



Séminaire de droit administrative comparé, européen et global

Good Governance and Global Administrative Law

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1. Introduction

“Good governance” is becoming increasingly important in political and in legal discourses. It is a goal which several states seek to achieve, in order to adapt their structures and processes to the needs of globalisation. Some Western states also seek to promote “good governance” abroad, by supporting and financing public sector and business’ environment reforms. “Good governance” is also promoted by global financial institutions, such as the World Bank and the International Monetary Fund. In the last ten years it has been promoted in the context of the European Union (EU), too. The EU has been involved by the wave of reforms undergone or at least attempted by most of its Member states, while it tried to improve its own organization and functioning.

That said, the ideas of good governance (as I understand them) differ in several ways ⁽¹⁾. First of all, it is not always clear if and why the term “governance” is more correct than that of government, traditionally used by legal and political science. “Governance”, it is suggested, describes structures and processes by which decisions are taken and implemented (or not implemented), with the contribution of private actors. Accordingly, it illustrates realities which are not characterized exclusively by the action (or inaction) of public authorities ⁽²⁾. Second, there is a variety of views about what good

¹ See D. Curtin & R.A. Wessel, *Good Governance: the Concept and its Application by the European Union*, in Curtin & Wessel (eds.), *Good Governance and the European Union. Reflections on concepts, institutions and substance*, Antwerp / New York, Intersentia, 2005, p. 20 (for the thesis that good governance could “prove no more than a convenient catch phrase”).

² Another difference emerges with regard to “good administration”, which focuses more on procedural safeguards such as the right to be heard, access to files, the duty to give reasons and the indication of remedies: Administrative Justice, *Some Necessary Reforms*, Oxford, Clarendon, 1988, p. 15.



governance is or should be. A traditional, Weberian approach may suggest that good governance simply requires the respect of existing rules and standards. However, even a quick glance at IMF's documents reveals that good governance has further implications. It implies, particularly, transparency and openness of decision-making procedures. Recent literature about development uses good governance in still another sense. It often affirms, with a strong normative approach, that decision-making processes must guarantee the realization of human rights.

A first task of this paper is therefore to examine what good governance means concretely. This task will be accomplished in section 2. Section 3 will instead try consider the concept of good governance in two ways, the former being its distinctiveness with regard to the rule of law and the latter its implications from the point of view of market economy and democracy. While such values may give some clues to understand why good governance should be promoted section 4 considers the different question of how it can be promoted. Finally, the shift from national to global public law is considered.

2. Phenomenology of good governance

A. Internal reforms of international institutions

A way to understand what good governance concretely means from an international point of view is to take into account what international institutions have done to adapt their structures and processes. The IMF, the World Bank and the World Trade Organization have been



particularly criticised by discontents of globalization for their lack of transparency, openness and responsiveness (to all the states) ⁽³⁾.

However, sometimes these standards have different implications. Consider, for example, the case of the WTO. To cope with growing criticisms, not only have WTO bodies declared their commitment to non market values, such as public health and the protection of the environment, but they have also introduced some internal reforms. One of such reforms was not introduced by political bodies, however, but by the Appellate Body. Some Asian countries (India, Pakistan, Malaysia and Thailand) had brought an action before the WTO against the US ban of shrimp and shrimp-related products coming from countries which did not oblige producers to use certain devices. Environmental associations had claimed that sea turtles were endangered by shrimp harvesting. Obliging shrimp trawl vessels to use turtle-excluder devices appeared an appropriate solution. An *ad hoc* panel was set up. While it rejected the U.S. argument that environmental protection could offer a sound basis for prohibiting certain imports, the Appellate Body (AB) took a different view. It admitted the *amicus curiae* briefs presented by environmental groups ⁽⁴⁾, to the dismay of developing

³ For further remarks, see J.R. Freeman, *Competing Commitments: technocracy and Democracy in the Design of Monetary Institutions*, 56 *International Organization* 889 (2002). See also J. Wouters & C. Ryngaert, *Good Governance: Lessons from International Organizations*, in Curtin & Wessel (eds.), *Good Governance and the European Union. Reflections on concepts, institutions and substance*, cit. supra at 1, p. 69.

⁴ Three decisions are involved: I) Panel Report, WT/DS58R, 15 May 1998; II) Report of the Appellate Body, WT/DS58/AB/R 12 October 1998; III) Report of the Appellate Body, WT/DS587AB7RW, 22 October 2001. They are referred to as *Shrimp I*, *Shrimp II* and *Shrimp III*. For further details, see A. von Bogdandy, *Law and Politics in the WTO*, in *Max Planck Yearbook of International Law*, 2000, 613 (for the thesis that the AB creates law, thus threatening the delicate balance between political sources and other ones), but see also S. Cassese, *Global Standards for National Administrative Procedure*, 68 *Law & Contemporary Problems* 109 (2005) (for the thesis that global principles of due process are emerging).



countries' representatives. They observed that the AB had exceeded its powers in admitting this kind of *amicus curiae* brief. Japan, a member of G-8, joined the other Asian countries in claiming that the AB should show more deference to the position expressed by the majority of national governments. Responsiveness to members and openness were thus in conflict.

Another interesting, though not always coherent example of the efforts made to enhance good governance is the EU. After the Santer Commission was obliged to resign, a widespread debate arose. EU institutions have emphasized good governance principles, particularly those of openness and participation, with a view to reducing the distance from the citizenry and its organized groups, such as political parties, trade unions and NGO's. The Commission's controversial "White paper" focused, more specifically, on five principles associated with good governance: openness, participation, accountability, effectiveness and coherence ⁽⁵⁾. However, it adopted a purely top-down and a somewhat corporatist approach. It completely neglected procedural due process of law and same happened with the constitutional treaty. Interestingly, a different approach was followed in the EU aid policy to developing countries. As a matter of fact, the goal of a balanced and sustainable development has been constantly matched by that of good governance, including the respect of human rights.

B. Mumbai traders and the World Bank Inspection Panel

⁵ See LSE Study Group on European Administrative Law, *Response to the Commission's White Paper on Governance in the European Union*, 27 March 2002.



Whatever their internal coherence and soundness, internal reforms of international bodies may have indirect implications in domestic environments, as it emerges from the case of the World Bank' financing of new infrastructures in developing countries. One of such infrastructures, a new highway, projected in Mumbai (India), with a population of approximately 13 million. The project would sensibly improve transfers by buses and rails services. However, it would require the relocation of business and the involuntary resettlements of inhabitants. Such changes would affect, in particular, small shopkeepers.

Many of such small shopkeepers protested against resettlement. They claimed their business would run into ruin and their own lives would be ineluctably worsened by the new urban transport project. Some non-governmental organizations backed their protests. A request for inspection was sent to the Inspection Panel (hereinafter the Panel) of the World Bank. Further requests followed. Consequently, an inspection was carried out.

The Panel's findings did not consider the observance of national and local rules. It focused, rather, on the compliance with the Bank's policies and procedures. Two of such findings are particularly interesting. First, the Panel found that shopkeepers had not been consulted regarding alternatives to resettlement of the sites for their shops. Second, necessary documentation to ensure that all environmental consequences had been considered was unavailable. This led the Bank to suspend some lines of payment. The Management's response recognized these shortcomings. It took the commitment to place increased emphasis on consultation, which should be



supplemented by “effective and timely dissemination ... of information”⁶).

At least three features are worth mentioning. First, the Inspection Panel is neither a judicial nor an arbitral body. It is, rather, an administrative body. However, it checks the respect of previously established rules and this may determine negative consequences for the activities supervised. Second, such rules are not those of national or local authorities, for the simple reason that the Panel does not interfere with them. It checks whether all of the Bank’s policies and standards are met, though this may produce indirect consequences on funding. Last but not least, this determines an important institutional consequence. It gives voice to individual and collective interests, which otherwise would be excluded from decision-making processes.

C. Foreign investments in Africa: Washington consensus v. Beijing consensus

Infrastructures are at the heart of another story, too, though a quite different one. It regards China's hunger for natural resources, which induced Chinese state-owned firms to sign a series of contracts with African countries: in Nigeria and Congo as regards oil and copper, respectively.

What matters, for our purposes, is neither the conflict between political strategies, which emerges particularly in Darfur (or Burma), nor the growing competition between Western and Chinese firms. It is, rather, the growing fear that Chinese expansion will find support because of its lack of interest for good governance. Such a risk is not

⁶ The Inspection Panel, *India- Mumbai Urban Transport Project*, Report n. 34725 of 21 December 2005; Management, *Response and Reconsideration in Response to the Inspection Panel Report*, 27 February 2006.



merely theoretical. Consider the case of Angola. One of Africa's poorest countries, Angola had decided to apply for International Monetary Fund's for building new infrastructures. However, this implied complying with tight requirements for transparency and sound economic management. Since aid and investment from China grew rapidly, in 2006 Angola decided it had no need of IMF's billions and conditions (⁷).

All this shows, according to critics, that the "Washington consensus" of economic liberalism and good governance programs finds itself in competition with a "Beijing consensus", based on the established doctrine of national sovereignty and non-interference in domestic affairs. Of course, discontents of globalisation, and especially of the Americanisation of public law, would see these things in a very different way. An obvious reply is that decades of European and American aid have not always succeeded in bringing much transparency and accountability in several African (and other) countries. That said, it is evident that good governance has become a factor in the decisions taken by national governors.

3. The concept and good governance and its underlying values

A. Beyond the rule of law: principles for the twenty-first century

These stories and international documents may shed some light on the concept of good governance. What soon becomes evident is that, though there is a relationship between good governance and the rule of law, the two concepts differ in some respects. An analysis of the ideals

⁷ *A Ravenous Dragon*, *The Economist*, March 13th 2008, accounts for \$12 billion of investments. See also H.W. French, *True friend of Africa? Bush states his case*, *International Herald Tribune*, 22 th February 2008.



and contents of the rule of law would largely encompass the limits of this paper. At its heart, however, there lies the idea of legal equality, that is to say, to borrow Dicey's words, the "universal subjection of all classes to one law", administered by independent courts (⁸).

However, the respect of rules does not prevent arbitrariness. Consider, for instance, Maurice Hauriou's well-known observation about the importance of time in administrative procedures. While late nineteenth advocates of "bound" administration held that legislation may achieve this goal, Hauriou noted that administrators almost always keep the power to decide when a certain decision must be adopted. The consequences of this from the point of view of, say, corruption should not be overlooked.

Good governance determines further requisites, too. It requires transparency, first of all. As a result, not only must all decisions be taken on the basis of standards previously made public, but the entire decision-making process must favour public access to information. Information must be made (freely, if possible) available and directly accessible to all those who will be affected by such decisions and their enforcement, such as the Mumbai shopkeepers's associations.

The Mumbai case also shows another distinctive feature of good governance, as opposed to the rule of law. Such feature concerns participation. It implies that decision-making procedures must provide all interested parties with a fair opportunity to express their own views. Of course, there is a variety of ways, direct and indirect, to achieve this goal. However, the key point is that decisions are not entirely left in the hands of politicians and administrators. Civil society

⁸ A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, 1959, 10th ed., p. 328. See also, for a critical evaluation, C. Harlow & R. Rawlings, *Law and Administration*, 1997, 2nd ed., p. 40.



must be involved somehow. This, it is argued, has important implications for democracy (see *infra* § 3.C).

B. Good governance supports market economy

While the events just mentioned regard developing countries, the importance of good governance should not be neglected elsewhere, in wealthier or more developed countries. In this respect, I shall distinguish between two sets of values which are common to many countries of the world, the former being market economy and the latter democracy.

With regard to market economy, a twofold premise can be useful. First, in the last part of the twentieth century capitalist market economy has become the world's basic economic paradigm. There are exceptions, notably in Asia and Latin America, such as China and Venezuela respectively. However, even in those countries, market economy is not wholly repudiated, at least in some sectors. As a result, some standards of good governance may be accepted there. Second, and more important, there is no need to share the IMF's orthodoxy as far as macroeconomic policies are concerned (monetary and financial stability, and low external debt) to note the connections between good governance and market economy. The key to understand it is the concept of trust. Trust is an essential requisite of market economies, especially in its capitalist version. It requires, according to an established tradition, a reasonably uniform and impartial enforcement of existing laws.

Trust may benefit, moreover, from several more modern standards of good governance. Some of them regard mainly the public sector, such as procedural legitimacy and efficiency, transparency and



accountability. The “administrative law toolbox” (⁹) offers a variety of tools through which such standards may produce concrete results. Such tools include inspections and audits, as well as more specific controls on political and administrative corruption. Other standards regard the relationship between administrative law and the private sector. The stability and transparency of the economic and regulatory environment for private sector activity is one of such standards. Consider, for example, the issuing of authorizations, licenses and subsidies (or fiscal exemptions) are granted to firms. If administrative rules are adopted and made public before all such decisions are taken, transparency may be enhanced (¹⁰). The same applies to public procurements’ schemes and requisites. In both cases, the room for corruption may be limited. This is confirmed by the emphasis placed by OECD and the US administration on some issues of good governance. The former has set up a directorate that focuses on corruption in a variety of ways. The US administration has financed, in the years 1998-2007, the Good Governance Program (GGP). GGP worked to increase market access and ensure a level playing field for U.S. companies in emerging markets by promoting transparency (through business ethics), accountability in corporate governance, fairness in commercial dispute resolution and protection of intellectual property rights.

To the extent to which all this may foster economic efficiency and growth, it may be argued that even an autocratic government might be interested in it. I am aware that some economists affirm that

⁹ See D.C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 Yale L. J. 1491 (2006)(for the thesis that principles and practices of administrative law ought to be more widely used at the international level).

¹⁰ See R. Baldwin, *Rules and Government*, Oxford, Clarendon, 1995 (for an analysis of the rationales of administrative rules and guidance).



corruption is not always detrimental for economic efficiency and growth. However, such claims do not imply that the general argument ought to be abandoned ⁽¹¹⁾ (and, if I may add it, the experience of Southern Italy confirms this).

C. Good governance supports democracy by limiting some of its inconvenient

The situation is quite different as regards democracy. The problem is not so much that theories of democracy are so numerous that none of them can be considered as paradigmatic. Nor does the problem lie in the increasingly important distinction between well-functioning and ill-functioning democracies. The problem is, rather, that while democracy is a founding value of both some countries and their regional organizations, such as the European Union (article 6, Treaty establishing the EU), it is not substantially accepted by a plethora of autocratic regimes which are represented within the United Nations. Accordingly, the opinion that democracy is better (or worse than all governments, except the existing ones) cannot claim general, that is to say universal, validity. This partly explains why the IMF's argues that that good governance does not necessarily require a specific political

¹¹ An interesting discussion is provided by F. Bonaglia, J. Braga de Macedo and M. Bussolo, *How Globalization Improves Governance*, CEPR discussion paper n. 2992 (for the thesis that more open economies, enjoying more foreign investments, will normally register lower corruption levels).



regime ⁽¹²⁾. I will instead try to demonstrate that at least some standards of good governance strengthen democracy ⁽¹³⁾.

The weakness of the IMF's position is that it considers democracy only in the political arena. It neglects the administrative arena. In this respect, it is influenced by the nineteenth century's conception of the administration as the mere machinery of government. Quite the contrary, the growth of the administrative state has induced legislators and the courts to open up the administrative process, bringing policy issues into the open and allowing individuals and citizens to participate in a sort of alternative political process. A particularly interesting example is that of the US Administrative Procedure Act (1946). The Act provides for notice of proposed rule-making together with a public hearing. A less heavy procedure is applicable to informal rule-making. Another Act established freedom of information in 1966. As a result, an enriched culture of openness and participation in public affairs has emerged.

Beyond the State, the situation is quite different. Indeed, there is no such thing as an APA or a Government-in-the-Sunshine Act. However, there are important developments, as the Mumbai case shows. According to many observers, India is a democratic polity, the world's largest. While this view is approximately true as far as political processes are concerned, it may be not fully satisfying when considering administrative procedures. The Inspection Panel's reports,

¹² IMF, *The Role of the IMF in Governance Issues: Guidance Note The Economist*, approved by the IMF Executive Board, 25th July, 1997. See also J. Wouters & C. Ryngaert, *Good Governance: Lessons from International Organizations*, cit. supra at 3, p. 73 (for the thesis that the IMF and the World Bank did not acknowledge the influence of the New Public Management movement).

¹³ This does not exclude, however, that a right to democratic governance may be identified, as suggested by T.M. Franck, *The Emerging Right to Democratic Governance*, 86 Am.J. Int. L. 48 (1992).



for true, did not produce any legal effects on such procedures. However, they induced the Management to adopt new initiatives aiming at ensuring that the voices of vulnerable societal groups are heard in decision-making processes.

Of course, the principles of transparency and participation are not a panacea. Moreover, they have some negative effects on the effectiveness of administrative action (ossification or formalism). They can even create an environment which is more favourable to strong economic interests. That said, they enrich democracy. More precisely, they cut across established political traditions, constructed around a theory of representative government, which gives even too much weight to the majority principle. This problem was clarified masterly by Alexis de Tocqueville. Not only did he observe the emergence of democracy in the early nineteenth century, but he also saw the risk of despotism or the tyranny of the majority. The coming of welfare has made this risk even more serious, by creating an overpowering central paternalism.

To counter this, Tocqueville emphasised the importance of those intermediate institutions which had been shattered by the French Revolution. Of course, feudal aristocracies and old municipalities cannot come back. However, old and new non-majoritarian institutions may limit somehow the excesses of the majority principle. The literature on good governance highlights, first, the importance of an independent judiciary. Second, although in economic literature there is a vivid debate as regards the goals of monetary policies, it is commonly accepted that central banks ought to have a certain degree of independence from political and economic power. Third, regulatory agencies may enhance institutional pluralism.



A caveat is, however, necessary. Since, as I said before, there is not a single theory of democracy, all such devices are subject to debate and criticism. However, even critics concede that at least an independent judiciary is a necessary requisite for market economy, if not for democracy. It is not fortuitous, therefore, that China has introduced some reforms of the judiciary. Once it exists, however, it may have unintended effects.

4. Promoting good governance: from coercion to incentives

Once some arguments in favour of standards of good governance have been taken into account, a further question arises. The question is how such standards may be promoted outside liberal democracies, that is to say in other kinds of political regimes, where there is a frequent governmental resort to the powers of *imperium*, in connection with traditional theories of sovereignty.

Sometimes an effective instrument is external political coercion. In the late 1940's, we find important examples of this instrument in the new constitutions adopted by the 2nd world war losers, namely Germany, Italy and Japan. For example, Constitutional courts were set up, too, and they contributed to strengthening checks and balances. However, coercion can be used only in such extraordinary circumstances. Moreover, it may be argued that legal transplants, such as that concerning constitutional courts, work only if they are compatible with the legal system considered as a whole and its underlying social values (¹⁴). In short, there are both moral and pragmatic arguments against external coercion.

¹⁴ See C. Mc Crudden & S.G. Gross, *WTO Governmental Procurement Rules and the Local Dynamics of Procurement Policies: a Malaysian Case Study*, 17 Eur. J. Int. L 151



An extreme variant of these arguments is *fin de siècle* relativism. An interesting example is that of the UN Commission on Human Rights. In its resolution 2000/64 the Commission identified the key attributes of good governance as: transparency, responsibility, accountability, participation and responsiveness (to the needs of the people). Resolution 2000/64 expressly linked good governance to the enjoyment of human rights. However, it argued, “prescriptive approaches” were highly inappropriate. Partnership approaches had to be followed, instead. An external observer may easily notice that such a position is hardly surprising when considering the Commission’s membership. The least that can be said is that it included several countries whose record in terms of human rights was far from decent.

Such *idées reçues* concerning sovereignty suffer from another weakness. They are based on nineteenth century ideas. Such idea corresponded perhaps to the reality of one or two superpowers, such as the French and British empires. However, they do not provide useful tools to understand the reality of modern states. In the contemporary international system, characterised by growing interdependence, sovereignty is exercised, rather, by joining regional and global regulatory regimes ⁽¹⁵⁾. Membership is the only way to influence decisions which are likely to influence state interests anyway.

This brings in the role of international institutions. They may impose some requirements for membership, such as the independence of central banks. More often, however, they use other instruments,

(2006) (holding that transparency and judicial review may not be easily introduced in all legal orders).

¹⁵ A. Chayes & A. Handler Chayes, *The New Sovereignty. Compliance with International Regulatory Agreements*, Cambridge, HarvardUP, 1995, p. 27. See also J.C. Yoo, *Globalism and the Constitution: Treaties, non-self-execution, and the original understanding*, 99 Colum. L. Rev. 1955 (1999) (“we live in a world of treaties”).



including conditional funding and information about best practices. In the last thirty years or so, major state donors and international financial institutions, like the IMF or World Bank, have increasingly based their aid and loans on the condition that reforms ensuring good governance are undertaken. In legal terms, this implies that if a State wants to obtain funds for a specific project, it has to comply with some requirements. Such requirements are controversial, however. Some macroeconomic conditions, such as those aiming at ensuring monetary stability, are criticised for imposing an intolerable burden on the poor and the most vulnerable in society. Other requirements, such as those concerning transparency and accountability, are criticised because they are culturally alien to the legal and political cultures of the recipient countries. However, recent studies call into question the real impact of austerity programs on the poor and the vulnerable. They argue that the negative effects depend largely on domestic factors, such as the cost-shifting induced by political elites. Perhaps the most interesting element, a counter-intuitive one, of such studies is that the reduction of public spending is particularly pronounced in democratic countries (¹⁶).

Whatever its legitimacy, conditional funding is nevertheless limited to those countries which demand external financial aid. Its importance is lessened, moreover, by the largess of competing donors who show little or none interest for good governance. Accordingly, they do not ask for stringent requisites to be respected. Hence the importance of another instrument aiming at promoting good governance, that is to say the dissemination of information. Today there is an impressive amount of

¹⁶ See I. Nooruddin & J.W. Simmons, *The Politics of Hard Choices: IMF Programs and Government Spending*, 60 International Organization 1001 (2006).



information about government. Some sources, relatively influential, derive from “regional” and global institutions. For example, OECD does not only collect data concerning its member states, but it also provides an evaluation of such data. Reports such as those periodically produced on national regulatory systems show their different capacity to attract foreign investors. As a result, it may (and often does) stimulate their reaction. For those who are familiar with Hirschmann’s concept of “exit”⁽¹⁷⁾, this is neither new nor peculiar. However, this model has some limits. First, it requires that full and accurate information is made available, including targets and results. Second, it presupposes a market-type discipline. However, unlike firms, states may decide not to adjust their behaviour or even not to discuss about it. The different reaction of Germany and Italy to the PISA reports, concerning education, is an illuminating example of this. An increasingly globalised world therefore accentuates the states’ different performance, but it does not necessarily foster reforms.

5. From national administrative law to global administrative law

At least two important changes emerge from the analysis carried out thus far. First, while a judicial review exercised by independent courts over government goes back centuries, other tools that are socially valuable emerged during the twentieth century. Concern with procedural safeguards, transparency and accountability has become familiar. Openness and participation, in particular, imply a shift from

¹⁷ A.O. Hirschmann, *Exit, Voice and Loyalty. Responses to Decline in Firms, Organizations and States*, Cambridge, Harvard UP, 1970. For an analysis of administrative law tools which may be relevant for foreign investments, see G. della Cananea, *Equivalent Standards under Domestic Administrative Law: a Comparative Perspective*, in L. Liberti, F. Ortino, A. Sheppard, H. Warner (eds.), *Investment Treaty Law – Current Issues* Volume II, London, BII CL 2007, p. 112.



the traditional rule of law ideal. Moreover, they justify the claim that administrative law does not express only concerns about government. It sets standards concerning governance, more generally.

The other change regards the relationship between public authorities and states. Until quite recently, both public administrations and their systems of administrative law were seen as the last enclaves of nationalism. As a result, they were seldom studied by way of the comparative method. The underlying idea was that such a comparison was useless. Each public administration and its system of administrative law were seen as rooted in the political and social traditions of its own legal system⁽¹⁸⁾. This view has been challenged by other studies, however. Such studies have shown that “borrowings”, “importations” and “transplants” have also been detectable in the public sphere from the diffusion of the Napoleonic model in continental Europe onwards⁽¹⁹⁾.

More recently, the relationship between administrative law and state has changed in several respects. The growing interdependence has produced a shift of regulatory decision-making from nation states to a variety of regional and global regulatory regimes and authorities⁽²⁰⁾. Hence the growing concern about the legitimacy and accountability of such authorities, since domestic networks are being increasingly sidestepped. However, the mix of tools used within domestic systems is unlikely to be transplanted as such in the

¹⁸ See A. Plantey, *Perspective de l'Etat*, Paris, Pedone, 1975.

¹⁹ See A. Watson, *Legal Transplants*, Athens, University of Georgia Press, 1993, p. 7.

²⁰ See S. Cassese, *Administrative Law Without the State? The Challenge of Global Regulation*, 37 NYU J. of Int'l L & Pol 663 (2005) and *Oltre lo Stato*, Roma, Laterza, 2007. See also J.B. Auby, *La globalisation, le droit et l'Etat*, Paris, Montchrestien, 2003 (for the thesis that the new institutions do not reduce the importance of public law).



international arena. It is not easy, perhaps not even possible, to build democratic institutions beyond the states, especially as far as input legitimacy is concerned ⁽²¹⁾. This raises the question whether other sources of legitimacy and accountability may balance the lack of democracy. Such sources include the rule of law, checks and balances and expertise.

At the same time, not only have regional and global institutions become a permanent feature of the landscape, but they exert an increasing pressure for adjustment on domestic administrative systems. Good governance standards thus provide benchmarks for evaluating the functioning and even the organization of national institutions. In short, globalization and membership of regional and global regimes reshape the framework for the role and development of government and, as a consequence, for public law.

Again, I'm not suggesting that a transformation of the deeper values expressed by each society is desirable or even likely to occur ⁽²²⁾. Rather, I'm suggesting that the shift from an monadic conception of sovereignty to another in which membership of international regulatory regimes is the only option for taking part in decision-making processes has a profound institutional and cultural impact. Such an impact has not yet been fully identified. However, there is evidence that complete isolation and refusal of change are not anymore viable even for North Korea. As a result, good governance standards ought to be taken seriously.

²¹ See J. Cohen & C.F. Sabel, *Global Democracy*, 37 NYU J. of Int'l L & Pol 765 (2005).

²² For a general perspective, see B. Kingsbury, N. Krisch & R.B. Stewart, *The Emergence of Global Administrative Law*, 68 Law & Cont. Problems 15 (2005). For a critique of the use of some "Western constructs", see C. Harlow, *Global Administrative Law: the Quest for Principles and Values*, in *European Journal of International Law* (17), 2006, p. 168.