 'deliberation', but because of it, which, moreover, has the merit of institutionalizing the position of those who did not agree with the final solution adopted - the minority - strengthening the legitimacy of the decision.

Joshua Cohen (2001), with the intention of deepening and concretizing such deliberative conception, considers that it is not enough to ensure a public culture of discussion on political issues and try to associate it with traditional institutions of representative democracy, such as votes, parties and elections. For him, political deliberation is only legitimate when it links the exercise of power to conditions of the 'public *razonamiento*'.

The 'public *razonamiento*' is the procedure in which all citizens who can think about the subjects to be debated - for Cohen (2001), 'approximately all human beings' - are and are understood as free and equal, and their interests are presented to the debate by means of proposals expressing reasons that could be accepted by all. Thus, the deliberationist procedure would be, besides democratic, rational. When democratic negotiation between different rational points of view does not produce consensus, one must resort to voting for decision-making. In these cases, they vote on proposals which, although they do not reflect the reasons of all, were constructed taking into consideration such reasons. It is, therefore, a question of choosing between the one that, in the view of the voters, better considers such reasons. This gives legitimacy to the deliberative process and, consequently, to the decision made through voting.

Adam Przeworski (1984) presents an important contribution to a better understanding of this 'voting moment' by defining that the uncertainty of the results of a political competition is fundamental to the legitimacy of institutions. For him, if some political actor is sure that his interests will win

political competition, regardless of the form that the decision-making process has, the other actors tend to delegitimize the competition and resort to other extra-institutional strategies (tendentially compulsory and/or violent) to assert their interests.

This means that if the voting to which the deliberate proposals are sent does not express the 'referential uncertainty' to which Przeworski refers, the voting runs the risk of falling into disagreement with the deliberation, since, if any political actor is certain that, regardless of what has been decided, the proposal will be successful in the vote, the efforts of articulation and debate are annulled and the deliberation loses legitimacy. For this author, the referential uncertainty can and should be built and guaranteed through institutional rules agreed upon among political actors. About voting, such rules have, among other things, to be concerned with the composition, number and decision-making weight of voters.

Taking these arguments into account, Jon Elster (2001) considers that deliberative democracy is not immune - and, probably, is even more sensitive - to what he calls the 'large-scale problem'. For him, if greek procedures of deliberation are repeated, based on the agora assembly, in which thousands of people took part, the deliberative process tends to become a debate among a few, usually fitted with oratory and rhetoric, who are dedicated to persuading the others that their proposal is better than the others. In this dynamic, speakers, preoccupied with persuading listeners, tend to resort to the disqualification of other proposals (or, worse, their proponents), emptying the debate and the exchange of information and, by extension, the legitimacy of decisions.

In the same tone, John Dryzek (2004), seeking to identify the possibilities for deliberative democracy to overcome the large-scale problem, considers that it hangs upon a thread if its viability crucially depends on a clear majority, especially, because it always

opts for not exercise the rights and capabilities that are so fundamental to the theory.

The reduction of scale advocated by these authors – already thought by Manin, when associating the deliberation of all with the right of all to deliberate – necessarily, introduces in the debate the complex and problematic aspect of representation/representativeness. Lijphart (2003) considers it as one of the main formal elements for the success of political institutions. Hannah Pitkin (1969), in an already classical study, explains that the representation, because it is based on the paradox of making present who is absent, contingency the performance of the representatives to a kind of oscillation between a posture of spokesman of those who named them representatives (mandate) and another that places them as representatives not only of those who indicated them, but of the whole society, which leads them to decide in the name of this (autonomy). For her, institutions should be able to harmonize such oscillations, generating intermediary positions that enable the representative to represent those who indicated him, but that does not prevent him from attending to designs that he considers as those of society and, at the same time, allow that this posture of independence does not usurp the interest of those who have indicated as representative.

Archon Fung (2004, p. 183), dealing with issues of scale and representation, proposes that political deliberation has as a locus what he calls ‘mini-publics’, clippings of the public sphere that

bring together citizens to dozens, hundreds or thousands, but not millions or tens of millions, in public deliberations organized in a self-conscious way.

He proposes a typology of mini-publics based on their functions and attributions: ‘educational forum’; ‘participatory advisory council’; ‘cooperation for participative

resolution of problems’; and ‘participative democratic governance’.

The mini-public, whose attribution is that of ‘participative democratic governance’, because it has the function of incorporating citizens directly into the formulation and determination of the political agenda, is what presents an increased possibility of constructing a deliberative democracy. This is because it opens space for the creation of institutions that include in the decision-making process of public policies political actors that had been kept away and that, given the characteristics presented by Cohen (2003), can legitimize the decisions taken.

All the authors mentioned here are concerned with another fundamental element for the success of political deliberation: the definition of the subjects/policies that can and should be put to debate. As a rule, they consider that one cannot work with the idea that any subject should be discussed, but they also find it difficult to define what they would be (presenting broad and somewhat vague solutions, such as ‘anything that interferes in the daily life of the other’) and, what seems to be even more important, how to define what should be discussed. This seems to be the least focused aspect of political deliberation in the literature.

Marcos Nobre (2004), based on Seyla Benhabib, defines practical aspects for the deliberative process: (i) participation in deliberation is regulated by norms of equality and symmetry; (ii) all have the same chances of initiating speech acts, questioning, interrogating and opening the debate; (iii) all have the right to question the agenda produced for discussion; and (iv) all have the right to introduce reflective arguments about the rules of discursive procedure and the way in which they are applied or conducted.

So far, it is aimed to design a theoretical-reflexive structure that characterizes deliberative democracy as a movement of radicalization of representative democracy – especially, to the fact that it exhausts its

responsive possibilities in electoral mechanisms of aggregation –, increasing the political legitimacy of the decision-making process by through a constant and institutionalized search for consensus.

The next step, as highlighted by Vieira and Silva (2013), is to establish the relationship between the theoretical contribution of the deliberative democracy and the real deliberative practices and more concrete issues of institutional design, especially, in the creation and development of mini-publics.

For this reason, the path taken in this essay leads to, at the end of the present topic, the enunciation of an articulated set of 11 characteristics whose intention is to contribute to the design of an institution that, being the arena of a decision-making process, acts from the deliberative democracy.

For democratic radicalization to be driven by a deliberative character, it must be (i) be constructed from institutions in which decision-making is the result of a process of debate between different proposals. Such institutions (ii) tend to be more successful if, in terms of scale, they are characterized as mini-publics. Among those, (iii) those that deal most directly with the policy decision-making process are those of the ‘participatory democratic governance’ type, because they have the task of defining the political agenda and, in a broader sense, formulate and monitor the execution of the public policies.

To be a democratizing institution, these mini-publics must (iv) define the agendas that will be object of deliberation, refusing the temptation to try to deliberate on everything. Agendas from broader participatory forums that, periodically, are reviewed constitute a powerful strategy; and (v) include in its decision-making process representatives of all those who have interests in the political actions that will be discussed.

These representatives need to (vi) understand each other – and those represented – as free and with equal ability to

make political decisions. For this to occur (vii), it is essential that all participants have equal opportunity to formulate, present and defend proposals. More than that, (viii) the proposals they present must be based on reasons that all participants could consider as possible of being acceptable.

This way, (ix) the debate is not reduced to veto/acceptance positions, constituting a process that seeks to improve the original proposal. This improvement does not extinguish divergences, but it does highlight convergences. Thus, (x) the vote, if necessary, becomes a way of choosing – between different proposals that, because they were deliberate, are already legitimate to all – the most plausible. (xi) Deliberation and voting are, therefore, articulated processes that need to be based on the referential uncertainty of their results, which invalidates the de-legitimizing argument.

Such characteristics have, in articulated way, from the point of view of this essay, the potential to confer legitimacy to the deliberations and decisions taken by the institutions, consolidating them and, therefore, radicalizing democracy. It is intended, now, to relate them to the Municipal Health Councils, to verify what measures they already practice; how much could be improved to incorporate them, that is, their possibilities; and its limits, those that can prevent them from practicing deliberative democracy. The main purpose of this procedure is, as discussed above, to contribute to overcoming the crisis of delegitimization faced by the Health Councils.

Possibilities and limits of deliberative democracy in Municipal Health Councils

At this moment of the essay, it is important to approach the reflections hitherto constructed by the Municipal Health Councils,

seeking, based on the institutional design outlined above, to discuss the possibilities and limits of these councils to face the crisis of delegitimation from a deliberationist turn.

In the field of possibilities, there are at least five that are very important for an approach that intends to characterize CMS as ‘mini-publics of participatory democratic governance’: (i) they are mandatory institutions, and their non-existence can be punished with a cut of federal resources; (ii) the advisers represent segments that have an interest in municipal health policies; (iii) the entities that represent the segment of the users of the health system count on half of the vacancies of counselors, opening wide participatory space for those who will, ultimately, be hit hardest by the results of the decision-making process; (iv) by dealing in this way with the participation-representation relationship, enable a strategy for overcoming the large-scale problem; and (v) its legal attributions institutionalize it as a forum for formulating health policies and, in extension, controlling and monitoring them.

Even more potent is the fact that Law nº 8.142/90 (BRAZIL, 1990), that institutionalizes health councils in the decision-making process, defines that these institutions have a ‘deliberative character’. However, dialectically, perhaps lives in this legal definition not only the great possibility of the councils taking a deliberationist turn, but, also, the great limiting factor for this change. This is because the hegemonic interpretation among the CMS on its deliberative character is that which Manin explains as the decision itself, and not the search for consensus as the producer of the decision.

In more specific terms, in the practice of the councils, deliberation is the result of the voting held in its plenary sessions. It is embodied in an official document of a normative nature that must be approved and put into practice by the governments within a maximum period of 30 days. As

already mentioned, in the only available national census study, Moreira and Escorel (2009) identified that about 90% of the Brazilian CMS had at least one of their last five deliberations not approved by the municipal executive branch. This high percentage allowed the authors to consider that either there was no process of exchanging ideas, seeking consensus, preceding the votes, or, if it occurred, was not able to produce proposals that, although divergent, were based on reasons which all actors involved could have.

There is to be aggregated here another limiting element, the veto posture of certain advisors, who, by their number and leadership, end up transforming their councils into an a priori veto instances, discouraging any search for consensus, as shown by Silva (2011).

Considering that the composition of the CMS is parity and is understood as half of the seats allocated to the representatives of the users and half to the representatives of the other segments (25% of health professionals and 25% of the service providers and governors), to win a voting, rulers need to attract representatives from all other segments. If such attraction already tends to have high transaction costs, they are even greater in a decision-making process where the exchange of ideas is difficult to occur.

A procedural analysis of the voting shows the increase in transaction costs: about 70% of CMS does not establish a minimum quorum for voting (MOREIRA; ESCOREL, 2009). In practice, this means that, in each vote, decisions can be made regardless of the number of counselor members present and the segments they represent. In addition to representing the breakdown of parity between advisors, also determined by Law 8142/90 (BRAZIL, 1990), this extends the possibilities of the rulers to understand that their positions will be defeated. If they are sure of this, that is, if they consider that the process does not have a referential uncertainty and that their proposals will be vetoed, or that proposals contrary to their interests will be

successful, they will tend not to homologate the result of the voting, a reaction whose political cost is very low. By acting like that, they delegitimize the decisions and the CMS themselves.

It can be argued that this situation is a noncompliance of the law by the executive power, what would transfer the problem to the legal sphere. However, the number of times that such disrespect occurs and the fact that it is distributed throughout the Country, focusing on places where the social movement and the Public Ministry have a prominent role, seem to indicate that, if there is a legal problem, it is more than a lack, than the jurisprudence and/or legal uncertainty about the role and power of the CMS.

The amount and sequence of deliberations of the CMS that are not certified by the executive power put in check their institutional legitimacy and, thus, reduce their possibilities to intervene in health policy directions. This is what is called the 'crisis of delegitimation', which can empty the sense of the advances conquered, especially, those of including new actors and, therefore, the CMS themselves. More ahead, this reflection on the delegitimation, albeit in a preliminary way, will incorporate a new element, which emerges with the political crisis that Brazil is going through in 2016.

Before, however, it is necessary to discuss the potential reasons for this conception of deliberation because of the vote and of the power over other institutions of the decision-making process to be predominant in the councils.

The main hypothesis discussed here pertain to a peculiarity in the transition from the 'Final Report of the 8th National Health Conference' (BRAZIL, 1986) to the health chapter of the Constitution of 1988 and the laws of creation of the Unified Health System (SUS), since one of the few aspects of the Report that were not incorporated by the SUS is about exactly the health councils.

In the 'final Report of the 8th' (BRAZIL, 1986, p. 12), the health system would have a private sector 'subordinated to the directive role of state action'. Although it is the agent first and responsible for the direct exercise of this control, the State would neither be the only nor the definitive controlling instance, and it should, also, be controlled, this time, by the population.

This control of the population over the State, health policies and services – and, therefore, over the private sector – has been termed 'social control'. To put this into effect, were fostered, among other broader measures, the reorganization of the National Health Council and the creation of State, Municipal, Local and Regional Councils. Item 25, Theme II, of the Report, provides for the formation, at the municipal level, of the Health Councils:

[...] composed of representatives elected by the community (users and service providers) that allow the full participation of the society in the planning, execution and supervision of health programs. (BRAZIL, 1986, P. 18).

Thus, the social control to be undertaken by the CMS would be a control external to the State and that accumulates power formulators, executors and inspectors of health policies. Because they are external and not linked to the state and national councils, the CMS would not be submitted to their own control bodies, except, obviously, by the legal system of the Country.

For all this, the proposal of the VIII National Conference of Health gives to the CMS preponderance over the other political actors, in particular, over the governors, giving them power to determine the result of the decision-making process of the municipal health policies, although subsequently. In this context, the role of CMS would be less that of a democratizing institution and more of a controlling institution.

As stated, the municipal health council

made official by Law nº 8.142/90 (BRAZIL, 1990) is quite different from the proposed in the 'Final Report of the 8th CNS', mainly because its composition was expanded including not only users and workers, but, also, governors and providers of service. However, the conception of control and power over the other instances of the decision-making process persisted in the practice of counselors, constituting almost an ideology, still today hegemonic in CMS. And it is this historical persistence that, in the context of this essay, sustains the greatest limitation for the development of councils as institutions of the deliberative democracy.

To close this topic, it is necessary to refer to another fundamental question for the development of institutions of deliberative democracy, which is to define what they will deliberate on. As discussed, the concern of the deliberationists is that not all subjects and themes should be submitted to the deliberation.

In the case of the Councils, this definition would go through the rescue of the role of the Municipal Health Conferences, also mandatory. As Carvalho (1995) affirms, councils and conferences are participatory instances designed to act in an articulated way, in which they, of a broader character and with more participants, formulate the guidelines of the municipal health policies for the next four years, and those construct policies from the guidelines.

Thus, the focus of the deliberations of the councils is defined: the guidelines defined by the conferences. More than that, the transformation of these guidelines into health policies and actions. The next conference, in turn, evaluates these policies, identifies the new priorities, perfects and creates new guidelines for the next four years, and the virtuous cycle goes on, without this being obstacle for, in front of extraordinary situations, the council to deliberate.

The limit of this virtuous cycle seems

to be, therefore, the fact that the municipal health conferences have privileged in their debates the choice of counselors for the state conference, the election of new municipal councilors and, above all, the discussion of immediate and emergency problems of the SUS, giving up its role of formulator of political guidelines and/or producing extremely generic indications for health policy, sometimes, even extrapolating the health sector.

Final considerations

The crisis of delegitimation discussed here has as a reference the reactions of the mayors to the decisions of the CMS, either by direct means (the non-homologation of the decisions), or by a more disguised way (restrictions on the working conditions). The current conjuncture of the Country, however, has widened such delegitimation, spreading it to the national congress and to several social segments.

In October 2014, the National Congress withdrew the decree, of the president Dilma Roussef, which instituted the National Policy for Social Participation, which, according to Alencar and Ribeiro (2014, p. 27), did not mean "any threat to the work of our traditional representative institutions" and which had the merit of seeking a link between the different administrative councils of public policy. The newsletter 'Chamber of Deputies', in reporting the fact, pointed out that "the government lost its first vote after the re-election of Dilma Roussef [...] with the support of the PMDB and the PP, of the allied base" (RIBEIRO, 2014, p. 24).

It was, therefore, the political movement that would become clearer during the years 2015 and 2016 of destabilizing the re-elected government, with opposition parties calling for the impugnation of the elections, the nullification of the winning platform and, after the inauguration, the 'agendas-bombs',

those that had the potential to destabilize the accounts of the Country. Such a movement, in articulating criticism of the management councils to the federal government, has become a more serious indicator of the delegitimization crisis.

There is, also, another indicator, perhaps more acute, because it displaces the delegitimation of the reaction of the governors and congressmen to the discontent of different segments of society: in the street manifestations that have been happening in the Country since 2013, 'health' has always been a word of order, despite the tone of the manifestation. From the infamous 'Fifa's standard health' (institution scourged by international corruption scandals) to 'more money for health', through the president's attempt to use Pre-Salt resources for health, all went to the streets to manifest for changes in health.

And these street movements ignored the health advice, probably because most people do not even know about its existence. But the most striking thing is that councils, from the institutional point of view, also ignored the street movements. It is not being said that councilors, exercising their citizenship, did not go to the streets, or even that certain councils have discussed the demonstrations in their meetings.

What is being discussed is that the councils were not open to the demonstrators, they did not seek to canalize the participatory power of those who went to the streets, becoming a porous institution to this kind of participation. To paraphrase Young (2014), this is an activist challenge

to deliberative democracy, but also a de-liberationist challenge to activists and demonstrators.

It is in this confluence that, in this essay, there is the extreme concern with delegitimation and its consequences. Logically, political deliberation is not a panacea, and CMS are not the only possible institutions for thinking about the democratization of the municipal health sector. There are important criticisms that, while not appear in the objectives of this essay, need to be considered. The main one is that, even if the model of deliberative democracy advocates the possibility of everyone participating in the decision-making process, not everyone has the capacity, political resources and/or interest in such participation. As already mentioned, the conception of deliberation as an exchange of ideas embodies the conception that this exchange is, also, a political-pedagogical process, that improves the political capacity of its participants.

However, what was intended to work on here is that CMS are institutions that have deliberative potential and that can consolidate and contribute to the production of health policies that more directly fulfill the interests of political actors who have always been excluded from decision-making. They can, therefore, contribute to democratization. They are not, certainly, the only way nor the only plausible proposal to think of more effective councils and radicalizations of democracy, which are so at risk in Brazil in 2016, but whose main merit is to permanently associate the search for effectiveness with the search of democratization. ■

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