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Essays and Articles

The Spanish autonomous State: a critical assessment (p. 299)

Brunetta Baldi

This paper outlines a record of the local dimension of Spanish State in the event of the fortieth anniversary of its foundation, and it will be underlined not only its main achievements but also, and above all, the critical issues which surround it. Notably, the paper scrutinises the still unsolved territorial question, symbolised by the Catalan crisis. Such a failure stems from the development of regional autonomy, which has betrayed expectations and contents of the 1978 constitutional agreement. Although the Constituent Assembly recognised the distinctiveness of the historic regions, the dualistic and asymmetrical original idea has been replaced by a uniform arrangement which denies a special status to nationalist regions despite their historical identities, thus making more difficult their integration within the State. The deep institutional crisis produced by the unilateral declaration of independence of Catalunya highlights the need for constitutional reform of the Spanish State for which federalism could be the primary way forward.

Anniversary of the Spanish Constitution and the European Charter of Local Self-Government: the local government in Spain (p. 329)

Alfredo Galán Galán

The commemoration of the fortieth anniversary of the Spanish Constitution and the thirtieth anniversary of Spain's ratification of the European Charter of Local Self-Government provides an opportunity to evaluate the situation of local government in Spain. In the context of the Spanish Constitution, some of the main challenges currently facing the local authorities are being examined and proposals for reform are being put forward: the distribution of powers with regard to local governance, the need to bring local authorities back into a local government system, the

unsolved problems of local authorities administrative borders, including the phenomenon of the rural exodus, and the questions which continue to raise the issue of local self-government, starting with the inadequacy of the guarantee mechanisms. In addition, in the context of the European Charter of Local Self-Government, the degree of conformity of the Spanish legal system with the Charter is analysed: in particular, it will be highlighted the binding effect of the CEAL on Spanish law, the recognition and definition of local self-government in national statutory law and the link between this defined self-government and local democracy.

Considerations for a reform of local administration in Spain (p. 367)

Luis Cosculluela Montaner

On the assumption that reform of local government requires the intervention of the state legislator - the solely competent subject in the matter according to the Constitution - this paper covers all the main issues currently under discussion in Spain. Starting from the guarantee of local autonomy, intended both as protection of the territory and powers, firstly the paper addresses the issue of the municipal administrative borders and the attempt to shift powers in favour of the provincial level. Then it will be examined the proposals for reform of the municipalities' governance arrangement, relations between politics and professional administration, mechanisms of popular participation, forms of decentralization. A changing landscape emerges, in which the need for a new comprehensive intervention of the State legislator is evident, after the controversial effects of the Ley de racionalización y sostenibilidad of 2013.

Constitutional reform and the territorial model. Citizens' preferences and parties' proposals between the 40th Constitutional anniversary and the 2019 elections (p. 399)

Fabio Garcia Lupato

On the 40th anniversary of the approval of the Spanish Constitution, much of the issues that were negotiated at the time - State form, territorial model, identity, political culture - have been put back into question, especially with the Catalan independence conflict. At the public opinion level as well as among the main parties of the system, we can observe deeply rooted dif-

ferences regarding the evaluation of Spanish democracy, its constitutional performance or the preferred territorial model. This has a profound effect on political competition and the party system. If initially the new parties that disrupted the system did so with ideas and proposals for democratic regeneration, constitutional reform and “new politics” against traditional parties, in the last elections held on April 2019 the identity and territorial dimension has gained salience, presenting two novelties in the Spanish party system. On the one hand, the Spanish exceptionality has ended, with Vox, an extreme right party, obtaining a relevant parliamentary representation. On the other hand, the widespread support of all parties to the decentralization process has disappeared with the profound questioning of the current decentralization system. If this new scheme is institutionalized, it will have profound effects on the functioning and stability of the Government and the whole system.

Federalism and decentralization in Latin America. A comparative analysis of education and health care policies in Argentina and Brazil (p. 439)

Cristian Altavilla

Argentina and Brazil constitute two clear examples of high decentralized federations in delivering public policies, in which several social policies are managed and implemented by the constituent subnational levels of government (states/provinces and municipalities). This paper analyses the decentralization of the main social policies in Argentina and Brazil from a comparative perspective, from a constitutional approach (considering the distribution and allocation of competences between levels of governments) from a fiscal perspective (policy financing) as well as from a public policy perspective (the decision, implementation and management of those competencies). In particular, the paper takes into account two classic welfare state policies (according to the particular model of welfare state developed in Latin America countries): education and health care. Both cases are of particular interest from a comparative perspective, although the processes of decentralization have followed different paths in the two countries, the outcomes show several similarities.

The “Smart Cities” in the light of the principle of subsidiarity (p. 463)

Graziana Urbano

This paper examines the theme of “Smart Cities”, placing the definition within the legal system. In particular, the author, through the description of a defining framework of the terms “City” and “Intelligent City”, suggests a legally oriented reading of the adjective “intelligent”, which is associated with the City, from the perspective of the principle of horizontal subsidiarity. The interpretation of the proposed “Intelligent City” highlights the increasing importance of institutions for the active participation of citizens in the decision-making processes of the public administration, as a corollary of the principle of subsidiarity. Closely connected is the concept of “intelligent community”: the author traces the relevance of the connotation of “intelligence” both to the urban spaces in which the community operates and to a new legal category represented by the commons.

Corruption and public contracts: terminological and evaluative clarifications, between the need for national uniformity and opportunities of local interpretation (p. 485)

Vinicio Brigante

This paper aims to analyse the pronounced polysemy that characterises the notion of corruption, with specific reference to the various stages for the award of public contracts. The need to operate a differentiation between the different models of manifestation of corruption is necessary in order to carry out an in-depth assessment of the real impact of the different phenomena of misappropriation of public authorities tasks, through certain data flows. Moreover, there is a need to analyse the potential opportunities for corruption linked to the forms of execution of public works alternative to the ordinary procurement contracts, such as public-private partnerships. Finally, the paper focuses on the territorial dimension of corruption, an issue that has developed in recent years, in connection with the promulgation of the Sicilian Regional Law No. 3 of 2018, which amended the tasks of the existing Regional Parliamentary Committee for investigation and supervision about mafia and corruption by raising issues of coordination with the tasks of the National Anti-corruption Authority not solved by any appropriate provision.

Notes and Comments

The Right Place to Balance. The Mutual Positioning of the Right to Protection of Personal Data and of the Right to Transparency in the Decision no. 20/2019 of the Italian Constitutional Court (p. 525)

Benedetto Ponti

The decision No. 20/2019 of the Italian Constitutional Court has made headlines above all for the general profiles connected with the judicial treatment of issues covered by both fundamental national rights and the Charter of Fundamental Rights of the European Union (the s.c. “dual preliminary”). Instead, this contribution intends to emphasize the importance (in this same perspective) of the merit of the issue addressed. In particular, the analysis shows why the forum chosen by the referring judge to evaluate the balancing defined by Legislative Decree No. 33/2013, between the right to transparency and the right to protection of personal data, has influenced the outcome of such judgment. To this end, two elements are relevant. On the one hand, the asymmetric framework that characterizes the clash between the two rights at stake: the second, attracted in the sphere of Eu law; the first, strictly relevant to the Member States’ legal system. Furthermore, it should be noted the different consideration reserved for them. While the jurisprudence of the CJEU clearly shows the systematic pre-eminence of the right to the protection of personal data on the right to transparency, according to the Italian Constitutional Court they deserve “equal respect”. Precisely this “parity of arms”, assigns the legislator a more extensive manoeuvring space for the balancing, to be played not in terms of strict proportionality and necessity, but rather according to the canon of reasonableness.

Regional Observatory

2019 Sardinia regional election (p. 549)

Stefano Rombi, Fulvio Venturino