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THE WEB 2.0 AND ITS IMPACT ON RELATIONS BETWEEN CITIZENS AND POLITICAL REPRESENTATIVES

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1. Introductory remarks.

Constitutional issues related to Internet are today very popular, even if its

intersection with law is rather recent. We often forget that the HTTP protocol was invented by Tim Berners-Lee, a British scientist at CERN, in 1989; that, just in 1993, the source code has been released and put in the public domain; that the Internet access services were not commercialized until the mid-1990s.; that today's web is incredibly different from its origin and, eventually, that the web evolution is still running really fast.

Consequently, it is important to underline that we are far away from a complete knowledge of the Internet impact on our societies and that, day after day, new concerns arise from the continuing change of technologies. The lack of awareness, stability and predictability represents, as it is well-known, the worst obstacle for legal scholars and specialists which are called to propose legal adjusts or new regulations.

Few years later, with the development of the Web 2.0, which is based on a dynamic paradigm that allows users not just to receive information but also easily to interact, the possibilities for individuals to communicate and share – consciously or not – every kinds of contents or data have spectacularly increased. Because of this technological transformation and because of others innovations in ICT - as for example, the diffusion of portable devices, like smartphone or tablet computers, that appear more and more like an extension of the human organism - Internet has become much more than a means of communication.

It is a fact of common experience that currently Internet is essential for lots of every daily activities, which don't have prevalent communicative purposes or they do not have at all. Many examples are possible: the reservation of train tickets, the registration of e-health records, the inscription to primary school, the payment of taxes.

All these activities find a constitutional framework corresponding to its content and, for the quoted example, we may consider the freedom of circulation, the right to health, the right to education and the duty of tax contribution. It means that the constitutional landscape of the free speech may not be entirely absorbent. Moreover, it is necessary to remember that all these online activities raise issues related to the protection of

personal data and to the control of the data provided.

The consequence is that scholars and practitioners are, today, required to re-read the constitutional freedoms as well as the constitutional guarantees which protect the democratic process, taking into account Internet and the transformations of the reality that it has produced.

In other terms, the Constitution needs, as first step, an evolutive interpretation that we can define as “Internet-oriented” .

As second step, it is plausible that the existing constitutional norms couldn’t cover all possible deals related to Internet. Since law is a human product which aims to regulate human relations in a specific historical, social and technical context, the evolutive interpretation of the existing constitutional rules could not be, in some cases, sufficient and, therefore, could be necessary to amend existing norms or even to introduce new ones.

This second step, even if it seems quite consistent to the real nature of law, is highly debated and questioned. Some scholars trust in the possibility to solve any kind of controversial issues through principles or values taken from the Constitutions. Some others prefer to support the idea of an Internet Bill of Rights which could introduce, at national or, better, at international level, new specific rules and fundamental rights governing the use of Internet and specific just for online activities.

I am sceptical about the idea that evolutive interpretations through values or principles may solve all sorts of doubts. Instead, I agree with the idea that new rules are needed and that international level is more adequate than national according with the nature of the Internet. Despite this, the proposal of an Internet Bill of Rights doesn’t completely persuade me because it seems based on the idea that it is possible to separate the constitutional guarantees for online activities and for offline activities.

In order to explain my position, we should consider that actually, when the Internet appeared during the Nineties of the last century it was generally accepted the distinction between a real life and a virtual life. This separation, at that time, was adequate because it was possible to make a

clear distinction between the moment in which a person connected and entered to Internet and then the moment in which the same person disconnected and exited from the Internet.

Nowadays, digital and physical are increasingly meshed and people are in Internet, even if they do not want to be (see, for example, the ECJ case Costeja Castro v. Google). They do not go anywhere, neither in nor out. The separation among real and virtual life doesn't exist anymore, because life develops through an inextricable muddle of online and offline activities.

Becoming very hard to say if the protected activity is online or offline based or mostly based, the definition of a complete set of rules just for Internet activities sounds as nonsense. Also, as we have already experienced with print-press, if the protection, at constitutional level, is based on a single medium, then it is more than difficult to apply the same protection to the new media when they appear at the horizon.

The alternative proposal is then to scrutinize the existing constitutional rules in order to verify if they could be applied to this muddled new reality and, if they are not, to amend them.

2. **Delimitation of the investigation.**

The issue of the relationship between citizens and political representatives is a very important one. It is inherently connected to the concept of democracy because the rules which govern this relationship define the legal structures which allow people to decide and to participate to the decisions. They contribute together with the kinds of government to define the type of democracy.

As it is palpable, it has spread around Europe a dangerous sentiment of inability of the political class and of distance from citizens. Fighting against this feeling is a central theme for every European States as well as for the European Union.

The main scope of this contribution is then to investigate whether the Web 2.0 does change the relationship between citizens and political

representatives and whether it may help to reduce this sense of distance by increasing citizens' participation.

The changes produced by Internet on this relationship may rebound on various basic concepts of the western legal and constitutional tradition such as the notion of political representation (which in the European tradition is strictly linked to the theory of the sovereignty of nation and the competing theory of the popular sovereignty), the balance among representative democracy and direct democracy; the role of political parties in modern democracies, their crisis and their reorganization; the accountability of decisions in a globalized world. Each of these issues would deserve a specific attention as well as a prior precise dogmatic reconstruction, which is not possible to make here.

Then, taking in utmost account the existence of these dogmatic issues, my contribution will focus on a very specific concern: the possibility that the web 2.0 offers to citizens to participate in the democratic process with specific regard to the possibility to orient the decisions of political representatives. This concern is somewhat related to the wide concept of electronic democracy (e-democracy).

3. The notion of e-democracy and its transformation because of Web 2.0: the new notion of liquid democracy.

Defining democracy is extremely hard because it historically comes in many shapes. Even more prohibitive is to define the concept of electronic democracy. It appeared during the Nineties and it was generally referred to the use of Information and Communication technologies (ICT) in order to enhance citizens' engagement in political decisions.

At that time, the web 1.0 allowed just unidirectional initiatives or "one way processes". They consist in the dissemination through the Internet of information, assessments and ideas about specific topics by the government (in the broad sense), by political parties or lobbies, by representatives and individuals.

Some scholars suggested that Internet, as a new powerful means of

communication, could have increased mass participation and could have been a potential remedy for the decline of the traditional political participation. In fact, compared to the radio television, Internet may assure both “top-down” initiatives and “bottom up” initiatives. In other words, it could enlarge the possibility for citizens to influence the public debate without the mediation neither of a political party nor of an organized and structured media.

Some other scholars advocated the fast overcoming of the technical problems which commonly are made against direct democracy in order to deny its wider applicability within the complex legal systems as today are the national States as well as the European Union.

Both predictions have not come true.

On one sides, e-democracy failed to increase mass participation.

Because of their nature of “one way processes”, neither the initiatives “top down” nor the initiatives “bottom up”, helped to strengthen the link between citizens and representatives.

In fact, the initiatives “top down” were not so dissimilar from the traditional ways to make politics through old and traditional media and overall they were mostly driven by political parties in a real traditional way. Likewise, through initiatives “bottom up”, the capacity to influence and orient the decisions of the representatives turned very low. In other words, the impact of the e-democracy on the constitutional relationship between representatives and citizens was almost insignificant.

On another side, direct democracy “Internet based” didn’t replace representative democracy. The idea that Internet could be used as a new agora in which all citizens may take part to the decisions is destined to crash for social and economic reasons more than for technical problems.

By a technical point of view it is maybe possible using the appropriate instruments to call citizens to make proposals and to express directly their opinions and their votes on every bill. Perhaps, it could be enough a mobile app with an identification system to consent citizens to approve or deny a proposal.

From my point of view this system will not probably be sustainable and, for sure, it will not take expected results: it will not make the decision process faster, the decision of citizens will not be more transparent or more weighted, the accountability problem will not be reduced.

If the reference is admissible, it is not possible to imagine today a society in which citizens instead of working, devote their entire daily activity to political participation. The mythical citizens of Athens, which in the 5th and 4th centuries BC during the Athenian democracy, voted directly on legislation and executive bills, didn't work or they didn't work in the modern meaning of the term and this was possible because in that society slaves and metics (*métoikos*) respectively produced goods and trade them.

With the development of the Web 2.0, the situation has changed. The new dynamic paradigm made possible the development of bidirectional initiatives or "two way processes", which consent citizens to interact with the representatives and vice versa.

The range of possibilities of interaction is almost unlimited.

We have traditional forms of interaction, refreshed or invigorated by the web 2.0, such as bill proposals, petitions, open consultations and referenda.

At EU level, the only form of direct democracy provided by Treaties is the European Citizens' Initiative. It is quite recent because it has been introduced by the Lisbon Treaty (now art. 8 B, par. 4) and ruled by Regulation 211/2011. For this contribution this Regulation is quite interesting because it is a good example of a new legislation "web oriented".

In fact, it provides both the creation of the online Register of proposals and the possibility that the statements of support may be collected on line. Then, the same Regulation requires European Commission to set technical specification and make available an open source software and Member States to verify the conformity of their online collection system to this standard.

At national level direct democracy institutions are usually not web-oriented. They are commonly ruled, even if with relevant differences in each State, both at constitutional level under direct democracy chapter or section and at legislative level.

According with the two step analysis proposed in the introductory remarks, it will be necessary to evaluate if the constitutional norms which rule these institutions allow the adoption of web based procedure. In case it would be not possible, changes and specifications in those regulations could be necessary in order to offer a new life to these institutions.

It is possible to quote, in order to make a significant example, the possibility introduced in Great Britain to propose and submit electronic petition to the House of Commons and the possibility they could be discussed if they reach 100,000 electronic signatures.

The new forms of bidirectional or continue interaction are even more interesting.

It is possible to quote, just as example, institutional blogs, social network accounts, open politics *fora*, wikis, political party platform and open party mechanism.

These new mechanisms developed all, as it is absolutely normal, without a constitutional framework. In few cases, they have been provided by law for specific decisions while in most cases they are experimented in an unregulated way. The Iceland's attempt to establish first crowd sourced Constitution is the most relevant experience. In particular, the drafters allowed anyone interested in the process to comment on the texts published from time to time using social media like Facebook and Twitter.

Behind these new possibilities of interaction made possible by the web 2.0 developed one vision, really revolutionary, which considers the "new e-democracy" as the picklock for the instauration of a liquid or delegative democracy.

For supporters of the liquid democracy, the development of so many new tools, based on the web 2.0 paradigm, determined the possibility to imagine a continue relationship between representatives and citizens. The

basic concept is that every voter has a mandate to exercise and the mandate is transferable. Voters may decide to pass theirs on to someone they trust or use themselves. It means voters may have different representatives for different topics.

In this form of democracy, the power is then delegated, within specific limits, by citizens to their delegates. As they have delegated it, they can in every moment withdraw the delegation. In the liquid or delegative democracy, citizens don't exercise the power themselves as in the direct democracy and neither they confer the power to their representatives as in the representative democracy.

Supporters of this form of democracy says that it tries through the use of Internet and of digital technology to combine the positive elements of representative democracy together with the positive elements of direct democracy, while removing the negative elements .

4. **The constitutional pivots of the political representation as limits to the adoption of web 2.0 tools.**

As a constitutional lawyer I have to underline, without a value judgement, that the comprehensive adoption of a model of delegated representation based on the principle of the liquid or delegative democracy is not compatible with the European existing constitutional systems and would require a profound reform of our Constitutions.

In order to make my point clear, it is necessary to say that it is possible to identify two profiles in the notion of political representation, on which the representative democracies defined by the European constitutions and by the EU treaties are based: the subjective situation in which the representative is called to work and the objective situation that is the relationship with the constituency, which may substantially *influence* the exercise of the representative function.

The subjective situation is today defined by the guarantees related to the status of the representative (parliamentarians - at national or European level - regional or local representatives). The Constitutions define the

beginning and the end of the mandate, rule the loss of mandate, provide for non accountability for the opinion expressed or vote cast, for inviolability or immunity, for the verification of the credential and for salary, allowance and other facilities. All this norms are oriented to guarantee the broad independence of the representatives in the exercise of their function. The First Chapter of the Rules of Procedure of the European Parliament dictates exactly the same set of laws.

The objectives situation is defined by the norms which specifically rule the relationship with the constituency. The pivots, commons to every Constitution, are the prohibition of binding mandate and the adoption of the representative mandate.

The same principles apply to the Member of the European Parliament according to Rule 2 of Procedure which provides that they “shall exercise their mandate independently” and “they shall not be bound by any instructions and shall not receive a binding mandate”.

With regard to the binding mandate, it has been traditionally banned since 1789. The ideological foundations of this forbid is that representatives do not exclusively stand for their electorate but they represent an abstract body, the nation, whose will is superior of, and different from, every other local or political constituencies. At that time, the bourgeoisie considers its abolition as one of the conditions to affirm the sovereignty of the nation, considered as a whole and to justify the radical transformation of the *Ancien Régime*. Today the Constitutions of a number of European countries explicitly maintain this prohibition.

With regard to the free representative mandate, it is also historically linked to the theory of the sovereignty of the nation and, as it is well known, it emerged in opposition to the theory of the popular sovereignty of Rousseau, which instead considered representation as a second-best after direct democracy.

The most powerful guarantee of the free representative mandate is the fact that the representative could not be expelled by the Assembly for not complying with his/her political obligations as defined by the electorate or

by his own political party or by his parliamentarian group. About this guarantee there is a general consistency in the European Constitutions.

European Constitutions don't provide institutions, which are proposed, not surprisingly, by the supporter of the transition to liquid or delegated representation, like the recall and the termination of mandates because of change in party affiliation.

While the origin of recall is in Swiss, according with the country tradition of direct democracy, it now became, as significant example of circulation of models and legal transplants, an American institution, which consist of a procedure that allows citizens to remove and replace a representative (or also more in general an elected public official) before the end of the mandate. It is widespread, in some States of the USA, in some Provinces of Canada and in Venezuela and Belize. The termination of the mandate because of change in party affiliation is, at the moment, not expected in any European country, even if the practice of "crossing the floor" is quite common in many countries.

As it is evident the quoted constitutional principles which protect the independence of the representatives and prevent legally binding decisions, exclude the possibility to adopt many instruments of liquid democracy.

Nevertheless, it is still possible and necessary for national States and overall for the European Union to seriously encourage citizen's participation through the web 2.0. Even some tools theorized by liquid democracy advocates can be parameterized in the light of the basic principles of representative democracy.

As example, it is possible to imagine, open web consultations on specific bill related to matter identified in the Constitutions or in the Treaties (for example proposals on constitutional matter, economic and social reforms or ethic and sensible issues); online referenda and, according with its results, the provision of different majorities in Parliament; specific platforms of discussions with a transparent algorithm to identify a wisdom of crowd in order to dedicate a monthly session of the Parliament

to the subjects which emerge as more debated; motions of no-confidence against the Government or single Ministers proposed directly from citizens through the web.

For sure every proposal should be carefully weighted taking in utmost account the effects and the criticalities that it could produced. Then, it must be strictly regulated in order to guarantee both effectiveness and trust.

5. The political parties and the web 2.0.

The possibility to increase the political participation through the web 2.0 and to make stronger the relationship between representative and electors depends, to a great extent, by political parties.

About that, it is necessary to underline that the representative democracy is, at the moment still based, on the existence of political parties and on their historical role to mediate between representatives and electors.

This mediation is, clearly, not entirely regulated by the Constitution and by the law which usually fix just some principle. It develops also according with private statute or customaries and it presents an important margin of political discretion.

Here it is necessary to make a prior distinction about the notion of political party.

If we think to the static political parties that we have inherited from the twentieth-century tradition of mass parties, then the adoption of new technologies may just probably improve their complex organizations (reducing, hopefully, their elephantiasis and their costs) and perhaps make more fluid the relations between the militants and the political leaders. This would not be a bad result but, most likely, it will not help political parties to evolve as the new economic and social reality call for, and to gain back the central position they had in the previous century.

On the other hand if we rethink political parties beginning from their original mission – which is clearly defined in many Constitutions – to

guarantee the political participation of citizens or, in other terms, if we consider their function as a *prius* and we postpone their organization or structure, then new technologies and the web 2.0 may offer an extraordinary opportunity to revitalize their role.

Apart few EU countries which have not codified political parties in Constitution, the large majority dedicates specific constitutional norms to them. Art. 10, par. 4, of the EU Treaty recognizes that "Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union".

Even if the intensity of the constitutionalization – in term both quantitative and qualitative – varies State by State, there is a common constitutional principle which emerges among all others: intra-party democracy.

It refers to the level and methods of including party members in the decision making within the party structure. This issue is really broad and could be the object of another investigation.

What it is important to underline, according with the subject of this contribution, is that political parties may and should experiment, in order to maximize participation of militants and voters, every possibility offered by the web 2.0 with the only limit that the adopted initiative assures transparency and internal democracy.

Some experiences and attempts to develop citizen's participation through the adoption of web platform are really interesting.

The most structured attempt has been realized by German Pirate Party. The Pirate party phenomenon began in Sweden in 2006 and spread to twenty EU countries. In Germany, it got its best electoral performance and secured one MEP in the 2014 elections. The German Pirate Party adopts an independent and open software, Liquid Feedback Software, published under MIT license, for the management of the proposals within the party.

The software in question allows the establishment of a permanent assembly, open to all militants, where all initiatives are developed and put to the vote among all party members. It allows also militants to delegate other militants their vote on single issues.

The initiatives that pass the scrutiny of the online Assembly are carried out by their elected representatives in the traditional form of the German institutional system.

Also interesting is the Italian experience of the *Movimento 5 Stelle* (M5S) which has some similitude and many differences compared to the German Pirate Party.

As similitude, M5S uses also software (not a single one) to enhance militant's participation and realize online assemblies about specific or general topics. The Movement is structured on a network of "meet up" created by individuals to discuss specific issues or general ones. Their political representatives (or "portavoce" as they call them) bring the results of their assemblies in the Italian institutions and very often consult their militants before taking a common decision on specific and relevant issues.

As difference, it is interesting to underline that M5S rejects the qualification of party, even if from a legal point of view it is subject to the Italian constitutional rules regarding political parties and to the legislative rules regarding electoral campaign, *par condicio* and fund raising. Another important feature is that the Movimento 5 Stelle has a strong leadership (not formalized) that his founder Beppe Grillo exercises through its own blog. Finally, the Movimento 5 Stelle doesn't accept the vote delegation among activists.

For this contribution, the most important is that both parties uses an Internet based system of political participation which partly substituted the traditional mechanisms of internal debate and consensus creation.

If we take seriously the principles of transparency and intra-party democracy, as firstly we should do with the traditional parties, we have then to verify how these platforms work, which are the features of the used software, who are the administrators and which are their prerogatives, how militants can check the results of votations.

It is probably time for legislation and Parties' statute to take into consideration these issues and try to define *ad hoc* rules and

requirements. *In primis*, it would be really important for ensuring an acceptable level of inter-party democracy. Not secondarily it would help to increase citizens' confidence and, consequently, to spread these initiatives.

The examples of the Pirate Party and of Movimento 5 Stelle could probably appear quite extreme because both political subjects theorize, even if in different ways, the overcoming of the traditional political organization and the transition to a new model of delegative democracy. But if we consider their web platform without prejudice, we should recognize that they made possible to reach persons which would have never joined a traditional party.

If the most relevant constitutional function of a political party is to guarantee the political participation of citizens, then every political party should experiment these or similar kind of platforms and add forms of Internet participation to their traditional ones.

This suggestion could be even more interesting with regard to European Parties which have, as all know, a weak relation with their elector, mainly mediated by the national affiliated parties. The adoption of an Internet platform, where people and electors interested in European matter could exchange their views or present their proposals, could be an extraordinary opportunity to make European parties closer to European citizens. Furthermore, it could also help to create a system of direct political affiliation bypassing the national political parties.

6. **Concluding remarks.**

Some really shorts remarks at the end of my contribution in order to summarize key points.

First, the web 2.0 does not impact just on the constitutional norms which guarantee the freedom of speech or more in general the fundamental rights. It is able to crash also into the norms on which our democracies are founded and specifically into the norms which rule the relationship between representatives and citizens.

Second, the participation of citizens may increase through the use of the new technology especially after the advent of the web 2.0 because it consents an interaction based on “two ways processes” which are better able than “one way processes” to influence the political agenda and the behaviour of the representatives. The experimentation, even institutionalized by law, of new forms of interaction in decision-making meets just two limits, the forbid of imperative mandate and the principle of the general representation. The exceeding of these limits clearly entails the adoption of a new model of democracy. At the contrary, without abandoning our historical model of representative democracy and remaining within the boundaries of our constitutions, it is possible to incorporate, through the web 2.0, some deliberative and participatory features.

Third, political parties may and should lead the process of innovation of political participation made possible by the web 2.0.

They *may* lead it firstly because they are a fundamental element of our democratic systems and secondly because their political activity is just in part ruled by constitution or by laws. In particular, the relationship between militants and parties is, at a great extent, left to internal and autonomous rules. Therefore, they can experiment new forms of organization within the limits, common to almost all European States, of inter-party democracy.

They *should* lead the process because it is probably the only possibility they have, in the current situation, to reinforce their political role and to avoid a progressive marginalization in the political context.

Fourth and final. The EU should be in the first line.

In fact, Web technology may help to fill the gap which exists between European Institution and European citizens and to fight against the lack of political participation which is undoubtedly one of the most relevant problems of the EU construction.

Many times and relating to different matters, the European Commission and the European Parliament supported the adoption of a policy in order

to get back a spill over effect which could reinforce the integration process. Perhaps it is time to use also the possibilities offered by the Web 2.0.

This contribution reproduces with few modifications and the addition of essential citations the speech I made at the International Conference on "Active Citizenship, Identity and Democratic Governance in the European Union", hold in Oradea, Romania, 21-22 May 2015.

See McKeown, M.M. (2014). "The Internet and the Constitution: a selective retrospective", *Wash J.L. Tech. &Arts* 9:3, 133-175.

For O'Reilly the Web 2.0 is "the network as platform, spanning all connected devices; Web 2.0 applications are those that make the most of intrinsic advantages of that platform: delivering software as a continually-updated service that gets better the more people use it, consuming and remixing data from multiple sources, including individual users, while providing their own data and services in a form that allows remixing by others, creating network effects through an architecture of participation, and going beyond the page metaphor of Web 1.0 to deliver rich user experience" at http://radar.oreilly.com/2005/10/web-20-compact-definition.html, the famous definition of

About the theory of technology as extension of human organism (intended as body and cognitive functions), see in a different technological context, McLuhan, M. (1966). *Understanding Media. The extension of Man*. New York: McGraw-Hill, 19 ff.

The protection and the control of personal data are, according with European tradition, the pre requisite to guarantee the dignity of persons. See about, Whitman, J.Q. (2004). "The Two Western Cultures of Privacy: Dignity versus Liberty", *The Yale Law Journal*, 113: 1151-1221.

Please, refer to Orofino, M. (2014). *La libertà di espressione tra Costituzione e Carte europee dei diritti*. *Il dinamismo dei diritti in una società in continua trasformazione*. Torino: Giappichelli.

As stated in the well-known Latin brocardo: *Ubi homo, ibi societas. Ubi societas, ibi ius. Ergo ubi homo ibi ius.*

The matter of evolutive interpretation of Constitution is highly debated in the literature. Generally accepted in the European context by the national constitutional courts and by the European Courts (with different accents by the European Court of Human Rights and by the Court of Justice of the European Union), it is questioned in the American literature where it is well known the profound doctrinal division between originalists and evolutionists. Originalists believe that the Constitution has to maintain the meaning that was ascribed to the original document by those who drafted and ratified it (the Fathers). Evolutionists believe that the Constitution must evolve with the time according with its nature of living Constitution. See Posner R.A. (1995). *Overcoming Law*. Harvard: Harvard University Press.

In 2003 the *World Summit on the Information Society* firstly proposed the adoption of an Internet Bill of Rights. Currently, this idea is under discussion in many European countries. In Italy, the President of the Chamber of Deputies, Laura Boldrini, has created a Commission which proposed a draft that is at the moment under consultation. At the same time, the British Parliament decided to appoint an *ad hoc* Commission to study the perspective of the digital democracy and to make proposals.

For a wide analysis of the opinion of the ECJ, see Pizzetti, F. (2014). "Le Autorità garanti per la protezione dei dati personali e la sentenza della Corte di giustizia nel caso Google Spain: è tempo di far cadere 'il velo di Maya'", *Diritto dell'informazione e dell'informatica*, 4-5: 805-829.

See Dahl, R. (1996). *On democracy*. New Haven: Yale University Press.

Dahl R. (1991), *Democracy and Its Critics*. New Haven: Yale University Press

The literature is really vast. For a complete overview see Hilbert, M. (2009). "The Maturing Concept of E-Democracy: From E-Voting and Online Consultations to Democratic Value Out of Jumbled Online Chatter", *Journal of Information Technology & Politics*, 6:87–110.

See about these issues, Papadopolous, Y. (1998). *Démocratie directe*, Paris:

Economica. For a critical analysis see Rodotà, S. (2004). *La democrazia e le nuove tecnologie della comunicazione*. Roma-Bari: Editori Laterza.

Chadwick, A. (2009). "Web 2.0: New Challenges for the Study of E-Democracy in an Era of Informational Exuberance", *I/S: A Journal of Law and Policy*, 5:1-42.

See about the results, House of Commons Procedure Committee, *E–petitions: a collaborative system. Third Report of Session 2014–15*, 4 December 2014, HC 235.

The interaction through the social network is really interesting. At the moment almost all Italian Institution have created their account on Facebook and on Twitter. Also many Italian Member of the Parliament have their official accounts on Facebook and on Twitter. The Italian President of Council, Matteo Renzi, often introduces topics and discussions through a tweet.

It is difficult to say where the expression "liquid democracy" was first used. It was not a concept elaborated by the doctrine. Instead, the term delegative democracy was used, before the Internet diffusion, by O'Donnell, G.A. (1994). "Delegative Democracy", *Journal of Democracy*, 5, 1: 55–69. Then it was applied to Internet by Ford, B. (2002). "Delegative Democracy", http://www.brynosaurus.com/log/2002/0515-DelegativeDemocracy.pdf.

See also Art. 10, par. 2 of the Treaty on European Union which provides that "Citizens are directly represented at Union level in the European Parliament".

It is also necessary to consider that representatives may develop their political activities through the s.c. new media. The choice is whether extend the existing guarantees or define new ones.

The Constitutions of many EU countries explicitly prohibit imperative mandate (Croatia, Article 74; France, Article 27; Germany, Article 38.1 (the German Fundamental Law prohibits "imperative" mandate in the Bundestag); Italy, Article 67; Lithuania, Article 59; Romania, Article 69; Spain, Article 67.2). See about, Council for Democratic Elections and

Venice Commission, *Report on the Imperative mandate and Similar Practices*, Strasbourg, 16 June 2009, Study No. 488/2008

Rousseau rejection of the representative democracy is clear in the Social Contract of 1762. In his most controversial statement, talking about the English representative system, he affirms that: "The English People believe they are free, but they are grossly mistaken. They are only so during the elections of member of parliaments. As soon as these have been elected, the people are immediately consigned to slavery"

The first studies on this phenomenon are those of Alan Watson and Rodolfo Sacco. See, Watson, A. (1974), *Legal Transplants, An Approach to Comparative Law*. Athens: Press of University of Georgia, and Sacco, R. (1980). *Introduzione al diritto comparato*. Torino: Giappichelli.

In German *Bundesrat*, members of the *Länder* governments may be "recalled" but by these same governments (Article 51.1) and the votes of each *Land* must be cast as a block (Article 51.2). Anyway it is necessary to underline that in the German constitutional system, *Bundesrat* represents governments of the Länder and not the territorial constituencies.

Just in Serbia there was a norm (at legislative level) which provided the expiration of the mandate of an elected member of parliament if she/he leaved the political party or the coalition on whose candidate list she/he had been elected. This provision because of his contrariety to the free representation principle has been declared unconstitutional by the Serbian Constitutional Court in 2003. See about, Council for Democratic Elections and Venice Commission, *Report on the Imperative mandate and Similar Practices*.

See Kippen, G. and Jenkins, G. (2004). "The Challenge of E-democracy for Political Parties", in P.M. Shane (ed.), *Democracy Online*. New York: Routledge, 253--65.

See Pizzetti, F. (2008). "Partiti politici e nuove tecnologie" in *Partiti politici e società civile a sessant'anni dall'entrata in vigore della Costituzione*. Napoli: Jovene, 277--313. Also on line at: www.federalismi.it.

Kling, C.C., Kunegis, J., Hartmann, H., Strohmaier, M., Staab, S., (2015).

Voting Behaviour and Power in Online Democracy: A Study of LiquidFeedback in Germany's Pirate Party, in International AAAI Conference on Web and Social Media (ICWSM2015), Oxford, UK, May 26-29, 2015 (http://arxiv.org/pdf/1503.07723v1.pdf).

They reject this kind of delegation because in the Italian context the vote delegation among activists could encourage the vote-buying, which is a well known phenomenon. See about Fornaro, F. (2012). “Un non-partito. Il Movimento 5 Stelle”, *Il Mulino*, 2: 252-261