Gli strumenti tattico-sistemici per la modellizzazione delle politiche e la legiferazione

Les outils stratégiques et tactiques pour la modélisation des politiques et le processus législatif

The Tactic Systemic Toolkit for Policy Modelling and Lawmaking[♦]

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Riassunto

Il presente saggio si concentra sulla visione sistemica e sull'importanza degli slittamenti sistemici nello studio della sociologia giuridica attraverso l'introduzione di concetti fondamentali tratti dalla teoria di Luhman, la variazione paradigmatica delle teorie sistemiche e l'idea di legge come sistema sociale.. Inoltre, l'articolo si prefigge di analizzare la costruzione e la progettazione di sistemi, di nuovi standard relazionali tra cittadini e sviluppo e di mostrare la nuova forma di un sistema sociale, cioè l'ipercittadinanza (Pitasi). Tali idee verranno illustrate tramite alcuni esempi, fornendo una nuova prospettiva.

Résumé

Cet essai est centré sur la vision systémique et l'importance des changements systémiques pour l'étude de la sociologie de la loi, à travers l'introduction de quelques concepts fondamentaux tels que la théorie de Luhmann, le changement paradigmatique des théories systémiques, et l'idées de loi en tant que système social (Luhmann). En outre, à travers la construction et la conception de systèmes, cet article traitera des nouvelles normes relationnelles entre citoyenneté et développement, dessinant également une nouvelle forme de système social, celle de l'*hipercitizenship* (Pitasi). Ces concepts et raisonnements seront illustrés par des exemples et fourniront une nouvelle perspective.

Abstract

This essay is focused on the systemic vision and the importance of systemic shifts for the study of sociology of law. Through the introduction of fundamental concepts such as Luhmann's theory, the paradigmatic shift of systemic theories, and the idea of law as a social system. Additionally, this essay will discuss constructing and designing systems, the new relational standards between citizenship and development, and showing the new shape of a social system, Hipercitizenship (Pitasi). These concepts and discussions will be illustrated with examples, providing a new perspective.

Key words: tactic systemic toolkit; policy modelling; lawmaking; hipercitizenship.

[♦] About this matter, we encourage the reader to access the book *Development as Citizenship Expansion – a systemic approach to the globalizing law system*, edited by Natália Brasil Dib, André Parmo Folloni, Sara Petroccia – Curitiba: Íthala, 2018. Specially the chapters 1, 2, 3, 6 and 7. Specifically the chapters 1,2, 3, 6 and 7. The reader could find a complete explanation about the theories pointed out in this short work.

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1. Ideas of Mass Control.

What is a constitution? The usual answer is that it is the most important law of a national legal system. An American sociologist named Christopher Lasch describes some changes in this context. He was born in 1932 and died in 1994. He was likely one of the most important sociologists from the 20th century in the United States. Some of his most important concepts include the *revolt of the elites* and the *minimal self*. Lasch's revolt of the elites was a response to a previous publication of the 1930s by Ortega y Gasset (2000), discussing the revolt of the masses. In the books by Lasch, we do not directly find the matter of the constitution. A revolution is essentially the revolt of the elites. What is the revolt of the elites? In order to answer this question, we provide an example drawing upon Karl Marx.

Two different theories of the literature of the elites and the masses exist. Both models initially focused on the idea that the elites and the masses were "married" forever. Lasch was the first to suggest the elites and masses can "divorce." For Parsons (1951), the relationship between the elites and masses were a whole. Within this whole society, there were parts - the elites and masses. Following the increased speed of globalization, they have become system and environment, as Luhmann clarified in his book about ecological communication. A large rate of powerful elites base their power on the independence from the masses, rather than the power of controlling the masses. Regardless of whether the power stems from concept or conflict, it still controls all masses.

Since the 1980s, the elites focused their power on independence. The connection of the masses with the elites could be good, bad, constant, or conflicting. In a more globalized world, we do not even know where the public square is. The more the elites become invisible, the more the masses become comfortable. On one side, the masses may not feel as protected as they were from the past elites. On the other side, the masses may become more frustrated because if they want conflict, they have no idea against whom they should create the conflict. which is, more or less, the same difference as an official war and terrorism. So, the more the elites and masses separate, the more the masses feel uncomfortable because they are less protected and frustrated, and unable to manage a clear enemy. Ultimately, the masses feel something is wrong and is not working, but it is unclear whom to fight against. The more they feel under siege, alone, abandoned, and under attack, the more the wish to react, but do so in random ways. Therefore, the more the masses act this way, the more the elites escape from the masses. The more the distance grows, the more the constitution changes. As a result of the common vertical conception of the constitution, whether top or bottom, up or down, it was designed to keep the masses and elites together. But, the elites continue to escape from the masses and their power no longer depends on the masses.

At the same time, masses are marginalized and free. For example, the emergence of populism in Europe, which is a very strong environmental noise producer. At the moment it has no systemic influence, but is the difference between the systemic elites and the environmental masses. Populism is very much affecting the masses, as a kind of psychological drug to make sense of something. It is a tool to remain in the comfort zone because it takes on a strong shape of cognitive sailing, only reducing the perception of uncertainty.

A treaty, in a globalized law system, is supranational and goes beyond international agreements, which means that the borders of a state are not the legal

borders, therefore they are no longer shaped by a constitution. Then, when we design or redesign constitutions, we need to ask, what is a constitution. Since what Lasch called the revolt of the elites, the constitution is no longer the vertical document from bottom up or top down setting the borders of the limits of the legal system, but it is rather a kind of door which allows us to create the borders of the system more and more flexible.

So what does it mean to make a constitution horizontal?. Let's get to this answerr step by step.

Step 1: Cosmopolitanism is a scenario in which we have a strong combination of different symbols and memes, which manage to organize each other in a quite fitting way combining and recombining again and again (Beck, 2006). Multiculturalism is when we have it like in the 1960s, the Chinese town, the German town, the Irish town, they are all together, but separate and could be dangerous for different groups of people in different areas.

The answer could be Luhmann's theory (2012, 2013). So, if we speak about social environment, the outside of the system, we find that people who speak about globalization, we find a loophole talking about what they could mean as growth. The level of the common sense of the masses, what do we say about return of the globalization movements and globalism (Luhmann: 1997). It is the social something on a bigger scale of what we can write about the minimal self. The more people think they are fragile, the more uncertainty they feel, the more they need rigid distinctions between us and them. However, this is artificial and when we could connect on real time through technology all over the planet, we have an increase of symbols, means, cultures, so that the borders and distinctions between us and them become softer and softer. The more it turns into softer, the more some masses

react violently because they think they are losing their identity. These things are focused around the idea taht the EU is already designed to reduce the risk that this kind of movement can transform themselves from social environmental noise into systemic organization. What should happen in this situation? Some politicians saying that lets average out the little monthly salary, salary of citizenship. To let these people have a survival amount. But, we prefer to give them some land, to stay home, and not to work, than to search for jobs for them. Because as they are obsolete in terms of skills, most of them don't want to work, it is less expensive. And let them stay home and hire better people from abroad than searching jobs for them, for which they would produce nothing. The second level of the problem is that they appoint a policy that mostly decides in Brussels for Italy or any other EU country (Pitasi: 2018a). In Brussels where most of the politicians serve, are high officer and high commissioner of affairs in Brussels is the person. If we think that human resources are obsolete, it is not trained for the current markets, it is easier to give a person some money to survive than to try to find a job for that person and we invest upon other resources that can be more competitive. It is what is happening in Europe, so to skip people from starving, it is important. No one wants Europeans to starve. However, at the same time, when such an increase in employment, it means that the economical assist and the production of wealth in society changed, but the human resources did not. Between the innocent and the guilty systems, which require more job and more efforts and more human resources? To understand the point, we have, ironically, to reduce unemployment, especially among the people with a degree in law, focusing the system on the principle of guilt, not of innocence,

and we hire a gigantic amount of bureaucrats. From this point of view, the choices between innocent or guilt principle, has nothing to do with the moral legal matters, it has to deal with the bureaucrats organization.

Another important concept was the of the typical approach of a traditional professor who teaches constitutional law still according to methodological nationalism and feels cosmoplitan merely talking about comparative law. We know that the pure doctrine for years and years the vertical idea of constitution, top down, or bottom up, with the constitution as the top of bottom. However, horizontalization of law lends to the matter of facing what the Germans used to call methodological naturalization. We are just summarizing what we said in the first part (Pitasi). For example, lawyers and most of our comments, are not wrong, but inspired by methodological nationalism. So, still focused on the concept that national state is vertically grounded, because the constitution is the top or bottom.

For conclusion, the key concepts in this paragraph are: the revolt of the elites and the minimal self. Which under pressure turns into mechanisms like black nationalism, which are evident at the level of the social environment, not at the systemic level, and probably the most side is that the separation between the elites and masses lend to the kind of horizontalization of law.

2. The few differences that makes the difference: the situation room.

Step 2: Traditional constitutions were designed vertically which means they were presented to shape clearly the different levels among the source in the law the hierarchy. The problem is that the vertical constitution treaties this with development and development is not a vertical concept. The problem between constitution and development is this kind of problem, we can have a step-by-step balance between theory and practice. We will start from the knowledge and wealth flow.
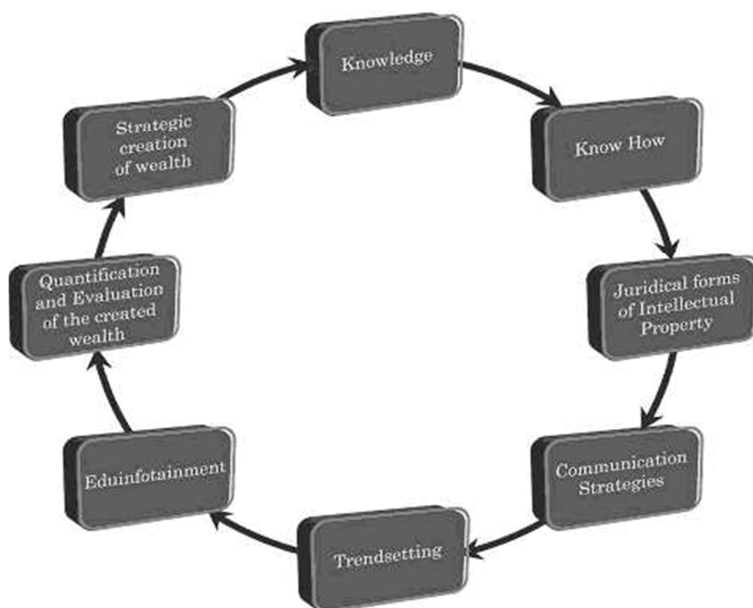

Figure n. 1: *Knowledge and Wealth Flow* (Pitasi, 2007)

Let us start from knowledge (Pitasi: 2007). Knowledge is general and knowledge is part of more challenges, that we turn knowledge into the how. The how is basically a procedure, only just made of motions. If there is not knowledge into a how, then knowledge would be obsolete because the problem is not that if something is scientific or something is something else, we need both. Nevertheless, historically, science was much more based on the how and not enough on knowledge, and vice versa the humanities was based too much on knowledge and not the how.

Every time we share knowledge, we share knowledge without an formal intellectual property agreement of any kind, we are destroying resources, we are turning the formal into the informal. Of course we have a different ways to balance the intellectual property rights, sometimes more focused on the rights of the author, sometimes more focused on the rights of the editor, the publisher, or the industrial machine, sometimes we can privilege the rights of the user. And, for women and men, that kind of advertisement is about the lifestyle in the product. It is not the product, it is what the symbol means of the product. And, the symbol means that the dream is produced every time. At every stage, something grows up and something dies. Some knowledge appears and some disappears. The best of them can be turned into an intellectual property. The best IPR can be turned into something tangible. We sell the dream before we sell the product. The next step is trend setting. After we start a communications strategy, if it is effective, we create a trend. The trend is something which is a collective phenomenon, let's say, that develops in a kind of Roger's cycle (1956), in a fast way. When we want to speed up what we call

Roger's cycle (1956), we want to enter education, information, and entertainment.

3. Demography and destiny.

In the following pages, we are trying to link some concepts. First of all, the matter of democracy, human rights, and globalization. What is called globalization, which we do not deny, could simply be, and likely is, a shift and not a shock. Nowadays, it is much more reinforced, as it never was in the past, because not only technology, demography, and currency are going the same direction, other things are also going in the same direction, the things that are no longer shaping an arrow, but a spiral. The spiral gets stronger and faster, and it is for better or worse, globalization. The leverage required to change the trend should be extremely powerful and violent, not mean physically violent. As lawmakers, we do not have to predict, we have to model. Laws, rules, regulations, so on, so that we can make the most effective advantage of the spiral. Where are human rights in democracy? Is democracy vertical or horizontal? Are human rights vertical or horizontal? Which means that we cannot even try to think about a democratic project or a human rights project on a nation-state scale only. There is no national way to shape human rights. The same story for democracy. If democracy means that every vote equals one, we might say that we are democratic, because everyone is given a vote. But, what kind of info or knowledge do we have about voting matters? Do we know what we are voting about? What kind of access do we have to compare wer democracy with other democracies? Both democracy and human rights are part of the spiral. Democracy in the USA is kind of tricky, because the article about happiness in their constitution, which is similar to the one in Colombia constitution. But

the UN is not democratic for a simple reason, there are very small number of countries in the superior council, which decides, so they are about 200 countries, and about 4 of them count. However, to have a democratic order, and human rights, we cannot have them locally. They are a strategic tool of globalization because this is meant in a more technical way, is the top of the spiral. Which means that world order, that means just one world order. That means if it is democratic and not totalitarian, then it must be founded on the shared conception of human rights and shared conception of democracy.

Because once again, human rights and democracy are fundamental tools of a real globalization, not just a market globalization. That is why constitutions are either such a big shock that turns the trend around, and what may happen, because it happened in history. We are not saying it is forever, but to reverse a trend is not that easy. And, what could happen in media, when people fight in the streets, are simply shifts. The risk of these shifts they should increase, the Williamson´s costs (1991), so they could make the cycle a bit slower. But, on a scale of 30 year cycle, or Roger's cycle, a delay of 2-3 years is nothing (Pitasi: 2013). That is why in terms of lawmaking, and the legislation, to consider things like the cycle, the spiral think in terms of the cycle, eventually we can focus on a 30 year time, eventually, we would revise the constitution about 30 years later.

But, we have to remember that all internal laws, lose before constitution and constitution nowadays, might lose in comparison to international treaties, when the EU and Canada signed the CETA, some months before the university in Munich, Germany had written a paper/report explaining why according to them, the CETA was against German constitution, and the reply of Brussels, which has a lot of power, was, essentially, who cares? Because German constitution loses hierarchically before the treaty of Lisbon. The EU would never sign that agreement because if the EU signs an agreement like that, they shut down the customs, the thing would require a kind of alignment in politics, economics, and technology and everything in law, that it could not be changed one side.

References.

- Dib N., Folloni A., Petroccia S., *Development as Citizenship Expansion – a systemic approach to the globalizing law system*, Editora Ithala, Brazil, 2018.
- Beck U. *The cosmopolitan vision,* Polity Press, Cambridge, 2006.
- Luhmann N., *Social Systems*, Stanford University Press, Stanford, 1995.
- Luhmann N., "Globalization or World Society? How to Conceive of Modern Society", *International Review of Sociology*, vol. 7, n. 1, 1997.
- Luhmann N. *Law as a social system,* Oxford University Press, NY, 2004.
- Luhmann N., *Social systems,* Stanford University Press, Stanford, 2006.
- Luhmann N., *Theory of Society*, Stanford University Press, Stanford, 2 voll., 2012-2013.
- Ortega y Gasset J., *L'uomo e la gente*, Armando, Roma, 2000.
- Parsons T., *The Social System,* Routledge & Kegan Paul, UK, 1951.
- Pitasi A., Angrisani M., "Hyper citizenship and the Evolution of a Global Identity", *Journal of Sociological Research.* vol. . 4, n. 2, 2013.
- Pitasi A., Ferone E., "1978-1989 Le radici socio-politiche dell'ipercittadinanza", in Petroccia S. (edited by), *Between Global and Local Cultural Changes*, Volume 2, Esculapio, Bologna, 2017.
- Pitasi A., Martin A., "Second Part of Transcriptions", in Dib N., Folloni A., Petroccia S., *Development as Citizenship Expansion – a systemic approach to the globalizing law system*, Editora Ithala, Brazil, 2018.
- Pitasi A., Petroccia S., "Expanding Citizenship", in Dib N., Folloni A., Petroccia S., *Development as Citizenship Expansion – a systemic approach to the globalizing law system*, Editora Ithala, Brazil, 2018a.

- Pitasi A., Petroccia S., "Politiche sovranazionali dell'Unione Europea", in Salzano D., Germano I.S., Ferzetti F. (a cura di), *Sociologie del Mutamento II*, Esculapio, Bologna, 2018b.
- Pitasi A., "The Complex System Approach as a Global Think Tank", in Floriani Neto A. et al. (edited by.), *Governing Turbulence, Risk and Opportunities in the Complexity Age*, Cambridge Scholars Publishing, Newcastle, 2018.
- Pitasi A., "Systemic evolution", in Petroccia S. (edited by), *Between Global and Local Cultural Changes*, Volume 1, Esculapio, Bologna, 2017a.
- Pitasi A., "Hypercitizenship beyond methodological nationalism", in Petroccia S. (edited by), *Between Global and Local Cultural Changes*, Volume 1, Esculapio, Bologna, 2017b.
- Pitasi A., "Methodologically Designing for hypercitizenship", in Petroccia S. (edited by), *Between Global and Local Cultural Changes*, Volume 1, Esculapio, Bologna, 2017c.
- Pitasi A., "A Systemic Approach to Hypercitizenship", in Bonazzi M., Di Simone V., *Redesigning Worldwide Connections*, Cambridge Scholars Publishing, Newcastle, 2015.
- Pitasi A., *Ipercittadinanza. Strategie sistemiche e mutamento globale*, FrancoAngeli, Milano, 2012.
- Pitasi A., *Sfide del nostro tempo*, Aracne, Roma, 2007.
- Rogers E., *Diffusion of Innovation*, The Free Press, Glencoe, 1956.
- Williamson O., *L'organizzazione Economica. Imprese, mercati e controllo politico*, il Mulino, Bologna, 1991.