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Essays and Articles

Asymmetry as a Rule and a Structural Element of Compound Systems (p. 255)

Francesco Palermo

Legal status, power, and functional asymmetry among subnational entities is often considered an exception rather than the rule in compound, i.e., federal and regional systems. This article shows that in fact the opposite is true. Furthermore, the comparative method helps understand that asymmetry represents a rather implicit rule, often underestimated due to some epistemological errors in the theory of federalism. The article first analyses, in a comparative perspective, the relationship between rules and exceptions as far as asymmetry is concerned. It then explains the driving forces behind asymmetrical rules, their procedures, and the institutional forms that asymmetry takes on, including the development of bilateral relations. The study ends by applying game theory to the phenomenon of asymmetry, in order to understand if there is an optimal degree of asymmetry and how asymmetry can be reconciled with the unitary nature of the legal system.

Asymmetries and Globalization of Law (p. 273)

Roberto Scarciglia

The essay deals with the issue of asymmetries in constitutional law, through an approach focusing on the phenomenon of the globalization of law. The text initially addresses the meaning of “symmetry”, originated by Hermann Weil, a German mathematician and philosopher. Symmetries/asymmetries represent a continuum of dynamic projections within different areas of law: from constitutional law to private law, from administrative law to criminal law, from commercial law to labour law. Starting with the asymmetric origin of the Constitutions, contemporary constitutionalism, even in the perspective of global law, has

sparked a debate on values in search of invariant features, thus defining the foundations of European law based on a common constitutional heritage, which new political formulas tend to dissipate.

How Sustainable is the (Asymmetric) Supranational Integration Process? A Comparative Law Perspective (p. 287)

Giuseppe Martinico

The aim of this short article is to explore the sustainability of asymmetric dynamics in the supranational context. The article is divided into two parts. In the first part a selection of key concepts (sustainability, asymmetry, flexibility) is explained; the second part addresses recent developments in the EU integration process that, for different reasons, have led to a higher degree of asymmetry in the European legal order.

On Asymmetry in Federal States and the Practical Utility of a Good Theory (p. 301)

Roberto L. Blanco Valdés

The purpose of this text is to define precisely three concepts of different legal and political natures that are often confused with one another: diversity, lack of homogeneity, and asymmetry. This distinction is necessary for a detailed analysis of asymmetries in federal systems. In this work, the various asymmetries existing in the main federal states of the world are analyzed; particular emphasis is placed on the existing relationship in the Spanish case between asymmetry and the presence of internal nationalisms.

Optional and Consensual Asymmetry as a Constitutional Response to the Catalan Conflict: An Inevitable Constitutional Amendment (p. 323)

Maribel Gonzalez Pascual

Generally the starting point of the Catalan conflict is considered to be the Spanish Constitutional Court's judgment no. 31 of June 28, 2010, concerning the amendment of the Catalan Autonomy Statute. The conflict experienced a particularly critical phase in the period between September and October 2017. The situation changed in June 2018, since the

new central government is committed to promoting cooperation and dialogue with all the Regions and, particularly, with Catalonia. This decision could engender mutual trust between the Central State and the Regions, leading to a successful constitutional amendment in the near future. This constitutional amendment must take into consideration both the current development of the Spanish Regional State and the strength of the Catalan independence movement. The response to the Catalan challenge might be a certain degree of asymmetry for all autonomous Regions on a consensual basis and sanctioned by the Central State; the response also needs to accommodate a reform of the Senate and a regional role within the EU. Undoubtedly, such a constitutional amendment would be legally complex and almost politically unattainable, but is also inevitable if the Spanish Constitutional system wants to endure.

Territorial Autonomy in the Basque Country: Internal Asymmetries and European Recognition. In Search of a Confederative Relationship and Recognition of the ‘Right to Decide’ (p. 343)

Alberto López Basaguren

The autonomy of the Basque Country, established in the Territorial Act of 1979, has important distinctive features, some of which are shared with Catalonia and Navarre (such as the existence of a regional police force). However, the Basque Country and Navarre have a unique characteristic because of their being ‘foral’ territories, holders of ‘historical rights’ protected by the Constitution (First Additional Provision). The main result of this distinctive feature is a special system of tax management and financing in each of these territories, which, in practice, has guaranteed them access to greater resources compared to other territories. Nevertheless, Basque nationalism displays, when the opportunity arises, its desire for a confederal relationship within Spain, as highlighted by the agreement reached by the traditional nationalists – PNV – with the radical nationalists – EH Bildu – in the Select Committee on self-government of the Basque Parliament on the ‘bases’ of a proposal for ‘political status’. The nationalists attempt to attain recognition of this confederal model – as an exceptional system with regard to the Constitution – as a possible effect of the ‘right to decide’ that should be claimed by the

Basque people as a 'nation'. This recognition is not merely an internal issue; they also seek European recognition of the 'right to decide', which should be guaranteed in the Eu, and continuity of EU membership in the case of secession.

The Italian Regionalism in the 'Autonomistic Vortex' of Differentiation: the Experimental Asymmetry Between Integration and Conflict (p. 365)

Anna Margherita Russo

The paper analyzes the asymmetry clause governed by art. 116. 3 Cost., introduced by the 2001 reform of Title V of Constitution but so far 'sleeper' as to the implementation. After a comparative framework concerning the 'state of health' of the federo-regionalism in Europe and outlined a 'general context' within which the analysis is carried out – from the 'centralization' of the economic crisis to the trend towards an "asymmetric autonomy" in the current phase – we outline the main features of the asymmetry clause declined as a dispositive asymmetry connected to the recognition of a diversity 'efficiency-functional'. Starting from the three regional 'pilot' initiatives, characterized by different inputs, objectives and procedures, and by the 'uniformizing' intervention of the Preliminary Agreements, we analyze the opportunities and risks related to the implementation of the asymmetric regionalism in a system marked by deep territorial gaps and devoid of the "culture of autonomy", as a material constitution of regionalism.

The Devolution Process as a Reflection of the Constitutional Specificities of the United Kingdom (p. 393)

Claudio Martinelli

This article aims to illustrate the distinctive characteristics of the British devolution process, highlighting in particular the institutional asymmetries that can be found among the different ways of implementing devolution among UK countries. After a historical and legal reconstruction on the English local government, the article analyzes both the onset of the devolution processes and their outcomes in Scotland, Wales and Ul-

ster- Finally, the text examines the failure of regionalization in England and the impact of Brexit on these developments.

Paths of Asymmetry and Trust Relationships in Political Integration Processes: The Belgian Perspective (p 411)

Anna Mastromarino

The features of contemporary democratic constitutionalism demand a rethinking of asymmetry, to be conceived no longer as a state of exceptionalism within the legal system but as a model of organization of pluralism. In order to develop the issue, this article analyzes trust/mistrust dynamics that in composite social bodies help define the social conditions required to strengthen, regardless of differences, the link between individuals, groups and institutions on the basis of mutual trust grounded in recognition. These considerations are reinforced by an examination of the Belgian case, as regards the organization of the Belgian judicial system.

The Cooperative Principle as a Guiding Feature of German Federalism: Unrepeatable *Sonderweg* or Inspiring Model? (p. 431)

Andrea De Petris

The German federal model focuses on a substantial cooperative structure, which emerges from the analysis of the decision-making power of bodies and member states. The lack of secessionist aspirations, even in the presence of considerable differences among the EU's member states, is perhaps an exception, if compared to other autonomy-based models. The purpose of this article is to verify to which extent the aforementioned cooperative structure may have acted as a deterrent to centripetal forces, aimed at undermining the unitary State, as recently observed in other nations.

Formal and Substantial Asymmetries in Portuguese Territorial System (p. 451)

Romano Orrù

Due to a dominant “tradição centralista” and a strong sense of national identity throughout the country, the political and administrative history of Portugal, at least since the beginning of the Republican government (under the 1911 Constitution), has been based on the combination of local and central power. The provision for two autonomous island regions was one of the most significant innovations of the 1976 Constitution and is now a consolidated feature of the legal system. There is no doubt that the keystone of Portuguese territorial asymmetry lies in the distinctive autonomy regime of the island regions, linked to their geographic and economic specificities (but not to social segmentations based on ethnic and cultural elements) and bolstered by exogenous factors (such as, in particular, the Eu’s support for outermost regions). Nonetheless, it is also clear that the Portuguese territorial order is anything but homogeneous, even if one considers only the country’s continental part, characterized by strong substantive asymmetries between its different areas and an inefficient and incomplete administrative devolution.

Regional Observatory

Asymmetrical Regionalism and Local Government: The Requests of Emilia-Romagna, Veneto and Lombardy. Differing Views of Regional Autonomy (p. 471)

Marzia De Donno, Patrizia Messina

Readings and Highlights

When Local Authorities Create a System. On LUCIANO VANDELLI’S, *Il sistema delle autonomie locali*, 7th ed., Bologna, Il Mulino, 2018 (p. 505)

Gianluca Gardini