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New Trends in Comparative Federalism. A Special Issue.

Final Remarks

by

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Abstract

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Keywords

New trends, federalism, federalizing process, asymmetry, new actors



In this special issue, we have gathered experts from different legal systems, and critical voices who have explored new trends in comparative federalism from an original and fresh perspective.

Reflecting on the contributions included in the first section, it is possible to stress the never-ending tension between asymmetrical and symmetrical drives, which, in India, assumes the characteristic of a contraction of asymmetrical autonomy on a religious basis. Harihar Bhattacharyya's article highlights the conflict around Article 370 in the Indian federal system, which has assumed the role of a very important case study for testing the coexistence of asymmetry and symmetry in the light of Modi's new Hindu nationalism.

Marjan Kos's article offers a reading that relates asymmetric federalism and EU differentiation, going beyond the classic rigid division of categories. The article also addresses the convergences between these two categories and builds a bridge between comparative and EU law scholarship. Moreover, it provides important keys for an analysis of the European integration process.

In his essay, Matteo Monti discusses why comparative federalism's traditional categories of asymmetry cannot fully describe the asymmetrical demands of ethno-regionalist parties in so-called 'regional states'. He introduces the concept of spearheaded asymmetry, which holds together demands for maximum self-government and the differentiation of regions inhabited by linguistic minorities or nationalities, in order to explore the claims of ethno-regionalist parties in Spain and Italy. Through this concept, it is easier to understand some of the dynamics that can be generated in those federalising processes defined as 'regional states'.

Finally, Alice Valdesalici provides a new conceptualisation of fiscal federalism and proposes the adoption of a fuzzy logic approach to understand how fiscal decentralisation systems and the actual powers in this field of sub-national units are evolving. Her analysis offers a method for studying fiscal decentralisation outside traditional patterns to give a better understanding of many of the asymmetrical demands concerning fiscal autonomy as they arise in various jurisdictions.

Several insights and new trends also emerge from the second section, entitled *New Actors in Federal Dynamics*. In particular, Allan Tatham's article offers an analysis of a new phenomenon: regional integration in Africa through judicial dialogue. The deployment, by the courts of regional economic communities, of the legal toolbox of the EU Court of Justice, either implicitly or explicitly, is a shining example of the new integrative dynamics in



the African continent. Tatham's article thus offers a very compelling analysis for understanding the future evolution of African regional processes and the role that these new actors – the courts – can play.

Erika Arban's essay addresses the growing role of so-called *units* in federalism. Her essay proposes new ways of approaching the subject of federalism and its established legal categories. The author, starting from local needs and the challenges of the twenty-first century, highlights how new actors, particularly cities, are emerging, and how it is essential to extend our analysis beyond the rigid structures of classical federalism studies.

Taking the same perspective of challenging the classical categories of federalism studies is the essay by Giuseppe Martinico. This author emphasises that Hay's work is still very useful today for understanding developments in the process of supranational integration and argues that, above all, Hay was among the very first to define the concept of supranationalism in legal terms.

The last section – *Secession in Context: Experiments and Innovations* – analyses new trends in the field of constitutionalised secession and secessionist claims. Errol Mendes' essay deals with the new proto-secessionist challenges in the Canadian legal system, underlining how some western provinces have recently employed the 'provincial sovereignty' weapon to claim new powers, and showing how this element represents a new challenge for the first legal system to have recognised a lawful secession. In the article, Mendes reveals a more concealed 'secessionist' tendency: a claim to sovereignty that recalls Calhoun's theses on the Compact Theory.

Nikos Skoutaris proposes a reinterpretation of secession in the context of federalism, challenging some traditional readings whose aim is to marginalise the secessionist phenomenon and normalising this phenomenon in a 'pragmatic' vision of federalism. This is a stimulating reinterpretation that allows many secessionist experiences to be read from a different perspective.

Partly in continuity with Skoutaris' theses, Yonatan Fessha and Nejat Hussein give an account of the problems related to the constitutionalisation of a mechanism for internal secession in the Ethiopian system. The analysis of these developments is of great interest to those who see the constitutionalisation of secession as an instrument for accommodating ethnic conflicts.



Elisabeth Alber deals with the complexity of the New Caledonian case and shows how difficult it is to find – in a conflict resolution situation – a balance between secessionist referendums, autonomy powers and the ‘issue’ of what should be an electoral body in an ethnically divided country. These two last articles contextualise some of the challenges related to the constitutionalisation of internal or external secession, providing essential data from which to develop further considerations on the constitutionalisation of secession.

The dialogue between Nickson Oira, Aslı Ü. Bâli and Omar M. Dajani provides an opportunity to explore various federalising processes in a wide geographical area that, except for the Kurdish issue, is not often the focus of in-depth analysis. This is a dialogue that both gives an account of the book’s innovative traits and highlights the reasons why its editors embarked on this analysis.

In conclusion, we hope to have contributed to the debate on comparative federalism, the multifaceted dynamics of which present a new terrain for analysis.

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