



CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



ISSN: 2036-5438

Foreword: Continuing Sophistication in Subnational Constitutionalism

by

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Perspectives on Federalism, Vol. 6, issue 2, 2014



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Abstract

Giacomo Delledonne, Giuseppe Martinico and Patricia Popelier have edited a symposium collecting some of the papers presented at the latest IACL World Congress in Oslo.

The symposium tries to develop a framework for comprehensive analysis of subnational constitutions and offers a number of elements for further reflection.

Key-words

Subnational constitutionalism, subnational constitutions, legal comparison



Although comparative constitutional law has grown wildly as a field of study in recent decades, attention is almost always placed on national constitutional law with little mention of subnational issues. This myopia often results in an oversimplification of constitutional dynamics. Indeed, federal constitutional democracies almost always involve an overarching national constitution that reserves at least some constitutional choices to subnational units. This means that in most federal systems, constitutional decision-making occurs at both the national and *subnational* levels. Thus, a more complete and accurate understanding of constitutional law requires careful study of subnational constitutional dynamics as well as the relationship between national and subnational issues.^I

Giacomo Delledonne and Giuseppe Martinico have done it again! They edited the highly successful symposium in Volume 4, Issue 2 (2012) of *Perspectives on Federalism* growing out of the Workshop on Subnational Constitutions at the 2010 World Congress of the International Association of Constitutional Law (IACL) in Mexico City.^{II} Now, in this important symposium they and Patricia Popelier include articles developed for the Workshop on Subnational Constitutions at the IACL's World Congress in Oslo, Norway in the summer of 2014. Without the efforts of all of them much of the excellent research prepared for these workshops would not have been disseminated widely. Now it is easily available worldwide.

The comparative study of subnational constitutions in federal systems is still a relatively new undertaking. As Jonathan Marshfield noted above, until fairly recently most scholars and practitioners set their sights only on the national (or federal) constitutions even in countries organized according to the federal principal. This restricted view seriously oversimplifies the understanding of the complete constitutional systems in such countries. This long-standing oversight is now being recognized, and an entirely new field of comparative constitutional law is being developed, to include not only the national but also the subnational constitutions. This is in no small measure because of the efforts of Delledonne, Martinico and Popelier, as well as the IACL.

As a new field, comparative subnational constitutionalism is evolving rapidly both in the scholarly world and in real practice.^{III} For this reason, publications like *Perspectives on Federalism* are extremely important in bringing contributions concerning recent developments to readers in a timely manner. As Mila Versteeg and Emily Zackin have recently shown, the study of comparative constitutional law that includes only national



constitutions without considering the internal, subnational constitutions where they exist, can lead to serious misconceptions about countries' constitutional traditions.^{IV} There are, of course, questions about what sort of documents actually deserve to be called “constitutions,” and therefore subjects of these studies.^V

A careful study of subnational constitutionalism also may have lessons to offer the practice and study of *supernational* constitutionalism.^{VI} Finally, this new sub-category of comparative constitutional law will have to encompass the subnational constitutions of well-established federations, those that are newly emerging, or in transition, and those in which such constitutions are only now being suggested or proposed. All of these possibilities for academic research and practical understanding will be advanced by the contributions to this symposium.

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^I Marshfield 2013: 593 f.

^{II} <http://www.iacl-aidc.org/en/iacl-research-groups/subnational-constitutions-in-federal-quasi-federal-constitutional-states>.

^{III} Williams 2011.

^{IV} Versteeg & Zackin 2014.

^V Williams 2011: 1118; Saunders 2011; Delledonne and Martinico 2011.

^{VI} Gormley 2004; Fabbrini 2012.

References

- Delledonne Giacomo and Martinico Giuseppe, 2011, ‘Legal Conflicts and Subnational Constitutionalism’, *Rutgers Law Journal*, XLII(4): 881-912.
- Fabbrini Federico, 2012, *Fundamental Rights in Europe: Challenges and Transformations of a Multi-level System in Comparative Perspective*, doctoral thesis, European University Institute (on file with the author).
- Gormley Ken, ‘Exploring a European Union: Unexpected Lessons from the American Experience’, *Rutgers Law Journal*, XXXV(1): 69-102.
- Marshfield Jonathan L., 2013, ‘Book Review: Dimensions of Constitutional Change’, *Rutgers Law Journal*, XLIII(4): 593-616 (reviewing *Constitutional Dynamics in Federal Systems – Subnational Perspectives*, edited by Michael Burgess and G. Alan Tarr, 2012).
- Saunders Cheryl, 2011, ‘The Constitutional Credentials of State Constitutions’, *Rutgers Law Journal*, XLII(4): 853-880.
- Versteeg Mila and Zackin Emily, 2014, ‘American Constitutional Exceptionalism Revisited’, *University of Chicago Law Review*, LXXXI (forthcoming).
- Williams Robert F., 2011, ‘Teaching and Researching Comparative Subnational Constitutional Law’, *Penn State Law Review*, CXV(4): 1109-1132.