STUDI
parlamentari
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Abstracts of Articles

SARA VOLTERRA

The many different aspects of the Second Amendment to the United States Constitution

The issue of interpretation of the Second Amendment to the U.S. Constitution, which protects the right to keep and bear arms from infringement of federal Government, has been for a long time ignored by jurists, but today it arouses scholars' interest and it feeds debates on various Constitution's interpretation theories. Firearms regulation arouses public opinion as well as other debated issues like the relationship between State and Church and the abortion.

The Author considers some recent decisions of the Supreme Court on firearms regulation (Parker v. D.C. (D.C. Cir. 2007) and D.C. v. Heller (2008)) largely criticizable.

ANTONIO ZORZI GIUSTINIANI

Karl Loewenstein between Verfassungsrealismus and axiological Consitutionalism

Karl Loewenstein belongs to that large community of German scholars of social sciences who emigrated to the United States after Hitler's rise to power. An evidence of the scarce success gained by this Author in Italy is given by the translation of only two essays (die Monarchie in modernen Staat and Kooptation und Zuwahl: Über die Autonome Bildung Privilegierter Gruppen) among his numerous works: it is a matter of fact that Italian constitutional comparatists seldom quote him and often do not know at all his doctrine and writings, such as his lucky textbook and best-seller "Political Power & the Governmental Process".

The present essay tries to fill this gap and outlines a Loewenstein's summary intellectual biography, aiming to highlight: a) his original contribution to the comparative study of political relationships between written Constitution and political power; b) his resolute and passionate battle, after World War II, to restore a protected constitutional democracy in Germany and

in the other defeated countries, as ruled by the Atlantic Charter (art. 3), supported by his doctrine of militant democracy, which was adopted by German Grundgesetz in 1949; c) his scientific method, based on a historical and sociological approach to political and institutional problems, that aims to check the actual effectiveness of the Constitution in a realistic perspective (Verfassungsrealismus), with a strong anchorage to an ontological conception of the Constitution as a set of values (axiological Constitutionalism), faced to safeguard democracy and pluralism against every totalitarian temptation.

DANIELA CEVOLI

Right of health and informed consent. A recent sentence of the Constitutional Court

In sentence n. 438/08, the Italian Constitutional Court dealt with several problems concerning health protection, informed consent agreed from parents and guardian in case of use of narcotics and psychotropics on the under age of 18 years old, and also, last of all, division of legislative competences between State and Regions in reference to the subject of this decision.

This sentence, concerning substantially the informed consent, indirectly touches on health protection referring to application of therapies on patients.

At the same time, even if only as mention, it is to be recalled the old problem of the division of legislative competences in matter of health protection that art. 117, comma 3, of the Constitution explicitly grants to concurrent powers between State and Regions.

The Constitutional Court has come to declare the contested rule unconstitutional as it regards the informed consent as a fundamental principle in health protection, whose conformation should therefore be left to State legislation. In fact, by reading this case law, it shows that awareness of health as a person's value is likely, as such, to constitute a guiding principle of legislative choices and that is the reason for the declaration of unconstitutionality of the contested provision.

So, does not seem to doubt that it is up to the State to dictate the rules of principle coming into play on fundamental rights of individuals which are ineligible to receive differential treatment throughout the country.

Furthermore, the State is entitled to intervene in matters of regional competence under article 117, comma 2, letter m, of the Constitution, stating that the State determines the essential levels of benefits relating to civil and social rights.

That said, being the need to provide informed consent central to the field of health protection, the prediction of cases in which such consent is required should be left to the jurisdiction of the State legislator.

NICOLA GRECO, PAOLA BIONDINI

Categories and techniques of the law for the arrangement and the juridical discipline of renewable sources of energy in connection with environmental protection: "resources", "rules", "regulation", "technical rules and regulation"

Legal systems prevalently are still in the phase of promotion of the use of renewable resources as sources of energy and not in that one of systematic regulation of such use according to well definite principles. Particularly the point of the compatibility between energy production from renewable sources and environmental protection has not yet resolved, except for the use of some procedural tools (environmental impact assessment, single authorization procedure, etc.). But the substantial discipline of the matter will need mature settlements and resolutions on

- the relations among science, technique and law;
- the transition from the protection and the management of goods to the protection and the management of resources.

Such a discipline can not be resolved only in the logic and the technique of statute law, but in those of administrative regulation, with which the translation of scientific and technical evolution in rules and the conflicts among involved interests can more usefully be managed.

FRANCESCA FERRONI

Giving children born in wedlock mother's surname. Can the Constitutional Court still draw back?

In recent years, the Italian Constitutional Court has had ample occasion to examine the conflict between articles 3 and 29 of the Constitution, on one hand, and the custom of giving children born in lawful wedlock their father's surname, on the other. Although the 1975 family law reform was a direct application of those constitutional principles, in that it allowed for the addition of the mother's surname to children born in wedlock, nothing really changed on a practical level. Twice, the Constitutional Court refused to examine the issue, citing the need to respect the legislative prerogative. Now, however, the question should be brought again to the Court's attention, but with an additional twist: the consideration of the article 117 of the Constitution, which requires Parliament to respect international conventions.