

## ATTUALITÀ

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### Through the lenses of the pandemic: three short reflections on science policy and citizens' rights

Attraverso le lenti della pandemia: tre riflessioni brevi su science policy e diritti dei cittadini

**Mariachiara Tallacchini**

Facoltà di economia e giurisprudenza, Università Cattolica del Sacro Cuore, Piacenza (Italy)

**Corresponding author:** mariachiara.tallacchini@unicatt.it



#### NEW SOFT RULES FOR CO-HABITING THE WORLD

Through the experience of this crisis there is a lot to learn and to re-imagine from the point of view of the rules governing our societies. First of all, the very meaning and characters of the law itself need to be rethought.

It has been widely recognized that, in so-called knowledge-based societies, and even more in innovation societies, law is increasingly becoming a "learning process".<sup>1</sup> This means that, when confronted with new technologies (from biotechnology to Artificial Intelligence), the regulatory process has to acquire a lot of scientific and technological knowledge, but also that new technical domains of regulation require reframing existing, and introducing new, legal tools.

However, what democratic societies are currently experiencing is that we are all collectively learning – regulators and citizens – how to adequately absorb what we know and how to implement it in our daily behaviour.

More specifically, the pandemic has highlighted the new role of what is called 'soft law'. With this expression, legal scholars refer to conducts that citizens comply with not primarily because they are legally enforced, but because of their own responsibility towards themselves and others. Self-certifications about reasons for circulating during the lockdown, declarations about having had contacts with people posi-

tive to the virus, about experiencing COVID-19 symptoms, or practices of fiduciary quarantine and isolation are all examples of this forms of normativity: while these provisions are certainly strengthened by penalties and sanctions, citizens' compliant behaviour is primarily anchored in their personal sense of responsibility.

Moreover, several soft-law practices are informed by science-based knowledge. This implies that they are endorsed and implemented because of their authoritative and not authoritarian meaning, namely because they convey reliable knowledge about how to behave. This is true, for instance, of sanitization protocols, and more broadly of many activities based on knowledge skills (from wearing masks correctly to interacting with other people safely, to properly managing food, cleaning homes, etc.). In all these daily actions, we have to trust, and rely on, ourselves

and others as having the ability to use specific knowledge and to implement it responsibly.

From this perspective, enforcement has lost its exclusive role for the law to be respected. This is not only due to the fact that we do not have one (or more) controller(s) for each individual to be controlled, but also because the myriad of safe practices aimed at containing infections are capillary interconnected and beyond control. Successful coexistence is intimately dependent on factually well-performed and responsible actions of each of us.

Soft law is still a largely unexplored dimension for the law and is certainly deemed to become increasingly relevant in legal systems.



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## LIBERTY AND SECURITY: TOWARDS COLLABORATIVE FREEDOM IN SECURITY

**What we are experiencing** today as a society also requires rethinking the relation between liberty and security. Indeed, the new imagination/interpretation of what we are entitled to do without harming others goes beyond the model proposed after 9/11, when the main mantra was that we had simply to 'give up' our liberties in exchange for more security. But we are also moving beyond the vision of individual liberties as atomistic, compatible actions: my freedom ends where your freedom begins. Moreover, safety and security cannot be granted only by authorities.

A new way of imagining and connecting liberty and security suggests that citizens collaborate in preserving each other freedom 'in' security and interpret their rights also as forms of collaborative actions. We are finding ourselves in a relational situation where, for instance, individual health (and right to health) is radically intertwined with, and implies, shared, collective health.<sup>2</sup>

We need to reframe our reciprocating conducts in order to maintain our ability to be free (and safe) in the future. Freedom can take the form of voluntary self-restraint in collaboration with others to make life safer and more secure. These new ways of thinking about rights need to be absorbed, cultivated, and practiced.

## HOW TO MAKE THE BEST SCIENCE POLICY DECISIONS

### TOWARD A SOUND EPISTEMOLOGY OF UNCERTAINTY FOR MORE LEGITIMATE AND ROBUST DECISION-MAKING IN DEMOCRATIC SOCIETIES

**Citizens, scientists,** and institutions should not miss the opportunity to cultivate the awareness toward a sound epistemology of uncertainty.

Since the beginning of the COVID crisis there has been a shift in public discussion and the media from thinking that we should listen to scientists and do what they suggest – according to the science policy model of "science speaks truth to power"<sup>3</sup> – to the disappointed discovery that scientific uncertainty exists and scientific disagreements can be radical, with the consequence that decision makers can 'cherry pick' results to do what they want.

Scientific uncertainty does not mean arbitrariness and does not allow arbitrary political decisions.

On the contrary, clarification of aspects of uncertainty and improved institutional and public dialogue can lead to a better understanding of what is not known. Different disciplines involve different perspectives, but they can be

analysed and integrated; scientific evidence can be stronger or weaker; scenarios of uncertainty can be illustrated and compared; decision makers should present their reasons for endorsing certain perspectives and take responsibility for them. This articulation of discussion involving citizens, scientists, and institutions can make political choices more

legitimate, robust, and trustworthy.<sup>4</sup> This awareness is not new. A longstanding reflection on Post-Normal Science (PNS) and policy ("facts uncertain, values in dispute, stakes high, decisions urgent") exists.<sup>5</sup> It is now the time to implement these lessons for seriously knowledge-based democratic societies.<sup>6</sup> Moreover, citizen science – knowledge produced by citizens – can greatly contribute to robust science policy. The NIH, for instance, is currently supporting and collaborating with two citizen-driven initiatives (Patient-led Research for COVID-19 and Body Politic COVID-19 Support Group), collecting evidence on long-term symptoms of people who had COVID-19.<sup>7</sup> The COVID-19 crisis widened the meaning and scope of citizen science, because institutions have to rely on lay people's ability to properly manage and contextualize knowledge in their practices. As has been highlighted, "the whole world becomes an extended peer community, as the appropriate behaviour and attitudes of individuals and masses become crucial for a successful response to the virus. This extended peer community is the opposite of a technocratic, number and model-based decision strategy".<sup>8</sup> A sound epistemology of uncertainty through new forms of interactions among citizens, scientists and policy makers will make expert knowledge more credible and will nurture trust between citizens and institutions.

## REFERENCES

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