

**RETHINKING THE CITY STARTING FROM THE CANADIAN
‘TAXPAYER TOWN HALLS’: TOWARDS THE INVOLVEMENT
OF A NEW CONSTITUTIONAL SPACE BEYOND DIGITAL
DIALOGUE?**

Giovanna TIEGHI¹

INDEX

1. GLOBAL LEGAL CHALLENGES AND THE ‘CITY ARGUMENT’

1.1. “Money Matters”. Starting from the Bottom: People Matter

**2. FROM RIGHTS AND FREEDOM TO THE CANADIAN TAXPAYER’S
RIGHTS: ATTEMPTS FOR UPDATED INTERGOVERNMENTAL
ARRANGEMENTS?**

*2.1. Cities’ Responsibilities through the Citizen-Taxpayer’s Involvement: The
Canadian ‘Taxpayer Town Halls’*

¹ *Adjunct Professor of ELP- Global English for Legal Studies – PhD in Constitutional Law, Department of Public, International and Community Law - Law School, University of Padua, Italy - Email giovanna.tiegghi@unipd.it. This paper arises from the remarks I delivered as invited lecturer at 2021 Massey Cities Summit/ Le Sommet Sur Les Villes, Toronto University, Toronto, Canada, on the topic “Constitutional Space for Cities”, on April 7, 2021 (at <https://www.masseycityessummit.ca/>), within Session no. 5: “Cities, Regionalism, Fiscal Responsibilities, and Intergovernmental Arrangements”.*

**3. USING FORUMS FOR INTERGOVERNMENTAL INTERACTION: FIRST
STEPS OF A NEW CITIES' CONSTITUTIONAL SPACE**

**4. CHALLENGING PRACTICES IN ACTION AND THEIR COMPARATIVE
LAW VALUE: INSPIRATION FOR AN UPDATED CITY-ORIENTED
DISCOURSE?**

**1. GLOBAL LEGAL CHALLENGES AND THE 'CITY
ARGUMENT'**

How to deal with today's city-driven society² is a concrete question for legal scholars. In addition to – and, day by day, versus - traditional state-centered thinking³,

² Ex multis: since the beginning, L. Mumford, *The Culture of Cities*, (San Diego: Harcourt Brace, 1938); M.P. Smith (ed.), *Cities in Transformation*, (Newbury Park, CA: Sage, 1984); E. Frug Gerald, *The City as a Legal Concept* (1980), in *Harvard Law Review* 93(6): 1053-1154; M. Loughlin, *Local Government in the Modern State*, (London: Sweet&Maxwell, 1986); W. Magnusson, *Metropolitan Reform in the Capitalist City*, (1981) 14:557-85, in *Canadian J. of Pol. Sc.*; W. Magnusson, *The Search for Political Space: Globalization, Social Movements and the Urban Political Experience*, (Toronto: University of Toronto Press, 1996). Lately: C. Poli, *Città flessibili. Una rivoluzione nel governo urbano*, Torino: instar Libri, 2009); F. Pizzolato, A. Scalone & F. Corvaja (ed.), *La città e la partecipazione tra diritto e politica*, (Torino: Giappichelli, 2019); G. F. Ferrari (ed.), *La prossima città*, (Milano: Mimesis, 2018); S. Bertuglia & F. Vaio, *Il fenomeno urbano e la complessità*, (Torino: Bollati Boringhieri, 2019).

³ For a critique to the state-centered outlook, see, ex multis: J. Bartelson, *The Critique of the State* (Cambridge: Cambridge University Press, 2001).

contemporary academics, government officials, ombudsmen, as well as lawyers, are requested to embrace a new intellectual skill and attitude useful, on the one hand, to better match the ‘city argument’ with law⁴ and, on the other hand, to constructively debate the future of an updated citizen-centered legal approach in the constitutional law field.

Considering global legal challenges, the role of the city needs to be evaluated in a distinctive comparative law perspective⁵: a stimulating, legal empirical way to face the ongoing debate about a target model of balanced Citizen-City/State relationship giving response, through the exploration of the untapped potentialities for local democracy, to the State-Local dichotomy⁶ and to ‘right to the city’ competing conceptions⁷. The ongoing process of reconsidering the

⁴ Recently, on the matter, and for a compelling outlook on “The programme of reflection: the city, the new frontier of administrative law”, see J.B. Auby, *La città, nuova frontiera del diritto amministrativo*, in F. Pizzolato, A. Scalone & F. Corvaja, (ed.), *La città e la partecipazione tra diritto e politica*, quot., 10 and from 19. More specifically, on the city as a legal concept and dimension, see F. Pizzolato, *La città come dimensione del diritto e della democrazia*, in F. Pizzolato, A. Scalone & F. Corvaja, (ed.), *La città e la partecipazione tra diritto e politica*, quot., 31-43. For future updated scenarios, see F. Pizzolato, G. Rivosecchi & A. Scalone, *La città oltre lo Stato*, (Torino: Giappichelli) upcoming ed.

⁵ “In other words, how can the comparatist reconcile the strongly national attitude of constitutional law with the end of boundaries fostered by globalization?”: A. Baraggia, *Challenges in Comparative Constitutional Law Studies: Between Globalization and Constitutional Tradition*, Special Issue – in *Comparative Law, Law and Method*, October 2017, 8.

⁶ From a state-local government perspective: R. Briffault, *Our Localism, Part II – Localism and Legal Theory*, (1990) 90:346-454, in *Columbia Law Review*.

⁷ H. Lefebvre, *Le Droit à la Ville*, (Parigi: Anthropos, 1968). Lefebvre conceived the *right to the city* as the right “to habitat and to inhabit. The right to the oeuvre, to participation

local scenario is presently emerging worldwide⁸. Specifically, in the context of an ongoing conceptualization of “smartness in government”⁹ a recent challenging alternative is to be evaluated as in the current digital era: not in opposition to different levels of government, but with the aim to construct an updated, bottom-up *legal paradigm* including the citizen – in its crucial role as taxpayer - and the effective value of his/her rights from a constitutional law perspective¹⁰. A changing path towards new constitutional forms of protections of local needs¹¹, preferences and, even, resources. A city-based oriented approach¹² clearly

and appropriation (clearly distinct from the right to property)”, in H. Lefebvre, *Writing on Cities*, (Oxford: Blackwell, 1996), 173-174. For the updated version on the outlook of the cities to be considered equivalent to the one related with the legal functioning of the whole society: J.B. Auby, *Droit de la ville. Du fonctionnement juridique des villes au droit à la ville*, (LexisNexis, 2013).

⁸ R. Hirschl, *City, State. Constitutionalism and the Megacity*, (New York: Oxford University Press, 2020).

⁹ J. R. Gil-Garcia, J. Zhang, G. Puron-Cid, *Conceptualizing Smartness in Government: An Integrative and Multidimensional View*, in *Government Information Quarterly*, 33(3)/2016.

¹⁰ G. Tieghi, *Taxpayer Rights: A Constitutional Perspective*, (2019) 3 *Federalism.it* 1-39.

¹¹ Recently, R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, from 431, in J. B. Auby (directed by), *Le Futur du Droit Administratif/The Future of Administrative Law*, (Lexis Nexis, 2019).

¹² P. Van Waart, I. Mulder, C. De Bont, *A Participatory Approach for Envisioning a Smart City*, in *Creativity and Innovation Management*, 23(2)/2014.

recognized, today, in the constitutional traditions mentioned in the preamble of the Charter of Fundamental Rights of the European Union¹³, so as to include the *smartness*¹⁴ paradigm in the local constitutional outlook and practices.

The fundamental assumption proposed is, thus, that the issue must be globally faced as it ranges across topics such as local government – with the dawn of smart city law¹⁵ - , democratic theory, governmentality and constitutional comparative law¹⁶. That means,

¹³ On the matter, from an administrative law perspective: R. Cavallo, G. M. Racca, *The Plurality and Diversity of Integration Models: The Italian Unification of 1865 and the European Union Ongoing Integration Process*, in D. Sorace, L. Ferrara & I. Piazza (ed.), *The Changing Administrative Law of an EU Member State*, (Cham: Springer; Torino: Giappichelli, 2021).

¹⁴ “The word ‘smart’ implies choosing between at least two possible meanings. Actually, being ‘smart’ either means finding rational and optimal solutions or discovering the different types of intelligence existing in a given context. In this second perspective, it is clear that the adjective ‘smart’ qualifies the noun ‘city’ as a clever attempt to identify the intelligences which, within the context in question, can be systematised in a certain order”: R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 431.

¹⁵ For significant, updated insights and a multifaced perspective see the variety of papers in J. B. Auby (directed by), *Le Futur du Droit Administratif/The Future of Administrative Law*, quot., within the Chapter entitled *Villes (Intelligente)/ (Smart) Cities*, 325-342.

¹⁶ Burchell, Grajam, C. Gordon & P. Miller, *The Foucault Effect: Studies in Governmentality*, (Chicago: University Chicago Press, 1991); D. Mitchell, *Governmentality: Power and Rule in Modern Society*, (London: Sage, 1999).

primarily, considering the citizen – and the place where he/she lives¹⁷ - as a crucial part of the so-called *glocal* process¹⁸; secondly, in terms of citizen’s liberty, which “depends on taxes”¹⁹.

In the context, no doubt legal and tax experts are to face a further issue in the present technology-driven society. Contemporary lawyers, government officials, ombudsman and taxpayer advocates, as well as academics, are requested to embrace a new skill useful, on the one hand, to better match digital technology with law and, on the other hand, to debate the future of legal approach in the tax field. And cities are involved as well, being the citizens the ITC users: they are the recipients of the city services and can thus positively contribute to the improvement of governance exploiting increasingly updated and effective tools.

¹⁷ Dreier, Peter, J. Mollenkopf & T. Swanstrom, *Place Matters: Metropolitcs for the Twenty-First Century*, 2nd ed (Lawrence: University Press of Kansas, 2001).

¹⁸ As to the expression “glocalization”, by Z. Bauman, *Globalizzazione e glocalizzazione*, (Roma: Armando ed., 2005). On the matter, also, G. Tieghi, *Città, diritti umani e tutela glocal*, (2019) 2 federalismi.it – Focus Human Rights; M. Shamsuddoha, *Globalization to Glocalization: A Conceptual Analysis*, (December 29, 2008), available at SSRN: <https://ssrn.com/abstract=1321662> or <http://dx.doi.org/10.2139/ssrn.1321662> .

¹⁹ “Public policy decisions should not be made on the basis of some imaginary hostility between freedom and the tax collector, for if these two were genuinely at odds, all of our basic liberties would be candidates for abolition”: S Holmes & Cass R. Sunstein, *The Costs of Rights. Why Liberty Depends on Taxes*, (NY-London: W.W. Norton & Company, 1999), 31; G Tieghi, *Fiscalità e diritti nello Stato costituzionale contemporaneo. Il contribuente partner*, (Napoli: Jovene, 2012).

What kind of implication for the democratic theory²⁰? How about the role of the city and the topic of urban citizenship as issues of deliberative participation²¹? How to consider the need – and risks - of interaction²² between contemporary States and their urban civil societies?

1.1. “Money Matters”. Starting from the Bottom: People Matter

A recent debate on the topic *Cities, Regionalism, Fiscal Responsibilities, and Intergovernmental Arrangements* started from a crucial assumption: “Money matters”²³. But we should add: People matter. And each dimension – specifically the foundational fiscal

²⁰ The debate on the matter is particularly deep and offers interesting insights on democratic legitimacy: “(...) The democratic legitimacy of municipalities requires redesigning the participatory processes in order to foster community engagement and make citizenry the architect of collective life. Within such a process, the smart city can contribute offering one of the most striking examples of data processing to be undertaken as an ordinary and necessary activity while developing a bottom-up process that has to be transparent”, in R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 434.

²¹ G. Tieghi, *Autonomia e partecipazione: ‘laboratori di democrazia’ per un rinnovato ‘right to experiment’?*, (2019) 3 Rivista AIC, 485.

²² J. Morison, *Citizen Participation: A Critical look at the Democratic Adequacy of Government Consultations*, in *Oxford Journal of Legal Studies*, 2017, 37 (3).

²³ Massey Cities Summit, Session no. 5: “*Cities, Regionalism, Fiscal Responsibilities, and Intergovernmental Arrangements*” (at <https://www.masseycitysummit.ca/conference-recap-day-2>).

policy²⁴ - contributes to the understanding and the development of *smart governments*. “What is evident”, has been recently underlined, “is that we urgently need to bridge the gap between smart city discourses and the reality of everyday life in cities for millions of people”²⁵.

This paper adopts a comparative perspective starting from the Canadian case: concentrating on the role of cities (as drivers of change), with a peculiar focus on the role of the citizen, the people and their connections with the institutional/fiscal arrangements and responsibilities, the proposal is for a citizen-centered outlook. It reveals a potential spot of other perspectives primarily centered on policy structure: the citizen has thus to be conceived as a crucial part of the *glocal* process especially in terms of the citizen’s liberty, which “depends on taxes”²⁶. As such, emphasizing the relationship between democracy and fiscal policy: in other words, revitalizing the importance of democratic deliberation in municipal fiscal policy also as a standard of updated smartness. “If we, as citizens, are included in the data flows of contemporary cities, but”, and that’s the point, “excluded from shaping, questioning or

²⁴ G. Tieghi, *A Human Rights-based Model Enhancing Comparative Law Methodology in the Tax Field*, in DPTI, n. 2/2018, Vol. XV; *Taxpayer and Human Rights: The Taxpayer Advocate and the Challenge of Contemporary Democracies Towards New Constitutional Forms*, in Dir. pubb. comp.eur., n. 4/2014.

²⁵ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, in *Etica & Politica/ Ethics & politics*, XXII, 2020, 2, 34.

²⁶ The main issue is to start evaluating the foundational role of financial resources and their link with constitutional values: “Liberty has little value if those who ostensibly possess it lack the resources to make their rights effective. (...) Only liberties that are valuable in practice lend legitimacy to a liberal political order”, in S. Holmes & Cass R. Sunstein, *The Costs of Rights. Why Liberty Depends on Taxes*, quot., 20. And again: “To the obvious truth that rights depend on government must be added a logical corollary, one rich with implications: rights cost money”, quot. at 15.

critiquing them, or if we have no understanding of how the production logics and techniques of data driven optimization and prediction work, or if we have no say in the decisions controlling what is optimized and who it is the optimized for, are we in fact losing control of our data, being disempowered and socially excluded?”²⁷ The question is crucial.

The democratic side of municipal fiscal policy, indeed, as properly underlined, retrospectively raises issues about the theme of equalization policy²⁸. Issues precisely related to some sort of ‘models of equalization’ that could better support the recognition of regional or national interdependencies. Target of municipal autonomy and exploration of alternative avenues in current intergovernmental arrangements can be pursued to protect cities’ ability to carry out their functions in an effective – and smart – way, dealing with potential solutions to the existing fiscal imbalances. To readdress the issue two premises can be suggested: on the one hand, the concept of ‘Equalization’ to be investigated not just in connection with

²⁷ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 36.

²⁸ I deeply thank prof. Daniel Béland, Director of the McGill Institute for the Study of Canada, Department of Political Science, McGill University for his precious comments, insights and productive suggestions, special guest of the Session no. 5. Especially, as regards some confrontational and provocative questions shared during the conference: “Is democracy necessarily favorable to horizontal fiscal redistribution or can citizens living in wealthier areas of the city or the country use deliberative mechanism to reduce such redistribution to their advantage? In the municipal context, is more democracy necessarily favorable to redistribution?”. Not last, his foundational work on the matter, D. Béland & A. Lecours, *Canada’s Equalization Policy in Comparative Public Perspective*, IRPP Insight 9 (Sept. 2016). Montreal: Institute for research on Public policy.

shared-cost programs²⁹ or shared prosperity³⁰ but, rather, as a shared accountability path, a fiscal exchange where local autonomy, participation and fiscal fairness are balanced; on the other hand, a shift from the ‘*cities’ equalization*’, based on financial solidarity, to the ‘*cities’ valorization*’ (i.e. citizens’ valorization’) in the way it includes pluralism and a realistic view – aimed to combine unity, autonomy and participation. In this direction recent efforts of the Italian Constitutional Court³¹ have clearly highlighted the positive value of differences.

While local government practices have the potential to transform the action of National Governments and the way academics think and teach, experimental studies focus on the impact of the foundation of taxpayer rights in human rights. Which means questioning the use of indicators and standard-setting processes to measure the effective protection of the

²⁹ See, specifically, on the matter, the interesting study of M. Janigan, *Cities and Equalization*, Presentation and research like *The Art of Sharing: The Richer versus the Poorer Provinces since Confederation* (Montreal & Kingston: McGill- Queen’s University Press, 2020).

³⁰ See R. Poirot and his studies on the metropolitan equalization schemes and implications.

³¹ About cities – not just states – as laboratories of democracies, and for an effective attempt to revitalize the nexus between unity and pluralism to face not just different level of autonomy but, rather, territorial economic asymmetries, see the Italian constitutional court decision June 25, 2015, no. 118 which recognizes the consultive referendum consistent with the constitutional principles and with the prerogatives of the national State. A way to include the citizen-taxpayer in the devolution issues concerning the recognition of specific – i.e. differential – forms of autonomy for a Region, Veneto, and its cities, demanding to apply their constitutional prerogatives starting from their financial status. On the matter, see: M. Bertolissi (ed.), *Regione Veneto 1970-2020. Il futuro estratto dai fatti*, (Marsilio, Venezia), 2020.

citizen-taxpayer's rights. What is crucial on a constitutional law ground, is that those international studies are simultaneously decisive, more broadly, to provide a citizen-oriented policy based on democratic principles which can support the City-thinking as a special habitat, basically, for human rights³².

These studies have a remarkable impact and an incredibly incisive influence for the construction of a city-centered thinking aimed to localize democracy properly. And that is specifically emphasized especially in times of crises. A Rights-based approach applied to the tax field has become epidemic and expanding since the last decades of last century with the enactment of the first Taxpayer Rights Legislations and Charters all over the world (civil-common law jurisdictions). What today is considered as “undeniable”, like “the relationship between Human Rights and Taxation”³³, is the outcome of very recent trends and studies aimed to recognize the influence of human rights on tax relationship³⁴. New best practices and challenging platforms to monitor developments concerning the effective protection of citizen-taxpayers' fundamental rights in the world (i.e., lately, the Observatory on the Protection of Taxpayers' Rights, IBFD³⁵) have served to take a turn in this direction: the turn now has to be implemented looking at cities as the modern, effective local environment where democratic practices can help to reinforce, through the revitalization of the old ideal of town

³² G. Tieghi, *Human Rights Cities: lo Human Rights-Based Approach per la Governance locale*, (2019) 3 *DPCE Online*. 1933; M. Bertolissi, *L'habitat della democrazia*, in F. Pizzolato, A. Scalone & F. Corvaja, *La città e la partecipazione tra diritto e politica*, quot., 21-30.

³³ IBFD Report, April 2018, 4.

³⁴ G. Tieghi, *A Human Rights-based Model Enhancing Comparative Law Methodology in the Tax Field*, in *DPTI* (2018) 2 Vol. XV, 408.

³⁵ OPTR, at <https://www.ibfd.org/Academic/Observatory-Protection-Taxpayers-Rights>.

meeting as a touchstone, the conception of contemporary democracies as republican models of authentic institutional dialogue³⁶.

This paper examines that further step forward, questioning the effective application of the citizen's human freedom and dignity in the constitutional field as a new paradigm of comparative law methodology, including the challenges of the city comparative law perspective, even considering the implementation of technological tools. While digital technologies have the potential to transform the way public authorities operate and take their decisions (more often on algorithmic processing of digital data³⁷), experimental studies focus on the impact of the foundation of taxpayer rights in human rights including the new technological scenario³⁸. That implies the questioning of the use of indicators and standard-setting processes to measure the effective protection of taxpayer rights – valorizing the municipal perspective - and to provide a customer-oriented policy.

³⁶ G. Tieghi, *Ripensare la Repubblica tra partecipazione e dibattito pubblico locale: 'If we can keep it'*, in M. Bertolissi (ed.), *Regione Veneto 1970-2020. Il futuro estratto dai fatti*, quot., 499.

³⁷ On the “algorithm government” and its critical implications on the need of consultations and even politics “or, in other words, a government without politics”, see R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 433-434.

³⁸ On the matter, see the 4th *International Conference on Taxpayer Rights*, Center for Taxpayer Rights, on *Taxpayer Rights in the Digital Age: Implications for Transparency, Certainty, and Privacy*, Minneapolis, Minnesota, USA, May 23-24, 2019, at <https://www.taxpayerrightsconference.com/2019-archive/2019-conference-materials-minneapolis-minnesota-usa/>.

Will that prove a fundamental good local governance reform to bridge the citizen's rights from fundamental (Human) rights indicators to an updated set of rights useful to come to terms with the top-down command-and-control³⁹ uniformity and steer clear of sovereign solutions? How to overcome the unquestionable weak points inherent to the current shift from the traditional state-centered approach to a city-tailored method of democratic performance? Is that a matter of application of theoretical assumptions or of a long-term institutional approach? And, for the purpose: how about the Canadian experience within the framework defined? Are there any recent inputs and practices which lead to rethink the city's rights and responsibilities in the modern, digital era and can also have a comparative law value or, at their best, can prove the reflection of other foreign democracies' theoretical and/or experimental studies?

2. FROM RIGHTS AND FREEDOM TO THE CANADIAN TAXPAYER'S RIGHTS: ATTEMPTS FOR UPDATED INTERGOVERNMENTAL ARRANGEMENTS?

³⁹ On "The distinction between control and consent" and its importance "to several recent incentives towards the creation of smart cities" see the interesting analysis which affirms that "pervasive interlinking of surveillance, computational processing, and virtual databases into the physical structure of cities (...) is only legitimate if citizens can, both politically and in individual encounters, can be said to have 'consented' to it. (...)": R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 433, footnote no. 13.

Within the general framework of the rights discourse, the Canadian official set of rights (from the 1977 Canadian Human Rights Act⁴⁰ and the Canadian Constitution Act with the 1982 Charter of Rights and Freedom⁴¹, to the 1985 Declaration of Taxpayer Rights⁴² released by the Canadian Revenue Agency - CRA) and, above all, the operational role of the Canadian Taxpayers' Ombudsman (Office of Taxpayer's Ombudsman - OTO)⁴³ have started contributing to a renewed public debate maximizing the local component and, consequently, emphasizing the governors-governed democratic nexus. Contemporary attempts to shift the institutional state-centered paradigm towards a constitutional space for cities starting from a dialogical/dialectic constitutionalism?

The need to amend the worldwide institutional paths of communication calls for the development of an updated theoretical framework for the new nexus between cities and national governments, including the smartness perspective. However, some compelling questions are emerging: in the global era, where international networks seem to drive economic and legal markets, is the institutional dimension to include or exclude the human-

⁴⁰ The Canadian Human Rights Act R.S.C., 1985, c. H-6, at <https://laws-lois.justice.gc.ca/eng/acts/h-6/page-1.html>. K Kirkup, "The Canadian Human rights Act" (2018), <https://www.thecanadianencyclopedia.ca/en/article/canadian-human-rights-act>.

⁴¹ Official version at <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/>.

⁴² As regards the official text of the Canadian Taxpayer Bill of Rights, see <https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/taxpayer-bill-rights.html>. For a relevant analysis on the matter: L. Jinyan, *Taxpayers' Rights in Canada*, in D. Bentley (eds.), *Taxpayers' Rights. An International Perspective*, (Adelaide: Hyde Park Press, 1998), 89; SA. Butler, *Charter Challenges to Income Tax provisions, The report of Proceedings of the Forty-Sixth Conference, 1994 Conference report* (Canadian Tax Foundation, 1995).

⁴³ OTO, at <https://www.canada.ca/en/taxpayers-ombudsperson.html>.

behavioral pattern as part of a democratic process? In other words, how about the complex area of communication related to personal emotions, feelings and citizens' rights and expectations?

The field outlines the potentialities of institutional dialogue and supports the removal of the rational assumption from the law. Can we really assume the dialectic feature of the legal conversation to be totally substituted by technology or national data interpreting the vital differences as a useful and reliable source of legal certainty? How about the role of citizens' needs and preferences - and their link with the real local context they live - in legal discourse? This paper includes the above questions and assumptions as basic premises to provoke a more concrete discussion on the crucial issue of the role of *dialogue as an experimental source of law* for contemporary democracies. Not just considering the constitutional justice ground as a privileged perspective of judicial constitutionalism⁴⁴ but, even – and more empirically - the broader institutional environment of federal and regional jurisdictions with their historical efforts to appropriately balance pluralism with unity⁴⁵.

The proposed founding theoretical justifications are, on one hand, the so-called theory of the 'invenzione del diritto' (from the Latin word *inventio* which means "invention" or "discovery"), a method pursuing the substantial value of the law flowing directly from the society, to investigate bringing out the "constitutional dimension of coexistence" - as explained by Paolo Grossi, the former Chief Justice in the Italian Constitutional Court⁴⁶ -; on the other hand, the theory of communicative action supporting the constitutional discourse

⁴⁴ G. Tieghi, *Diritto, esperienze comunicative*, Questioning: *nuovi itinerari di Giustizia costituzionale?*, (2020) 14 *Federalismi.it*.

⁴⁵ As regards Canada: Tindal, C. Richard & S. N. Tindal, *Local Government in Canada*, sixth ed. (Toronto: Nelson Thomson, 2004); Young, I. Marion, *Justice and the Politics of Difference*, (Princeton Nj: Princeton University Press, 1990).

⁴⁶ P. Grossi, *L' invenzione del diritto*, (Bari-Roma: Laterza, 2017), 71.

theory by J. Habermas⁴⁷. Both are emphasized by a diachronic comparative citizen-centered outlook which finds its roots in the Roman tradition⁴⁸ where the community is *civis*-oriented for the common interest.

These substantive constitutional approaches find an unexpected modern application at international, comparative level and reveal the contemporary institutional attempt to overcome the gap between norms and facts in the specific field of the relationship between State and citizens, especially if we look from the fiscal responsibility perspective.

They enhance the chances to disclose the potentialities of the communicative power giving strength – and normative effectiveness - to a more updated comparative, constitutional outlook where the global environment appears, for itself – and even if just from a merely formal, legal and fiscal approach to be the proper answer to manage daily conflicts among current institutional actors.

⁴⁷ J. Habermas, *Teoria dell'agire comunicativo*, (Bologna: il Mulino, 1986); J. Habermas, *Etica del discorso*, (Roma-Bari: Laterza, 2009); J. Habermas, *Solidarietà tra estranei. Interventi su "Fatti e norme"*, (Milano: Guerini e Associati, 1997).

⁴⁸ For an interesting analysis on the republican tradition and its Roman origin and character (...) see P. Pettit, *Il repubblicanesimo. Una teoria della libertà e del governo* (Milano: Feltrinelli, 2000), from 334. The author explains that the three fundamental ideas of this Roman tradition are: a conception of freedom as a non-domain; the idea that freedom as a non-domain requires a constitution that directs the political community towards the common good; and the conviction that certain institutional forms – namely those characteristically Roman – must in some way be part of such a constitution. Freedom in this specific sense is the condition enjoyed by an individual when no one imposes himself as a master (...). On the matter, also U. Vincenti, *Law Roman*, translated by Glenn W. Most, in A. Grafton, G. W. Most & S. Settis (ed.), *The Classical Tradition* (Cambridge, Massachusetts, and London, England: The Belknap Press of Harvard University Press, 2010).

Looking at real experiences in contemporary democracies, some risks and limits have to be underlined especially as regards the hardship in balancing rights and responsibilities.

2.1. Cities' Responsibilities through the Citizen-Taxpayer's Involvement: The Canadian 'Taxpayer Town Halls'

Using the ancient idea of town meeting as a touchstone, the Canadian OTO has recently emphasized the potentialities of cities focusing on transparent and public dialogue. The basic constitutional statement appears to be the process of reciprocal improvement and learning – which took modern features with the historical British 1647 Putney debates⁴⁹ - to realize an effective 'democratic self-government'⁵⁰. This is a concept, investigated by the current literature with a new outlook⁵¹, to capture the workings of these local actors considering that "the change itself does not happen on international level, but on local

⁴⁹ M. Bertolissi, *Fiscalità Diritti Libertà. Carte storiche e ambiti del diritto costituzionale*, (Napoli: Jovene, 2015, 39).

⁵⁰ It is the logic according to which "institutions must be created that make self-government possible and stable, and that tend to produce for citizens lives worthy of being lived": C.R. Sunstein, *A cosa servono le Costituzioni. Dissenso politico e democrazia deliberativa* (Bologna: il Mulino, 2009), ix, (Italian version of *Designing Democracy: What Constitutions Do* (Oxford: Oxford University Press, 2001)).

⁵¹ Especially, on the matter, W. Magnusson, *Local Self-Government and the Right to the City*, (Montreal: McGill Queens Univ, 2015). And before, by the same author: *Protecting the Right of Local Self-Government* (2005) Can. J. Pol. Sc./ Revue Canadienne de Science Politique, 879.

level”⁵²: that turns out to be the so-called *regulatory conversations*. Introduced some years ago, regulatory conversations are proposed “as a tool to understand the workings of local regulation, the area where both convergence and divergence are evident”⁵³.

Their application in the tax field is supported by the *responsive regulation* theory⁵⁴. The impact of the *responsiveness* tool – as a democratic ideal⁵⁵ - on the constitutional role of cities has a double, significant implication: on one hand, it fosters a compelling “conversation about what is being done to that person and why it is being done”⁵⁶; on the other hand, it creates a link with the *circular theory of democratic accountability* aimed to focus on “building one another’s capacity to responsively serve human needs”⁵⁷ which means “responsiveness to the

⁵² U. Larsson-Olaison, *The Convergence and Divergence Debate: A Regulatory Conversations Perspective*, (2011) 8,4, *Corporate Ownership & Control*, 320.

⁵³ U. Larsson-Olaison, *The Convergence and Divergence Debate: A Regulatory Conversations Perspective*, quot.

⁵⁴ V. Braithwaite, *Responsive Regulation and Taxation: Introduction*, (2007) vol.29, no.1, *Law & Policy* 1.

⁵⁵ And, thus, as an effectiveness ideal, see J. Braithwaite, *Responsive Regulation and Developing Countries* (World Development, Elsevier Ltd., 2006) vol. 34, no.5.

⁵⁶ N. Olson, *Taking the Bull by Its Horns: Some Thoughts on Constitutional Due process in Tax Collection* (2010) Westlaw, *Tax Lawyer* vol. 63, American Bar association, 2.

⁵⁷ “If we believe that democracy is fundamentally an attribute of states, when we live in a tyrannous state or a state with limited effective capacity to govern, we are disabled from building democracy – we are simply shot when we try to, or we waste our breath demanding state responses that it does not have the capacity to provide. But when our vision of democracy is messy – of circles of deliberative circles”, and that’s the point, “there are many

complex texture of social life”⁵⁸. The basic common ground is the idea that governments ought to be “responsive to the conduct of those they seek to regulate in deciding where a more or less interventionist response is needed”⁵⁹.

This perspective considers the values and the potentialities of the citizen-oriented conception of law – to be included in the Charters of Rights and even Taxpayer’s Rights Declaration - “as a ‘constitution’ which enables the life world to more effectively deliberate solutions to problems that are responsive to citizens”⁶⁰. The recent Canadian ‘Taxpayer Town Halls’ seem to attempt to embrace that challenge, also beyond the law, testing the constitutional status of the single citizen (as well as the non-technological citizen) as the crucial and effective representative of the municipal community.

kinds of circles we can join that we believe actually matter in building democracy”. On these premises, the author underlines democracy is not “something we lobby for as distant utopia when the tyrant is displaced by free elections”; it is “something we start building as soon as we join the NGO, practice responsively as a lawyer, establish business self-regulatory responses to demands (...), educate our children to be democratic citizens (...)”: J. Braithwaite, *Responsive Regulation and Developing Countries*, quot., 886.

⁵⁸ P. Selznick, *The Moral Commonwealth: Social Theory and the Promise of Community*, (CA: University of California Press, 1992), 470.

⁵⁹ I. Ayres & J. Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: oxford University Press, 1992), 20.

⁶⁰ J. Habermas, *The Theory of Communicative Action*, vol.2, *Lifeworld and System: A Critique of Functionalist Reason* (Boston: Beacon Press, 1987).

For the 10th anniversary of the institution of the Canadian Taxpayer Ombudsman the former TO – before the appointment of the new Taxpayers’ Ombudsperson last October⁶¹ - required a number of taxpayer town halls⁶² to provide information on taxpayers’ rights and to discuss Canada Revenue Agency service issues with taxpayers. Four Town halls meetings with more than ten communities, starting from Ottawa, invited local residents, elected officials and community leaders to address tax related issues. An “open and respectful dialogue” “up against the wall”⁶³ and the OTO commitment “to continuing to create opportunities to meet with individuals and groups across the country to get a firsthand account of service-related tax issues and to share information on service rights and the resources available when they face these issues with the CRA”⁶⁴.

In arguing for an interpretative responsibility for effective and taxpayer-tailored tax administration, the local town halls experience seems to explore challenging practices in action which can pragmatically support, through a proper use of places and methods of communication, a new paradigm of intervention by institutional actors and, specifically, by TAs, in their role of ‘voice of the citizens-taxpayers’⁶⁵. The aim is to define a new

⁶¹ Canada Revenue Agencies, *New release: Oct. 1, 2020, The Minister of National Revenue announces the appointment of a new Taxpayers’ Ombudsperson*, at <https://www.canada.ca/en/revenue-agency/news/2020/09>.

⁶² The Canadian Bar Association, *Taxpayers invited to discuss CRA service issues with the Ombudsman*, August 22, 2018, at <https://www.cba.org>.

⁶³ OTO Annual report 2018-2019, *Breaking Down Barriers to Service*, 10.

⁶⁴ OTO Annual report 2018-2019, *Breaking Down Barriers to Service*, 12.

⁶⁵ G. Tieghi, *Taxpayer and Human Rights: The Taxpayer Advocate and the Challenge of Contemporary Democracies towards New Constitutional Forms*, (2014) IV Dir. Pubb. Comp. Eur. ederalism.it, 1475-1488.

institutional/fiscal-exchange pattern between tax agency and the taxpayer with broader implications on the constitutional ground: it serves to overcome the inadequacies of contemporary democracies – most of them caused by an inappropriate command and control approach, instead of a cooperative one in the sense of (tax) compliance – and to include the local dimension within the legal discourse. The mission of “Listening to those we serve”⁶⁶ and the rethinking of the “right to be heard” have to be contextualized facing “Transformation through Disruption”⁶⁷. Again, through “Meetings”, beyond memos.

The limit is clear especially in times of crisis, when aiming to converge good governance and legal remedies, with the citizen’s demands and expectations: they have to be placed in the context of solutions to the nodes of institutional disfunction - and their operational implications considering the decision-making level - within a human- constitutional context. The Canadian city forums, benefiting from the advanced previous US experience of the ‘Special Public Forums on Taxpayer Needs and Preferences’⁶⁸, reflect the worldwide ongoing process of localizing democracy⁶⁹ trying to face two specific challenges: to better

⁶⁶ OTO Annual report 2018-2019, *Breaking down Barriers to Service*, from 11.

⁶⁷ In line with the title of the OTO Annual report 2019-2020, *Transformation Through Disruption*, delivered last June 2020.

⁶⁸ The *Special Public Forums on Taxpayer Needs and Preferences* planned in 2016 by the former U.S. Taxpayer Advocate (NTA), Nina Olson. “I and my small team”, she underlined, in the Preface of the *NTA Fiscal Year 2017- Objectives Report to Congress – Volume One*, June 2016, “have been welcomed into communities large and small; our Congressional co-hosts were actively engaged in the planning and promotion of the Forums as well attending and participating in them”, at www.taxpayeradvocate.irs.org/Media/Default/Documents/2017-JRC/Preface.pdf, 1.

⁶⁹ G. Tieghi, *Ripensare la Repubblica tra partecipazione e dibattito pubblico locale: ‘If We Can Keep it’*, quot.

reply to citizen's demands and to foster cooperative measures to facilitate communication and government-citizen interaction⁷⁰.

Can dialogue be considered an experimental source of law helpful to define a new cities' constitutional space and, even, to build a city smart network inside - and beyond - the State? To be taken into consideration is the objective assumption that "(...) while cities may be planned from above, they are experiences and lived from below, from the interactions of citizens, from the interplay of formal and informal structures and a myriad of practices"⁷¹. Practices, where the dialogue is shaped.

3. USING FORUMS FOR INTERGOVERNMENTAL INTERACTION: FIRST STEPS OF A NEW CITIES' CONSTITUTIONAL SPACE

Revitalizing old democratic practices in the emphasis of the *discourse* element as the key paradigm to reinsert the *moral discourse* into the institutional process, multiple implications (theoretical and operational) have to be considered and investigated from a 'glocal' perspective: the contribution of the communicative action supporting the

⁷⁰ "Municipality delegitimization requires redesigning participatory processes and making them more appealing in order to foster community engagement while counteracting a decline in trust in the public administration. That way", the authors underline, "citizens may become the makers of their collective life, thus transcend ordinary roles in society": R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 435.

⁷¹ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 35.

constitutional discourse theory by Habermas⁷², the attempt to build dynamic Human Rights Cities (Goal 11, 2030 Sustainable Development Agenda – UN 2015)⁷³, the revisited nexus between taxation and the Sustainable Development Agenda⁷⁴, the renewed role of the Ombudsman as the crucial actor of an “open Government” (OECD Recommendations 2018)⁷⁵ and the Declaration of Cities Coalition for Digital Rights “to protect and uphold human rights on the internet at the local and global level”⁷⁶.

The final aim involving cities as the relevant subjects in the institutional arrangement is to promote the relationship between participatory democracy and human rights, as well as between rights and resources⁷⁷. The new belief is connected with the idea that “human rights

⁷² From a constitutional justice perspective, see G. Tieghi, *Diritto, esperienze comunicative, Questioning: nuovi itinerari di Giustizia costituzionale ?*, quot.

⁷³ G. Tieghi, *Human Rights Cities: lo Human Rights-Based Approach per la Governance locale*, quot.

⁷⁴ The first Global Conference on the issue “relationship between taxation and the achievement of the UN’s Sustainable Development Goals (SDGs)” took place in New York: Taxation&SDGs, *First Global Conference of the Platform for Collaboration on Tax*, February 14-16, 2018, NY Conference Report, at <https://www.oecd.org/tax/tax-global/first-global-conference-of-the-platform-for-collaboration-on-tax-february-2018.pdf>.

⁷⁵ OECD Working Paper on Public Governance, No. 29, *The Role of Ombudsman Institutions in Open Government*, at <https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>.

⁷⁶ *Declaration of Cities Coalition for Digital Rights*, Premises, at https://citiesfordigitalrights.org/assets/Declaration_Cities_for_Digital_Rights.pdf.

⁷⁷ That is from the core meaning of human rights (HR) and taxpayer rights (TR), and

principles such as privacy, freedom of expression and democracy must be incorporated by design into digital platforms starting with locally-controlled digital infrastructures and services”⁷⁸. Specifically, article 4 on Participatory Democracy, Diversity and Inclusion states a principle to be considered as a relevant trend: “(...) everyone should have the opportunities to participate in shaping local digital infrastructures and services and, more generally, city policy-making for the common good”. The “*participation in shaping* local (..) services” creates a crucial stimulus for enhancing the effective smartness of a local government in the perspective here supported: the one including the social dimension of cities within the smart city paradigm⁷⁹. A way to avoid the risks of the emptying of the civic empowerment⁸⁰ which is a key tool of updated participatory trends for smart cities?

aims to define how to assure “the core principle of *respect* for taxpayer rights” with a service-oriented approach towards the taxpayer as a person: U.S. NTA, *Written Testimony, Statement* (May 19, 2017), retrieved at https://www.irs.gov/pub/tas/nta_written_testimony_irs_reform_nta_perspectives_5_19_2017.pdf, 4 and 7.

⁷⁸ *Declaration of Cities Coalition for Digital Rights*, quot., 2.

⁷⁹ S. Bolognini, *Dalla “Smart City” alla “Human Smart City” e oltre*, (Giuffrè, Milano, 2017).

⁸⁰ “The development of smart cities is related to civic engagement, empowerment, and participation (...). In this sense, cities play a vital role as drivers of (open) innovation and entrepreneurship”: AA.VV., *Crowdfunding for the development of smart cities*, in *Business Horizons*, Vol. 61, Issue 4, July-August 2018.

“Attempts at public participation in the design of smart cities are often tokenistic and give little opportunity to co-produce the design of smart city projects”⁸¹. Moreover, even though the English Magna Charta encouraged the citizen’s institutional incorporation - historically experienced by the Italian medieval City-States⁸² and nowadays by contemporary technological Info-States like Singapore⁸³ -, as well as understandings of the relationship among liberties, rights and fiscal policy, the Canadian recent focus on the right to be heard stands as the road to overcome the worldwide critical, top-down shortcomings of institutional legal systems. The attempt to foster a turning point appears to be related to a globally changing nature of the law that is bridging the transition so as to encompass the foundational core of the local institutions within the constitutional law ground. The latter, to be assumed and conceived as an effective “common ground”⁸⁴.

This approach implies a deep consideration of the assumption reminding that “(...) many smart city and social media technologies result in a paradox whereby digital inclusion for the

⁸¹ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 36.

⁸² R. Putnam, *Making Democracy Work. Civic Traditions in Modern Italy*, (Princeton: Princeton University Press, 1994).

⁸³ G. Tieghi, *Info/City States: la città ‘oltre lo Stato’. Dalla Connectivity alla City Diplomacy*, (2020) 2 DPCE Online.

⁸⁴ “(...) understanding the data shared between the citizen and the city” – i.e. institutions – “as the common ground for a dialogue directs our attention to the range of constraints placed on mutual understanding by current structures and the lack of voice afforded to citizens and inhabitants. Without common ground, and mutual understanding,”, suggests the author, “the citizen is repositioned as the object of surveillance and an inhabitant in a panopticon, as distinct from a participant in a dialogue”: J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 39.

purposes of service provision also results in a marginalization and disempowerment of citizens”⁸⁵. The tax field, more than others, provides a clear evidence of the challenges to tax administration in the digital era, of the impact of the digital economy and big data on vulnerable taxpayer populations⁸⁶ and, lastly, of the “*Quality Tax Audits and the Protection of Taxpayer Rights*” as an effective platform of (digital and no-digital) exchange between tax agency and taxpayer. Specifically, on the related topic which drastically challenges the smartness of the interaction between the citizen-taxpayer and the tax agency: the conduct of tax audits and the intersection with taxpayer rights and the impact of audits on future compliance⁸⁷.

Some case studies on tax audits show the relevant and risky gap between legal principles and their fictional or weak empirical application⁸⁸. Many factors stand on the reconsideration of

⁸⁵ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 33.

⁸⁶ Main topic discussed during the 4th *International Conference on Taxpayer Rights*, Center for Taxpayer Rights, on *Taxpayer Rights in the Digital Age: Implications for Transparency, Certainty, and Privacy*, quot.

⁸⁷ On the matter, I delivered my remarks from a comparative perspective as invited lecturer at the 5th *International Conference on Taxpayer Rights*, Center for taxpayer Rights University of Athens, School of Law, IBFD, on May 27-28 2021, (at <https://taxpayer-rights.org/wp-content/uploads/2021/05/5th-ICTR-2021-Agenda-05-21-21.pdf>), within Panel 2, on the topic: “*Audit Practices: The Formalistic Temptation Over the Substantial Protection of TR*”.

⁸⁸ Lastly, at international level, the *IBFD Yearbook on taxpayers’ Rights 2020*, by the Observatory on the Protection of Taxpayers’ Rights, at [https://www.ibfd.org/sites/ibfd.org/files/content/pdf/2020%20IBFD%20Yearbook%20on%](https://www.ibfd.org/sites/ibfd.org/files/content/pdf/2020%20IBFD%20Yearbook%20on%20)

a new turning point in the audit policy. A part of the audit procedure and principles explicitly provided by Taxpayer's Charters, by constitutional principles, and by operational guidelines from administrative agencies, the ongoing arduous process towards the taxpayer- (local) tax agency cooperation is complicated by the serious lack of financial resources. The aim is to combine the enhancement of tax compliance programs with the AI procedure of automatization ("data lake" platform; Network Analysis (Sna), risk evaluation of no compliant) to be implemented in a way to efficiently direct the tax audit to the recovery of the financial resources uncollected, often – it is the case of Italy - for the high rate of tax evasion. Meanwhile, the human component of legal tax provisions (i.e. constitutional principles, the TBORs, the case law and the multiple City Charters and Declarations) and the related taxpayer's behavioral studies are going, however, to be almost completely dismissed. Some specific issues are at the forefront. The digitalization of the various tax agencies (and their local personnel) all over the world, presently emerging as a touchstone of new trends of conduct of tax audits, is actually reducing the intersection with taxpayer's rights to a mere bureaucratic step from a variety of perspectives: considering the dialogue with the taxpayer and his/her right to be heard, and its critical recognition; the interconnection between the tax agency's access and audit, their final report and the time to let the taxpayer set his/her remarks; the way the formal observation has to be structured and its link with the judicial stage (the controversial ability to challenge and the difficulties connected with the Agency explanation and the right to be informed); the controversial role of the formal justification to be provided by the tax agency; the attempts for mediation and the weak relevance of the invitation to a meeting, which is connected with the risk of a public financial damage for the tax agency itself in case of self-defense and, finally, the role of amicable agreements. Finally, considering the global institutional and administrative context, persistently struggling to balance the authoritative tax power with the participatory rights, a recent alternative is becoming increasingly relevant: not the attitude of opposition to the different

[20Taxpayers%27%20Rights.pdf](#). Concerning the tax audit and, specifically, the Canadian practices (on Normal Audit, More intensive Audits), see from page 62.

interests linked to the tax audit (the City/State’s public interest for revenue and the protection of the taxpayer’s rights), rather of resolution to construct an updated, bottom-up legal paradigm including the role of the taxpayer-citizen and the effective constitutional legal value of his/her rights (specifically, right to be heard and right of information) during tax audits. Within the general framework of the rights discourse, the official set of taxpayers’ rights on audits reveals a continuous tension between a command-and-control and a cooperative compliance approach.

The pandemic has revealed the authenticity of that critical tension and has contributed to a renewed public debate maximizing the fight against tax evasion in view to operationally face the dangerous ‘tax gap’ and its connections with the ‘compliance gap’. The global debate on the “quality of the tax audit”, embraces that challenge. Strategic foresights to inspire an updated citizen-taxpayer-oriented tax audit or, broadly, dialogue evaluating the place where the citizen-taxpayer lives?

The thesis here proposed, starting from the recent Canadian experience, points out that, differently from a static approach to law, strictly connected with the public interest of raising revenue to fund the state budget, the constitutional participatory values embracing the city’s potentialities should have the specific role to guide the process of exploration of rules designed towards a cooperative stage where dialogue among institutional actors is the proactive requirement, beyond – or, just through – a digital support. The smartness to be conceived as the constant search for the “common ground”: a concept to be included in the legal perspective, while coming from the communication theory. “When common ground is deployed in the smart city context it prompts us to reimagine data services as an ongoing dialogue between peers, to rethink citizen participation in terms of capabilities and empowerment, and to focus on clear lines of accountability and equality of citizen outcomes”⁸⁹.

⁸⁹ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 33.

The aim is the transparency of the pragmatic implication of dialectic, updated constitutionalism for society and its lack of resources. Moreover, it “ensures a likewise modern view of human rights” in the specific meaning that “includes the economic dimension of fundamental rights of individuals and other persons”⁹⁰ and that goes “beyond current solutions to user empowerment that focus on technical solutions, citizen centric design and ethics guidelines”⁹¹.

That leads to the persuasion of the relevance of a research study on the city’s fundamental rights in line with the legal systematics of fundamental rights in general. This study, questioning the challenge of the operational city’s rights *protection* through its relationship with the core concept of *justice*, suggests a path in line with the so-called transformative constitutionalism. Presently, actual demands for a local culture consideration are strongly rising to meet the new city’s needs. The empiric practices suggested by the Canadian local debate pass through the illuminating study of the taxpayer’s rights comparative literature, its constitutional framework and its historical combination of common law-statute law models.

4. CHALLENGING PRACTICES IN ACTION AND THEIR COMPARATIVE LAW VALUE: INSPIRATION FOR AN UPDATED CITY-ORIENTED DISCOURSE?

⁹⁰ *Preface*, in G. W. Kofler, M. Poiares Maduro, P. Pistone, *Human Rights and Taxation in Europe and the World*, in *IBFD*, 2011, Online books IBFD.

⁹¹ “We borrow from models of dialogues to propose that smart city initiatives that involve city inhabitants need to create a common ground and build capabilities attuned to the specifics of localities if they are to protect public values and maintain the trust of urban inhabitants and city administrators. Only then can we reimagine a more symmetrical economy of contribution and greater citizen empowerment in real city contexts”: J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 36.

In arguing for a ‘city responsibility’ of new forms of the citizen-taxpayer’s democracy through the city, this study, starting from the challenging practices in action, highlights that cities – in their potential ability to become Human Smart Cities⁹²– can support a new paradigm of interventions. The assumption is aimed to overcome the traditional State’s structural inadequacies⁹³ and to foster an unprecedented institutional dialogical argument⁹⁴.

⁹² S. Bolognini, *Dalla “Smart City” alla “Human Smart City” e oltre*, quot. It is an emerging concept that returns a vision of the Smart City – currently dominated by technological infrastructure – from the point of view of citizens and the community. It has multiple implications: “Neglecting the human component is by far the worst mistake that an aspiring smart city can do. If these future smart cities aim for efficiency, they just cannot be planned without the community”: C. Harrouk, *Designing Smart Cities: A Human-Centered Approach*, 2020, at <https://www.archdaily.com/934186/designing-smart-cities-a-human-centered-approach>.

⁹³ “(...) administrative law was the product of the State. Now it has become dependent on other powers of transnational, global, and local dimensions”: S. Cassese, *The current state of administrative law*, in J. B. Auby (directed by), *Le Futur du Droit Administratif/The Future of Administrative Law*, quot., 5.

⁹⁴ Aimed to, specifically, overtake and dissolve “(...) the lack of ‘Functional legitimacy’, including the absence of ideas or authority in politics”: R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 433.

That paradigm, linking democracy with human rights, finds in the city context⁹⁵, in the conceptualization of the human smartness⁹⁶ of the “smart city&community”⁹⁷ and in the

⁹⁵ “The degree of self-government enjoyed by local authorities can be regarded as a key element of genuine democracy. In this regard, political, fiscal and administrative decentralization is essential for localizing democracy and human rights. It should be borne in mind that democracy is not possible without respect for human rights and no human right can be achieved without democracy”: Human Right Council, *Role of Local Government in the Promotion and Protection of Human Rights – Final Report of the Human Rights Council Advisory Committee*, A/HRC/30/49, August 7, 2015, UN General Assembly, in www.uclg.org/sites/default/files/2015_report_en_role_of_local_government_in_the_promotion_and_protection_of_human_rights.pdf, 4.

⁹⁶ “Smartness in cities comes from people understanding what's important to them and what problems they are experiencing”: John Harlow, a smart city research specialist, pointed out a new approach fostering community involvement in smart cities. Therefore, a city cannot be considered smart if it doesn’t revolve around humans, their needs, preferences, human expectations and even resources. On the matter, see K. Barret, *How to Prioritize People over Tech when planning Smart Cities*, 2019, at <https://www.smartcitiesdice.com>.

⁹⁷ S. Bolognini, *Dalla “Smart City” alla “Human Smart City” e oltre*, quot., from 106. On the evolution of the legitimacy dialectic within smart cities and the paradigm-shift towards the collective dimension to be essential and prevailing, see R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 437.

common ground of the new paradigm⁹⁸ for reframing the citizen/taxpayer-city relationship⁹⁹, the authentic constitutional space the Canadian Constitution provides for what the Canadian Supreme Court defined a “continuous *process of discussion* and evolution”¹⁰⁰. That is what today can be reached through “a reimagining of the citizen-city interaction as a dialogue between equals” which “may provide a useful starting point for addressing some of the serious ethical, social, political and environmental problems with current smart city designs and implementations”¹⁰¹.

That is a matter of comparative law in a constitutional context to be addressed, now and in the near future, to identify which practical purposes the comparative constitutional law

⁹⁸ “It is worth wondering how the relationships between cities may develop following a particular logic of representation, administration and fluxes – as opposed to the more traditional and homogeneous territorial logic, going from the small to the big scale – and therefore based on a new paradigm of mutual influence”: R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 436.

⁹⁹ “If we are to build ‘common ground’ between citizens and civic infrastructures and start to approach the ideal of freedom to attain human flourishing and well-being, then digital inclusion and public engagement initiatives need to go beyond platitudes, freedom to choose between services and skill building for the few. The citizen-city relationship needs to be reframed as one of peer-to-peer communication where citizen is empowered to understand their digital footprint, the city works to collaboratively ground and make intelligibly transparent the data it has collected and used, and both can monitor the differential impact of these activities on the economic, social and environmental life of the city”: J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 61.

¹⁰⁰ *Refence re Secession of Quebec*, 1998 2 S.C.R. 217, 150.

¹⁰¹ J.D. Kelleher, A. Kerr, *Finding the Common Ground for Citizen Empowerment in the Smart City*, quot., 59.

serves; furthermore “to go some way towards correcting the often oppressive and sometimes incompetent behavior of governments”¹⁰² and, as underlined by the Court within that 1998 landmark Reference - which had a global impact -, to rethink the constitutional principles¹⁰³ with a precise orientation. “The Constitution”, explained the Court, “is not a straitjacket. Even a brief review of our constitutional history”, it emphasized, “demonstrates periods of momentous and dramatic change. Our democratic institutions” – further recalled by the Canadian Supreme Court - “necessarily accommodate a *continuous process of discussion and evolution*, which is reflected”, and that’s the point even for a city-oriented discourse, “in the constitutional *right of each participant in the federation to initiate constitutional change*”. That cue for change, today, has a specific function to be considered properly to define a current constitutional space for cities: “this right” - as the Court underlined - “implies a reciprocal duty on the other participants to *engage in discussions to address any legitimate initiative*”.

Initiative to “change the constitutional order”, of course. But, even, to include dialogue as a driver of change in its role of fostering the classic image of competing ideas and robust debate which dates back to English philosophers John Milton and John Stuart Mill, passed through

¹⁰² A. Harding & P. Layland, *Comparative Law in Constitutional Contexts*, in E. Orucu & D. Nelken (eds) *Comparative Law: A Handbook* (2007), 313.

¹⁰³ “The Constitution is more than a written text. It embraces the entire global system of rules and principles which govern the exercise of constitutional authority. A superficial reading of selected provisions of the written constitutional enactment, without more, may be misleading. It is necessary to make a more profound investigation of the underlying principles animating the whole of the Constitution, including the principles of federalism, democracy, constitutionalism and the rule of law, and respect for minorities (...): *Refence re Secession of Quebec*, 1998, quot.

the jurisprudence of the US Supreme Court and still shapes¹⁰⁴ – better than anywhere - the Canadian constitutional arrangement defined since 1998 as the “marketplace of ideas”¹⁰⁵. Within that marketplace, Canadian current cities can now have a privileged scenario: they can provide strategic foresights able to inspire an updated city-oriented, human-smart discourse¹⁰⁶. They can implement and reinvent their crucial role of contemporary actors of change being the effective “glocal defenders of rights”¹⁰⁷ properly because “no one has the monopoly on truth”. Thus, the step forward made by the Court in 1998 seems now, more than

¹⁰⁴ The ability to express oneself helps create a healthy democracy, the Supreme Court of Canada said Sept. 2020 in setting out rules for deciding when a lawsuit has merit or is intended simply to quell participation in matters of public interest: J. Bronskill, *Supreme Court Touts Role of Free Expression in Democracy As It Sets Out Guidance*, Sept. 10, 2020, at <https://www.thestar.com/news/canada/2020/09/10/supreme-court-of-canada-says-doctors-libel-action-over-email-comments-can-proceed.html>.

¹⁰⁵ The first reference to the "free trade in ideas" within "the competition of the market" appears in Justice Oliver Wendell Holmes Jr's dissent in *Abrams v United States*, 250 U.S. 616, 630 (1919). The actual phrase "marketplace of ideas" first appears in a concurring opinion by Justice W. O. Douglas in the Supreme Court decision *United States v Rumely* in 1953. For an interesting investigation, see I. Stanley, *The Marketplace of Ideas: A Legitimizing Myth*, (1984) 1:3 Duke Law Journal.

¹⁰⁶ For a community-oriented perspective: “Smartness thus implies that each individual has to renounce to the ‘paradox of excessive freedom’ and accept some restriction”, in R. Cavallo Perin, G. M. Racca, *Smart Cities for an Intelligent Way of Meeting Social Needs*, quot., 437.

¹⁰⁷ B. Barber, *Cities as Glocal Defenders of Rights*, in *The Future of Human Rights in a Urban World: Exploring Opportunities, Threats and Challenges*, (Netherlands (2014), 101.

ever, to be the decisive constitutional background to be revitalized in a city-oriented perspective: because the Canadian system, better than others, “is predicated on the faith that in the marketplace of ideas, the best solutions to public problems will rise to the top”.