



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

**Governing Complex Societies: the Constitutional Implications
of Democracy and Leadership
in Shaping Innovative Institutional Designs**

Matteo Nicolini

**15th International Winelands Conference
Governance of Transitions in a Complex World**

Stellenbosch Institute for Advanced Study (STIAS),
Stellenbosch (30 March – 1 April 2016)



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- **Beginning with three Passages**
 - Goals and Methodology
 - Paradigms of Institutional Innovation
 - Types of Democracies, Role of Leadership, and Transition
 - From Liberal Democracy to Alternative Narratives
 - External Factors and Constitutional Governance
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

FIRST PASSAGE

And I say also unto thee,
Thou art Peter,
And upon this rock
I will build my church;
And the gates of hell
Shall not prevail against it.

Mt. 16:18 in *Holy Bible: King James Version* (Cambridge: Cambridge University Press, 2006), 10.



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

SECOND PASSAGE

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market force within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

EUROPEAN COUNCIL, *Copenhagen criteria* 1993



THIRD PASSAGE

Underlying the litany of Africa' development problem is a crisis of governance. By governance is meant the exercise of political power to manage a nation's affairs. Because countervailing power has been lacking, state officials in many countries have served their own interests without fear of being called to account. In self-defense individuals have built up personal networks of influence rather than hold the all-powerful state accountable for its systemic failures. In this way politics becomes personalized, and patronage becomes essential to maintain power. The leadership assumes broad discretionary authority and loses its legitimacy. Information is controlled, and voluntary associations are co-opted or disbanded. This environment cannot readily support a dynamic economy. At worst the state becomes coercive and arbitrary. These trends, however, can be resisted. ... dedicated leadership can produce a quite different outcome. It requires a systematic effort to build a pluralistic institutional structure, a determination to respect the rule of law, and vigorous protection of the freedom of the press and human rights.

WORLD BANK, *Sub-Saharan Africa: from Crisis to Sustainable Growth*, Washington (DC) 1989, at 60-61.



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- Beginning with three Passages
 - **Goals and Methodology**
 - Paradigms of Institutional Innovation
 - Types of Democracies, Role of Leadership, and Transition
 - From Liberal Democracy to Alternative Narratives
 - External Factors and Constitutional Governance
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

Interrelations between the theoretical types of democracy
(deliberative, conversational, representative, economic)
and their constitutional implications,
under which governance of complexity is attained
and institutional transition takes place.



- 1) **Speculative aims:** assessing the theoretical features underpinning the adoption of innovative institutional designs within constitutional democracies.
 - 2) **Constitutional features count as constitutional reflexes** of the different theoretical conceptions of democracy.
 - 3) The **scenario:** State-society institutional interface is in a state of flux; globalisation and global financial dominance impacts upon domestic socio-economic and political contexts; international financial actors, are neither democratic nor accountable; nation states are in a state of flux, and instability is accrued by the presence of fragmented plural societies, within which global mobilisation triggers sharper crosscutting cleavages.
 - 4) This narrows discretion of the leadership's proposals for innovative structures, and weakens the ability of political actors to manage the complex interweaving stemming from the need for governmental change and the respect for the democratic framework.
-



METHOD:

Variety of Constitutional Democratic Forms: they incorporate theoretical models of democracy and therefore set limitations in order to constrain the leadership that, acting upon political mandate, promotes institutional innovation.

HOW TO HANDLE VARIETY

- **comparative legal studies:**
 - examine a vast array of constitutional regimes and operational rules, proposes classifications that are the outcome of a cross-national analyses, groups constitutional forms (i.e., the reflexes of the theoretical concept of democracy) group on the grounds of their common traits, and devises “models”, which are “a synthesis of complexity by logical categories” useful for the advancement of comparative legal studies.
 - scratch beneath linguistic labels and grasp those unitary traits upon which variety is grouped.
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- Beginning with three Passages
 - Goals and Methodology
 - **Paradigms of Institutional Innovation**
 - Types of Democracies, Role of Leadership, and Transition
 - From Liberal Democracy to Alternative Narratives
 - External Factors and Constitutional Governance
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

PASSAGES AS PARADIGMS OF INSTITUTIONAL CHANGE

And I [**the theoretical model of constitutional democracy**] say also unto thee,
Thou art Peter [**leader/institutional innovator**],
And upon this rock [**constitutional democracy**]
I will build [**or innovate**] my church [**reflexes of constitutional democracy/society**];
And the gates of hell [**a different regime/rule**]
Shall not prevail against it [**constitutional limitations**].

Where the **interaction between leadership, innovation and limitations to innovation is the paradigm shift.**

The constitutional framework is democratic and capable of attaining governance of complexity because it is coherent (A REFLEX) with the theoretical model



Key Questions:

- 1) Which is the original theoretical foundations revealing the democratic character of its legal reflexes?

 - 2) To which types of transition/change patterns the paradigm refer?
 - 'innovation' as the governance of the 'transition' from an authoritarian rule to constitutional democracy in emergent democracies;
 - Western democracies are experiencing changes in structures, policies and values and decision-making processes that endorse the transformation of the legal and economic premises of constitutional democracy by promoting stringent budgetary policies and the narrowing of the welfare state.

 - 3) How does the 'paradigm shift' works? How leadership interacts with the theoretical presuppositions of constitutional democracy and with its reflexes?
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- Beginning with three Passages
 - Goals and Methodology
 - Paradigms of Institutional Innovation
 - **Types of Democracies, Role of Leadership, and Transition**
 - From Liberal Democracy to Alternative Narratives
 - External Factors and Constitutional Governance
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

TYPES OF DEMOCRACY

The Copenhagen criteria and the World's Bank Reports propose a paradigm of innovation which coincides with that of liberal democracy, which has been characterising Western democracies since the onset of constitutionalism.

stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market force within the Union, rule of law, political accountability, efficient governmental action, protection of fundamental rights, market economy

Government is thus legally limited in its powers, and its authority or legitimacy depends on its observing these limitations, which also constrains its ability to promote legal and institutional change.



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

ROLE OF LEADERSHIP

Liberal democracy thus reduces the manoeuvre of the leadership and narrows the applicability of the paradigm shift, because it is mainly representative-oriented.

The equation “representative government – liberal democracy” is coherent with the ‘Gospel paradigm’ and tends to **exclude patterns of innovation that rest only on mechanisms of direct citizen participation**



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

TRANSITION

The paradigm shift is usually perceived as negative: **crises of governance are crises of political leadership**, which is not able to promote, under the vest of constitutional leadership, the exercise of political power to manage a nation's affairs.

Hence, leadership should propose institutional innovation that count as constitutional reflexes of the theoretical conception of democracy.

However, political leadership may also play a positive role (African States and the then new democracies of Eastern Europe in the early Nineties): the presence of a fragmented plural society was governed by innovative structures, and leadership was capable of manage the complex interweaving stemming from the need for governmental change and the respect for the democratic framework.



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- Beginning with three Passages
 - Goals and Methodology
 - Paradigms of Institutional Innovation
 - Types of Democracies, Role of Leadership, and Transition
 - **From Liberal Democracy to Alternative Narratives**
 - External Factors and Constitutional Governance
-



Although it has been predominant in the last two centuries, liberal democracy shows all its limits: it is not capable of proposing new types of institutional change and innovation.

- liberal democracy presupposes a homogenous body politic, **where common core values (may they be religious, class-based, cultural) are shared.**
 - It is a frame of government that totally rests on representative institutions. Governance is possible: due to the homogeneity of its body politic, **cleavages are mainly political** and therefore mediated by political parties – and this mediation allows political community's interests and representatives' interests to perfectly match.
 - In pluralistic contemporary societies **governance of societal complexity still and innovative institutional strategy still presupposes the type of governance that fall under the umbrella of liberal democracy.**
-



– Traditional liberal democracies are mainly **majoritarian-oriented**.

- 1) democracy consists of the majority principle (and rule) for the governance of the societies;
- 2) the whole governmental and institutional framework is percolated by the majority principle.
- 3) checks and balances are counter-majoritarian
- 4) constitutional adjudicators are supra-majoritarian.

- During the political mandate, **homogeneity allows** representatives to make decisions without taking into due account community's views. **But does this assumption still hold true in societal contexts where differences and cleavages undermine societal homogeneity? Or where representatives are called to face the dire effects of the crisis by adopting appropriate measures without taking into account the popular will – and the populace will probably bear these effects –, thus disregarding the same constitutional democratic presuppositions?**



TOWARDS DIFFERENT DEMOCRATIC NARRATIVES

- alternative to the traditional one, according to which we usually consider the relations between conceptions of democracy and constitutional democratic designs.
 - We have to abandon the idea that only innovative designs consistent with liberal democracy are acceptable.
 - That there is still room left for different forms of democracy capable of managing complexity and coping with transition notwithstanding the dominant role representative liberal of democracy has been playing for the last two centuries.
-



SOCIAL DEMOCRACY

- It epitomises Richard Rorty's «social hopes» for «a classless, casteless, egalitarian society»
 - It goes beyond the pure representative liberal democratic model.
 - It does not rests on a purely theoretical conceptions of democracy, because it breaks down the distinction between philosophy, science and politics.
 - Its realism stems from the observation if two constitutional realities: the U.S. **Constitutional participatory scenario**; the **deliberative process held in Putney Church (29 October – 1 November 1647)**.
 - It proves to be capable of accommodating popular sovereignty, 'liberalism', and 'possessive individualist' .
-



CONVERSATIONAL DEMOCRACY

- Michael Oakeshott's *The voice of poetry in the conversation of mankind* (1959)
 - Presence of different voices/innovators (political, scientific, poetic, historical) with practical implications.
 - There is an implicit strong political commitment : “There is no *vita contemplativa*; there are only moments of contemplative activity abstracted and rescued f from the flow of curiosity and contrivance”.
 - Adequate for complex societal context and when governing transitions: the conversational democratic model is indeed ‘pluralistic’ and ‘participatory’ and match the needs of fragmented societies
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

A BRIEF SKETCH

- Beginning with three Passages
 - Goals and Methodology
 - Paradigms of Institutional Innovation
 - Types of Democracies, Role of Leadership, and Transition
 - From Liberal Democracy to Alternative Narratives
 - **External Factors and Constitutional Governance**
-



ECONOMIC DEMOCRACY

- *Economic democracy* constraints the utterance to external standards.
 - These, however triggers the role of leadership: unlike liberal democracy, it does not promote any institutional change from within.
 - The external pressure of economic actors causes a shift from the political to the economic sphere, which focus on “the problem of allocative efficiency rather than [on] questions of stabilization and income redistribution.
 - External factors narrow constitutional representative democracy: there is a lack of accountability.
-



IT IS A REACTION TO A CHANGE IN THE MEANING OF LAW

- This is due to the fact the *financial actors* look for legal system that ensure elevated economic performances (**efficiency rule**).
 - As legal institutions have an impact on economic growth, the *Doing Business reports* of the World Bank evaluate the economic performance of legal systems by applying quantitative methodologies and numeric indicators.
 - This deletes the variety of constitutional forms: the global legal language is necessarily based on economic models; Public finance budgetary policies are now the economic reflexes of the constitutional economic democracy.
 - Leadership is constrained: **where numbers warrant**
 - Liberal democracy was implemented by differentiated constitutional domestic designs, the efficient rule requires **homogeneous** constitutional features.
-



OVERSIGHTING ECONOMIC DEMOCRACY

PROACTIVE «system of checks and balances on economic power and support for the right of citizens to actively participate in the economy regardless of social status, race, gender, etc.» (S. Sjöberg, N. Dube, *Economic Democracy through Collective Capital Formation: The Cases of Germany and Sweden, and Strategies for the Future*, in *World Review of Political Economy*, 5(4), 2014, pp. 490)

In this regard, the quest for innovative institutions should attain the following goals:

- It should monitor market mechanism and corporate activities,
 - It should encourage the moral and political support of social enterprises,
 - It should limit the power of banks by reducing fractional reserve banking,
 - It should reclaim the commons,
 - It should reframe economic freedoms.
-



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

It is a **constitutional upheaval**: it departs from variety and diversity.

When the economic democracy will definitely determine the meaning of the lexicon of constitutionalism, the limitation of powers and government of the body politic will then be based on a *new economic democracy*, and this will mean the time for *new universals* has come.

Against this background, scholars should accompany – and, whenever possible, warn against – the application of economic principles to constitutional democracy and to the governance of the body politic.



UNIVERSITÀ
di **VERONA**

Dipartimento
di **SCIENZE GIURIDICHE**

Matteo Nicolini, Ph. D. (University of Verona)

Assistant Professor of Comparative Public Law,
Public Law for Economics, Comparative Constitutional Traditions
University of Verona – Department of Law
Via Carlo Montanari, 9
37122 Verona – Italy

* * *

Researcher
Institute for Studies on Federalism and Regionalism
European Academy of Bolzano/Bozen

e-mail: matteo.nicolini@univr.it

webpage <http://www.dsg.univr.it/?ent=persona&id=613>
