

# TABLE OF CONTENTS AND ABSTRACTS

The Calm after the Referendum: Crisis Democracy or Democracy Crisis? (p. 585)

*Gianluca Gardini*

## **Essays and Articles**

The “Mezzogiorno” in Search of a Development Strategy (p. 609)

*Gaetano Armao*

*In light of the outcome of Italy's constitutional reform referendum, this essay examines the main indicators of the serious social-economic hardships faced by the South and the financial aid and equalization measures taken in implementation of national and EU economic cohesion policies. In particular the paper analyzes the application of the additivity principle driving structural funds and the European Fund for Strategic Investments (the so-called “Juncker Plan”), with respect to the Masterplan for the Mezzogiorno, the “Pacts for the South”, and the cohesion measures taken to reduce social and economic gaps and achieve infrastructural equalization.*

Provincial Government After the Referendum Vote (p. 623)

*Stefano Civitaresse Matteucci*

*This article expounds some thoughts regarding the institutional role of Provinces after the negative outcome of the referendum on the Renzi-Boschi constitutional reform. The thread is represented by the issue of how to differentiate second-tier local government throughout the Country. The main thesis is that the rejection of the said referendum along with the claim by the Constitutional court (decision 50/2015) that there is not any necessary implication between the political nature of a local Authority and the direct election of the members of its bodies raises doubts on the policy implemented in the recent period aimed at transforming Provinces into a sort of agencies at the service of local Councils.*

**“Waiting for Title V Reform”: The Wait Is Over. *Quid Juris?* Remarks on the Constitutional Referendum’s Effects on Law No. 56/2014 (“Delrio”) (p. 635)**

*Giovanni Boggero*

*This paper analyses the implications of the constitutional referendum held on December 4, 2016 on the Act of Parliament reforming intermediate local authorities (Delrio Law). This Act was adopted “pending approval of the constitutional amendment”, thereby anticipating some of the reform’s structural features. The Constitutional Court ruled on the conformity of this Act with the Constitution by using provisions not yet in force as constitutional review yardsticks. Following the victory of the “No” vote in the referendum, questions now arise as to the conformity with the Constitution of different aspects of the same Act of Parliament, especially as to how administrative functions have been re-allocated, whether political bodies of intermediate local authorities require universal and direct election, and the extent to which these authorities enjoy financial autonomy.*

**Regional Legislative Autonomy After the Referendum Vote About Constitutional Reform (p. 665)**

*Giovanni Martini*

*The paper aims to examine the prospects opened by the negative referendum on the constitutional reform project, regarding regional autonomies system. Through the analysis of the text rejected by the electorates, the paper tries to reflect on the reasons of such a clear and resolute decision, analyzing which profiles the reform could be worthy of acceptance in the perspective of a new reform of Part II of the Charter, considered no longer able to satisfy the requirements of promptness and efficiency of the contemporaries legal systems of the Western world.*

**The Principle of Proportionality and Its Role in the Relationship between Public Administration and Citizenry (p. 697)**

*Alessandra Albanese*

*In Italy, proportionality became an established principle of administra-*

*tive law much later than in other European States and the European Union. Even after its reception, scholars and judges have long considered the principle of proportionality to be strongly linked to the principle of reasonableness. Consequently, the importance of the three-step test in its application has been neglected or at least under-evaluated, whereas it has always characterized the evaluation of proportionality in German and EU law. Indeed, the three-step procedure aims not only to verify whether the measure adopted by an administration is appropriate for its legal goal, but also to assess whether the result can be obtained in a less onerous way and whether it is bearable. On the one hand, the application of the latter two parameters may permit the public administration to take into account the interests of the subjects of its actions; on the other, it enables judges to check more extensively the legality of the measure adopted by the public administration. The paper analyzes the evolution of case law, showing how recently the three-step procedure in the application of the principle of proportionality in Italy is becoming increasingly relevant. Moreover, the author highlights the emergence of a meaningful connection between the principle of proportionality and citizens' procedural rights. Procedural rights, if implemented according to the principle of proportionality, can take on a substantive value, thus rendering their protection more effective.*

**Civic Access as a Tool for Administrative Transparency: Lights, Shadows, Future Prospects (Including Local Authorities) (p. 725)**

*Anna Simonati*

*Legislative Decree No. 33 (March 14, 2013) introduced civic access as a tool for administrative transparency in the Italian legal system. Notwithstanding the autonomy of civic access with respect to the right of access to administrative documents as regulated by Law No. 241/1990, in case law some doubts have arisen, in the implementation stage, as concerns the distinction between the two mechanisms. The strengthening of civic access by Legislative Decree No. 97 (May 25, 2016) has further complicated the situation. The multiplication of the types of access, reflecting the polysemy of the current notion of transparency, points to*

*the variety of tools protecting citizens in their relationship with the public administration. Meanwhile, however, evaluation procedures which public authorities are held accountable for in this field are at present quite complicated.*

### **Notes and Comments**

**The Constitutional Court Voids the Harbour and Logistics Plan Due to the Lack of Regions' Involvement: Considerations Suggested by the (Never Implemented) Removal of the Matter from Regions' Jurisdiction (p. 753)**

*Francesco Monceri*

*The Constitutional Court's recent judgment (No. 261/2015) nullifying art. 29, paragraph 1, of Decree-Law No. 133 (September 12, 2014) and, as a consequence, the Harbour and Logistics Plan, is motivated by the lack of any prevision for the Plan's approval by the State-Regions Conference. Such a prevision is considered necessary in light of the current "concurrent" nature of the relevant jurisdiction. The Court defined the situation as a "call to subsidiarity", that is, contexts in which full protection of common interests entails a prevalence of State intervention in the implementation of shared jurisdiction, although minimal participation by Regions needs to be safeguarded. No such involvement is envisaged and is therefore deemed lacking. Actually, for the sake of simplification and in the light of the entire ordinary and constitutional reform process affecting the matter, the issue could have been framed as an "early exercise" of a competence that the current constitutional reform process intends to leave out of concurrent jurisdiction in order to reinstate its status as an exclusive State competence.*

**Mayors' Ordinances: Critical Issues Regarding the Casual Use of necessary and Urgent Powers (p. 775)**

*Luca Matteo Di Carlo*

*This paper focuses on the topic of public security, with particular regard to necessary and urgent mayors' ordinances pursuant to art. 54 of*

*the Italian Unified Text Governing Local Authorities (Tuel). The analysis is based primarily on a selection of particularly “original” ordinances, each representing the typical model of mayoral intervention in a specific area. Considerations are made on the basis of a specific evaluation of each ordinance, including its practical effectiveness and its compatibility with the Constitution, in order to discuss the possibility of a legislative reform capable of bringing an end to the uncertainty pertaining to Tuel article 54’s limits and area of applicability.*

### **Regional Observatory**

The Public-Private Healthcare System of Tuscany (p. 805)

*Emanuele Rossi*

### **Readings and Highlights**

Protection for Small Savers, Constitutional Precepts and Relevant Legislation. Is a Rethink Necessary? Review of Mariangela Atripaldi, *La tutela del risparmio popolare nell’ordinamento italiano. Dinamiche attuative dell’art. 47, II comma, Cost.*, Editoriale Scientifica, Napoli, 2014 (p. 835)

*Emanuele Luigi Guarna Assanti*