



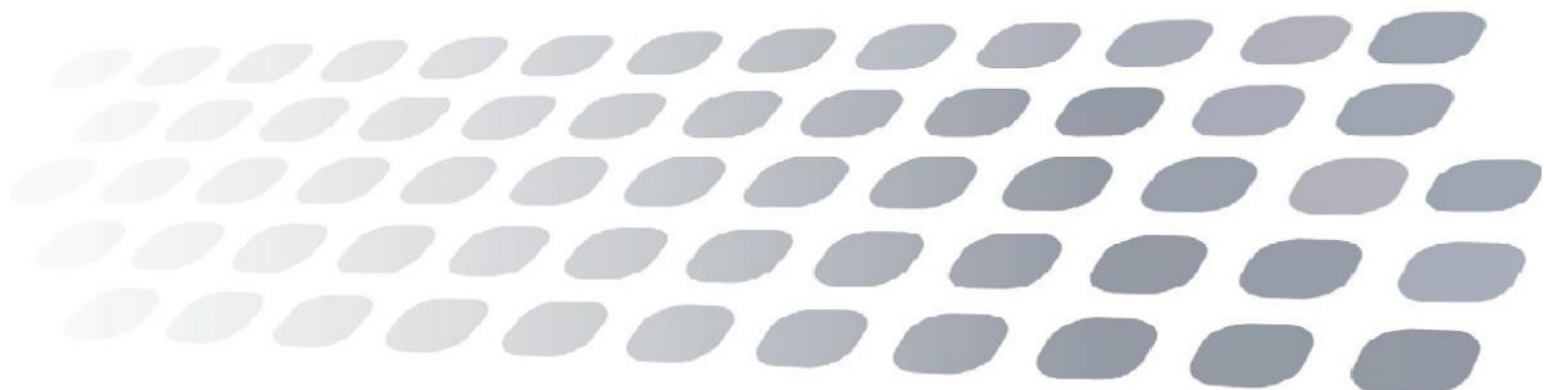
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VOL. 12, ISSUE 1, 2020  
TABLE OF CONTENTS

## EDITORIAL

*Amid Challenging Times*

GIACOMO DELLEDONNE Ed- I-IV

## ESSAYS

*Can Asymmetrical Constitutional Arrangements Provide an Alternative Answer for the Disputed? Bringing Constitutional Asymmetries into Play in the Middle East Peace Process*

MAJA SAHADŽIĆ E- 1-25

*Climate change, food security and rights of peasants: how this complexity is addressed in the international legal framework*

ROBERTO TALENTI E- 26-35

*European Integration and Minority Nationalism: a Literature Review and Avenues for Further Research*

MICHAL STRNAD E- 36-67

*Regional responses to COVID-19: A comparative analysis of EU and ASEAN policies to counter the pandemic*

MARIA PAPAGEORGIOU AND DANIELLA SILVA  
NOGUEIRA MELO E- 68-85

*Sustainable Agri-Food Systems, Climate Change and CAP Strategic Plans in the ambitious pathways of the EU after the Green Deal*

ANDREA SABA E-86-99

*Addressing the limits of autonomy: Origin, organization and purpose of horizontal intergovernmental forums in three federations*

YONATAN TESFAYE FESSHA E- 100-123

*The Normative Dimension of EU-ASEAN Relations: A Historical Perspective*

GIOVANNI FINIZIO E- 124-145



CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



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## Amid Challenging Times

by

Giacomo Delledonne\*

Perspectives on Federalism, Vol. 12, issue 1, 2020



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Ed - I



## 1. A tumultuous year

I am writing these lines amid challenging times. The last few months have been dominated by the Covid-19 crisis. Sadly, the further evolution of this crisis is impossible to predict. As things stand, Covid-19 has deeply affected the world in which we live. This has already led scholars in law, economics and political science to enquire into the impact of the health crisis. In many jurisdictions, the handling of Covid-19 has revived the age-old discussion about states of emergency and the ability of constitutional law to provide appropriate instruments for addressing existential threats. In federal and regional jurisdictions like Italy and Germany, the distribution of competences has often come to the spotlight of public attention. In some cases, the need for a unitary crisis leadership has been highlighted, and the existence of multiple centres of decision-making has been accused of producing inefficiency and of diluting political responsibility. Entirely different viewpoints have argued that federalism and regionalism allow for differentiation and experimentation with innovative policies. This should be particularly welcomed due to the largely unknown nature of the Covid-19 threat, which hardly lends itself to rigidly unitary reactions. Moreover, so serious a crisis quite often leads to strong centralisation of power to the advantage of the central executive. Against this backdrop, the distinct centres of decision-making may serve as counterpowers, much in line with classical political thought.

Of course, the Covid-19 crisis has also affected the European Union. However, it does not seem correct to describe it as just another crisis in the difficult ten years or so that have followed the entry into force of the Treaty of Lisbon. It is a symmetric shock that affects, although to a different extent, all the Member States. The recovery plan for Europe, on which the heads of state and government reached an agreement in July 2020, was only a few weeks after the German Federal Constitutional Court rendered a landmark judgment on the Public Sector Purchase Programme of the European Central Bank. In sum, the issue of transnational solidarity has become more topical than ever.

Finally, the result of the presidential election in the United States will also have tremendous impact on the future of interregional cooperation in the next few years.

Meanwhile, *Perspectives on Federalism* has also experienced some change. At the beginning of the year, Giuseppe Martinico left his position as editor and I took over. Also on behalf of the other editor, Roberto Castaldi, I would like to thank Giuseppe wholeheartedly for



his invaluable contribution to the growth of *Perspectives on Federalism* and its increased international visibility. Meanwhile, new colleagues have joined Salvatore Aloisio and Fabio Masini in the Editorial Board of *Perspectives*: Susanna Cafaro, Andrea Cofelice, Francesco Costamagna, Olimpia Fontana, Claudia Morini, and Annamaria Viterbo. In its diversity, the Editorial Board reflects the commitment to interdisciplinarity that has characterised *Perspectives* since it was launched in 2009. I would also like to thank the Centre for Studies on Federalism and its director, Flavio Brugnoli, for their precious support. In the next issues, we will present some new initiatives connected with *Perspectives on Federalism*.

As usual, we encourage our readers to submit articles, review essays and notes, or to submit proposals for fully-fledged special issues.

## 2. The contents of this issue

In this issue, a number of topics are covered. Two articles delve into comparative federalism topics. [Maja Sahadžić](#) focuses on the peace process in the Middle East and the faltering consensus around the one-state and two-state solutions, and argues that this issue could be addressed in terms of ‘multi-tiered multinational systems’ with asymmetrical features. Building on comparative research, she offers an alternative point of view with regard to the Middle East. [Yonatan Tesfaye Fessha](#) analyses a trend of increasing relevance in contemporary federations, that is, horizontal intergovernmental forums that bring together the constituent units of a federation to the exclusion of the national government. His comparative research examines the rise of horizontal intergovernmental forums in three federal jurisdictions: Kenya, Spain and Canada. Two essays focus on the multiple challenges raised by climate change. First, [Roberto Talenti](#) considers how the international legal framework, including the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, addresses the relation between climate change, food security, and the rights of peasants. Second, [Andrea Saba](#) analyses the recent communications of the European Commission deal with the issue of sustainable farming and food system against climate vulnerability. [Michal Strnad](#) surveys past and present literature focusing the relationship between the European integration process and minority nationalism in the Member States of the European Union. As the current state of knowledge in this field is quite limited, he delineates areas of tension and a framework of



analysis for filling the gap. Finally, two pieces consider topics related to comparative regionalism. [Maria Papageorgiou and Daniella Silva Nogueira Melo](#) examine the reaction of the EU and ASEAN to the first outbreak of the Covid-19 crisis. The findings of their research show that both the EU and ASEAN should acquire a more proactive role in health and crisis management. In his essay, Giovanni Finizio, provides a historical reconstruction of the normative dimension of EU-ASEAN relations, whose ultimate goal is to assess the EU's ability to make interregionalism an instrument for the diffusion of regionalism, democracy and human rights within the partner organization.

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**Can Asymmetrical Constitutional Arrangements  
Provide an Alternative Answer for the Disputed?  
Bringing Constitutional Asymmetries into Play in the  
Middle East Peace Process**

by

Maja Sahadžić \*

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## Abstract

Most traditional federal theory remains rooted in the notion that asymmetrical constitutional arrangements within a state structure are somewhat exceptional. According to contemporary federal theory, however, recent systems are multi-tiered and multinational, producing asymmetrical responses by default. In addition to suggesting that asymmetrical solutions are often required, this implies that some degree of constitutional asymmetry may provide grounds for the sustainability of the system. To this end, a more comprehensive approach is needed to investigate constitutional asymmetries as a mechanism for accommodating diversity in the Middle East peace process. It will require establishing a framework based on a notion of asymmetrical multi-tiered multinational systems, as well as exploring this framework to identify an alternative solution in the Israeli-Palestinian conflict.

## Key-words

Middle East peace process, Israeli-Palestinian conflict, stability, constitutional asymmetry, multi-tiered systems, differences in identity





## 1. Introduction

The study of the Middle East peace process has become an important aspect of many scientific disciplines. It has advanced so far that computers have been employed to explore human behavior. The PeaceMaker game was invented as an electronic peace education instrument, in which participants on both sides commit achieving an acceptable proposal in the Israeli-Palestinian conflict (Kampf 2014: 9-14). The persistence of the dispute has evidently heightened the need for renewed proposals concerning the issue.

Long-established approaches for assessing the Middle East peace process have included two plans as a starting point. The ‘One-State Solution’<sup>1</sup> could be regarded as an egalitarian approach, as it revolves around balancing and safeguarding the interests of Israelis and Palestinians within a single state, regardless of its internal organization. The ‘Two-State Solution’ involves two groups in two separate states, projecting Palestine as an independent state alongside the Israeli border. The ‘Three-State Solution’ – which proposes restoring the territorial landscape to the one that existed before the Six-Day War in 1967, when the Gaza Strip was under the Egyptian and the West Bank under the Jordanian authority – has not received much attention. Not only these solutions were the starting point, but they remained relentless. In this light, the scientific community’s inability to move beyond the first two approaches suggests a deep entrenchment in long-standing proposals.

Given the points presented above, it is of palpable interest to address alternative theoretical routes in the study of the Middle East peace process. One possible approach would be to use contemporary rather than traditional constitutional law research in the area of federalism to address this issue in terms of ‘multi-tiered multinational systems’ with asymmetrical features. There are three reasons for this proposal. First, most traditional approaches fail to trace evolution in the internal structure of states. Second, for the most part, the arguments in these approaches are based on mono-nationalism. Finally, they propose symmetrical relationships as an essential integrative part of the states. Such constructions cannot be expected to address (at least not effectively) the current challenges with regard to changing the general understanding of claims to autonomy. This has been especially true of such systems like Bosnia and



Herzegovina, Belgium, Indonesia, Iraq, Italy, Malaysia, Myanmar, Spain, the United Kingdom, and many more. Threatened by autonomy claims from various sub-national entities, these systems accommodate these entities by employing asymmetrical solutions that are put into practice in order to hold the state together, thus bringing forth new types of state systems known as ‘multi-tiered multinational systems’. In this way, the findings suggest fresh opportunities for embracing alternative points of view with regard to the Middle East peace process.

The first aim of this article is to respond to these theoretical challenges by establishing a new theoretical framework based on a notion of multi-tiered multinational systems that experience constitutional asymmetries. The second aim of this article is to apply this framework to the identification of situations in which asymmetrical solutions may offer an alternative in disputed territories, as in the Palestinian-Israeli conflict.

The article begins by addressing two touchstone factors in the Middle East peace process. It then shifts to focus to traditional and contemporary federal theory, highlighting new systems known as multi-tiered multinational systems with constitutional asymmetries. This is followed by a short discussion on the assessment of constitutional asymmetries in light of an alternative for the disputed parties in the Middle East conflict. The article ends with concluding comments and remarks about further research.

## 2. Mint vs. stale approaches

To date, two factors have been identified as being significant for examining the Middle East peace process: sovereignty and identity (Tilley 2015: 425). Importantly, these two factors are used as a touchstone for new directions in further considerations. Assuming that the co-existence of Israelis and Palestinians is not manageable under the present scope of circumstances, the present article suggests that the approach incorporating constitutional asymmetries should be employed in order to reach a solution. Correspondingly, the article suggests that this approach is quite receptive and versatile in accommodating new contexts (Blindenbacher and Koller 2002: xiii). The present article nevertheless differs from previous



studies in several key ways. In contrast to previous studies, this article points out that sovereignty does not play a deciding role in the resolution of the Israeli-Palestinian conflict. This expectation is fostered by studies focusing on a dynamic approach to federalism. With regard to identity, the article underscores the significance of discussing it in greater detail. Nevertheless, in order to address the identity issue, the article uses the term multinationalism in the further elaboration of its importance.

## 2.1 Non-essential sovereignty

The arguments in this article imply that sovereignty loses its importance under the dynamic notion of federalism. Unlike the traditional approaches, the dynamic notion of federalism centers on the identification of federalism with a process (Friedrich 1968, 7). It involves the idea of a federalism that is dynamic rather than of a static design (Friedrich 1968: 7, 173). With this in mind, federalism is a process in which a number of different political communities create arrangements in order to accommodate differences. It is also the process in which a unitary political community may transform into a federal community (Friedrich 1968: 7, 173). Given that a static model of federalism cannot outline new tiers between the central and local levels (Duchacek 1970: 279), a dynamic model offers certain advantages. They can be analyzed in line with two key points.

A first key point under the dynamic notion of federalism is that there is a wide scale of different systems (Friedrich 1968: 7, 173) (Popelier 2012: 43-44), which tend to expand the traditional classification of states according to federal theory. Recent scholarship points out that the ‘Hamilton tradition’, which classifies forms of the state as unitary, federal or confederate, based on their institutional features, offers the advantage of clarity, although it is not in tune with a variety of political systems in the contemporary constitutional sphere (Popelier and Lemmens 2015: 72) (Popelier 2014: E-3-E-4). Given that a state’s institutional structure does not always reveal the true nature of the state, a state may be established as unitary but act as federal, and *vice versa* (Livingston 1952: 84, 87) (Palermo 2009: 14-15). In addition, the scope of difference fluctuates both between systems and within the same system in a different time frame, thus producing extreme varieties (Duchacek 1970: 5). That being the