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Jean-Bernard Auby

Essays and Articles

The legislative function between Parliament and Government: towards a physiological integration in the prism of the discipline of areas scientifically connoted (p. 931)

Simone Penasa

The essay deals with the dynamics between legislative and executive power in the face of scientifically characterised issues. After some general considerations aimed at drawing a conceptual and normative map, useful to understand the characteristics of a “physiological” relationship between Parliament and Government faced with scientifically complex issues, will propose a systematisation of the different declinations that this relationship has concretely come to assume, to highlight its potential and criticality. The aim is not to assess the order of “institutional” prevalence between the two powers, but to determine the structures - from the point of view of sources, procedures, and regulatory content - constitutionally more sustainable, in the light of the necessary guarantee of the respective functional prerogatives and the specificity of the regulatory object.

Public administration with scientific and technological eminence. Theoretical reflections (p. 965)

Pierpaolo Forte

To put it briefly, administrative discretion is commonly considered a possibility of choice that refers to the interests at stake in the decision to be taken, with a “political quota”, which thus provides an arrangement defined as public interest. This paper aims to criticise this well-established assumption concerning our difficult times, character-

ised by an enormous quantity, consistency, eminence and reliability of knowledge in every sphere of scientific mastery and the “distinction” between politics and administration. The study provides arguments and evidence to assume that the administrative activity, purified of the political quota as a result of the principle of distinction with the administrative activity, is not a function of aims, and uses, like all human activities of this type, operational and decision-making structures that bring it close to technique, a very professional and complex practice to achieve objectives established elsewhere, even when they have vague, indeterminate definitions, since it consists precisely in determining a decision, outside the courtroom, before the judge, and indeed possibly without him. It is for this reason that when the choice of decision concerns techno-scientific options, there is little that differs from any other hypothesis of properly administrative discretion, not for the reasons that, in the past, supported that thesis, but paradoxically for opposite reasons, since today’s administrative decision must unfold, one might say physiologically, using techno-scientific knowledge, know-how, expertise, and equipped awareness, founding the reasons for the decision-making choice and the reliability of the consequent act, in a sort of “technique of the singular fact”.

The difficult balance between technology, policy and regulation in vaccination campaign against Covid-19 (p. 1011)

Fabrizio Figorilli

After analysing the competencies of the regulatory bodies regarding the marketing of new drugs, the article dwells on the authorisation procedures and measures that have allowed the rapid use of Covid-19 vaccines. From this reconstruction, some contradictions emerge that have accompanied the choices made within our legal system concerning the indications provided by the EMA. The paper also focuses on the nature of the solutions adopted to conduct an effective vaccination campaign, highlighting the difficulty of classifying the interventions of the competent authorities as technical-discretionary, political and regulatory decisions, relying on soft law tools instead of traditional ones with immediately prescriptive contents.

The contribution of science to government in the UK: Untangling and updating constitutional 'fault lines' in the light of the Covid-19 Pandemic? (p. 1037)

Peter Leyland

Taking account of the recent Covid-19 pandemic this article provides a discussion of the accountability mechanism at the heart of the constitution and the role of science within the UK civil service. Scientific advisers had made a significant impact in wartime, but by the 1960's, the Fulton Report found that the contribution and status of scientists, economists and other professionals were grossly undervalued as part of the civil service hierarchy. This essay proceeds to explain how the Covid-19 emergency drew upon and promoted the expertise of scientists at the highest level of government, with the government's most senior scientist and senior medical officer appearing regularly at the side of the PM and other senior ministers on TV. It is argued that this change of status, not only involved a loss of anonymity for scientific advisers but it also shifted attention away from government ministers as the architects of policy. At the same time this development impacted on the attribution of constitutional accountability for the policies adopted and the far-reaching legal measures put in place to contain the pandemic between elected politicians on the one hand, and the scientific advisers forming part of the government service, on the other.

Discourses on the relationship between science and law. Outline of a cartography (p. 1063)

M. Mercè Darnacullela Gardella

In a historical context in which advances in science and technology shape the world we know, legal decisions - by the legislator, the administration or even the courts - cannot be adopted without considering the available scientific knowledge. This observation, which explains the reduction of the public authorities' discretion where science offers certainty, does not justify the current scientific drift of law in contexts of uncertainty. To provide an adequate response to the multiple questions raised by the relationship between science and law, it is necessary first

to draw up a cartography, of which these pages are intended to offer only an outline, which considers the diversity of existing sciences and the evolution of scientific knowledge.

Notes and Comments

A pact between the Cities of art for the revival of tourism and protecting historical value (p. 1091)

Edoardo Nicola Fragale

The pandemic has provided an opportunity to reflect on the problem of the tertiarization of art cities. Public decision-makers are also beginning to become aware of this problem. An agreement signed by the Municipalities of Venice and Florence proposes to counter the tertiarization of art cities, preserving them from the effects of tourist aggression. The article examines the proposals contained in the agreement aforementioned, in order to verify whether they are consistent with the final objective pursued.