

# The crisis of democracy in Latin America and the exercise of citizenship through a rereading of participatory democracy

## A crise da democracia na América Latina e o exercício da cidadania por meio de uma releitura da democracia participativa

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### Abstract

The article cares about the actual crisis of democracy, based on themes of representativeness, seeking possibilities for overcoming the crisis through a rereading of democracy. Some countries, in particular some of Latin America, present strong problems with regards to the democratic model of representativeness and governance. Through a deductive approach, it is concluded that the process of consolidation of politic democracy, although strengthened by some Constitutions denotes particular fragility because of high levels of inequality, as well as distance between the society and the government, because of representative system. Thereby, it is believed that from the social movements is possible to build a redemocratization of the political systems, as the best way of effective popular participation of the citizenship that is based in a participatory representativeness and in the education in human rights and that result in the creation of public policies aimed at eradication of poverty and social exclusion.

**Keywords:** Democracy in Latin America. Democratization. Participatory Democracy. Representativeness.

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## Resumo

O artigo preocupa-se com a atual crise da democracia, pautada sobre temas de representatividade, buscando possibilidades de superação da crise através de uma releitura da democracia. Alguns países, em especial alguns da América Latina, apresentam fortes problemas no que tange ao modelo democrático de representatividade e de governança. Através de uma abordagem dedutiva, infere-se, portanto, que o processo de consolidação da democracia política, embora fortalecido por algumas Constituições denota particular fragilidade por conta de altos níveis de desigualdade, bem como distanciamento entre a sociedade e o governo, por conta do sistema representativo. Desse modo, acredita-se que a partir dos movimentos sociais é possível se construir uma redemocratização dos sistemas políticos, como melhor forma de efetiva participação popular do cidadão, que sejam baseados numa representatividade participativa e na educação em direitos humanos e que resultem na criação de políticas públicas voltadas a erradicação da pobreza e da exclusão social.

**Palavras-chave:** Democracia na América Latina. Democracia Participativa. Democratização. Representatividade.

## Introduction

Before the peoples' need of living in structured groups in search of better conditions of life and safety, emerged the gatherings of individuals, these became more sophisticated and evolved, originating the life in society that continues in constant adequacy, adaptation, mutation and development. For this cluster of people to perpetuate with harmony were emerging the first models, forms and systems of government, passing through the clans, villages and several others, arriving to the *polis*.

These organizations were the source of the today called cities. Already in the period of incitement of thought and of political discussions emerged the democracy, form of government through which the people - in the early days with its many restrictions -, had the opportunity to participate in the decisions that organized, structured, directed and delimited the relations and activities within a certain grouping of individuals in a certain territorial space to that submitted decisions.

Democracy, despite many criticisms, emerged with the intent to confer participation to the citizens in the political life, making them enjoy the influence on political power guiding of social structures, because they are the legitimate

holders of sovereign power and of conducting the society's life. Democracy is subdivided into: direct, indirect and semi-direct or participatory, depends on the purpose that wants to reach.

The involvement and effort in this research intend to find, in the vast literature, the evolutionary characteristics, the assumptions and the peculiarities of democratic models. However, greater focus will be given to the study of semi-direct or participatory democracy, whereby can be found the effective citizen involvement in the political and administrative decisions of the State in which they are legally submitted and subordinated.

In this kind of democracy there are several instruments of participation of individuals - the sovereign people - in the political life of the State. It can be cited as main, the referendum, the plebiscite, the popular initiative, as well as the popular veto, the latter two are those that most effectively and concretely involve individuals in the political decisions of the State, therefore, better able to promote people's participation in the political life of the nation, through the proposition of instruments destined to making law, having an inclusive character, or, obstacle to the law enforcement or elaborate measure that is about to be executed.

### **1. Historical context and concept of democracy**

Democracy was originated in ancient Greece, where the citizens actively participated in the political decisions of the *polis*, gathering in the *Agora*, where it was discussed and made effective the exercise of the powers to legislate, govern and judge. It should be noted that the individuals who held this title of citizen were few, and the poor, the women, the child and the foreigners were not holders of it. Therefore, the idea of "people's government" did not have literalness, once that this right of involvement in the State's political life was restricted to a small group.

Finley stated that:

[...] foram os gregos que descobriram não apenas a democracia, mas também a política – a arte de decidir através da discussão pública – e, então, de obedecer às decisões como condição necessária da existência social civilizada. Não pretendo negar a possibilidade de que houvesse exemplos anteriores de democracias, as chamadas democracias tribais, por exemplo, ou as democracias na antiga Mesopotâmia, que alguns assiriologistas acreditam poder reconstituir através de investigação. Quaisquer que possam ser os fatos sobre estas últimas, eles não tiveram impacto histórico algum nas sociedades mais recentes. Os gregos, e apenas os gregos, descobriram a democracia nesse sentido; exatamente como Cristóvão Colombo, e não algum navegador *viking*, descobriu a América<sup>3</sup>.

Such is his minimum definition of democracy:

[...] primariamente um conjunto de regras de procedimento para a formação de decisões coletivas, em que está prevista e facilitada a participação mais ampla possível dos interessados; [...] conjunto de regras (primárias ou fundamentais) que estabelece quem está autorizado a tomar as decisões coletivas e com quais procedimentos<sup>4</sup>.

According Norberto Bobbio:

a democracia se constitui de um conjunto de regras para a formação de maiorias, entre as quais valeria a pena destacar o peso igual dos votos e a ausência de distinção econômicas, sociais, religiosas e étnicas na constituição do eleitorado<sup>5</sup>.

Democracy cannot be defined with an abstract and static political concept, in view of translate itself in a true instrument of realization of essential values to human coexistence, unveiled, in short, in the fundamental rights of the individual, that before the historical construction arising from the process of

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<sup>3</sup> Author's translation: "[...] it was the Greeks who discovered not only democracy, but also politics - the art of deciding through public discussion – and, then, to obey the decisions as a necessary condition of civilized social existence. I do not mean to deny the possibility that there were previous examples of democracies, the so-called tribal democracies, for example, or the democracies in ancient Mesopotamia, that some assyriologists believe they can reconstruct through research. Whatever may be the facts about the latter ones, they had no historical impact on newer societies. The Greeks, and only the Greeks, discovered democracy in that sense; just like Christopher Columbus, and not some *viking* browser, discovered America". In: FINLEY, Moses I. **Democracia antiga e moderna**. Edição revista. (Tradução de Waldéa Barcellos, Sandra Bedran). Rio de Janeiro: Graal, 1988, p. 17.

<sup>4</sup> Author's translation: "[...] primarily, a set of rules of procedure for the formation of collective decisions, where is planned and facilitated the widest possible participation of interested; [...] set of rules (primary or fundamental) establishing who is authorized to make collective decisions and with which procedures". In: BOBBIO, Norberto. **O futuro da democracia** (uma defesa das regras do jogo). Trad. Marco Aurélio Nogueira. Rio de Janeiro, Paz e Terra, 1986, p. 12-18.

<sup>5</sup> Author's translation: "democracy is constituted by a set of rules to the formation of majorities, among which it would be worth highlighting the equal weight of the votes and the lack of economic, social, religious and ethnic distinction in the constitution of the electorate". In: BOBBIO, Norberto. **O futuro da democracia** (uma defesa das regras do jogo), p. 12-18.

affirmation of the people and of search for the guarantee of human rights have been conquered throughout history<sup>6</sup>.

Traditionally it was characterized as a form of government through which the people exercises sovereignty, influencing the equitable distribution of power among the citizens, manifesting popular will, meaning by form of government the “definição abstrata de um modo de atribuição de poder”<sup>7</sup>. However, today, it is classified as one of the political regimes, giving it greater dynamism in its meaning; these are considered as a structural complex of principles and political forces that set up certain conception of the State and of society and that inspire its legal system<sup>8</sup>.

Ready, Müller says that the foundation of the democratic idea “é a estruturação normativa do convívio social de um povo, pelos indivíduos que compõem essa sociedade, em razão de ser inviável e praticamente inexecutável um autogoverno”<sup>9</sup>. Therefore, the fundamental idea aims to establish prescriptions that complies with the multiplicity of opinions and interests of those who compose the State, through effective means of political sanctioning.

In the twentieth century, more precisely, in the 80's, after long years of unfettered rights and repression of freedom, lived during the period of the military dictatorship, comes the democratization process in Brazil, after tireless inquiry of equality of rights, with the promulgation of the constitutional text of the Magna Charta of 1988, that brought in its essence and foundation the freedom, the equality and citizen participation in the political life through popular participation instruments<sup>10</sup>, expressly writing in its preamble and in the article

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<sup>6</sup> SILVA, José Afonso da. **Curso de Direito Constitucional Positivo**. 37 Ed. São Paulo: Editora Malheiros, 2005, p. 125 e 126.

<sup>7</sup> Author's translation: “abstract definition of a power assignment mode”. In: CARVALHO, Kildare Gonçalves. **Direito Constitucional Didático**. 8.ed.Belo Horizonte: Del Rey, 2002, p. 97.

<sup>8</sup> SILVA, José Afonso da. **Curso de Direito Constitucional Positivo**, p. 124.

<sup>9</sup> Author's translation: “is the normative structuring of the social life of a people, by the individuals that compose this society, because it is not viable and practically unenforceable a self-governance”. In: MÜLLER, Friedrich. **Quem é o povo? A questão Fundamental da Democracia**. (Traduzido por Peter Naumanm). 3ª Ed. Revista e Ampliada. São Paulo: Max Limonad, 2003, p. 57.

<sup>10</sup> FONSECA, Jumária Fernandes Ribeiro. **O Orçamento Participativo e a Gestão Democrática de Goiânia**. Dissertação (Mestrado em Desenvolvimento e Planejamento Territorial). Programa de Pós-Graduação em Desenvolvimento e Planejamento Territorial da Universidade Católica de Goiás. Goiânia, 2009. Disponível em: <http://tede2.pucgoias.edu.br:8080/handle/tede/2861>, p. 14.

1<sup>st</sup> that the Federative Republic of Brazil from then on became in Democratic State of Law. An obelisk was erected in the bosom of the nation praising the watershed that perpetrates the breakup with the oppression once lived and the propitiation of a new era of governance, under parameters that would include (or at least should include) the people in the decisions of political life.

## 2. Types of Democracy

Democracy can be classified into three types: a) direct; b) representative; c) semi-direct, mixed or participatory. Although, it is highlighted, there are other theories of democracy classification, these are the most usual and of majority argument in the political and legal science literature <sup>11</sup>.

According to Aristotle <sup>12</sup>, Direct Democracy is the one in which the people, gathered directly, discuss and decide all matters of political life (legislates, manages and judges). An example is the Athenian democracy that was characterized as an equality regime as well as freedom, and more collective freedom than individual freedom.

Representative or Indirect Democracy is the modality by which, the people, power holder, does not exercise it directly, the exercise of this is given up through representatives of this people, elected to act on his behalf, invested and legitimized in popular sovereignty. To the author, the Semi-direct, mixed or participatory democracy is characterized by the concomitant existence of the procedural expedients predicted in both, representative and direct democracy, that is, has mechanisms for the exercise of power by representation, as well as by the holder of this, the people.

The first two modalities today are unsustainable. Direct Democracy remains unfeasible before the large population that exists in the states, considering that in this model, everyone should participate in political decisions of legislative, executive and judicial nature.

While representative Democracy found its failure on its own foundation, the pure and simple representation of the people, since these individuals who

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<sup>11</sup> FONSECA, Jumária Fernandes Ribeiro. **O Orçamento Participativo e a Gestão Democrática de Goiânia.**

<sup>12</sup> ARISTÓTELES apud MORAIS, José. **Alfabetizar para a Democracia**, [s.ed.], p. 3 e 4.

should be representatives of the holders of sovereignty, after being invested in power, receiving legitimation through the granting of power, proved manipulable and/or defrauded, acting and deciding based on economically driven wills or private ones, in contrast to the popular will of the represented <sup>13</sup>.

The contemporary democracies seek a new spirit, new foundations. The classical forms of political representation survive, but their legitimacy is undermined and their effectiveness declines. The power of representative institutions is gnawed everywhere, their authority is slumped and their ability to impose differentiated solutions is heavily eroded <sup>14</sup>.

In the meantime, the participatory democracy is the one that has as ideal the achievement of the essence of this political regime, the “people’s government” exercised by the “people” in the enjoyment of its popular sovereignty, with a deep involvement in political decisions that guide the society in which they are inserted, this democratic modality predicts institutes of representative democracy and others of direct democracy, through which this performance of the people is legally viable with the institution of suitable means for such intent. Contemporaneously, the participation is still shy, the awakening of the nation to its power and sovereignty, overlooking the fruitful accomplishment of the democratic essence, is what is expected.

The participatory democracy represents, therefore, under the critical eye of Paulo Bonavides, who is at the same time pessimistic in relation to the present and optimistic about the possibility of reversal of the actual Brazilian institutional design to the future generations, an ideal “[...] que ultrapassa, de uma parte, a malignidade autocrática do presidencialismo, doutra a instabilidade anárquica do parlamentarismo”<sup>15</sup>. The enlargement of the popular participation in the decision spheres of power possesses, in the proposed logic to the third generation Constitutional Law, “[...] dose bastante de autoridade legítima com que pôr termo às crises institucionais que flagelam a república

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<sup>13</sup> BONAVIDES, Paulo. **Ciência Política**. 10.ed. São Paulo: Editora Malheiros, 2001, p. 51.

<sup>14</sup> BLONDIAUX, Loïc. **Le nouvel esprit de la démocratie**: actualité de la démocratie participative. France: Seuil, La République des Idées, 2008, p. 5.

<sup>15</sup> Author’s translation: “[...] that surpasses, on one part, the autocratic malignancy of presidentialism, from other the anarchic instability of parliamentarism”. In: BONAVIDES, Paulo. **Teoria constitucional da democracia participativa** (por um direito constitucional de luta e resistência, por uma nova hermenêutica, por uma repolitização da legitimidade), 2008, p. 290.

federativa desde sua fundação”<sup>16</sup>.

### 3. Assumptions and participatory democracy

An assumption consists of a circumstance or a fact considered a necessary antecedent from another, are the basic elements, fundamental, inseparable, inexcusable to the establishment of a democratic regime.

The largest of democratic assumptions is the people and from this derives the power that express itself through popular sovereignty, that exerts direct (direct democracy), indirectly (representative democracy) or by these two, through a mixed system of power exercises (participatory democracy). Sovereignty is understood as

[...] o poder supremo, ou o poder que se sobrepõe ou está acima de qualquer outro, não admitindo limitações, exceto quando dispostas voluntariamente por ele, em firmando tratados internacionais, ou em dispondo regras e princípios de ordem constitucional<sup>17</sup>.

Therefore, the principle of popular sovereignty puts the power of the people over everyone else within the political universe that is regulated by the rules of the legal system of a certain State to which it is submitted, and which are created through the exercise of this sovereignty, either directly or indirectly.

Another assumption is the Fundamental Rights, being that without these there is no democracy, it will be had a regime of totalitarianism or authoritarianism, in which there is no observance of people's rights – collectivity of individuals – or minimally it will be observed.

Without fundamental rights there is no democracy, because it presupposes those to be able to be exercised. The constitutionalism, in that order of ideas, serves to protect the democracy from itself. That is the reason why proceed the statement according to which the foundation of the

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<sup>16</sup> Author's translation: “[...] quite a bit of legitimate authority with which put an end to the institutional crises that flog the Federative Republic since its foundation”. In: BONAVIDES, Paulo. **Teoria constitucional da democracia participativa** (por um direito constitucional de luta e resistência, por uma nova hermenêutica, por uma repolitização da legitimidade), p. 290.

<sup>17</sup> Author's translation: “[...] the supreme power, or the overlapping power or is above any other, not admitting limitations, except when arranged, voluntarily by it, in signing international treaties, or in disposing rules and principles of constitutional order”. In: SILVA, De Plácido e. **Vocabulário Jurídico**. Atualizadores: Nagib Slaibi Filho e Gláucia Carvalho. 27. ed. Rio de Janeiro: Forense, 2007, p. 1308.



Constitution (and, therefore, of the entire legal system constructed from it) resides in the human rights protection and in the recognition of popular sovereignty. And, the second, the assumption of democracy, that serves as its foundation. Highlighting the relation between democracy and freedom, Kelsen observes that

a vontade da comunidade, numa democracia, é sempre criada através da discussão contínua entre maioria e minoria, através da livre consideração de argumentos a favor e contra essa regulamentação da matéria. Essa discussão tem lugar não apenas no parlamento, mas também, e em primeiro lugar, em encontros políticos, jornais, livros e outros veículos de opinião. Uma democracia sem opinião pública é uma contradição em termos. Na medida em que a opinião pública só pode surgir onde são garantidas a liberdade intelectual, a liberdade de expressão, imprensa e religião, a democracia coincide com o liberalismo político – embora não necessariamente com o econômico<sup>18</sup>.

As already seen, Aristotle declares that Freedom and Equality are bases to democracy, attesting that the bigger is the evidence of these fundamental rights, bigger will be the purity of this government regime. These two, therefore, stand out among the fundamental rights, and the reason for being of this preponderance is in the exercise of power emanated from the people. While in the enjoyment of freedom and of equality, the many voices, ideas, ideologies and social longings will reverberate, and then the Aristotle's argument becomes sharp.

The participatory democracy, in its turn, presents itself as an evolution of original democracy, that one of the Greeks, from the meetings at *Agora*, but should not be confused with direct democracy, given that is classified as semi-direct – with vocation and disposition of advance to the democratic ideal of direct democracy, where the people is who practices the acts of direction,

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<sup>18</sup> Author's translation: "the will of the community, in a democracy, is always created through continuous discussion between majority and minority, through the free consideration of arguments in favor and against such regulation of the matter. This discussion takes place not only in parliament, but also, and first of all, in political gatherings, newspapers, books and other opinion vehicles. A democracy without public opinion is a contradiction in terms. Insofar as public opinion can only emerge where intellectual freedom is guaranteed, press and religion, democracy coincides with political liberalism - although not necessarily with the economic". In: KELSEN apud LINHARES, Emanuel Andrade, SEGUNDO, Hugo de Brito (orgs.). **Democracia e Direitos Fundamentais: Uma homenagem aos 90 anos do professor Paulo Bonavides**. v. 1 - 1. ed. - São Paulo: Atlas (GEN - Grupo Editorial Nacional), 2016. Disponível em: <<https://integrada.minhabiblioteca.com.br/#/books/9788597006575/>> Acesso em 10 jun. 2019, p. 411 e 412.

normative design and judgment within the State to which they belong, based on popular sovereignty – but, that keeps in its structure the norms of representative democracy.

Sell understands that participatory democracy is:

[...] um conjunto de experiências e mecanismos que tem como finalidade estimular a participação direta dos cidadãos na vida política através de canais de discussão e decisão. A democracia participativa preserva a realidade do Estado (e a Democracia Representativa). Todavia, ela busca superar a dicotomia entre representantes e representados recuperando o velho ideal da democracia grega: a participação ativa e efetiva dos cidadãos na vida pública<sup>19</sup>.

In a comparative analysis, Beçak<sup>20</sup> states that the differential of participatory democracy, compared to the representative modality, resides in the possibility of the population influences, directly, when provoked, regarding a particular subject, availing itself of possible instruments in this participatory governance regime.

The idea of participation gives a more concrete notion to the representative democracy, because the opportunity for involvement in political life by the people will not be restrict only to the moment of the election. It will be kept the representative participation, inherent to the representative electoral principle, whereby the elected individual will act in name of the people who elected them. While the participatory principle is embodied in the formation of the acts of government through the direct and personal participation of the citizens<sup>21</sup>.

There is in the core of its emergence the pretention of replaces and repairs the damages caused to the State through the representative democracy, by experimenting of the committing arbitrariness, failures, mistakes, by the

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<sup>19</sup> Author's translation: "[...] a set of experiences and mechanisms which aims to stimulate the direct participation of citizens in political life through discussion and decision channels. Participatory democracy preserves the reality of the State (and Representative Democracy). However, it seeks to overcome the dichotomy between representatives and represented recovering the old ideal of Greek democracy: active and effective citizen participation in public life". In: SELL, Carlos Eduardo. **Introdução à Sociologia Política: política e sociedade na modernidade tardia**. Petrópolis, RJ: Vozes, 2006, p. 93.

<sup>20</sup> BEÇAK, Rubens. (2014). **Democracia: hegemonia e aperfeiçoamento**. [Minha Biblioteca]. Disponível em: <<https://integrada.minhabiblioteca.com.br/#/books/9788502213241/>> Acesso em 21 jun. 2019, p. 32.

<sup>21</sup> SILVA, José Afonso da. **Curso de Direito Constitucional Positivo**, p. 141.

elected representatives, subjectively motivated or by negligence, considering this as resulting of the political representation system, adding it to several other ethical, moral and social negative factors, that bare themselves in obstacles to the exercise of the democratic ideal<sup>22</sup>.

The people begin to has an active role in the semi-direct democracy – breaking up with the mere role of legitimizer of representativeness inherent to the indirect democratic model that limits it to a tiny participation in the State political life by the suffrage – with the possibility of make use of the sovereign power emanating from it, directly. But, who is the people? Who is this that legitimizes the performance of individuals who are brought to the condition of their representatives in the political spheres?

It has etymological root in Latin, with the term *populum* – word used to refer to the habitants of a particular region – in sociological conception corresponds to the congregation of diverse groups of people that occupy a delimited territory and that when considered in unity constitute a nation. It is, therefore, the totality of individuals that compose the community, the State.

Despite, in the interests of legal-democratic consideration, people, corresponds to the individuals group of particular nation, able to exercise their political rights in fullness – called citizens – although the conceptual meaning of the word includes all individuals, the normative regulation, restricts it to who can actively exercise popular sovereignty.

In the view of Kelsen<sup>23</sup>, to consider the people as a conglomeration of individuals would be naivety, because he states that it can only be considered as one from a legal perspective, where there is a normative unit before the submission of everyone to the same state legal system.

Therefore, the people, is embodied in a “sistema de atos individuais, determinados pela ordem jurídica do Estado”<sup>24</sup>, and the unity that is sought is that one of the people as an object of power. Highlighting the difference between the people defined as the set of individuals subject to the same legal

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<sup>22</sup> SANTANA, Jair Eduardo. **Democracia e Cidadania**: o referendo como instrumento de participação política. Belo Horizonte: Del Rey, 1995, p. 141.

<sup>23</sup> KELSEN, Hans. **A Democracia**. 2.ed. São Paulo: Martins Fontes, 2000, p. 36-38.

<sup>24</sup> Author's translation: “[...] system of individual acts, determined by the legal system of the State”. In: KELSEN, Hans. **A Democracia**, p. 36-38.

order and the people that participates in political life intervening in the creation of legal rules becoming a subject of power.

Advancing in the reasoning, the reality is that many are the political rights holders – subjects of power – however, are not all these the ones who effectively exercise such rights, that is, those who participate in public and political life, forming the common will. This emerges in the education and political interest of society.

In Müller's view, the people who comprises all the voters in a particular state, is regarded as “povo ativo”, while the people in the conception of recipients of the prescriptions for the regulation of social life – justifiers of the legal system instituted – and, from who the power emanate – which is exercised by the State for charge under the “responsabilidade e atribuição” – is identified “povo como instância global de atribuição de legitimidade”<sup>25</sup>. People, to Müller, it's not about "masses" of the species of agitation texts, it is not about an eschatological revolutionary proletariat, that is put on readiness; and neither is it a parallel army of guerrillas.

Trata-se de ‘todo’ o povo dos generosos documentos constitucionais; da população, de todas as pessoas, inclusiva das (até o momento) sobre integradas e das (até o momento) excluídas: *trata-se do povo enquanto destinatário das prestações estatais* negativas e positivas, que a cultura jurídica respectiva já atingiu<sup>26</sup>.

This Kelsenian conception justifies why there are individuals and citizens within a society, those that reveal themselves in the people submitted to the same legal system, while these are qualified as the share of individuals in this society that holds political rights and, therefore, subjects of power are established, able to exercise the acts of political participation forming of the general will.

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<sup>25</sup> Author's translation: “active people”; “responsibility and attribution”; “people as a global instance of attribution of legitimacy”. In: MÜLLER, Friedrich. **Quem é o povo?** A questão Fundamental da Democracia, p. 100.

<sup>26</sup> Author's translation: “It is about ‘all’ the people of the generous constitutional documents; of the population, of all people, inclusive of (until the moment) about integrated *and* of (until the moment) excluded: *it is about the people as recipient of state benefits*, negative and positive, that the respective legal culture has already reached”. In: MÜLLER, Friedrich. **Quem é o povo?** A questão Fundamental da Democracia, p. 100.

### 3.1. Exercise's forms of the participatory democracy in Brazilian law

The Brazilian Constitution of 1988 disposes in its preamble, as well as in its article 1<sup>st</sup> that Brazil is under the aegis of a democratic regime, and, in the single paragraph of that article: “Todo o poder emana do povo, que o exerce por meio de representantes eleitos ou diretamente, nos termos desta Constituição”<sup>27</sup>. Faced with this essay conferred upon it, it appears that the Brazilian Magna Charta instituted in its ordinance semi-direct democracy, mixed or participatory, when from the expression: or directly, in the terms of this Constitution.

Little later, the insert text in its article 14, disposes that “A soberania popular será exercida pelo sufrágio universal e pelo voto direto e secreto, com valor igual para todos, e, nos termos da lei, mediante: I - plebiscito; II - referendo; III - iniciativa popular”<sup>28</sup>. Universal suffrage, direct and secret vote are instruments of representative democracy that, in summary, understand the way in which the Brazilian electoral procedure takes place, where there is the possibility of voting and being voted, since filled the requirements legally provided, owing be observed the constitutional provision that the voting system is direct and secret, therefore, the Constitutional Charta gave express execution to the principle of representation.

A greater focus will be given in the analysis of the other forms of exercise of participatory democracy, that is, the means of direct exercise of popular sovereignty, that finds regulation in the Law 9.709/98<sup>29</sup>.

The plebiscite corresponds to a convening act with characteristics of a public consultation, in which the citizen is instigated to manifest previously, through the vote, about legislative or administrative act to approve or deny what

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<sup>27</sup> Author's translation: “All the power emanates from the people, that exercises it through elected representatives or directly, in the terms of this Constitution”. In: BRASIL. **Constituição da República Federativa do Brasil (1988)**. Brasília: Senado Federal, 2019.

<sup>28</sup> Author's translation: “Popular sovereignty will be exercised by universal suffrage and by direct and secret vote, with equal value for everyone, and, under the law, upon: I - plebiscite; II - referendum; III - popular initiative”. In: BRASIL. **Constituição da República Federativa do Brasil (1988)**.

<sup>29</sup> BRASIL. **Lei 9.709, de 18 de novembro de 1998**. Regulamenta a execução do disposto nos incisos I, II e III do art. 14 da Constituição Federal. Disponível em: <[http://www.planalto.gov.br/ccivil\\_03/leis/19709.htm](http://www.planalto.gov.br/ccivil_03/leis/19709.htm)> Acesso em 20/07/2019.

was submitted, having forecast in the §1º of the article 2 of the Law 9.709/98<sup>30</sup>.

The Referendum, in its turn, is a summoning act too, however, this one is given after the legislative or administrative act is committed, in this tune, puts itself to the appreciation of the people, that by vote, they will manifest by ratification or rejection of what was submitted to them for evaluation, with forecast in the §2º of the article 2 of the Law 9.709/98<sup>31</sup>.

The said law prescribes in its article 2, *caput*, that plebiscite and referendum are consultations formulated to the people to deliberates on matters of great relevance, of constitutional, legislative or administrative nature<sup>32</sup>.

While in its Article 3, it is outlined the hypotheses in which may be called plebiscites or referendums, and are: a) on issues of national relevance, of competence of the Legislative Power or of the Executive Power; b) in the case of the § 3 of the article 18 of the Federal Constitution, that refers to incorporation, fusion and breakdown of municipalities<sup>33</sup>.

Both plebiscite and referendum should be called by legislative decree by proposal of one third, at least, of the members that compose any of the National Congress Houses.

It is interesting to points out that the 1937 Constitution brought the plebiscite and the referendum to the Brazilian legal system, being that the initiative to the convocation of the first fit to the president that by decree would indicate the conditions, as well as the subjects to be considered.

The popular initiative consists in instrument by which the citizens can present bills to the Chamber of Deputies, provoking the legislative to the appreciation of the subject contained in the proposition, that cannot be circumscribed to more than 1 (one) subject, finding prediction in the article 13 of the Law 9.709/98<sup>34</sup>.

There is express prediction that the popular initiative bill cannot be rejected for addiction in the way, in the §2 of this article, that assigns the competence to “providenciar a correção de eventuais impropriedades de

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<sup>30</sup> BRASIL. Lei 9.709, de 18 de novembro de 1998.

<sup>31</sup> BRASIL. Lei 9.709, de 18 de novembro de 1998.

<sup>32</sup> BRASIL. Lei 9.709, de 18 de novembro de 1998.

<sup>33</sup> BRASIL. Lei 9.709, de 18 de novembro de 1998.

<sup>34</sup> BRASIL. Lei 9.709, de 18 de novembro de 1998.

técnica legislativa ou de redação à Câmara dos Deputados”<sup>35</sup>.

Constitutional precepts should be observed, booklets in the article 61, §2 of the Federal Constitution, which comprises the underwriting by, at least, one percent of the national electorate, distributed in five states, with no less three tenths percent of the voters of each of them <sup>36</sup>.

This point of view is shown understandable before the objective requirements imposed by the constitutional norm, that makes the obstacles seen as unfeasible of its handling, while the subscription required in the article 61, §2 above-mentioned, puts up in such a way the mobilization of society that steals the feasibility of its use <sup>37</sup>.

A less stringent criterion on this requirement could foster greater action by society, of the people, for participation in the political life of the State, should be taken into consideration the continental proportion of the territory which comprises the Brazilian State, and, therefore, the plurality of cultures and ideologies that form it, what reinforces the idea that more malleable and soft criteria – with regard to the objective requirements of required observance to propositions by popular initiative, mainly regarding to subscription prorated in several states of the federation – would serve as enabling agents for the use of this democratic instrument, that has the purpose of awakening the legislator to the appreciation of particular matter that by the practical experience of the people demonstrates the need of being given attention with a view to normative regulation.

Among the three instruments of active democratic participation, predicted in the Brazilian legal system, the popular initiative, despite being the least used, is demonstrated as the fittest to the promoting people's participation in the political life of the nation, through the proposition of an instrument intended for the making of law, having an inclusive character.

While the plebiscite and the referendum connote certain mechanicalness,

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<sup>35</sup> Author's translation: “provide the correction of possible inadequacies of legislative technique or of essay to the Chamber of Deputies”. In: BRASIL. **Lei 9.7098, de 18 de novembro de 1998**.

<sup>36</sup> BRASIL. **Constituição da República Federativa do Brasil (1988)**.

<sup>37</sup> GARCIA, Alexandre Navarro. **Democracia semidireta**: referendo, plebiscito, iniciativa popular e legislação participativa. Revista de informação legislativa. Senado Federal. Brasília a. 42, n. 166, abr.-jun. 2005.

before their consultative essence, once the citizen people just enjoy what had already been done or it is pretended to do, without getting involved in the production of the legislative or administrative act.

Important achievement under the rules governing the electoral procedure is the called Clean Record Law - Complementary Law nº 135 – which was originated in a legislative proposition through popular initiative.

### **3.2. Other instruments of popular participation in semi-direct democracy**

The *Recall*, also denominated popular revocation by French doctrine, is an instrument that enables the repeal of the mandate of an elected representative, filled certain requirements, and since subscribed by a certain number of voters<sup>38</sup>. Another instrument is the Popular Veto, through this, the people can, within a specified time, negative a law or previously elaborated measure, that is about to be executed.

Defining this instrument of popular participation, Sgarbi states that:

Por este instrumento, confere-se ao povo a possibilidade, por solicitação própria, de se opor a uma lei já adotada pelo Parlamento, mas não ainda em vigor. Suas principais etapas podem ser enumeradas em três momentos: a) o órgão legislativo vota uma lei que não entra imediatamente em vigor; b) o povo, durante um certo período de tempo, pode solicitar que a lei seja a ele submetida; c) se a votação for majoritária, e a favor do veto, a lei, posta em dúvida, não subsiste. Trata-se, assim, de um direito dos eleitores de deflagrar uma votação de consequência resolutive, que deve ser exercido, não obstante, antes que o ato sujeito à consulta ganhe exequibilidade<sup>39</sup>.

How can be understood, resembles to the referendum, however, the difference between the institutes lies mainly in the provocation to the realization, because, in the referendum, the State summons the people to speak up about

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<sup>38</sup> PACTET, Pierre; MÉLIN-SOUCRAMANIEN, Ferdinand. **Droit Constitutionnel**. 23. ed. Paris: Dalloz, 2004.

<sup>39</sup> Author's translation: "By this instrument, to the people is given the possibility, by own request to oppose a law already adopted by Parliament, but not yet in force. Its main steps can be enumerated in three moments: a) the legislative body votes a law that does not immediately enter into force; b) the people, over a certain period of time, may request that the law be submitted to them; c) if the vote is majority, and in favor of the veto, the law, doubted, does not subsist. It is about, therefore, of a right of voters to trigger a vote of resolute consequence, that should be exercised, nevertheless, before the act subject to consultation gain feasibility". In: SGARBI, Adrian. **O referendo**. Rio de Janeiro: Renovar, 1999, p. 117.



legislative or administrative act already accomplished, while in the popular veto, it is the people who requests that certain law promulgated by parliament be brought to its attention.

#### **4. Participatory democracy as an instrument of effective exercise of citizenship**

The effective implementation of a participatory democracy lacks relevant and substantial civic and political education. Being appropriate to cite what many years ago was written in the Holy Bible: “Then, my people is being ruined because lacks knowledge to them” (Oséias 4:6).

The instruction of the individual must transcend mere basic education, once that their life will not be restricted only to the basic experience as much as the curriculum of the public or private educational institutions, of formation at high school level.

Global population organized into society, and in this life in society there are rules, rights and duties that must be observed and safeguarded, and that must evolve according to the dynamics of this society, because it was for the regulation of the “common well”, from good interaction between individuals that the State emerged and since then, gradually, evolves and fits the needs of its time. However, how to observe what is not known? How to participate in what is strange and so far away? How to integrate within a democratic organization that alienates massive numbers of those who legitimize the power and attribute it to the State, through omission of decent intellectual offer and necessary to political inclusion?

About this subject, Freire makes important considerations:

A compreensão dos limites da prática educacional necessita de uma absoluta clareza política por parte dos educadores em relação aos seus projetos. Exige que o educador ou a educadora assuma a natureza política de sua prática. Não basta dizer que a educação é um ato político, assim como não é bastante dizer que os atos políticos também são educativos. É necessário assumir verdadeiramente a natureza política da educação. Não posso considerar-me um protagonista, se entendo o espaço da escola como um espaço neutro, com pouca ou nenhuma relação com a luta de classes, onde os estudantes são vistos apenas como os que aprendem domínios limitados do conhecimento, de que os imbuo com auxílio de um poder mágico. Não posso reconhecer os limites da prática político-educativa em que estou envolvido, se não sei com clareza em favor de quem eu estou atuando. Esclarecer a questão em favor de quem eu atuo, coloca-me numa certa posição relacionada com a classe, pela qual vejo contra quem eu atuo e, necessariamente, por que razões eu atuo – isto é, o sonho, o tipo de sociedade em favor da qual eu gostaria de intervir, atuar e participar<sup>40</sup>.

Inclusion and conversion of the mere individual which today integrates only the people as a group of individuals under the same legal order to the citizen society must be seen as government goal. For the success of this intention, the biggest tool is the educational instruction and this is also the most neglected.

The necessity of democratic-educational inclusion is patent and urges. Regardless of, the power elite has no interest in this inclusion, because it qualifies as an instrument of opposition to its performance, look:

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<sup>40</sup> Author's translation: "The understanding of the limits of educational practice needs absolute political clarity by educators in relation to its projects. Requires that the educator assume the political nature of its practice. It is not enough to say that education is a political act, as it is not enough to say that political acts are also educational. It is necessary to truly assume the political nature of education. I can't consider myself a protagonist, if I understand the school space as a neutral space, with little or no relation to class struggle, where students are seen just like those who learn limited domains of knowledge, that I imbue them with the aid of magical power. I cannot recognize the limits of the political-educational practice in which I am involved, if I don't know clearly in favor of who I'm acting. Clarify the issue in favor of who I act, puts me in a certain class-related position, by which I see who I act against and, necessarily, why do I act, - this is, the dream, the kind of society I would like to intervene for, to act and to participate". In: TORRES, Carlos A. **Education, Power, and Personal Biography: Dialogues with Critical Educators**. Nova York: Routledge, 1998, p. 46.

A prática educacional faz parte da superestrutura de toda sociedade. Já por esta razão, apesar de sua fantástica importância nos processos sócio históricos de transformação das sociedades, a prática educacional não é em si mesma a chave da transformação, mesmo que seja fundamental. [...] Obviamente, uma elite de poder não gostará de introduzir e pôr em prática uma forma ou expressão pedagógica que aumente as contradições sociais que manifestam seu poder. Seria ingênuo pensar que uma elite de poder haveria de revelar o que ela é através de um processo pedagógico que, no final das contas, atuaria contra ela própria<sup>41</sup>.

Ideally, the individual should be forged so they want to participate in the political life of the nation and for this purpose becomes a citizen, and is not that they are considered a citizen just for fulfilling formal requirements without awakening themselves the yearning for an effective participation in State political decisions, which would bring to the viability of citizenship a doomed end to death, an ineffective increase, mere formalism of a dead letter.

### **Final considerations**

The Democratic State of Law, founded on the principle of popular sovereignty, imposes the effective participation of the people in political decisions, participation that is not exhausted in the mere formation of representative institutions. These constitute a stage in the evolution of the Democratic State, but not its full development. The democracy strictly representative no longer finds legitimacy in the contemporary state, especially in Brazil, where, sometimes, it turns out the dissatisfaction of represented due to the behavior of their representatives.

The Federal Constitution of 1988, besides reaffirming the representative democratic model implemented by the vote, guarantees to the individuals the direct exercise of power through various institutes, among them popular participation as a factual assumption of the Democratic State of Law.

Popular participation is the effective direct manifestation of popular

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<sup>41</sup> Author's translation: "The educational practice is part of the superstructure of every society. For this reason, despite its fantastic importance in the socio-historical processes of societal transformation, the educational practice is not in itself the key to transformation, even if it's fundamental. [...] Obviously, a power elite won't like to introduce and put into practice a pedagogical form or expression that increases social contradictions that manifest its power. It would be naive to think that a power elite would reveal what it is through a pedagogical process that, after all, would act against itself". In: TORRES, Carlos A. **Education, Power, and Personal Biography**: Dialogues with Critical Educators, p. 185.

sovereignty, through these democratic spaces, for the realization of the Democratic State of Law, in the parameters established by the model of participatory democracy.

The people cannot be restricted to be present only in the mandatory elections, but effective popular participation is required in the realization of the state activities. It is imperative that the participatory democracy be realized, in order to enforce popular sovereignty, extracting from the Constitution all the wills of the true holder of power — the people. In respect of the democratic principle, in the terms of the Constitution, it is essential to constitute a true participatory democracy, pluralistic, that is the general guarantee of the validity and effectiveness of fundamental rights.

In relation to the imposed model of democracy is necessary an extensive interpretation of its concept, rethinking its foundations in a more general policy of integrity, community, fraternity, equality and freedom, as the best form of effective popular participation of the citizen, sincerely upholding popular sovereignty, of withdraw from the provisions of the Federal Constitution all the wills of the true holder of power to them to exercise it in its fullness with the mechanisms of direct democracy, walking like this to a true and effective participatory democracy.

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