Constitutional Imaginaries: A Socio-legal Perspective of Political and Societal Constitutions

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I. INTRODUCTION

'W<small>E IMAGINE THE</small> happy state' states Plato in his *Republic* (Plato 2000: 111) and, to further illustrate this constitution of the ideal city, he employs a 'noble lie' as a founding myth of this imaginary polity. According to Plato, 'We want one single, grand lie which will be believed by everybody – including the rulers, ideally' (ibid: 107–10).

The lie is actually a fiction behind the imagined community, which makes it constituted by two different myths. The first is an autochthonous myth of the same descent of the entire population of the earth. The second is a myth of divine dispensation of different metals in the citizens' souls which constitutes the imagined polity's differentiated class structure. People are made to believe both myths and thus reconcile the principles of commutative and distributive justice by the symbolic constitution of the polity's unity.

This coeval constitution of the care for the city and for each other shows the legitimation function of imaginaries communicating the common good despite economic, political and other societal differences. This function was later elaborated by Polybius when he wrote in his *Histories*:

> it is the very thing which among other peoples is an object of reproach, I mean superstition, which maintains the cohesion of the Roman state. These matters are clothed in such pomp and introduced to such an extent into their public and private life that nothing could exceed it, a fact which will surprise many. My own view at least is that they have adopted this course for the sake of the common people. It is a course which perhaps would not have been necessary had it been possible to form a state composed of wise men, but as every multitude is fickle, full of lawless desires, unreasoned passion, and violent anger, the multitude must be held in by invisible terrors and suchlike pageantry. (Polybius in MacIntyre 2002: 104)

According to this view, symbols of power structures generate acceptance and unity in the absence of reason and rational consensus. They are more effective means of political

and societal stability with stronger capacity to guarantee the common consensus than the rational discourse which is a privilege of wise and educated elites and therefore cannot be extended to the whole society.

In the modern language of social and political sciences, Polybius's description of 'superstition' would be grasped by the concept of *ideology* as collectively shared views of different social groups which stabilise the existing political system by obfuscating and covering its internal conflicts and contradictions. Karl Mannheim described ideology as the collective unconscious motives blurring the real state of society and thus stabilising its order. It is part of a typically modern conflict caused by the democratisation of the state and the plurality of political parties which need to justify and systemically explain and validate their struggle and position within the political and social order.

Value plurality is a consequence of democratisation of modern society (Mouffe 2000: 120–21). Ideology then replaces theology in its goal of constituting the total and only image of modern society. However, this goal is paradoxical exactly because modern society is defined by the pluralism of its value structure (Mannheim 1997: ch 2). Modern morally pluralistic and politically democratic societies subsequently consist of the plurality and conflict of ideologies mirroring structural conflicts between those who rule and those ruled by them.

Unlike philosophy, with its belief in objective validity and social indeterminacy of knowledge, sociology – according to Mannheim – analyses unconscious social motives connecting the existence of a particular social group with its cultural values, goals and ideological arguments (ibid: 30). Modern democratic and pluralistic politics then reveals how different groups and parties represent different ideas and use them to legitimise their political goals and programmes.

To the credit of Mannheim's sociology of knowledge, the concept of ideology ceased to be the subject of speculations of idealistic and critical philosophy and became an intrinsic part of sociological inquiries into the construction of social reality and meaning and the circularity of legitimation and delegitimation processes in different social systems including the systems of positive law and politics. In the last two decades, these problems have been particularly elaborated by different philosophies and theories of social imaginaries.

In this chapter, I adopt these theories to explore imaginaries constituted by the systems of positive law and politics. I draw on the conceptualisation of modernity as the state of societal, political and value plurality. The contrast between the polyvalence and functional differentiation of modern society and the transcendental validity claims generated by specific social systems and enforced through their imaginaries continues to be one of the central themes of both social and legal theory. I, therefore, analyse social imaginaries as background power communicating the common good in functionally differentiated society at national as much as global societal levels.

II. PHILOSOPHY AND SOCIOLOGY OF IMAGINARIES

Imaginary symbolic forms of communication are spontaneous expressions of the human nature as the 'animal symbolicum' (Cassirer 1944: 26). For instance, Ernst

Cassirer adopted the notion of symbolic forms which, unlike the Kantian notion of universal and transcendental forms, are constituted historically and established in the social context of language, myth, religion and art. According to him, these symbolic forms are rooted in 'metaphorical thinking' and have their historical 'laws of evolution' while unified by 'a final community of function' of the human mind and its spiritual creativity (Cassirer 1946a: 84; Přibáň 2007).

Cassirer's philosophical analysis of symbolic forms and communication draws on humanity as unity of the manifold and considers symbolic expression the common denominator of human culture present in myth and art as much as language, logic and science. The function of symbolic forms is the constitution of an objective social and cultural reality (Cassirer 1946b: 45). Despite its philosophical attraction as the potential nature of humanity, this final community of symbolic forms, however, has to be analysed by anthropological and sociological methods to such extent that, according to Cassirer, the very notion of symbolic forms is nothing more than Emile Durkheim's 'primitive forms of classification' (Cassirer in Bourdieu 2014: 165).

Philosophers and sociologists thus both agree that symbolic forms of communication constitute social reality. Indeed, it is possible to ask whether symbolically communicated imaginaries are reservoirs of the ultimate meaning of social and human existence. Speculations on homogeneity and heterogeneity, transcendence and immanence or objective and subjective validity are likely to continue informing general philosophical and specific jurisprudential and ethical arguments and their sociological criticisms. Nevertheless, the very existence of these forms of social communication means that the specific constitution, function and operations of imaginaries in legal, political and other social systems have to be examined from social theoretical and sociological perspectives.

What Durkheim described as society comes very close to what the anthropologists understand by culture. Durkheim's sociology of 'collective representations' is often described as a predecessor of more recent philosophical and sociological studies of social imaginaries and the imaginary constitution of society (Gilleard 2018: 320). These representations make social institutions and practices collectively both meaningful and functional and, as such, constitute social facts and reality.

Imaginaries, therefore, are not to be taken as expressions of a universal rule of humanity and its collective soul or mass psyche. Their function is not ontological in the sense that they would confirm the collective existence of humankind. The question of 'Who are we as a meaningful community?' cannot be answered by one 'real' voice of the collective mind and always remains to be constituted and articulated through functionally differentiated social systems and their imaginaries. This is why even the identity politics of modern imagined communities, for instance, cannot be freely manipulated and controlled by the technologies of political power and its existential narratives of populist imaginaries.

Imaginaries also do not belong to either the substructure of material power, or the superstructure of hegemonic ideology or symbolic order. They need to be distinguished from cultural myths and economic or political dogmas and cannot be treated as mere residues of mythological and ideological imaginations operating in otherwise functionally differentiated systems and falsely constituting idealisations of social unity and totality.

Imaginaries constitute 'the symbolic dimension of the social world, the dimension through which human beings create their ways of living together and their ways of representing their collective life' (Thompson 1984: 6). In this respect, Durkheim's analysis of society as an autonomous societal process of collective self-understanding and self-representation actually can be used and reformulated as a 'second order' communication of imaginary collective unity in contemporary complex and functionally differentiated society (Durkheim 1898: 300).

Rather than one ultimate and binding system of imaginaries guaranteeing social solidarity and collective trust, modern social imaginaries constitute polysemy which is diffuse and generated by different rationalities. In this chapter, therefore, I draw on theoretical arguments and conceptualisations of imaginaries elaborated by Benedict Anderson's sociology of imagined communities and Charles Taylor's philosophy of modern social imaginaries. I also employ Niklas Luhmann's autopoietic social systems theory and its elaboration by Gunther Teubner in the context of theory of societal constitutions to analyse the paradox of the imaginary unity of society constituted by differentiated social systems. I argue that polysemy and polyvalence of constitutional imaginaries is driven by functional differentiation and the internal paradoxes of social systems.

III. SOCIETAL POWER OF IMAGINARIES AND THE PARADOX OF VALUE LEGITIMATION

Social imaginaries are societal forces, *potentia*, which reconstitute functionally differentiated society as one legitimate polity. They evolve immanently through different social systems, but they are treated as transcendentally valid and constitute social subjects as members of *communitas* – the community of values. They operationalise the transvaluation of values and represent the societal constitution of transcendental validity.

The function of social imaginaries is the constitutionalisation of systemic *facts* of power as legitimising *values* of polity. They transform the plurality of social immanence and differentiated societal forces into the community of transcendental values and ideals.

Using the terminology of structuralism, the constitution of social imaginaries can be described as arbitrary and conventional because they are social and historical constructs relative to the semantics and structures of specific systems such as positive law and politics. At the same time, they generate principles and values transcending these specific structures and constituting general expectations of living in one legitimate polity. The imaginary constitution of society, therefore, is the paradoxical constitution of one social self by specific social systems which involves the possibility of communitas as a collective form of the ethically meaningful life constituted by shared values and legal rules (Cotterrell 1995: 325).

Nevertheless, the contrast between the purity of authentic values of community and their corruption by the state of politics and society, so much favoured by Rousseau and subsequent generations of revolutionaries and moralists, does not apply to the constitutional imaginaries because they are constituted by society itself.

They are internal symbolic constructs of self-constituted positive law and politics which make it possible to constitutionally imagine and describe functionally differentiated modern society and its power hierarchies, fragmentations and asymmetries as one polity and distinguish between legitimacies and illegitimacies in it (Browne 2019: 399).

The paradoxical imaginary self-constitution of functionally differentiated society as a symbolically unified whole thus reveals a second paradox related to the semantics of social imaginaries which consists of the fact that generally shared and valid social values are just momentary outcomes of different societal operations and legitimation strategies. Values thus can constitute only immanent waiting lists despite the fact that they are argumentatively formulated as transcendental foundations by politicians, judges, activists, citizens and even legal or social theorists.

This internal paradox of the community of values claiming transcendental validity but depending on their immanent enforcement and legitimation needs to be analysed within the context of positive law and politics. Using the methodology of social systems theory and its radical constructivist perspective eliminates a typical mistake of perceiving imaginaries as the meaningful opposites of systemic rationality which reveal the authentic human existence in the otherwise alienating modern society. Instead, imaginaries can be analysed as expanding the potential of the functional rationality of different social systems and contributing to their legitimation beyond efficiency and performativity by making them part of the symbolic constitution of society.

Instead of constituting the canon of legitimising social imaginaries, a theory of constitutional imaginaries has to adopt both the sociological analysis of systemic paradoxes and the genealogical perspective analysing polyvalence, polysemy, mutual conflicts and societal contingency of specific imaginaries. Imaginaries are a play of societal forces and it is our job to identify and analyse them and their permanent transvaluations of societal values and immanent subversions of rights and principles considered transcendentally justified and verified (MacIntyre 1990: 38–43). In other words, it is our job to identify and understand these self-referential and self-subversive forces of social imaginaries and the interdependence of legitimacies and illegitimacies in positive law, politics and other social systems.

Following this social theoretical perspective and adopting it in the context of positive law and politics, constitutional imaginaries can be defined as systemic constructs describing functionally differentiated modern society as one polity and distinguishing between legal and political legitimacies and illegitimacies in it. The systems of positive law and politics construct their imaginary of constitution as the legitimate form of government.

Constitutional imaginaries are semantic reflections of structural tensions in modern constitutions, such as the distinctions between hierarchical political mastery and civic horizontal autonomy, normative authority and factual self-creation, reason and will or transcendental validity claims and their immanent enforcement. They are responses to the most general question of the possibility of a legitimate political order and collective self-rule materialising in the rule of law.

It, therefore, does not make much sense to stage another replay of constitutional theory's conceptualisations, contradictions and paradoxes of democracy,

self-determination and self-authorisation of popular and constitutional sovereignty. Instead, theoretical frameworks and their normative ambitions can be analysed against the background of social imaginaries showing that theories are part of the semantics and dramas evolving in modern constitutional politics. A sociology of constitutional imaginaries can show what their meaning and exercise look like and how they evolve and transform in the systems of positive law and politics.

IV. THE SOCIAL IMAGINARY OF POLITICAL CONSTITUTION: BEYOND THE UNITY OF *TOPOS-ETHNOS-NOMOS*

Imaginaries are both constituting and constituted by society (Blumenberg 1985: 37). Political constitutionalism reveals the duality of social imaginaries as both produced by social systems and stabilising them from the outside. Constitutions are imagined as a constructed artifact typical of historical and social contingencies, yet they are also treated as a natural fact validated by the very existence of its polity. The social construction of legal constitution is thus paradoxically imagined as a natural core of society (Giudice 2020).

Political constitution evolving through structural coupling between the systems of positive law and politics is a strong imaginary of legitimate government itself because of the generally shared belief that legality is the most efficient tool of limiting government and its political power as much as granting citizens their freedom and rights. The very idea of popular self-government and laws expressing the people's collective will and shared values draws on the imaginary of society as unity defined by legal rights and guaranteed by political force.

The constitution of society as one polity defined by the unity of *topos-ethnos-nomos*, that is the unity of territory, people and their laws, informed the rise of modern nations and nationalisms as much as constitutional democratic statehood and its liberal and republican regimes. Society imagines its collective self through the imaginary of legal constitution as expression of unity, commonality and meaningful existence. This imaginary of unity still persists in the current globalised society.

However, the imaginary of polity as one nation living on a given territory under the constitutional rule of law includes the problem of legitimation of legality itself which cannot be answered by exclusive reference to the systemic operations and efficiency of law and politics. Constitutions, therefore, internalise other imaginaries and knowledge regimes as background power of their societal operations to stabilise their legitimation by social and moral plurality, administrative steering, economic prosperity and social justice.

This co-dependence of the imaginary force of constitutions and their legitimation by non-legal social imaginaries is associated with but not limited by the modern constitutional state. Some imaginaries easily evolve beyond and independently of the classic constitutional imaginary of polity as the unity of topos-ethnos-nomos. Market spontaneity and performativity of economic constitutionalism is easy to imagine in the context of European and global constitutionalism. The same can be said about social steering of constitutionalism by administrative governance and reason. On the other hand, the politically mobilised democratic community, so easily imagined and

politically used and abused within the structures of modern nation-states, is harder to constitute at supranational and transnational levels.

The post-1945 history and general process of European integration and its legal and political forms thus offer a unique opportunity to study constitutional imaginaries beyond structural and semantic limitations of the modern nation-state and its imaginary unity of topos-ethnos-nomos. Like the modern nation-states, the history of transnational European integration has been informed by two general political goals, namely economic prosperity and social stability. These goals are formulated through imaginaries which are also typical of the nation-states, that is market as free exchange of mutual advantages and benefits, rights equally shared by their subjects and power democratically accountable and operating and conditioned by the public sphere.

However, these typically modern liberal imaginaries cannot be simply translated from the nation-state to the transnational supra-state constitutional structures of the EU which are expected to be socially and morally pluralistic, efficiently and rationally governed, economically prosperous and sufficiently democratised to challenge populist and illiberal responses to the European integration. The imaginaries of constitutional pluralism, administrative calculemus, economically prosperous imperium and the politically mobilised transnational democratic community, therefore, have evolved and operate as societal background power constituting and legitimising European polity.

These imaginaries are constituted by different social systems of administration, economy and politics and further transform and transvaluate the imaginary of political constitution beyond the classic unity of topos-ethnos-nomos. A study of constitutional imaginaries subsequently has to comprehend this transformation and transvaluation of the concept of constitution as much as validations of political constitutions by other social imaginaries and knowledge regimes. A social theory of constitutional imaginaries, therefore, moves from the question of *what* is the social self as constitutional polity to the question of *how* this imaginary of self as societal unity is constituted by different systems and their semantics.

V. IMAGINARIES AND SOCIETAL CONSTITUTIONALISM: A THEORETICAL PERSPECTIVE

As briefly demonstrated, the concept of imaginary is an intrinsic part of social philosophy and theory. Apart from Cassirer and Durkheim's legacies, it is particularly Charles Taylor who engaged in explorations of modern social imaginaries (Taylor 2004).

Normative theoretical and political claims and philosophical speculations are associated with the concept of imagination of *the world as it ought to be* while the sociological concept of imaginary describes *the world as it is* and signifies the specific semantics behind legitimation of existing practices, institutions and societal norms (Loughlin 2015; Přibáň 2018). Unlike the theorised and politically instrumentalised concept of imagination, social imaginaries, however, are neither practical, nor theoretical political constructs. They precede ideological practices and theoretical knowledge of the sociological or any other scientific imagination.

According to Taylor, they are 'common understanding that makes possible common practices and a widely shared sense of legitimacy' (Taylor 2004: 23). They, therefore, provide for meaning to whatever presents itself in society and thus constitute the imaginary order out of the semantic chaos.

A social theoretical inquiry into the imaginary constitution of political power and legal authority subsequently cannot be limited by either jurisprudential matters of legal principles and reasoning, or political matters of power institutions and constellations. It has to dig much deeper into the constitution of modern functionally differentiated society and its pluralistic value structures, unified only through the semantics of higher abstraction of imaginaries. It has to address the following questions: What enables the very process of legitimation of political power by legal rules? What background power operates in political constitutions and their legitimacy? What societal forces constitute the distinction between legitimacies and illegitimacies in law and politics?

I respond to these questions by arguing that constitutional imaginaries function as this societal force (*potentia*) behind political power (*potestas*) and legal authorisation (*auctoritas*). This approach uses different theoretical and methodological sources, especially the combination of Taylor's theory of social imaginaries and Luhmann's autopoietic social systems theory which inspired recent theories of societal constitutionalism, especially the theory of globally operating and fragmented societal constitutions elaborated by Gunther Teubner.

Luhmann's theory of autopoietic social systems showed that social subsystems are constituted by their self-referential constitution of internal meaning. Meaning became part of function. All subsystems of society, such as economy, politics, law, science, religion, and art, are normatively closed, self-referential and self-created – *autopoietic*. In this theoretical framework, society is constituted through autopoiesis of specific functionally differentiated systems. Law and politics perform only specific operations in this general self-constitution of society.

Luhmann famously criticised external and ultimate source of legal validity and reformulated the problem of legitimacy and the principle of justice as an intrinsic value (*Eigenvalue*) of the legal system manifested in its procedures, operations, internal coherence and, most importantly, efficiency as the internal criterion of legitimacy. According to him, justice is 'a contingency formula' and 'the concept of substantive justice … transforms a tautology into a sequence of arguments and makes something that is seen as highly artificial and contingent from the outside appear quite natural and necessary from the inside' (Luhmann 2004: 445).

The systemic semantics of validity by decisions means that the content of these decisions is indeterminate, but acceptable and validated through generalised 'dispositions of procedures' (Luhmann 1981: 122–50). Political values and principles of representative democracy and human rights are thus turned into internal operations of the constitutional system and, as long as constitutions are considered legally valid and their principles uncontested, no recourse to the idea of substantive political justice and legitimacy is needed and political values are treated as internal sources of the legal system.

According to this view, legitimacy by substantive values and justice is merely an externality of the system of positive law which has no effect on its functionality and

potential deficits. Legitimacy is generated through legal procedures and legal validity is secured through decisions made according to these procedures (Luhmann 1983: 28). Political principles and operations such as democratic will-formation, majority rule, constitutional separation of power, individual freedom, security and protection against the abuse of power and violence, are internalised by the system of positive law as procedures imposing constraints on arbitrary political decisions by virtue of their systemic operations and not by their principal nature and normative supremacy in a social and political order.

However, persistent and repetitive jurisprudential, political and public debates regarding constitutional principles, supra-legal values and their legal transvaluations also show that the systems of positive law and politics are expected to be meaningful beyond their function even if this meaning is impossible to achieve by rational consensus or intersubjectively shared experiences. This general expectation of meaning constituted by societal values and its change in the process of transvaluation of values is part of the imaginary self-constitution of society as one constitutional polity.

In this respect, Teubner's theory of societal constitutions represents an original reinterpretation of Luhmann's systems theory by expanding the concept of constitution into non-political systems, regimes and sectors of society. According to Teubner, polity and constitution are not merely political and legal concepts. They signify societal processes of systemic, sectorial, regime and organisational self-constitution. Instead of state-centred political constitutionalism, societal constitutionalism thus draws on a fragmented multiplicity of constitutions evolving in modern society beyond politics (Teubner 2012).

Another important hallmark of Teubner's societal constitutionalism is the epistemological shift from state hierarchies and authority-driven vertical forms of communication to horizontal relations between law and society. This shift has been inspired by Georges Gurvitch's perspective of the sociology of law as science studying the horizontal relations of law (Gurvitch 1947) to other social processes of norm making, the legal formalisation of informal and diffuse social norms, and the multitude of social normativities within the code of law (Teubner 1992).

Against Luhmann's concept of constitutions as organisations of structural coupling between politics and law using the primary coding of power and secondary coding of legality, Teubner argues that it is non-political societal constitutions which externally limit power operating in the systems of politics and law.

According to this view, it is necessary to look for the normative force in society and contrast it to other rules, principles and norms with their different regimes of validity and enforcement. Unlike Luhmann's procedural notion of legitimation, Teubner critically revisits the problem of legitimation but links the question of constitutional subjects to the self-constitution of the system's *episteme* as the source of the system's constitutional authority. This self-constitution includes the intrinsic political tension between the semantics and imaginaries of democracy and technocracy, respectively the public and expert reason.

If constitutional modernity means the differentiation of the economic, political and legal rationalities, part of which was the process of inventing the people as the imaginary subject of sovereign power (Morgan 1998), constitutional postmodernity of societal constitutionalism, according to Teubner, involves abandoning this

ultimate subject of politics and constituting non-human and non-political subjects imaginable as fragmentation and the plurality of knowledge regimes and networks within the system of global law (Teubner 2012: 71).

VI. CONCLUDING REMARKS: TOO MUCH POTENTIA, TOO LITTLE AUCTORITAS IN GLOBAL SOCIETAL CONSTITUTIONALISM

Teubner admits that democratic legitimacy and its deficits are 'the Achilles' heel' of transnational regimes and societal constitutionalism (Teubner 2018: 7). Addressing the 'universal core of democracy' (ibid: 11), he even argues that the conditions of global transnationalisation of law require a re-thinking and re-contextualisation of democracy including its relational aspect and self-identification of the authors of rules and decisions and those affected by them even if these new 'constituencies' and 'demoi' of transnational regimes are fluctuating and involve the affected outsiders as much as the corporate members in possession of expert knowledge which are 'the sources of regime authority' (Teubner 2018: 21).

Teubner's comment on democratic legitimacy as the Achilles' heel of transnational constitutionalism indicates a more general problem of global society that is the surplus of power and the shortage of authority. The absence of a global constitutional polity and its fragmentation into different subjects of the varied societal constitutions cannot obscure the fact that these constitutions are power organisations impossible to be exclusively legitimised by their social efficacy and steering capacity.

Using Unger's concept of 'institutional imagination' (ibid: 13), Teubner invites his reader to engage in the construction of new imaginaries of legal legitimation and authorisation suitable for transnational European and global law operating independently of the differences between international and transnational, public and private, or substantive and procedural law. However, Teubner's approach also shows that the theory of societal constitutions cannot ignore constitutional imaginaries of modern national and international politics and law and their potential to address legitimation deficits in globalised societal constitutionalism.

The power of expert knowledge is the source of authority in societal constitutions due to its ability to produce social norms and establish the conditions and criteria of efficient governance. The tension between democracy and technocracy in societal constitutions may be managed by internal constitutions of demoi with the potentia of dissent and its execution through the procedures of self-contestation.

The theory of societal constitutions, therefore, has to analyse not only power without legitimacy but also powerful imaginaries constituting the possibility of legitimation and the 'jurisprudence' of different knowledge regimes – economic, administrative, clinical, educational, scientific, digital etc (Foucault 2003: 36). Understanding this jurisprudence of different disciplines of knowledge assumes identifying and analysing their constitutional imaginaries evolving in different social systems and constituting new subjects of both political and societal constitutions.

The theory of societal constitutions and their jurisprudence of both legal and non-legal knowledge regimes must involve a genealogy of constitutional imaginaries and their legitimation potential. It has to take the opposite direction to the recent

sociological theories of legal pluralism and reflexive law promising to replace state law and formal institutions with civil society and informal networks. Power would not become more legitimate if it is constituted in the transnational private and public spheres of global society instead of coercive apparatuses of the nation-state and international organisations. The sheer number of books published on 'global transformations' of law, ethics, politics and society in the last several decades actually warns any researcher against hasty promises of new legitimation formulas evolving in this context.

Societal constitutionalism should not disconnect from the idea of sovereignty and territorial control only to reconnect with some reflexive ideas of the collective self-rule of the multitude and the plurality of political subjects constituted at global level. It is not subjects and their actions that constitute the subsystems of societal constitutions and legitimise their power because the subject is constituted by the system itself. Systems do not recognise subjects but produce them. New imaginaries of globally reflexive constitutional identities of the multitudinous self cannot fulfil the promise of substituting the reified essentialist images of nationhood and statehood and legitimise transnational polities by the contested collective identity because these contestations, rather than on the political will and subjects' actions, depend on the systemic rationality of transnational regimes.

The reflexive and differentiated images of demoi pushing back the expansive power of expert knowledge and conditioning it by the varied procedures of democratic legitimation are not enough for the legitimation of transnational societal constitutions. It, rather, is important to analyse how these constitutions manage to turn the affected populations into legitimate demoi and how they translate their specific expert knowledge to the generally shared rules and normative regimes.

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