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**On the Excessive Role of
Technocracy (from a Gadamerian
Perspective)**

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On the Excessive Role of Technocracy (from a Gadamerian Perspective)

Abstract: The role of experts grows in the present and that is, in part, justifiable: as complexity rises, the ones who deliberate feel the need of the help of those who have know-how in specific fields. The question that must be asked revolves around the type of expectations developed in modern societies regarding what experts can do. Though specialization is not a peculiarity of our time (the process can be observed since human beings became sedentary); it has presently gained specific characteristics. Two aspects of modern life are particularly significant on that matter: (i.) the fact that the economic system is based on excitation of new needs (and no longer on the demand for satisfaction of needs); (ii.) the growing pursuit for total administration of conflicts. These factors are constitutive of what Gadamer sees as a great threat to our civilization: the excessive emphasis given in our time to the human ability to adapt. A specific ability is demanded from individuals: the capability of making an apparatus functions properly. Less resistance and more adaptability is requested, and because of that, autonomous thought - that is, not determined by the function it has in a system - is devalued. The threat we currently face is that the abilities of a good technocrat become the only qualities demanded from those who are responsible for practical decisions (especially in politics and law). Teleological reason, that guides the activity of specialists (and requires know-how in a specific area and consists in choosing means to reach a previously established goal), should not substitute practical reason, as the former requires adaptability to experience (not to a plan that was previously established) and is grounded on solidarity. In order to discuss the limits of the activity of specialists, the paper looks back to phrónesis and the way ancient Greeks set boundaries - this exercise should help raising new questions revolving the matter.

Keywords: hermeneutics, technology, experience, phrónesis

I. Introduction: are our expectations about what specialists can do realistic?

The question this paper intends to ask revolves around the role of technocracy in our time. The hypothesis raised is that limits to technology have not been properly established.

In order to make general decisions about what we, as a community, want to be in the future and more specific choices about how do we want our judiciary system to work, it is important not to forget the limits of teleological rationality, that guides the decisions of specialists – as Kant has taught us¹.

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¹ Hans-Georg Gadamer, *Herança e futuro da Europa*, 1998.

The relevance of specialists grows today in almost every area, including in fields like politics and law. That is, in part, justifiable: as complexity rises, the ones who deliberate feel the need of the help of those who have know-how in specific domains. There are, however, reasons to be concerned when people start to believe that the abilities of a good specialist should become the only qualities requested of those who are responsible for practical decisions.

Hans-Georg Gadamer clarifies the differences between the activity of specialists - who have know-how in specific fields and are able to choose efficient means to reach a previously established goal - and the activity of the ones who are responsible for practical decisions - that requires adaptability to experience and has a lot to do with solidarity. According to Gadamer, the unrealistic expectations developed in modern societies in regards to what experts can do makes it difficult for us to learn where to draw the line between both domains.

Confusion about boundaries is a crucial underlying issue in the current Brazilian debate about reforms in the judiciary power. The discussions are centered on management strategies to gain efficiency: the main goal is to have fast and predictable decisions. The lack of concern of the players about the quality of decisions and the decision making process are consequences of the aforementioned confusion (one can observe claims for public and more reasonable justification of decision coming from Brazilian academic circles², but these demands do not seem to be yet strong enough to change the direction of the debate).

It is, hence, relevant to ask in what ways those powerful claims for efficiency - for fast and predictable decisions - obfuscate the importance of defining a domain for the exercise of practical reason. In order to decide if what we want is to continue using the current approach, it is crucial to understand what is it that we may have to leave behind in order to gain more rapidity and predictability.

Gadamer writes that the word *ethos* for ancient Greeks refer to mode of living. It points out to the fact that we are all participant of a historic situation and in order to make good decisions we must pay attention to our position and to concrete events.

The ethical aspects of the decision making process are not being sufficiently discussed nowadays; it is, hence, relevant to look back to the past in order to start a serious conversation about the matter. We should be reminded what Aristotle wrote about *phrónesis*.

The effort to understand what *phrónesis* was is not driven by any kind of nostalgic obsession³ and it is not related to the aim of transporting practices that were part of an ancient

² José Rodrigo Rodriguez, *Sobre a qualidade da jurisdição: justiça opinativa e luta pela justificação no direito brasileiro contemporâneo*, 2011.

³ Richard Rorty writes that Heideggers attempt to return to ancient Greeks is impregnated of nostalgic foundationalism. See Richard Rorty, *Essays on Heidegger and others*, 1991.

mode of life to the present. Reminding what *phrónesis* was may help us to make better decisions about what do we want our judiciary to be. There are important questions to ask and we should be open to them.

The task ahead can be now more clearly defined. In order to illustrate and construct a more consistent debate about the limits of teleological reason, this paper will use examples that are related to Brazilian judiciary reforms. It intends to compare the way we think about the decision making process nowadays with the way the ancient Greeks thought of it (this exercise must help us raising new questions about the issue). The decision to look at ancient Greek in particular lays on the interest of discussing the boundaries that in the past defined the domain of practical reason in a more clear way.

It's also important to stress that this work does not dwell on the discussion about justification of decisions (whether if it should include moral arguments or be restricted to legal ones); it focus on the decision making process. It asks what should be part of the process within which judge comes to a decision and what can be excluded of it in order to gain more efficiency and rapidity. A particularly interesting issue refers to the fact that the request for oral procedures is being progressively devalued by brazilian judges⁴. The problem has specific aggravating features in fields like family law. We must start questioning, for instance, if does it make sense for a judge to make a decision about custody of a child without the litigants, nor the child, ever meeting de judge.

The first section of the paper explores the role of specialists nowadays and brings out Gadamer's concerns about the excessive emphasis given in our times to the human capacity to adapt to an "apparatus". The second section brings out Aristotle's definition of *phrónesis* and clarifies that ethical decisions, in the past, were made through a *praxis* in which adaptability to experience was required. The following section dwells on Gadamer's considerations about formation (*Bildung*) and its connections with *phrónesis* (which, as Aristotle wrote, cannot be taught). The philologist revisits the hegelian concept and redefines formation (*Bildung*) as the process in which one can acquire the potency of being open to experiences. The last section aims to discuss the assumptions that have been driving the Brazilian debate about reforms on the judiciary power and raise some new questions considering what was previously discussed.

⁴ That is the conclusion of a field research made in Judicial Courts of Rio de Janeiro in 2006. See Bárbara Gomes Lupetti Babtista, Oralidade Processual e Construção da Verdade Jurídica, In: *Revistas da SJRJ*, 2008, 131-160.

II. About the excessive emphasis given in modern societies to the human ability to adapt to an “apparatus”

Specialization is a trend of socialization that can be observed since human beings started to live in sedentary communities. In the past there were pastors, hunters, artificers, as today there are specialized scientists; in all the cases, specialists exercise domain on a specific area.

Though specialization is not a peculiarity of our time; it has gained specific characteristics nowadays. Two aspects of modern life are particularly significant on the matter: (i.) the fact that the economic system is based on excitation of new needs (and no longer on the demand for satisfaction of needs)⁵; (ii.) the growing pursuit for total administration of conflicts. The work performed by specialists must be understood considering the function of science in a context of excitation of consumption (which generated tremendous pressure on producer and specialists) and of growing influence of social engineer in areas that were before guided by a different kind of reasoning (Zeljko Loparic observes that widespread optimistic believe in what social engineering can accomplish has to be comprehended in connection with the moral skepticism of our time⁶). It is crucial to stress that so called “scientifically proven facts” are not immune to pressure and they gain its importance and meaning from argumentative contexts, which are determined by interests and expectations.

This situation constitutes what Gadamer sees as a great threat to our civilization: the excessive emphasis given nowadays to the human capacity to adapt. What is required from workers is the specific ability to make an apparatus function properly⁷. Less resistance and more adaptability is requested, and because of that, autonomous thought – that is, not determined by the function it has in a system – is devalued. The greater is the pressure for adaptability, the closer we get to what Gadamer calls “society of functionaries”. The threat we currently face is that the abilities of a specialist become the main (or the only) qualities expected of those who make decisions in fields like politics and law.

Gadamer remind us that Plato wrote that the ones who need what is produced have the function of specifying the product and the ones who fabricate it are subordinated to that specification⁸. Behind that statement lays one thesis: economical reason should be subordinated to practical reason (nevertheless, we should not forget that permanent struggles for power characterizes the factual interaction between both spheres and that, in our time, economic systems, based on excitation of consumption, have gain power over political systems).

⁵Hans-Georg Gadamer, *Herança e futuro da Europa*, 1998.

⁶Zeljko Loparic, *Ética e Finitude*, 2004.

⁷ Hans-Georg Gadamer, *Razão na época da ciência*, 1983.

⁸Hans-Georg Gadamer, *Herança e futuro da Europa*, 1998.

Making technical and specialized decisions is different than making ethical ones. Unlike the former - that is guide for teleological reason-, the latest task brings out two types of rationality (which are part of a single process): one of them guides the discovery of adequate means to an end and the other kind of rationality is suitable for choosing ends.

In modern societies there are, doubtlessly, multiples perspectives and conflicted normative claims; this fact should not, however, become an excuse to give up on making efforts to construct rational justification for decisions about ends. Practical reason must guide our actions and the convenience of the means used as we act; hence, one should take seriously questions like “what is a good life?” and “what are the Just means to it?”⁹

An expert is someone to consult and who can help to make decisions about ethical issues, but should not substitute the ones who are responsible for making it. We can make a good use of science, technology and teleological rationality if we are aware of its limits. The problem is that today we seem to forget those boundaries. We have not been paying much attention on the habits we have developed in an environment of excessive technocracy. We have learned to manipulate time (as it was an object “at-hand”) in order to use it to bring the maximal utility and we have forgotten the importance of “letting experiences take its time”. When we give time to experiences, we allow them to show themselves in their own unique way – we let them affect us, aesthetically. The anxious and goal-oriented way that we deal with things is stealing the time necessary for an experience to affect. In that mode we do not allow the negative aspect of experiences (their potential to deny our plans) to show itself.

III. Aristotle’s *phrónesis* and the relevance of adaptability to cases (and experiences) in the decision making process.

The current debate about judiciary reforms in Brazil is, doubtlessly, connected to those claims for social engineering and control of decisions. In that context, demands for elaborating laws with accurate and closed meaning (José Rodrigo Rodriguez clarifies that this kind of claim comes from those who defend “textualismo”¹⁰), for standardization of decisions and for a fast an almost mechanical decision making process grows stronger.

The question to be asked is what may be left behind if the activity of judges became more and more similar to the activity of making specialized technical decisions?

⁹Hans-Georg Gadamer, *Herança e futuro da Europa*, 1998.

¹⁰José Rodrigo Rodriguez. *Zonas de autarquia nas decisões judiciais: Estado de Direito, indeterminação e democracia*, (Working Paper), 2010. Disponível em <http://virtualbib.fgv.br/dspace/bitstream/handle/10438/6865/Working%20paper%2056.pdf?sequence=1>. Acess: november, 2010

We can decide to make reforms that go in that direction, but there are also other options - that shouldn't be forgotten. Reminding what Aristotle wrote about *phrónesis* can bring out possibilities that currently are not getting enough attention.

Aristotle clarified the differences between *episteme*, *techné e phrónesis*. The first concept refers to theoretical knowledge and is related to the search of universals. The second notion points to know-how in making certain products - like in art or craftwork. *Phrónesis* is practical wisdom; it is moral deliberation within life's contingences. Its aim is to apply (Gadamer writes that comprehension, interpretation and application are inseparable) general norms to a particular cases. *Phrónesis* is different from *techné* because a human being should not relate other human being in the same way that a craftsman deals with the material he uses to make products.¹¹

When a craftsman uses a *techné* he has right in the beginning the image of the object he wants to create. The material he uses is a fungible mean to build what was projected. In the other hand, when it comes to ethical decisions, an image or concept are not sufficient to define the outcome of the process (an idea should not undermine a concrete problem). Ideas like justice, solidarity and common good are, certainly, directives, but they need to be adapted to the circumstances. *Phrónesis* doesn't allow us to extract aspects of concrete situation (abstraction) in order to use them to reach a previously established plan.

When a craftsman does not find the material he wishes to use for his work, he can renounce the project he first had in mind and adapt. But that is not a specific requirement of his occupation; that is a problem for him: the imperfection of the means will probably make the craftsman feel frustrated.

Adapt general laws to concrete cases is, on the other hand, a requirement for making practical decisions. In this domain, adaptation is not a concession made for us to deal with a practical problem: it is a matter of morality.¹²

Unlike *techné*, there is not a specific and previously establish end in *phrónesis*. There is a general care for life and the claim that ends are not to be thought of as an object of use. Taking responsibility for making good decisions is not the same as manufacturing an object. One can only learn *phrónesis* through life experience. Accumulating information or developing a specific ability is not enough: what should be pursued is a deeper wisdom about life and human relations.

Gadamer writes that the Greek word *ethos* refers to mode of living. It points out to convictions and habits. Taking ethics seriously is paying attention to concrete events the way they present themselves. *Phrónesis* is rooted morality: it brings out the aesthetical aspects of experience as it lets experiences affect in an integral way.

¹¹ Hans-Georg Gadamer. *Verdade e Método I - Traços Fundamentais de uma Hermenêutica Filosófica*, 2002.

¹² Hans-Georg Gadamer. *Verdade e Método I - Traços Fundamentais de uma Hermenêutica Filosófica*, 2002.

Modern technical training pressures human beings to become more and more insensitive to experiences: it is training for repeating standardized answers. Openness to the aesthetical aspects of every experience is an effort to bring up sensitivity to the surprising aspects of concrete events and to allow the emergence of new forms of dealing with things.

Gadamer writes that a human being who is open to experiences does not know and doesn't judge based in an external non-affected position¹³, but rather as being part of something that brings him and other person together in a way that one is affected by the very presence of the other and can learn to "put himself in the other person's shoes".

Gadamerians ethics refers to factual relations and lived solidarity, which is in the root of the formation of a community and of all ethical decisions made within it. Practical decisions are connected with comprehending in an empathic way, like in a conversation with a friend. According to Gadamer conversation is the paradigmatic form of communication: it happens in a concrete situation where another person is physically present, a spoken language is used and the situation favors emotional connections. The relevance of conversation and its potential to affect (that is, its aesthetical aspects) raises once more the aforementioned issue about reforms on judiciary power: are we willing to leave behind the conversational (or oral) phases of the judicial process? The issue will be better explore in the concluding section.

III. *Phrónesis* and Formation (*Bildung*): acquiring the potency of being open to experiences

Aristotle wrote that, unlike *techné* or *episteme*, *phrónesis* cannot be taught; it's rather something that can be gained through life and openness to experience.

The German word *Bildung* is frequently translated as formation or education. *Bildungsprozess* is a personal or social ongoing process towards growing or developing¹⁴. Formation, in this sense, is not search for actualization of a previously elaborated plan; it is a dynamic within which one can learn.

Gadamer writes that the word *Bildung* originally comes from the middle age, but it was Hegel who had defined it in a more precise way. The philologist uses Hegel's concept as a starting point, but, in the end, reaches a very different conception of *Bildung*.

Formation (*Bildung*), for Hegel, refers to a progressive movement from the immediate and particular to universals. Until this point there is no disagreement, since according to philosophical hermeneutics only because we are linguistic beings we can distance ourselves from

¹³Hans-Georg Gadamer, *Verdade e Método II – Complementos e Índice*, 2002.

¹⁴Jerald Wallulis. *The Hermeneutics of Life History – Personal Achievement and History in Gadamer, Habermas and Erikson*, 1990.

what is immediate and became able to make present what is universal. The question that is at the core of the debate is: what is the meaning of universality for hermeneutists and for German idealism?

Universality for Hegel's idealism is connected to absolute knowledge, capable of making history transparency (that is, conceptual). The word gains a very different meaning in Gadamer's perspective: because language makes present what is universal, it can bring out our end, our mortality (the idea that one of the main characteristics that define us as human beings is our capacity to anticipate death is not important only to hermeneutists, many anthropologists also emphasize features of funeral rituals that, since very early ages, shows peculiarities of our species).¹⁵

Gadamer reverses the direction of the trajectory of Hegel's thought: the new route goes from the absolute spirit to the substantiality of tradition¹⁶. Consciousness is finite, what happens historically always exceed what we are able to grasp and the aspects of experience that are concretely there but cannot be apprehended by our modern way of thinking should not be neglected (the relevance and the role of *the rest* or of what cannot be apprehend by our consciousness is in the core of the distinction between the approaches).

Understanding the different meanings of experience in both perspectives can clarify the issue at stake.

Hegel emphasizes the result of an experience; that is, the knowledge that one can gain thought it. Experiences can lead to self-knowledge that, at end, will have no longer an object¹⁷: the result of an experience is knowledge, at its highest point, absolute knowledge. That is why, for Hegel, dialectics of experience reaches its finality when it overcomes all experiences.

Gadamer observes that Hegel's idealism is impregnated with a lack of solicitude towards experience. According to the philologist, infinity is the flux of experiences – not the knowledge acquired through it. Gadamer emphasizes the process of having experiences and not the result of it: with a proper formation (*Bildung*) one can learn to let an experience affect.

The meaning of experience for Gadamer is, of course, also different from the way positivists understand it¹⁸: positivists forget that the instant of an experience is not a fragment that can be separated from its historical meaning.¹⁹ Experience is history acting in the present. Because

¹⁵ MORIN, Edgar Morin . *O Homem e a Morte*, 1997 e Hans-Georg Gadamer *Herança e Futuro da Europa*, 1998.

¹⁶ Jerald Wallulis. *The Hermeneutics of Life History – Personal Achievement and History in Gadamer, Habermas and Erikson*, 1990.

¹⁷ Hans-Georg Gadamer, *La Dialética de Hegel – Cinco Ensayos Hermenéuticos*, 1994.

¹⁸ Cristian Delecampagne. *História da filosofia no século XX*, 1997.

¹⁹ Martin Heidegger, *Lógica. La Pregunta por la Verdad*. Madrid, 2004.

experiences always resist to be apprehended in a concept, they frustrate. Openness to experiences can, hence, reveal that our consciousness is limited and finite.

Experienced human beings are not the ones who developed some kind of ability or knowledge in a specific field, but human beings who have learned to deal with the uncertainty of predictions and the limits of planning. Formation (*Bildung*) is the process of obtaining something that was already potentially there: an open attitude towards experiences. What was achieved cannot be separated of the process of achieving it.²⁰ When a formation is achieved what has happened in the process doesn't go away, what was overcome doesn't stay in the past.

The meaning of overcoming brings out another point of divergence between hermeneutics and idealism. For Hegel, reaching an idea is overcoming or leaving behind what was there before. According to Gadamer, what is there concretely is always conflicted; when we distance ourselves from it we are also driving ourselves away from it (that is, from what happens in a concrete event). For instance, overcoming a loss (maybe of someone loved) is not forgetting what has been lost. Grieving does not lead to extinction of pain, but acceptance and elaboration of a mode of carrying the pain. Suffering always leaves marks, we can learn a better way to deal with it when we accept it as part of our lives. The painful experiences are there, but modified, resignified; they still a part of our lives even when we have overcome it.

Gianni Vattimo explains that the word *Verwindung* was used by Heidegger in "Identity and Difference" in the context of the discussion about overcoming metaphysics and it refers to a movement of passing through something with deep acceptance. *Verwindung* points to convalescence (as in recovering from a disease or grieving from a loss) and a twist. Metaphysics is not something that can be left behind, its vestiges stay. We can deal with metaphysics in a better way if we get closer and dwell in it: that's the way to twist the direction and to find other possibilities of orientation.²¹

Formation (*Bildung*) is the process within which we gain conscience that we are a part of a historical dynamics. Openness to its movement is a way to deal better with life. An open attitude is a potency achieved: an open human being knows that we can learn from tradition and also that we need to have a humble attitude to be able to really learn something. One can learn with experiences when pays attention to what it is and do not forget that it is always more than what can be apprehended by our conscience.

²⁰Jerald Wallulis, *The hermeneutics of life history – personal achievement and history in Gadamer, Habermas and Erikson*, 1990.

²¹ Gianni Vattimo, *O Fim da Modernidade – Nihilismo e Hermenêutica na Cultura Pós-Moderna*, 2002. About *Verwindung* also see Martin Heidegger, *Que é isto – A Filosofia? / Identidade e Diferença*, 2006.

It is also possible to spend life paying too much attention to abstract concepts and projects and have the action determined by goal-oriented thinking. Orienting life by planning is a way to avoid contingency and frustration. In order to gain an ethical wisdom it is necessary to let oneself be formed (*Bildung*) by concrete and unpredictable experiences.²²

IV. When the pressure for efficiency and rapidity is excessive? The example of justice courts from Rio de Janeiro (can judges make good decisions without ever meeting the litigants?)

As it was pointed before, this paper does not intend to look at the way the decision making process was on the past for nostalgic reasons. It does not assume that the best solutions for the issues that the judiciary Power faces today must be transplanted from ancient Greek.

This paper is about openness to new questions and finding new possibilities through historical awareness. We should look at the past to gain conscience that the problems we face today are historical and that the answers are connected with what we see as relevant solution in our time. Paying more attention to aspects of the decision making process that have lost its force in time may help us to make better choices about what we are really ready to leave behind.

Reforms on the judiciary system should, of course, be made with the help of science and technology, for instance, information and communication technology. It can provide many improvements: files of judiciary cases no longer have to be constantly moving from place to place; less paper is needed (we can find better ways to use physical space of Courts, not to mention its environmental effects); petitions, motions, judicial notifications and intimations can be made online or be received by email (with the use of electronic signatures); intelligent systems can give impulse to the procedure and, for instance, warn the parties about deadlines; hearings can be video recorded (which can diminish the old habit of Brazilian judges of reformulating depositions in a technical language - that is neglecting the language used by witness or litigants - in order to save a written documented version of it) and preserved with regards of the language and the context it actually happened.

Automation in judicial procedures if well used can be a good instrument for reforms particularly in Brazil, since in this countries exchange of favors, economic advantages and very specific forms of “Jeitinho”²³ are too often means to make the system work in favor of those who knows “its ways”. Automation strategies can diminish the power of judge assistants (who frequently are the ones who decide which files are going to be first or last in the line and sometimes negotiate it in order to get advantages).

²²Hans-Georg Gadamer, *O problema da consciência histórica*, 1998.

²³João Mauricio Adeodato, *Ética e retórica: para uma teoria da dogmática jurídica*, 2006.

The most important effect of the use of new communication technology is, probably, the increase of public access to procedures and the decisions. José Rodrigo Rodriguez wrote about a “struggle for justification” (between the ones who defend the restoration of formalist tradition and Brazilian readers of authors like Alexy and Dworkin) ongoing in Brazilian academic circles. Although the disputants have conflicted views on the issue, they share the claim for more impersonality, transparency and public access to decisions and the decision-making process²⁴. Technology can help on the practical actualization of these claims.

But we must be aware that the pressure for efficiency and rapidity can be excessive. Anxiety grows in modern societies, we want fast decisions. But we shouldn't let our anxiety take the best of us. One should consider that sometimes the decision maker have to take his time to understand the peculiarities of a case. We should let them learn how to adapt to a concrete situation and not only to a system.

Some issues recently raised about the need of oral procedures in Brazilian judicial process make an interesting example. Although there is not strong demands in Brazilian law literature against the request for oral procedures, law practitioners observe that judges are, more and more, foregoing the presence of litigants in Courts. A field research made at courts of Rio de Janeiro in 2006²⁵ give us more accurate information on the issue. Bárbara Baptista interviewed attorneys and judges in Rio de Janeiro and observed the requirement oral procedures are perceived as negative by almost the totality of judges that were interviewed. The general opinion of judges is that oral procedures are an obstacle to the course of the procedures, that they are not useful and that there is no time for them. Baptista discusses the consequences of this kind of belief: encounters between judges and litigants are diminishing and they tend not to affect the decisions.

Many factors are connected to the above described situation: strong demands for fast procedures and the way we learned to think of the decision making process in our time (as something disconnected to ethics and to factual relations) are some of them. This paper should be read as an invitation for deepen the discussion about those issues.

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²⁴José Rodrigo Rodriguez, *Sobre a qualidade da jurisdição: justiça opinativa e luta pela justificação no direito brasileiro contemporâneo*, 2011.

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