

**STUDI**

**parlamentari  
e di politica  
costituzionale**

*Abstracts  
of Articles*

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## Constitutionalism and Constitutions in the modern and contemporary ages

The essay sets out how modern and contemporary constitutions rise. It also tries to explain which is, from time to time, either their subject and their legal value, and to identify the great trends of contemporary constitutionalism from the Enlightenment to the beginning of the third millennium. Soon after it highlights the peculiarities of the three great streams of modern constitutionalism and the features of constitutional patterns they yielded: the English unwritten constitution, the written, rigid and long-lived Philadelphia constitution and the French chronic constitutional instability.

Subsequently attention is paid to the post-revolutionary and Restoration constitutions which fostered the development of parliamentary regime and the suffrage's enlargement, opening the path, after the World War I, to the first liberal-democratic constitutions, proclaiming the social rights and introducing devices to stabilize the governments (so called rationalized parliamentarianism). The postwar season of democratic constitutionalism starts with the highly welfare-marked constitutions passed in France, Italy and Federal Germany and idealistically proceeds with the constitutions approved by the Iberian countries in the Seventies and, after the crash of the communism, with the constitutions adopted by East European countries inspired to liberalist patterns and to parliamentary regimes with executive predominance.

The survey ends with a mention to welfare state's crisis caused by the European integration and the economic globalization and with the hope of preserving European constitutional heritage, which connects rights and duties, freedom and solidarity.

MARIO PILADE CHITI

### Rules simplification and procedures simplification: allies or opponents?

The issues of overregulation and rules' quality are neither recent nor an exclusive characteristic of Italy and they are linked in many legal systems to the problem of administrative simplification.

Certainly there is a close link between economic growth and simplicity and number of rules, but it is also true that the free market needs complex and various regulations.

The Author considers some reformatory initiatives both on regulatory quality, such as the preliminary regulatory impact analysis (RIA) and the ex-post regulatory impact evaluation, and on administrative simplification as well as the results achieved.

The Author points out the risk that the simplification policies could become tools of deterioration both of regulation and administration.

CARLO ALBERTO GRAZIANI

### Land ownership and rural development

The Author considers that the traditional relationship between land and agriculture has interrupted and that by now there are two different types of agriculture: one takes care of the land and the other attacks or even sets the land itself aside. Only the former is consistent with the European policy in support of rural development (Council Regulation (EC) no. 1698/2005). In order to pursue the EU policy's goals, the land must be turned from simple input to a real value to safeguard. Consequently, the commercial farm could be no longer considered the mainstay of agriculture.

Following Giuseppe Capograssi's theory, the Author maintains that the relationship between man and land is not merely economic and that is confirmed by precise cases in point: a) the collective ownerships, which are still diffused in Italy; b) the agriculture without production as defined by Council Regulation no.1782/2003 i.e. the activity of "maintaining the land in good agricultural and environmental condition"; c) wastelands, which are not or will no longer be used and characterize most of the landscape; d) the lands which are to be saved from a speculative or aggressive use.

Referring to these cases in point, the Author assumes the category of "environmental ownership". In fact in all those cases the owner establishes with the land a particular form of enjoyment in order to get a deep harmony with nature. That is in compliance with the passage of the Genesis

“fill the earth and subdue it and have dominion...” (I,28), which has to be interpreted, in the light of the most influential biblical exegesis, in terms of good care and contemplation. According to the author those are the keywords to solve the juridical problem of the land and to identify the specific function of the “environmental ownership”.

MARIA DE BENEDETTO

### The organization of the regulatory function

The Regulatory Impact Assessment (RIA) organization is fundamental in order to carry out RIA policies. Indeed, the Italian RIA context is not so clear. In 2002, the experimental RIA on governmental regulation was transferred from a governmental task force (the Board for the simplification of procedures) to the legislative Unit at the Presidency of the Council of Ministers (the so-called DAGL). In other words, it was transferred from a centralised organization to a decentralised one.

This paper analyses the different models of RIA organization also from a comparative point of view (U.S., Great Britain, France), highlighting how the prognostic evaluation of the regulations to be adopted needs an inter-disciplinary approach and an adequate placement in the organization line.

EMANUELE BOSCOLO

### Landscape and regulatory techniques

The Author explains how the modern idea of landscape (in compliance with Italian legal decree no. 42 dated January 22, 2004) is no longer limited to the concept of “beauty of the landscape” but now includes the whole territory.

In its landscape plan, the Public Administration shall therefore not only consider aesthetic values, but also the values of identification, history and witness.

The criterion of landscape planning has changed and is engineered by taking into account scientific multi-disciplinary contributions and, for the first time, these plans are based on policies which are aimed not only at safeguarding, but also at increasing the value of “ordinary” landscapes and re-establishing degraded landscape areas.