DEMOCRATIC CONSTITUTION MAKING BETWEEN DELIBERATIVE AND CROWD-SOURCED FORMS OF CONSTITUTIONALISM: A REPORT

Posted on 6 Luglio 2023 by Giuseppe Martinico , Matteo Monti

A series of online seminars was held from 8 to 19 May 2023 devoted to "Democratic Constitution Making between deliberative and crowd-sourced forms of constitutionalism". The series was organised within the frame of the Sant'Anna Legal Studies (STALS) project. STALS is a project made possible thanks to the financial support offered by Scuola Superiore Sant'Anna, issued within the framework of the School's internationalisation policy.

The webinar series explored the processes of democratic constitution-making from a comparative law viewpoint. It offered an in-depth and up-to-date analysis of direct and representative participation mechanisms in constitution-making processes from a comparative law perspective. The series combined webinars on both general topics and specific cases of constitution-making processes, exploring some significant and recent experiences. Thus, alongside more general sessions, there were meetings devoted to specific case studies with academic experts coming from different jurisdictions.

The first webinar was given by Antoni Abat i Ninet, who presented his

book Constitutional Crowdsourcing. Democratising Original and Derived Constituent Power in the Network Society.

On that occasion, he conceptualised the phenomenon of constitutional crowdsourcing, dealing with the issue of how to include the people and give them a voice in the constitution-making process and in constitutional interpretation, by favouring in this way the exercise of what he called both original and derived constituent power. Antoni Abat i Ninet gave an original and out-of-the-box view of popular participation in consultative and constituent processes. He provided a critical approach to the issue and some interesting suggestions also concerning the use of new technologies.

In the second webinar, Sergio Verdugo addressed the main features of the failed (for now) Chilean constituent process, analysing its characteristics, the reasons that led to the rejection of the text and the start of its new phase, also in the light of the recent surprising electoral results (in some ways) for the constituent assembly ("consejo constitucional"). His analysis addressed both constitutional and politological arguments. The interdisciplinary approach employed was very beneficial for participants to understand the complex dimension of the Chilean constituent process.

Veronica Federico took an in-depth look at the South African constitution-making process in the third webinar. As is well known, South Africa represented a model for comparative constitutional law of how to proceduralise the constitution-making process, characterised by an interim constitution codifying certain structural principles that inspired the contents of the final constitution. While, of course, the South African process cannot be described as an example of crowdsourced constitutionalism, it certainly represented a model of a negotiated and open constitution-making process, which helped to rationalise the idea of constituent power as known by authors such as Schmitt. Veronica Federico's analysis, like that of Sergio Verdugo, was not limited to a mere overview of the South African constitution-making process, but covered the deep ideological and political drivers that led to the enactment of the post-apartheid Constitution.

In the fourth webinar, Paul Blokker presented a volume he edited entitled "Imagining Europe Transnational Contestation and Civic Populism". On that occasion he focused on protest movements (both left-wing and right-wing populist movements) and on those forms of resistance that tried to challenge the existing supranational crisis policies. He also offered a critical account of the works of the Conference for the future of Europe and explored the role of societal participation in the evolution of the European integration process. Incredibly fascinating about this latter aspect was the focus on imagination as a driver in the EU integration process.

Massimo Fichera presented his works on discursive constituent power in light of the inter-generational justice issue during the fourth webinar. Massimo Fichera's talk started with a historical-philosophical analysis of the idea of intergenerational justice, which ranged from traditional Western constitutionalism scholars through the investigation of some constitutional cases and documents. The analysis of the current "status" of intergenerational justice was enriched by drawing on Habermas' and Rawl's critical insights. In his view, the idea of "people" can indeed be constructed through the discursive practices, which play "an important role in the context of informal change".

Catherine Dupré presented her co-edited book "Icelandic Constitutional Reform: People, Processes, Politics" in which she analysed the well-known Icelandic crowdsourced constitutional reform attempt. While Iceland has been seen as a reference mark in this ambit, she actually provided a pretty critical and in-depth analysis of the process, by debunking many of the myths surrounding the process. In particular, Catherine Dupré emphasised the tensions that arose in the constitution-making process, namely *The Parliament v. the people* and *the people v. the experts*.

Francesco Palermo offered a ground-breaking analysis of the tricky relationship between territorial conflicts and constitutionalism, by focusing on the issue of independence and secession referendums. Francesco Palermo's talk pivoted on the disadvantages and advantages of proceduralising territorial conflicts and, in particular, of regulating secessionist processes. The analysis focused specifically on the

instrument of the referendum as a way to "change" the constitutionally established territorial structure and to involve the population in this kind of process.

Finally, Francesco Biagi carefully dealt with the relationship between constituent processes and populism in light of the Tunisian case. He compared the former Tunisian constitution, which had been approved after the Arab Spring, with the new constitution recently entered into force, which sadly represents the outcome of an evident constitutional retrogression pushed by the current President of the Tunisian Republic, a constitutional law professor who had guided the country through an evident step back in terms of fundamental rights.

All seminars can be accessed at the following YouTube link.