

**Democracy, Deliberation and Exclusion.
A Brief Case Study on Romanian Deliberation Regarding the Civil Partnership**

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Abstract

The present article has its starting point in the feminist critiques directed against the theory of public reason detailed in Political Liberalism. These feminist critiques reject Rawls' model as they consider it limits both the individual's access and also the topics and themes subjected to debate. Starting from the question how and who establishes the limits between political and non-political (and therefore the implications reasonable/unreasonable, public/private, inclusion/exclusion), this paper will analyze Rawls' model (and its reasonability restriction), Habermas' proposals (and the rational argument restriction) and those of Iris Marion Young (communicative democracy), adding in the last part Morgan-Olsen's conceptual frame. The four approaches will be then used in a short overview of the 2014 Judiciary Committee debate on legalizing civil partnership in Romania.

Key words: exclusion • public reason • legitimacy • deliberative democracy • communicative democracy • Rawls • Habermas • Marion Young

Rawls and the limits of reasonability

Rawls' theory of political liberalism is based not on pluralism, but on reasonable pluralism, and therefore its two main components are public reason and tolerance (overlapping consensus). Citizens are considered reasonable when they accept each other as free and equal, when they cooperate in a fair way and if they reach an agreement even if this is not favorable to their own interests as long as this entails that the other will accept the solution (Rawls 1997, 770).

Reasonableness is based on the *criterion of reciprocity* (Rawls 1993, XLII): citizens must accept / validate certain actions as free and equal individuals, without being manipulated or dominated. Reciprocity ensures the fairness of a choice in the *political* space. Being reasonable, thus, does not require sharing the same political values, but the mutual recognition of others' deliberative freedoms, the necessity for dialogue and the acceptance of reviewing their own opinions (Bohman 1995, 264) following the process of deliberation in equal terms with others. Unreasonable citizens do not approve social cooperation with others and/or do not agree that reasonable

citizens contradict on various matters (Friedman 2003, 166), and/or the fact that all citizens are free and equal (Quong 2004, 315).

The reasonableness of citizens represents the basis of public reason and the purpose of the latter is public justification (Rawls 1997, 786). Public reason proposes how to organize the structure and content of society's fundamental underpinnings for political deliberations (Rawls 1993, LVIII) and does not apply to the background culture (non-public reason) (Rawls 1997, 768). Rawls stresses that public reason does not address all political discussions, but only to the public political forum: the discourse of judges; the discourse of government representatives; the discourse the candidates for public offices. The limitations of public reason refers both to (a) its content and (b) its method (Charney 1998, 98-100): (a) the reasons put forward in the justification process shall be those that appeal to political values or to the values of a political conception of justice – what it is considered a public good or a public danger; and (b) adherence to general principles of reasoning, criteria of relevance and rules of proof.

Bohman (1995, 258-259) does not accept Rawls' idea that there is solely one public reason and several non-public reasons which belong to the background culture, contrasted with public political culture. Public reason will not be based on a comprehensive moral doctrine or on a specific conception of what is right because such reasons do not have a public domain. The neutrality of public reason comes precisely from avoiding such non-public moral claims. However, the neutrality of public reason and the impartiality of overlapping consensus may lead to forms of impartial universality and to a political culture of the majority group (Bohman 1995, 257-260). The problem noted by Bohman (1995, 255-259) is that, in a pluralistic society, public reason can be unstable and disputed in terms of its scope, especially in the context of cultural diversity and the conflicts generated by non-public reasons. He suggests a review of the liberal approach so that public reason would be considered plural, plurality that would promote a common deliberation concerning conflicts and not collective goals.

Bohman considers Habermas' perspective on deliberation as an alternative to Rawls' because it does not limit the topics of the debate and allows establishing the difference between political and non-political during the deliberation process, not prior to that. By enlarging the access in the deliberation field, public reason becomes more dynamic and thus avoids the objection of excluding minority groups (Bohman 1995,

265-266) - those that do not fall within the type of reasonable reasoning from Rawls' model - or citizens considered unreasonable. However, Habermas' model also becomes problematic as it is based on rationality and on the capacity of abstraction (neutrality and impartiality).

The Rawls-Habermas dispute starts from the problem of legitimacy and its relation with public justification, because without establishing, in an acceptable way for everyone, the limits of public reason and the differences between reasonableness and unreasonableness, then the justification based on public understanding is not sustainable (Bohman 1995, 265). While for Bohman the rawlsian ideal of public reason is an unrealistic standard for many political conflicts because it excludes diversity, for Habermas it is a substantial problematic issue since its outcome - legitimacy - may not necessarily be fair. Both Rawls and Habermas consider that justice is primarily concerned with the relationship between citizens and that they must agree upon the characteristics of the relationships of a fair society (Laden 2011, 140). The main difference between the two authors also regards the distinction between acceptance / acceptability, where Rawls' justification model generates only acceptance (Laden 2011, 151). For Rawls, the outcome of public reason is not automatically correct or true, but reasonable and legitimate (Rawls 1997, 798), allowing legitimacy to divert from fairness - but this estrangement from fairness has to be moderate, otherwise legitimacy itself becomes corrupted (Freyenhagen 2011, 332) - fact caused by the procedural conception according to which the agreement on the decisions should be based solely on the fairness of the proceedings (Cohen 1997, 409). Habermas considers, however, that an unjust law is illegitimate and that legitimacy must be compatible with valid moral rules (Finlayson 2007, 153-157). His model argues that valid moral rules (leading to acceptability) should be set prior to engaging in the political discourse and not within public reason. In *Between Facts and Norms*, Habermas stresses that "deliberative politics acquires its legitimating force from the discursive structure of an opinion- and will-formation that can fulfill its socially integrative function only because citizens expect its results to have a reasonable *quality*" (Habermas 1992, 304).

Public reason does not prohibit the plurality of opinions (only if they are reasonable), but imposes compliance with legitimate political decisions, even if some citizens do not consider so, by virtue of the majority principle (Rawls 1997, 798). This last aspect is criticized by Habermas (1995, 128), who considers that thus the public

reason does not represent an exercise of citizens' political autonomy, but only a nonviolent way to preserve political stability. In his conception, legitimacy depends on recognizing private individuals as potential contributors in the discursive processes that lead to the drafting of laws (Johnson 2001, 45). Audi's argument against the legitimacy generated by the majority opinion takes into account that this may lead to the opposite of liberal democracy and cannot guarantee the observance of basic rights, the majority being able to adopt a constitution that would legitimize restricting these rights (Audi 1997, 171).

For Friedman, legitimation resulting from the exclusion of unreasonable citizens is itself unreasonable because it does not take into account the conditions which have determined them to be unreasonable – e.g.: exposure to unjust/unreasonable institutions (Friedman 2003, 165). Such exclusion not only does not fail to remediate a previous injustice but serves to perpetuate the factors that determine citizens to be unreasonable. Furthermore, considering the fact that Rawls believes that agents are reasonable (public) and also rational (private), this might lead to the association between unreasonable and irrational, which would result in the exclusion of citizens on the basis of race, sex, class or based on implicit biases (Friedman 2003, 170-173).

According to Rawls, unreasonable citizens are excluded because they hinder the process of deliberation. Quong proposes that unreasonable citizens should be tolerated if their comprehensive views are compatible with public reason (Quong 2004, 320) and if it does not infringe the others' rights to equality and freedom. The intervention / coercion / exclusion of unreasonable citizens must not violate the general principles of justice (the persons are free and equal) and has to be performed only when unreasonable views attack the ideals supported by public reason - the intervention / the exclusion has to be made also through public justification (Quong 2004, 331-333).

Although the revision of the theory from *Political Liberalism* enables a flexibility of the content of public reason, the inclusion in it is still conditioned by reasonableness and justification outside the comprehensive conceptual frameworks (Morgan-Olsen 2010, 233-235). The problem noticed by Morgan-Olsen is that there are two categories of new concepts: those belonging immutably to the comprehensive doctrines, and those that even if occur in a comprehensive framework, they can be separated from it and included in the public justification process. If the constraints of public reason fail to consider the second category, then it will exclude from the process of deliberation

individuals who should have been included – and this is what Marion Young calls 'external exclusion'.

Morgan-Olsen's objection to the limitations of public reason refers to the fact that the concept is based on conceptual exclusion when it claims that reasons which are not supported/accepted by all participants involved in the deliberation should be rejected as nonpublic. Even if the broader version of public reason developed by Rawls after PL starts from the idea of allowing the addition of new grounds, this does not change the problem of conceptual exclusion because even the newly introduced grounds in public reason must be accepted by the general public, otherwise will be dismissed as unreasonable by the majority of citizens (Morgan-Olsen 2010, 229). For Rawls, the reasons are non-public or not depending not on their novelty, but on their support from the general public – this was issue brought to the forefront by Habermas when he criticized Rawls' model as one which is based on the tyranny of the majority.

While Rawls considers that the limited scope of public reason, the restriction of reasonableness and the consensus of reasonable comprehensive doctrines represent the most effective method of political legitimacy, the feminist critics reject all three elements, whilst Habermas focuses primarily on the first, proposing as an alternative his deliberative model and the importance of civil society (through public sphere) in the choice of topics submitted to public debate and in their classification as political or non-political.

The theory of public reason raises several conceptual oppositions, namely: public political justice/comprehensive perspectives, political/ethical, citizens/persons, reasons of the public sphere/reasons of other spheres - and all are based on the distinction between public and private (Charney 1998, 98). The feminist critics focus mainly on three antithetical pairs: political/non-political, public/private, reasonable/unreasonable.

The main problem raised by feminists concerning reasonableness starts from the fact that Rawls "introduces in this concept the distinction between political and private" (Baehr 1996, 58). Although Rawls mentions in *Political Liberalism* that the public/non-public distinction is not synonymous with the public/private one (Charney 1998, 98), we can at least split the elements of the three conceptual couples in two main classes: political – public - reasonable and non-political – private – unreasonable. Rawls considers that the private sphere cannot be characterized by reasonableness, but by

rationality, since the criterion of reciprocity (which underlies reasonableness) is limited to the political field (Laden 2011, 147 and Finlayson 2007, 156), and also because the reciprocity requirements have no philosophical nature and may not be applied to comprehensive doctrines. Replacing the reasonableness of the private sphere with rationality may be an evidence of avoiding any accusation of unreasonableness of the private field or of the comprehensive doctrines, allowing thereby the overlapping consensus of comprehensive doctrines which in fact are not reasonable (e.g.: the consensus of sexist comprehensive doctrines), but which, until they are involved in the process of public justification, can not be characterized so, but only rational or irrational. The removal of private conceptions from the public reason is an ideal that does not reflect the evidence of reality.

The liberal conception on the public – private distinction insists on the existence of certain delimitation between them, the latter being protected from the coercive state intervention. Rawls transposes this distinction in the form of political - non-political. In his conception, the public reason is distinguished from the non-public one in regards to their domain: the non-political is determined by the background culture, which is opposed to the public political culture. Responding to the critics on the limitation of the public reason, *The Idea of Public Reason Revisited* allows the non-public reasons to be accepted in the deliberation process as long as they are accompanied by public reasons which will support any comprehensive doctrine (Morgan-Olsen 2010, 232). However, this permissiveness does not refer to the translation of comprehensive arguments in reasonable political arguments, but to the acceptance of new public reasons which support certain comprehensive doctrines, according to liberal perspective that does not accept the intervention of the political / the state in private areas.

A second feminist criticism addresses the issue of autonomy. Friedman considers that the exclusion of unreasonable persons from the deliberation pool leads to their coercion without any consent from them, the result being the violation of the freedom, equality and autonomy of citizens (Friedman 2003, 163). For Rawls, however, a broad political concept and a narrow non-political conception endanger the citizens' personal autonomy because it restricts their freedom to build a life of their own choice (Baehr 1996, 60). Iris Marion Young believes that Rawls' emphasis on public autonomy requires the removal of particular demands and viewpoints, which leads to ignoring personal autonomy (Johnson 2001, 50). Habermas rejects prioritizing a form of autonomy at the

expense of the other, and includes both forms in the process of legitimacy (Finlayson 2007, 150 and Johnson 2001, 51), where the public sphere represents the framework in which the demands of personal autonomy are discussed.

Regarding the distinction between the political and the non-political, Okin raises the question who and where establishes the limit between the political and the non-the political borders, and if we should rely on the normative or on something else. Habermas' answer is that we should not leave it up to the normative - rejecting thus the model set out in *Justice as Fairness* because it deprives citizens of having an active role in the legitimation discourse (Laden 2011, 143), because the limit is not a fixed one, but can be changed and established by citizens in their quality of active agents - and here Habermas refers not only to voting, but also to participating in the public discourse through the public sphere (Baehr 1996, 61-62). Civil society has a central role, because it brings to the forefront issues that belonged to the non-the political until then, and turns them into political issues.

Habermas and the limits of rationality

While for Rawls legitimacy is the one that prevails, for Habermas justification is more important, the dispute between the two representing the result of Rawls' affiliation to deliberative liberalism, and Habermas' to deliberative democracy. Deliberative democracy focuses on political justification, understood as an ideal procedure of political deliberation in which participants acknowledge their mutual equality through cooperation (Cohen 1997, 412-413). For Habermas, those who participate in discourse "have the obligation to justify any appreciation and judgment regarding what decision should be made to those who will be affected " (McMahon 2002, 122) by the decisions taken following the deliberation.

The deliberative democracy model proposed by Habermas, discourse ethics, encompasses elements from both the liberal perspective as well as from the republican perspective. Its specificity is that "it invests the democratic process with normative connotation stronger than those found in the liberal model but weaker than those found in the republican model" (Habermas 1992, 298), namely it prioritizes the process of formation of political opinions and the formation of the will, but without leaving the constitution in the background. For Habermas, deliberative politics should not rely on citizens who act collectively (the republican conception), but on the institutionalization

of the communication procedures and conditions and on the interaction between institutionalized deliberative processes and *informally formed public opinions*. The inclusion of the latter in the communication field, alongside with the institutionalized forms of deliberation (choice and legislative decisions) leads to transforming the influence of opinions and of communicative power into administrative power (Habermas 1992, 298-299).

Habermas argues that the deliberative democracy model avoids exclusion in the field of deliberation precisely because the legitimacy of decisions is generated by the interaction between the communication field from the outskirts of political power and the administrative power (Habermas 1992, 356) – but as Marion Young underlines, his model refers only to external exclusion and does not take into consideration internal exclusion. According to Habermas, the forming of institutionalized opinions has to be caused by communication contexts from the public sphere, civil society and private sphere, otherwise the opinions of experts or representatives of the administrative system will be prioritized at the expense of citizens (Habermas 1992, 351-352). Legitimacy is thus ensured through the public acceptance of the procedures by which the drafting of laws or of political decisions is responsive to the public opinion formed in the public sphere (Dryzek 2001, 656).

Civil society, although it does not have a clear or delimiting definition, includes non-governmental and non-economic connections and voluntary associations. The civil society is composed of associations, organizations and movements that communicate and spread in the public sphere their reactions to the repercussions of some political or social problems, repercussions which are found in the private sphere. These associations have an open and egalitarian form of organization, its public consisting of citizens who seek acceptable interpretations for their social interests and experiences and which express their will to influence the forming of the institutionalized opinions (Habermas 1992, 366-367). Civil society should not be confused with market activities nor the private sphere, although it is correlated with the latter, its goal being the institutionalization of those features of the discourse which must generate legitimacy (Thomassen 2010, 119).

The voluntary associations that form the civil society do not have a hierarchical shape and that is why they can not become the locus of the political power (Thomassen 2010, 120). They can, however, influence the political decisions from the public sphere,

turning the communicative power into administrative power, and thereby the public sphere can become a binding agent between the political system and the private sectors. For Habermas, the civil society (independent from the economic area / lobby and public administration) represents the basis of autonomous public spheres.

Starting from the dualistic theory of the civil (the defensive and the offensive aspect), Marion Young considers that the second function of the associative activities aims to influence political or economic policies, which makes the offensive function of civil society to be translated in the form of the public sphere (Marion Young 2000, 163).

The public sphere implies unrestricted inclusion and equality, which prevents any process of exclusion (Habermas 1992, 374). Habermas identifies three types of actors within it: those who represent political parties or pressure groups, those who have to build their identity within the public sphere (e.g.: the social movements which must first self-identify and self-legitimize) and the media representatives who collect and select what information will be presented (Habermas 1992, 375-376).

Habermas raised the issue of the proper/realistic/proportional illustration in the public sphere of the civil society actions in the context of the emergence and development of mass communication. Thus, it is outlined a third actor in the democratic process of opinion formation: mass media (which brings with it the issue of gatekeeping, the private interests of media companies, political associations, etc.). Habermas recalls that in the present society we often meet a public sphere dominated by the media, but this does not lead to the exclusive identification of the public sphere with the media field – such an interpretation would not allow civil society to have an influence on the political system. Protest movements or the controversial presentation of the proposals initiated by the public sphere constitutes a way to gain a place on the public agenda dominated by the media (Habermas 1992, 379-381).

Habermas highlights the distinction between civil society and the public sphere: the first includes institutional factors (e.g.: NGOs) while the second is a broad framework in which the first takes place and also includes other elements (e.g.: media) but it does not include and it is not defined as an institutional mechanism. Civil society has the role to determine the directions of discussion in the public sphere - either brings to the forefront rejected themes considered until then irrelevant by all / most citizens, either discusses / rejects some political decisions and invites participating in debates regarding their alternatives.

The critics of Habermas' model refer mainly to the fact that he takes into consideration solely one public sphere. Nancy Fraser considers that the singularity of the public sphere ensures the dominance of certain actors and leads to the exclusion of the less privileged (Marion-Young 2000, 171). Habermas' argument is that in the mass society a multitude of public spheres would cause the impossibility of making a decision in accordance with their requirements (which can be conflicting). However he accepts Fraser's critique in the form of underling counter-publics as the main fields of critical publicity (Allen 2012, 824).

Inclusion and communicative democracy

Regarding the Rawls – Habermas dispute on legitimacy, Marion Young frequently emphasizes that inclusion represents the basic condition of legitimacy in democratic politics (MarionYoung 2000, 36), and that inclusion can become a tool for stopping political inequalities caused by social or economic inequalities. Democracy must be characterized by political equality (Marion Young 2000, 52) - all those affected by policies should be equally included in the decision making process and should have equal opportunities in influencing the outcome of the deliberation process. However, Marion Young does not conceive inclusion as formal and abstract equality, but as the explicit recognition of social differences and as encouragement that different groups which differ from the majority to express their needs, interests and perspectives under conditions of reasonableness - where 'reasonable' means being willing to listen to others, to accept their influence and not to resort to violence (Marion Young 2000, 38, 48) - and publicity (Marion Young 2000, 119).

In *Inclusion and Democracy*, Marion Young identifies two types of exclusion: external and internal. External exclusion can be found in ways through which individuals and groups that should have been included in the decision making process are left out, and often they are not aware of this phenomenon on time. The most obvious form of external exclusion is that which generated by economic and political differences, where those with political and economic advantages dominate the process - which makes the results of such a process illegitimate (Marion Young 2000, 54).

Internal exclusion is more difficult to observe and less analyzed by democratic theorists, since the terms of the discussion appeal to assumptions and meanings that not all the participants share and also favor certain styles of expression. Overcoming the

obstacles of external exclusion and gaining their presence in public - through the presence in the media and the dominance of the public discussion on an issue, citizens still encounter another form of exclusion from those more powerful – the ignoring or ironizing of their claims and causes. The fact that citizens are formally included in the deliberation process does not guarantee that they will be treated equally or with the same consideration (Marion Young 2000, 53-55).

If the rawlsian model can be rejected because it excludes diversity (through the limits of public reason and reasonableness), Habermas' communicative model operates at the opposite pole. However, Marion Young criticizes this aspect because it focuses on emphasizing the differences (Marion Young 2000, 18). Another critique to Habermas's model concerns the emphasis of his deliberative model on the rational argument, considering that the standards of rationality are subject to new conflicting interpretations (Bohman 1995, 254). Whilst external exclusion can be identified in Rawls' model from *Political Liberalism*, Marion Young considers that Habermas' model is incomplete because it allows internal exclusion.

While most deliberative democracy followers assume that state institutions are the primary place of deliberation, the proponents of discourse ethics give more importance to the civil society and believe that this should be considered the principal place of deliberation. Marion Young's model, communicative democracy, takes into account both state institutions and civic institutions as potential places for the democratic communication between citizens and also between citizens and public officials. Communicative democracy recognizes the main deficiency of deliberative models, namely that any deliberation process should proceed only after all participants accept and understand the premises that underlie the discussion. Marion Young builds her model starting from the fact that a particular audience may seem to have common concepts / understandings with others, but these concepts actually do not contain the needs of that audience (Marion Young 2000, 36-37). In order to avoid any type of internal exclusion, the author proposes three modes of communication: greeting, rhetoric and narrative.

The greeting (or public acknowledgment) refers to political gestures by which those who are in conflict and want to find a solution to it *acknowledge* the others as being included in the discussion. The lack of public recognition is found in situations where certain individuals or groups who have tried to outline their arguments in a

political discussion are depreciated or ignored. Another sign of the absence of public recognition is the fact that certain groups or social sectors are addressed to in the third person, never in the second person, and this is because they are either are considered the either subject of the debate or its problem (Marion Young 2000, 57-62).

The rhetoric implies the distinction between what is said in a discourse and *how* is said and motivated the shift from reason to opinion (Marion Young 2000, 54, 69). Marion Young rejects the exclusivism of the rational discourse at the expense of the rhetorical discourse and this represents the basis of the main objection she has on discourse ethics.

The rational discourse, proposed by Habermas, consists in universalistic, impartial and neutral arguments / reasons that focus on logical connections. Discourse ethics considers that the rational discourse has a communicative function (reaching agreement with the others), while the rhetoric discourse has a strategic function - manipulation at the will of the interlocutor (Marion Young 2000, 63). Marion Young rejects Habermas's conception, emphasizing that the rational/ argumentative can also be used for manipulative purposes, the truth of an argument being generated by the truth of its premises (Marion Young 2000, 79). Moreover, according to critics sensible on difference, the rational argument may be constructed by or in favor of white educated men (Dryzek 2001, 660), and thus such rationality, in fact, masks a systematic bias.

Bohman, following the same direction as Marion Young, believes that both Rawls' and Habermas' versions are too restrictive regarding the public agreement (Bohman 1995, 263). If for Rawls the universality and singularity of public reason (accepted by all) is built "by an act of monologic imagination " (McMahon 2002, 117) - the veil of ignorance, which leads to both types of exclusion identified by Marion Young, Habermas appeals to the universality and neutrality of dialogical constructed rational arguments, by the participation in the deliberation of all those likely to be affected by the outcome of political decisions. The fact that the latter introduces dialogue as a means of forming moral principles in a collective manner (McMahon 2002, 112) does not guarantee the avoidance of internal exclusion phenomena or dominance of the discourse by advantaged or majority group. In addition, the conditions of the discourse offered by Habermas focus on noninterference (no one is entitled to intervene in the right of participants to speak and to be heard) and allow easing the requirements for participation: anyone *may* enter in the discourse (Chambers 1995, 167), but this does

not guarantee that all those affected by outcomes of decisions will also engage in the process of deliberation.

Habermas does not accept the introduction of the rhetoric in the model of communicative action since he associates it with perlocution (Marion Young 2000, 66) and strategic action, and communication that aims to produce certain effects on receptors distorts communicative interaction. As Heath recalls, the essential difference between speech acts and strategic action is given by the fact that the commitments undertaken represent an action for the former, while in the second case commitments are only asserted (Heath 2001, 94). The feminist critique considers that 'the puritanism' proposed by Habermas suggests the contradictory separation of two spheres of action (Pajnik 2006, 388). However, Marion Young claims that the rhetoric should not be framed solely in the area of result oriented actions, but that this, along with narrative and greeting, have the main purpose of attaining understanding and changing the opinions and values of others. Actions aimed at influencing the beliefs of others are considered by Habermas understanding oriented actions (Heath 2001, 80), which allows the introduction of the three elements of the communicative democracy.

The narrative is a way of reducing internal exclusion generated by different understandings on certain assumptions, experiences or values. Marion Young's argument for introducing this element is the fact that different perspectives are selectively embedded in the public discourse depending on the dominant paradigms (Marion Young 2000, 71). Still, the narration of situations from the perspective of the excluded group does not warrant the legitimacy of its demands, and thus political communication also requires general normative arguments (Marion Young 2000, 74). Therefore the narrative must be supported by fixed norms, and only thus can influence the values of the opposing parties involved in the discourse.

Communicative democracy does not propose replacing arguments by greeting, rhetoric and narrative, but including them alongside rational arguments. The greeting precedes the reasons put forward in the discussion, because if the parties do not mutually recognize each other, they will not listen to the other's arguments. The rhetoric accompanies arguments, customizing them through style and tone. The narrative plays an important role in complex arguments and leads to a better understanding of the differences of perspective (Marion Young 2000, 79). The three modes of communication

lead thus to the inclusion in the democratic discourse of those having different views than the majority and correct the existing bias.

Marion Young distances herself from the central importance that Habermas gives to the civil society and the public sphere. Although she stresses that within civil society the marginalized individuals can express their perceptions in a way that is incompatible with the predominantly rational and neutral terms used in the political discourse and that the purpose of civil society is to promote social justice (Marion Young 2000, 155-158), she considers that institutional actors have an equally important role, because the voluntary associations are not able to solve disputes in which economic agents are involved, for example.

Conceptual exclusion

For Morgan-Olsen, exclusion can be reduced to the problem of difference in the conceptual resources because problems of marginalized groups are difficult to conceptualize as their experiences are not recognized in the public discourse (Morgan-Olsen 2010, 214-217). Starting from the hermeneutic injustice resulted from conceptual exclusion, he identifies two other forms of exclusion (similar but not identical to those proposed by Marion Young): exclusion within the group and public exclusion.

The first level of conceptual exclusion is the one within the group and it is found in the situations in which individuals encounter difficulties in expressing and transmitting their requirements even in the group that shares a relevant set of experiences (Morgan-Olsen 2010, 218). The exemplary situation in which we identify this type of exclusion is sexual harassment and the difficulties of individuals to develop the conceptual framework that will be accepted and understood by all the members of the group. Morgan-Olsen emphasizes that before starting any form of political activism, the respective group must solve their exclusion problem at this level, to elaborate their concepts (underpinning the public demands) based on the experiences specific to individuals that are part of the group. Morgan-Olsen's proposal to address the issue at group level completes Marion Young's model, which focuses mainly on public exclusion. The narrative, rhetoric and greeting can thus be included in the techniques which would generate the drafting and acceptance of the problems and specific requirements of the group.

At the second level we find public exclusion generated by the decreased likelihood that the requirements of the group (after overcoming the first level) will be taken into consideration or understood by the general public (Morgan-Olsen 2010, 215). The exemplary situation of public exclusion can be found in debates on abortion (Morgan-Olsen 2010, 222-223), where the general public uses different concepts in the interpretation of the pregnancy issue and ignores the experiences of those who are likely to be or have been in a position of having an unwanted pregnancy.

The exclusion problem in the case of civil partnership in Romania

While in the case of sexual harassment we can still identify forms of exclusion at the group level, in the case of same sex marriage this level was overcome (Morgan-Olsen 2010, 219). In Romania the issue regarding the demands of the LGBT community has been approached at group level through the involvement of NGOs since the 90s. The most important such engagement has been represented by the Association Accept, by organizing support groups, facilitating access to counseling (psychological, legal and medical) and small events for the LGBT community.

At the level of public exclusion mentioned by Morgan-Olsen, Accept had an important role in the repeal of Article 200 in 2001. Also the organization of the annual march of diversity (GayFest, renamed Bucharest Pride) aims both to strengthen tolerance, as well as to increase the visibility (www.accept-romania.ro/despre-noi/istoric) of these demands in mass media and in the public sphere. Given the mediatization of the festival, in 2006 Accept put for the first time on the public agenda the issue of marriage / partnership between people of the same sex.

In April 2013, at the initiative of Remus Cernea, a representative from the Green Party, the legislative proposal on civil partnership entered under debate (which applies both to couples of the opposite sex as well as to same-sex couples). This proposal was intended to give a statutory nature to people who live together, as an alternative to marriage. The legislative proposal was declined by the Senate in December 2013, unanimously rejected by the Judiciary Committee in March 2014 and in June 2014 it was rejected by the Chamber of Deputies.

In the explanatory memorandum of the law (Romanian Senate website, <http://www.senat.ro/Legis%5CPDF%5C2013%5C13L597EM.pdf>, accessed December 4, 2014), the main arguments put forward aim to transpose in the legislative field the

evolution of society, as well as the evolution of the norms and values of equal rights and non-discrimination, the recognition of new types of families and couples. Moreover, according to the 2002 census, more than 3.9% of the population admitted that they were living in some form of consensual union with the partner and the 2008 surveys show an increase of up to 5.7%. The explanatory memorandum mentions the fact that the legislative proposal does not imply financial resources from the state budget, and that it will enable, thus, the legalization of a less expensive form than marriage for officiating a relation of partnership between two individuals, regardless of their sex.

Further on I will briefly review the Judiciary Committee debate on 5 March 2014 (available in video format on YouTube, at www.youtube.com/watch?v=RGtTfz5TL-s, accessed December 4th 2014), while taking into consideration the four theoretical approaches described above. The issues rising from the Judiciary Committee debate should not be limited to the appeal of religious views, despite being the most frequent and intrusive argument used by the opponents of the draft law. It must be brought to the forefront also the following aspects: the unequal argumentation time allowed to the parts involved in the debate, the limitation imposed on the number of speakers representing the supporters of the legislative proposals and their time (representatives of the civil society who spoke in the name of the people who could have benefited the new law); the fact that the religious representatives were in a larger number than those who spoke in favor of the people who needed the law¹. Regarding the content of the arguments used by the opposed parties involved in the debate, the proponents of the law invoked reasons such as democracy, representation of every citizen regardless of his/her sexual orientation, equal legal rights, recognition and not just toleration, while the opposing side, meaning not just the religious representatives, but also the deputies, appeal to reasons referring to Old Testament, family values, moral values, Christianity, deviance, the destruction of society.

From the latter aspect it is clear that the two sides operate with terms belonging to different fields, the first are political public reasons, the latter are comprehensive worldviews. This can also be interpreted as a failure to translate religious views into reasonable political views, and also as a form of conceptual exclusion. There is, however,

¹ There were four representatives of different religions, none of which was forced to limit his argumentation by the Committee's president. The four representatives had more than 12 minutes for arguing their standing point against the law, while the three representatives from the civil society (the number was limited by the Committee's president, in fact there were more people available to present their arguments) had a total of 6 minutes, each being limited to speak only 2 minutes.

a more problematic issue than the intrusion of religious officials in this debate over an ordinary law which has mostly positive economic implications (creating thus the same legal frame as marriage in case of social benefits, healthcare access, mortgage, etc.). I must highlight the fact that also the deputies which expressed their opinion against the draft law used arguments similar to the religious officials, such as the destruction of society and the promotion of deviant behavior.

From Rawls' perspective, the vote against legalizing civil partnership is legitimate as the procedure is legitimate, since it complies with the decision of the majority. On the other hand, the the reasons invoked by some actors engaged in the debate stand out through unreasonableness, since they do not accept (based on reasons related to comprehensive doctrines - religion) the pleas raised by the advocates of the project. Another incompatibility of the public reason approach with the concerned subject is given by the fact that this subject is considered nonpublic because it assumes the involvement of the law in the organization of the private sphere.

From Habermas' perspective, this legislative project represents the influence of civil society on the public opinion and also the result of the subject's coverage in the public sphere. Habermas recalls that in order to fulfill its function of signaling social problems, the political public sphere should also include the communication that occurs between those possibly affected (Habermas 1992, 365). This, however, does not explain the massive involvement of the representatives of religion in the debate regarding the civil partnership as an alternative to marriage.

Both Rawls and Habermas focus on the nature of the reasons used in the political field. However, both approaches offer a flawed analysis when religious reasons are found in the middle of the issue. As mentioned in the first part of the paper, Rawls' approach to public reason is too restrictive and this applies also to the public appeals to religious beliefs. Habermas, following the direction drawn by Wolterstorff, allows the existence of reasons based or derived from religion since "requiring religious citizens to proffer secular reasons for their views would violate equality and lead to illegitimate outcomes" (Habermas in Walhof 2013, 227).

Habermas' view from *Between Naturalism and Religion* tries to reconcile the opposing approaches advocated by Audi and Wolterstorff, the strong restrictive and the weak restrictive versions of liberalism. Thus, the solution proposed is to distinguish between "the informal public sphere of democratic opinion-formation, on the one hand,

and the institutional decision-making public sphere, on the other hand" (Walhof 2013, 227). Habermas' view allows the appeal to religious reasons in the informal public sphere, but it prohibits it in the institutional public sphere: "political authority must be neutral towards competing worldviews, [...] only secular reasons count beyond the institutional threshold separating the informal public sphere from parliaments, courts" (Habermas 2008, 130). However, this ideal division of the public sphere does not have clear boundaries. In order to avoid the appearance of pure religious reasons in the institutional public sphere and also not to ignore to claims made in the informal public sphere, Habermas considers that the religious language could be translated into secular reasons and thus be a part of the official decisions. But another issue emerges from this translation proviso – asymmetry, since it demands "that religious citizens make an effort to learn and adapt", while "secular citizens are spared" (Habermas 2008, 136). Apart from that, as Walhof remarks, the translation proviso's failure is not only generated by the unequal effort among the two opposing sides, the religious and the secular one, but also by the fact that even in the translation of different languages there is an "interpretive dimension" (Walhof 2013, 233).

Considering the Judiciary Committee debate from the perspective just presented above, and taking into account that, firstly, both the religious representative and the deputies who opposed the draft law based their arguments on religious reasons, and secondly, that even the deputy who initiated the law started his pleading with a passage from the Bible which spoke about love and toleration, then we are found in the surprising situation where in fact the asymmetry is not favoring secular citizens, but the religious ones. The main secular reasons mentioned in the debate came from the three guest speakers who favored the draft law, all of them with a background in political activism and NGOs. Their claims (justice, the democratic representation of every citizen regardless of his/her sexual orientation, equal legal rights, recognition and not just toleration) did not rise any debate among the Judiciary Committee, but the recital of the Bible passage for supporting the law was criticized and even considered a blasphemy.

Stepping beyond the implications of religious reasons in the institutional and legislative field, I must stress the fact that the debate on legalizing civil partnership can be interpreted not just as a failure to translate religious reasons into secular reasons, but also as a form of exclusion.

Another interpretation of the debate on civil partnership corresponds to the model of communicative democracy, and the effects generated by the lack of the three types of communication modes offered by Marion Young. Among the reasons invoked for rejecting the draft law we can find the problem generated by the politics of difference: the destruction of the common good (family and society - plea raised by the church representatives) and weakening the national identity (Marion Young 2000, 84). But this common good (family, society) may be defined by a dominant group (in this case the proponents of religion) in a manner consistent with their experiences and perspectives. However, in the case of non-discriminatory legal treatment, the discussion should not be put into terms of difference or identity politics. As Marion Young underlines, in the case of same-sex partnerships, the requirements of equality in fiscal benefits, ownership and wage benefits should not be considered identity claims or recognition demands. Instead, these requirements represent the main demand of allowing someone to be different from the majority without suffering economic disadvantage on the basis of these private differences (Marion Young 2000, 107-108).

Taking into account Marion Young's approach, the Judiciary Committee debate shows all the signs of a form of external exclusion (those affected are excluded, they are not allowed and they are not allocated time to present their arguments), but mainly internal exclusion: the arguments of the proponents of the legislative project are looked down upon, they do not receive the same argumentative space as the ones who are against the project (less minutes for those in favor). The absence of public recognition is suggested by the fact that those affected by the project are considered in the discussion as being absent – they become the subject or the problem of the legislative proposal. However, we can identify types of rhetoric from both groups under discussion, as well as narration (in a very limited extent).

Another form of exclusion in the case of the legislative debate is conceptual public exclusion, as formulated by Morgan-Olsen, most of the representatives of the Committee operating with concepts different than those of the initiators of the legislative project and ignoring the particularity of same-sex couples which are economically and socially underprivileged.

Conclusion

This short overview of the Judiciary Committee debate on civil partnership shows the need for adopting other approaches, besides those of Rawls and Habermas. The two models do not tackle all the problems that emerge in the democratic deliberation procedures. Inclusion remains an empty word when those affected by a certain political decision are not effectively participating in the deliberation process. The formal inclusion in the process of deliberation only hides the various forms of exclusion. Therefore, the case presented above surely does not represent a singular episode, which calls for more attention to the role of communication and the proper methods that should be employed.

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