



Teachers' Room

Interview with Professor Ingolf Pernice

Interviewed: Professor Ingolf Pernice

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Interviewers: Professor Pernice, over the past ten years you have been one the directors of the Humboldt Institute for Internet and Society of Berlin, but you were first appointed professor of public, international and European law back in 1993, after having worked for almost ten years for the European Commission. Could you describe to us how the Internet was perceived back in the 90's? At the time, were the people aware of its democratic potential? Can we really talk of a 'democratic promise' back in those days?

Professor Ingolf Pernice (IP): In the early 90's the internet was not yet a subject of discussion. I remember that, after the special leave I took at the Commission from 1985 to 1987 for preparing my "Habilitation", a thesis allowing for an academic career in Germany, I was among the first,

perhaps the first, at the European Commission to request a personal computer on my desk as well as on the desk of my secretary: it was called a “pilot-project”. The argument was my experience of writing my thesis with a “Macintosh” instead of an electric type-writer; it had shown me how much easier and effective work could be also at the Legal Service of the European Commission if this new technology was used in our offices. When I left the Commission late 1992 for teaching at the university of Frankfurt, almost everybody had a computer at her/his desk, though e-mail and internet did not play any significant role yet. Later, in 1997/98 when I founded the Walter Hallstein Institute for European Constitutional Law at the Humboldt-University of Berlin (WHI), an internet presence through its own Website was one of the three pillars of the institute giving easier access of the public to our works. Even then, to my knowledge, talking about the “democratic potential” or “democratic promise” of the internet might have been a subject for some IT-pioneers, but this was not discussed yet, neither among practitioners nor among my colleagues at the university. Only the new century brought about a first hype for e-democracy, and I started research on global constitutionalism including questions of democracy within the framework of the Alexander von Humboldt Institute for Internet and Society some years ago.

The existing scholarship depicts a technological world that is completely at odds with democratic values. You have recently completed the DECiDE project on Digital Identify, European Citizenship and the Future of Democracy. This project conversely shows that digital technology can still be at the service of democracy...

(IP): Yes, the idea is to make better use of the potentials of the internet for giving the citizen a stronger voice in politics. Though e-democracy has seen a hype in the earlier years of this century, many hesitations arose more recently regarding privacy, manipulation and the lack of transparency and insufficient control by the public particularly of electronic voting machines. We thought that, nevertheless, an attempt should be made to create a new device for electronic voting. It should not replace, but be complementary to the traditional elections and representative democracy. The aim is to providing an additional way of dialogue between us citizens and those who represent us at the different political levels: from local to global.

Such a device would not be a new voting machine, but be composed by a blockchain-based register of digital identities and a sortition-based online-voting device that gives all those registered a chance to participate on a vote on specific political issues. With the DECIde- Project we have been able to develop a prototype of such a device with some modest funding obtained in a competition organised by Advocate Europe and thanks to the kind cooperation of Monique Morrow, of the Swiss undertaking “Procivis” having allowed us to use their “eID+”, as well as of David Chaum and his group who allowed us to use the “Random Sample Voting” (RSV). Both items put together, we could establish and test a new app that, if further developed, can be used by local communities, regional and national governments, political parties and any other organisations for polling, but also for finding what their registered members feel about any issues put to vote. We believe that those who are randomly selected for participating in each vote will be more responsible and ready to inform and prepare themselves appropriately before casting their vote. An online “space of organised deliberation” established by the respective voting authority in each case would offer an opportunity even to discuss the matter and seriously consider the pros and cons of the proposal at stake. This selectivity and the opportunity of preparation distinguishes the system from traditional polling and other methods of opinion research. The system is easily scalable, up to the European or even to the global level, it is extremely cost-effective and it is tamper-proof as much as voting systems can be. It could, thus, help to bridge the gap between citizens and their authorities at all levels. It could even help in constructing a framework for democratically legitimate rule-making where, so far, global challenges cannot be managed appropriately.

To be sure that there are no legal obstacles to the use of the system we have conducted a study on the constitutional law issues and found that there are ways to ensure that risks regarding individual rights or general principles are manageable.

Over the past few years, recurrent topics in our newspapers have been issues such as fake news, hate speech, surveillance, just to mention some examples. Despite all these phenomena that put into question the Internet’s democratic potential, is it fair to say that is still a lot that digital technologies can do to enhance individual and collective democratic rights? What do

you think are the main areas where this contribution is most important nowadays?

(IP): The global digital information ecosystem offers incredible opportunities not only for the good but similarly also for abuses, destructive practices and evil. Like for other originally promising technological innovations the practical use of new freedoms teaches us that normative frameworks are needed to define the limits and protect the rights and freedoms of the others and, eventually, the functioning of our democracies. We have proposed therefore that the G7 Summit of 2018 in Canada should adopt the “CHARLEVOIX STATEMENT ON THE PROTECTION OF THE GLOBAL DIGITAL INFORMATION ECOSYSTEM” in order to initiate a process aiming at common rules protecting our democracies. With regard to hate speech and probably also on fake news some content control for social networks and other uses of the internet enabling real-time information, worldwide education and other kinds of borderless communication is essential for this technology to protect the individual and to deploy fully its potential to contribute to enhancing individual and collective democratic rights. Regulation to this effect cannot be left to the responsibility of the internet platforms or other private players; democratic legislation is necessary. Similarly, data protection and privacy and cyber security need common approaches and, eventually, legislative action at the global level.

For this doing, it seems to be necessary to rethink the structures and provisions of global governance. While states remain the fundament of the political organisation of our societies, we can see that they more and more lose control of developments that fundamentally change the conditions of our life. Climate change is one striking example, but threats to our democratic systems due to changes of our communication ecosystem are another concern to be addressed much more seriously. International agreements are not outdated, but they are insufficient to effectively meet such challenges.

As the model of the EU seems to show, supranational legislation beyond states covering issues beyond the reach of national politics is possible. Leaving behind traditional concepts of national sovereignty, it represents some kind of a new social contract among the peoples of the member states adding an instrument of common action in areas where states individually or by traditional international cooperation remains ineffective. This kind of supranational political institutions beyond the state, thus, results to a gain of sovereignty to each of the citizens of their member states.

The internet is not only a subject of regulation at the global level. With its new forms of multi-stakeholder governance, it shows how a globally relevant infrastructure can develop without states playing the key role. It has indeed the potential of providing instruments to make

global regulation on global challenges possible, in accordance with not only the rule of law and the protection of human rights, but also the requirements of democratic legitimacy, even the potential to enhance democracy.

Here is where creative thinking is on demand, both of engineers and of political, social and legal sciences. Our DECIde project was aimed at contributing to this process of political innovation, but our works on global constitutionalism and the internet at HIIG also point to this objective.

What should be the role of legal academia in this scenario?

What are your main three suggestions for a young legal scholar working in this field?

(IP): Academia cannot and should not engage in politics. But with the different perspectives of the disciplines, academia can make a difference when it comes to understanding what politics can learn from history and what possible solutions might exist to imminent problems. Digitisation, including the conditions mentioned for a smooth functioning of the internet, the application of blockchain technologies, big data analysis and the potential uses and threats of what is called machine learning or artificial intelligence, offers a huge field of legal scholars' work. It touches and softly changes our daily life, business and financial markets, our work and services, patterns of management and administration as well as the structure of the public sphere and possibly even the democratic processes in our societies. Thus, given the progressive digitisation of our societies the three main areas worthwhile for young legal scholars to consider are:

1. From a constitutional law perspective: Revisit the constitutional relation between the individual and the state as well as supranational political systems, given that with a view to coping with new challenges like digitisation globally public authority may need to be organised according to a multilevel model where power is allocated at different levels in accordance with the principle of subsidiarity. The appropriate constitutional structures still remain to be defined.

2. In addition, from an administrative and constitutional law perspective: What are the challenges and what are possible constitutional responses to the use of information technologies and, in particular, of artificial intelligence both, in public administration and in political processes? Beyond ethical standards to be revisited the effective protection of individual rights and of our democratic processes may require a deeper understanding of how digitisation affects our political systems and, in particular, the exercise of power.

3. With regard to changing patterns of power in our societies, the traditional role and responsibilities of democratically legitimate public authorities not only vis-à-vis citizens, but

increasingly also regarding internet platforms and other global players need to be revisited in terms of constitutional law and principles. To what extent do they allow that responsibilities for the public good are delegated to globally acting private undertakings? What are the constitutional instruments to confer, contain and control the exercise of such power by public bodies?

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Prof. Ingolf Pernice

Ingolf Pernice is Research Director of the Humboldt Institute for Internet and Society. He studied in Marburg, Geneva, Freiburg and at the College of Europe in Bruges. After his legal clerkship at the Higher Regional Court in Munich and his doctorate on European Fundamental Rights, he became an official of the European Commission in Brussels in 1980, first on the topic of competition and later on legal service. In 1987, he did his state doctorate about 'equity and hardship clause in public law' in Bayreuth. In 1993, he joined the Johann Wolfgang Goethe-Universität Frankfurt. Since 1996 he has been a professor of public law, public international law and European law at the Humboldt-Universität zu Berlin. In 1997, he founded the Walter Hallstein-Institute for European Constitutional Law and in 1998 the European Constitutional Law Network. He is the host of the lecture series 'Forum Constitutionis Europae' (FCE) and 'Humboldt-Reden zu Europa' (HRE). Since 2006 he has been leading the DFG – Graduate School 'Verfassung jenseits des Staates' (Constitution Beyond the State) and from 2006 to 2008 he was the dean of his faculty.

Edoardo Celeste

Edoardo Celeste is Lecturer in Law at Dublin City University, where he teaches in the areas of privacy, data protection and intellectual property law. His research interests lie in the field of digital rights and constitutionalism, social media policy and regulation, privacy and data protection law, and EU digital policies. Thanks to the financial support of the Irish Research Council, Edoardo is currently completing a PhD thesis on 'digital constitutionalism' at University College Dublin. Edoardo previously studied law at the University of Rome 'La Sapienza', at the University of Paris II 'Panthéon-Assas', and at King's College London. Over the past few years, Edoardo has been visiting researcher at the Nexa Center for Internet & Society of Torino, the Humboldt Institute for Internet and Society (HIIG) of Berlin, and the Center for Information Technology, Society, and Law (ITSL) of Zurich.

Clara Iglesias Keller

Dr. Clara Iglesias Keller is a postdoctoral fellow at the Leibniz Institute for Media Research and an associated researcher at the Alexander von Humboldt Institute for Internet and Society in Berlin. She holds a Doctorate and a Master degree in Public Law from the Rio de Janeiro State University and an L.L.M in Information Technology and Media Law from the London School of Economics and Political Science. Her current research is dedicated to information technology regulation, with special focus on internet governance structures and regulation of online speech. She also has experience as a lecturer, researcher and legal advisor in technology, media and communications regulation.

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