JusOnline n. 2/2018
ISSN 1827-7942

Alessio Lo Giudice

Professore ordinario di Filosofia del diritto Università degli Studi di Messina

LOSING DEMOCRACY. DEWEY'S CONCEPT OF AN EXPERIENCE AND THE QUESTION OF LEGITIMACY

1. John Dewey's Concept of Democracy

As Charles Sabel writes, "In an uncertain world, where innovations in production and changes in individual life courses and gender roles upend each other, settled forms of assuring social solidarity fail, and traditional representative democracy seems more an institutional casualty of these changes than an instrument for an effective public response to them, committed democrats will want to learn from Dewey."[1] Certainly we do want to learn from John Dewey, especially considering the bases for Dewey's social diagnosis: trends towards a more and more complex society, radical pluralism, the eclipse of the public, and a crisis in democratic legitimacy. Granting obvious historical differences, these are clear features of our own context. In addition, Dewey's concept of democracy may make it possible to transcend the theoretical and practical distinction between representative and deliberative democracy, since his theory advances a concept of deliberative practice as social support for representative democracy. For these reasons, John Dewey's concept of democracy seems to me potentially capable of providing keys to a critical understanding of current conditions. In particular, Dewey conceived of democracy as a cooperative problem-solving practice in which actors try out provisional solutions by means of social communication. His notion of experimental democracy as a specific form of life and an ethical enterprise rather

[1] Charles F. Sabel, "Dewey, Democracy, and Democratic Experimentalism," *Contemporary Pragmatism* 9 (2012): 35.

than simply as a form of government implies the constitution of a polity as a practical and complex process of exchanging and sharing experiences. In a Deweyan approach, what constitutes "the people" is neither cultural homogeneity nor a mere procedure, but rather emergent shared meaning among citizens that functions to establish their orientation in life. As Dewey wrote, we have to "get rid of the ideas that lead us to believe that democratic conditions automatically maintain themselves, or that they can be identified with fulfilment of prescriptions laid down in a constitution."[2]

In fact, according to Dewey, civic participation is the crucial resource for a democratic environment. Society is accountable for generating its own principles and values. Thus these are always subject to debate and revision by citizens faced with concrete social problems. But this implies an idea of a democratic community that is based on the potential for the ongoing revision and development of the community's principles, values and institutional structures – revision that is the outcome of an exchange of practices, experiences, understandings, in order to find contingent shared meanings; revision that is the engine for the process of building a shared identity, as long as civic participation takes the form of a multiplicity of political laboratories where problems are envisaged, selected, and dealt with, and different solutions are tried out. Thus Deweyan democracy is dynamic and experimental. Democracy in action[3] is, at the same time, a problem-solving tool and a shared-meaning-building tool. It is not at all reducible to voting procedures, as Dewey states in *The Ethics of Democracy*: "But the heart of the matter is found not in voting nor in the counting the votes to see where the majority lies. It is in the process by which the majority is formed."[4]

In laying out his own idea of democracy, Dewey takes as his model the ideal of the scientific community, one dedicated to testing possible solutions for different problems and to opening up these solutions to free scientific discussion. The logic

[2] John Dewey, *The Collected Works of John Dewey,* 1882-1953, ed. by Jo Ann Boydston (Carbondale and Edwardsville: Southern Illinois University Press, 1969-1991), LW, 13:87.

[3] For a precise understanding of the role of action in Dewey's philosophy, see Joëlle Zask, "John Dewey on Political Action and Social Philosophy," *Revue Internationale de Philosophie* 207 (1999): 21-35.

[4] EW 1:234.

to be followed is that of scientific inquiry, which presupposes agents' freedom and free access by all to all the available data. For this reason, in Dewey's account of democracy, the notion of "the public" (in the sense that there are different publics) is decisive. The anthropological premise of the theory of the public is the pragmatic denial of an atomistic account of the human being. The individual and society are mutually constituted, and together they fight to extend the scope of their knowledge in order to react to unpredictable events and failures. Thus in the framework of democracy as self-government, the growth of social intelligence in problem-solving and the flourishing of individual personality go hand-in-hand with each other: "*In the realization of individuality there is found also the needed realization of some community of persons of which the individual is a member; and, conversely, the agent who duly satisfies the community in which he shares, by that same conduct satisfies himself.*"[5]

Dewey writes, "The public consists of all those who are affected by the indirect consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for."[6] Thus the concept of the public implies the real involvement of people in shared problems and represents the basis for the democratic enterprise, understood as informed self-government. Late-modern complex society, the need to involve expertise, factual relativism, large-scale urban and continental environments: all these represent problems for the public. They are radical problems that could lead to the eclipse of the public, with obvious consequences for the democratic project. In 1927 Dewey pointed out that conditions had changed: "We have inherited, in short, local town-meeting practices and ideas. But we live and act and have our being in a continental national state."[7] Today, we could simply rewrite that statement, saying: *We have inherited, in short, nationwide policy-discussion practices and ideas. But we live and act and have our being in a global, postnational world.*

So the challenge is to respond to the potential eclipse of the public and seek out a way to hold onto and sustain this essential democratic feature; that is, to arrive

[5] EW 3:323.
[6] LW 2:245-246.
[7] LW 2:306.

at an understanding of how the public can re-emerge, given current social, economic, technological, bureaucratic and geographic obstacles. For Dewey what is at stake is the necessity to extend communicative spaces and practices, since "[m]ental and moral beliefs and ideals change more slowly than outward conditions."[8] It is necessary to extend the number of venues where experiences can be exchanged, where different solutions for different problems can be put forward and tested. This is the only way to restore a sense of communal life suited to the new perspectives and geopolitical scales but nevertheless able to react against the anonymous impersonality of a pluralist and atomistic society. As Dewey writes, "We have the physical tools of communication as never before. The thoughts and aspirations congruous with them are not communicated, and hence are not common …. Our Babel is not one of tongues but of the signs and symbols without which shared experience is impossible."[9]

2. Having an Experience

In accordance with Dewey's concept of democracy, we can say the existential core of democracy resides in the practice of shared experiences based on meaningful communication. But delving deeper into Dewey's philosophy, we find that a genuine democratic experience must be an aesthetic experience, shaped by arguments that image a shared journey with a beginning, a middle and an end. To understand the link between democratic experience and the way argument can image aesthetically, we must turn to Dewey's concept of an experience as an aesthetic experience.

According to Dewey, an experience strictly speaking is structured along a line of development. This implies a difference between having an experience and continuous interaction between the living creature and the environment, which could be called experience in a broad sense. The latter is a sort of permanent background formed of distractions and dispersal and conditioned by a distance

[8] LW 2:323.
[9] LW 2:323-324.

between what we observe and what we think, what we desire and what we get. In particular, the background of continuously occurring experience is something unfinished, incomplete, unsatisfying, and incapable of generating new meanings for new experiences. In contrast, as Dewey wrote, "[W]e have *an* experience when the material experience runs its course to fulfilment."[10]

In fact throughout our lives, there is a constant flow of "experience," from our earliest memories through to the present. But some experiences stand out; they don't feel like "flow" but are instead coherent and complete. Dewey calls these "an experience," as when we say: "*That* was an experience!" And Dewey wonders what happens in "an experience". He notes that "an experience" often feels like it has some *direction*. "An experience" seems to have a beginning, a middle and an end; and the end brings about a sense of conclusion or finality, which is usually satisfying. He calls this the "consummation" of the experience. During "an experience," we both do things and undergo things; that is, we act and, in turn, things happens to us. This alternation of doing and undergoing is *varied* (not monotonous) and *directed* (toward the consummation). The whole thing is pleasurable and satisfying. The *end* (consummation) and the *means* (doing/undergoing) cohere and, in one way or another, we share these socially.

Dewey describes in the following terms the relationship between having an experience and the related feeling of consummation: "A piece of work is finished in a way that is satisfactory; a problem receives its solution; a game is played through; a situation, whether that of eating a meal, playing a game of chess, carrying on a conversation, writing a book, or taking part in a political campaign, is so rounded out that its close is a consummation and not a cessation. Such an experience is a whole and carries with it its own individualizing quality and self-sufficiency. It is *an* experience."[11]

This idea of having an experience is closely related to the potentialities of the imagination, for the imagination enables us to creatively encounter the possibilities inherent in a situation and thus allow for an experience. And the consummation,

[10] LW 10:42.
[11] Ibid.

understood as the end of a previously imagined experience, gives unity to the experiential path. It gives the experience its quality, that is, an aesthetic quality – the aesthetic consisting, for Dewey, of the felt richness of consummation. The aesthetic feature of the experience is conceived of as the expression of the conclusion, understood as the consummation of a movement, the completion of a development. Thus according to Dewey, an experience is structurally aesthetic, in the manner of a path having consistent unity or of a development that ends with a meaningful consummation that propels further experiences. As Dewey states: "No experience of whatever sort is a unity unless it has aesthetic quality. The enemies of the aesthetic are neither the practical nor the intellectual. They are the humdrum; slackness of loose ends; submission to convention in practice and intellectual procedure."[12]

3. The Aesthetics of Democracy

If we unite Dewey's concept of democracy to his concept of an experience – the latter implying a process with a coherent end that yields a sense of consummation – we obtain what may be considered a substantive account of democratic legitimacy useful for assessing legal and political institutions. For in a modern democracy, what guarantees one's sense of duty and one's obedience to the institution is not just the consistent development of a shared procedure that involves all citizens. A further feature of legitimacy is associated with the assessment of the material outcome of the procedure, the *content* of the democratic legislative act. This act is intended to be a tool for solving problems, one that brings a sense of satisfaction and consummation once enacted and applied. In fact, this combined concept of "a democratic experience" harmonizes very well with the widespread view of democratic legitimacy as requiring the twofold functioning of output and input mechanisms, with the output mechanism being the institutional capacity to solve problems (government for the people) and the input mechanism the capacity

[12] LW 10:47.

to represent the popular will (government by the people).[13] After all, democratic participation implies the involvement of citizens in designing solutions to shared problems – thus giving legitimacy to both input and output.

If, following Dewey, we try to image the aesthetics of democracy by examining a democratic legitimizing experience, we will have different outcomes depending on the form of democracy we take into consideration.

The ideal functioning of representative democracy can fulfil the requirements for an experience in Deweyan terms, as it can for an aesthetic experience. A way to grasp this is by considering the vertical manner of imaging representative democracy. Indeed, the arguments that justify and legitimize this kind of democracy tend to rely precisely on the metaphor of a path going in a specific direction indicated by the idea, the goal, of something in the general interest. The journey along the democratic path begins with the exchange of reasons, practices and ideas that takes place in the political realm of public opinion and within parties, continues on with elections, and reaches the midpoint of the path with parliamentary debate. Democratic legislation is the conclusion, with the end of the democratic shared experience potentially yielding a feeling of consummation for those who have participated in the decision-making process from the beginning.

Consider the representation of that sense of conclusion and finality accompanied by satisfaction in an ideally functioning welfare state. Legislative acts come back, in the form of feedback, to citizens mobilized by the process of public-opinion formation. Within such a process, directly or by means of our representatives, we both do things and undergo things; that is, we act and, in turn, stuff happens to us. Moreover, at the end we gain new meanings that can frame our social contexts and serve as the basis for further experiences. Thus the vertical framework imaged in the typical general argument about (or representations of) representative democracy seems to match the Deweyan idea of an experience. Theoretically, then, the ideal functioning of representative democracy could allow

[13] For an incisive claim on the vital relevance of input argument for EU legitimacy, see Richard Bellamy, "Democracy without Democracy? Can the EU's Democratic 'Outputs' Be Separated from the Democratic 'Inputs' Provided by Competitive Parties and Majority Rule?," *Journal of European Public Policy* 17 (2010): 2-19.

for the unfolding of a shared democratic experience. That vertical aesthetics, evoking the idea of a sovereign people following a path in the direction of the general interest, offers a possible account of Dewey's concept of an experience translated to the social, legal and political realms.

However, practically speaking, we all know that within current global conditions it is very hard to image or feel a democratic legislative act within representative democracy as an end, as a conclusion that yields a sense of consummation. The inefficiency of the State threatens this feeling; it hinders the possibility of Deweyan democratic experiences. Think of the crisis of the Welfare State; think of the contemporary trend towards various forms of political, legal, and economic cooperation that substantially reduce the sovereign power of states. We are witnessing a *de facto* decline in sovereign authority caused by the globalization of the economy, which limits the political and economic autonomy associated with the modern State. But along with that, there is a *de jure* decline in the supreme, ultimate and exclusive authority of the State. Clearly, this material framework makes it hard for democratic experiences to culminate in a coherent end; it makes it hard for any feeling of consummation to be possible, thus creating political frustration and conditions that could endanger the democratic legitimacy of our institutions.

But what if we turn to alternative theories of democracy, participatory and, above all, deliberative, theories, conceived specifically to deal with the crisis in representative democracy? What aesthetic imaging do we find in the arguments that inform these theories? Are the conditions for a shared democratic experience guaranteed within their theoretical core? In other words, is the democratic legitimacy of our institutions restored within so called democratic governance?

The postnational horizon is relevant in situating the social practice of regulation known as "governance" in contraposition to the classical vertical and hierarchical scheme of democratic government.

The concept of governance, which presupposes a complex society with a contingent balance, as Niklas Luhmann[14] perceptively recognized, seems to imply a

[14] See Niklas Luhmann, *Social Systems* (Stanford: Stanford University Press, 1995).

different conceptual framework than that of government as framed within the traditional idea of a legal order. In a generic sense, governance implies reference to a certain organizational and institutional complex; so it can imply any political or institutional model. But from a more specific point of view, the one I adopt here, governance implies a regulatory paradigm based on a horizontal image and on a horizontal aesthetics as models of agreement and negotiation among private and public players.

In a broad sense, we can find highly heterogeneous examples of these new forms of regulation in different spheres. For instance, in the traditional sphere of international law, mention may be made of the regimes associated with the WTO and the World Bank, the International Labour Organization, and the International Criminal Court.[15] In the sphere of what I am calling the postnational horizon, the regime of the EU is of course one of the most significant and complex examples.[16] Finally, we can observe widespread experimental use of these new forms of regulation even within states. In particular, we can also observe new domestic forms of horizontal regulation in the effort to remedy representative democracy's limitations as regards both legitimacy and efficiency, as well as in the perspective of an unexplored postdemocracy.[17] Thus in accordance with the need to reframe the democratic decision-making process at a local level, several municipalities and regions have tried out a form of democratic governance on controversial issues

[15] See M. Cherif Bassiouni, *Introduction to International Criminal Law* (New York: Transnational Publishers, 2003).

[16] See Fritz W. Scharpf et al., eds., *Governance in the European Union* (London: Sage, 1996); Andreas Føllesdal and Peter Koslowsky, eds., *Democracy and the European Union: Studies in Economic Ethics and Philosophy* (Berlin – Heidelberg: Springer, 1997); Olivier De Schutter and Notis Lebessis and John Paterson, dir., *La gouvernance dans l'Union européenne* (Luxembourg: Office des publications officielles des Communautés européennes, 2001); Gráinne De Burca, "The Constitutional Challenge of New Governance in the European Union," *European Law Review*, 28 (2003): 814-839; Hans Lindahl, "Finding a Place for Freedom, Security and Justice: The European Union's Claim to Territorial Unity," *European Law Review*, 29 (2004): 461-484; Michael Zürn and Christian Joerges, eds., *Law and Governance in Postnational Europe: Compliance Beyond the Nation-State* (Cambridge: Cambridge University Press, 2005); Charles F. Sabel and Jonathan Zeitlin, "Learning from Difference: The New Architecture of Experimentalist Governance in the EU," *European Law Journal* 14 (2008): 271-327.

[17] See Colin Crouch, *Post-Democracy* (Cambridge: Polity Press, 2004).

linked to apparently opposed values, like economic development and environmental or health protection.[18]

If we examine the theoretical structure of these practices, we find a peculiar imaging shaped by arguments that can depict images quite different from those we saw within the framework of representative democracy. Within the governance approach, the order of society is not intended to pursue a specific political aim, to follow a specific direction. It is devoted, rather, to establishing the playing field on which individuals, associations, organizations, and different public entities can pursue their particular interests. Democratic government presupposes the vertical aesthetic image of the framework of an official ultimate authority empowered to express the supremacy of the general interest and thereby guarantee political unity and social cohesion. The governance system takes for granted political and social unity or, in the best cases, seems aware of the ineffectiveness of these modern properties of the public space within our age, assuming instead that we must reorganize social coexistence and renouncing both unity and cohesion.

On this view, we must also give up the aesthetic form of unity attainable within a single coherent shared experience as well. In fact, democratic governance consists of the management of a playing field on which individuals and organizations can pursue their interests within a common, basic, and apparently neutral framework of shared rules that are in most cases the outcome of inter-subjective negotiations. The balance within the field, the image of a field, has nothing to do with a direction and the actors' behaviours are not conceived as part

[18] See James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991); Boaventura de Sousa Santos, *Democratizing Democracy: Beyond the Liberal Democratic Canon* (London: Verso, 2005); John Gastil and Peter Levine, eds., *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the Twenty-First Century* (San Francisco: Jossey-Bass, 2005); John Parkinson, *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy* (Oxford/New York: Oxford University Press, 2006); José Luis Martí, *La república deliberativa. Una teoría de la democrazia* (Madrid: Marcial Pons, 2006); Valentina Pazè, *In nome del popolo. Il problema democratico* (Roma-Bari: Laterza, 2011).

of a shared path. There is no beginning, middle or end. There is just balance, the search for equilibrium, for compromise that can preserve the field, the status quo.

The implicit idea at work here is that the horizontal involvement by all stakeholders in the decision-making process designed to generate rules is a better guarantee of the effective application and observance of the rules than the traditional vertical and hierarchical logic of command and control. Clearly, on one hand, the governance model dismantles the classical distinction between the public and the private: instead of being kept neatly apart, they interpenetrate each other; and on the other hand, it leads to the diminished importance of the concept of the general interest.[19] The *sui generis* general interest found within the governance framework is the contingent outcome of compromises in process of constant renegotiation.[20] There is no general interest that, as a direction, is established outside the field as the main goal.

At the end of the day, it is understandable that the governance system takes its cue from the postnational horizon, that is, from a perspective in which ultimate authorities, hierarchical chains, and general and public ends are marginalized and give way to new forms of cooperation. Governance, understood as a public-private practice of cooperation, has no predefined or imagined aims that could be linked to a single social project, to a single consistent experience, with a beginning, middle and end pursued through the alternation of active and passive behaviours. It is just a matter of achieving balances among particular interests. The only form of meta-aim is thus simply a contingent balance, which is not an end and which, of course, implies ongoing negotiation. This image of a horizontal network of negotiations is a way of coordinating actions that implies particular, private and isolated objectives, means, values, and interests. Thus everything is reducible to a network of procedures for systematic interaction and negotiation.[21]

4. A Lost Experience

[19] See Pierre Rosanvallon, *La légitimité démocratique. Impartialité, reflexivité, proximité* (Paris: Éditions du Seuil, 2008).

[20] See Philippe Moreau Defarges, *La Gouvernance* (Paris: Puf, 2008).

[21] See Jean-Pierre Gaudin, *Pourquoi la gouvernance?* (Paris: Presse de Sciences Po, 2002).

From an institutional point of view, starting from the crisis in representative democracy and then taking governance models into consideration implies two clearly opposed outcomes. On the one hand, it leads to an emphasis on the circulatory practices of participatory and deliberative democracy through the direct involvement in decision-making processes of those for whom public decisions are intended.[22] Of course, this approach is in a way strongly influenced by a certain theoretical perspective on the idea of a horizontal deliberative and discursive democracy, one that presumes the rational acceptability of rules that are the outcome of a free communicative decision-making process, in which all possible points of view are taken into consideration.[23] On the other hand, this same idea of governance could, paradoxically, give rise to antidemocratic forces through the power wielded by subjects that don't follow the general interest and speak, not in the name of the people but (as in the case of organized lobbies) in the name of their own particular aims. The fact is that, once the idea of a general interest is discarded, it becomes hard to establish limits for the representation of the multiplicity of social, political, and above all economic particular interests.

In fact, the whole theoretical mainstream of thought about the idea of democratic governance, supported by the ideal of deliberative communication, features clear visual argumentation that stresses the horizontal structure of relationships and dialogue. Indeed, the imaged horizontal seems to form the aesthetic core of democratic governance. It is an image that evokes a multiplicity of further images, as we have seen: field, circle, network. All these images share the absence of a direction, the absence of stages in the journey and thus the absence of an end, of a conclusion. Apart, then, from the question of the practical effectiveness

[22] See James Bohman, *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge: MIT Press, 1996); James Bohman and William Rehg, eds., *Deliberative Democracy: Essay on Reasons and Politics* (Cambridge: MIT Press, 1997).

[23] See Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity, 1996); Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity: Normative Analysis of The State*, ed. Alan Hamlin and Philip. Pettit (Oxford: Basil Blackwell, 1989) 17-34; John Elster (ed.), *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998).

of these practices on a large scale, the sense of a conclusion accompanied by the feeling of consummation is theoretically excluded. Once radical pluralism has made it impossible to conceive of a general interest, we are obliged merely to manage our public field, with no opportunity to experience the end of an experience, no opportunity to gain new social meanings for new experiences. To that extent, the legislative act no longer offers the potential for a shared consummation but just forms part of an ongoing compromise that adds no meaning to our common life.

All the requirements, then, that the Deweyan concept of a democratic experience enabled us to extrapolate seem to be missing from the general theoretical framework of democratic governance. But we saw that, for practical reasons, the same requirements are often missing nowadays from the general framework of representative democracy as well. Today we hardly ever experience, through participation in the democratic process, the sense of a conclusion that yields that feeling of consummation that can trigger further experiences. We seem to be living in a static democracy. Maybe, with Dewey, we recognize, in a deeper and more psychological sense, a feeling of loss. By understanding the general images depicted by different democratic aesthetics, we come to recognize that something crucial to the legitimacy of democracy is lacking. In fact, we recognize the loss of a democratic experience.

Abdtract: The aim of this paper is to explore the relationship between the democratic experience and the legitimacy of an institutional context. In this exploration, John Dewey's concept of the aesthetic experience plays a key role. The main thesis is the possibility to conceive of citizens' recognition of democratic legitimacy as Dewey envisages the feeling of consummation completing the aesthetic experience. This approach gains plausibility when we link Dewey's concept of the aesthetic experience to his concept of experimental democracy, that is, democracy as a cooperative problem-solving practice in which actors try out provisional solutions by means of social communication

Key words: Aesthetics, Democracy, Dewey, Experience, Experimental democracy, Governance, Postnational.