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Foreword: Taking Subnational Constitutions Seriously

by

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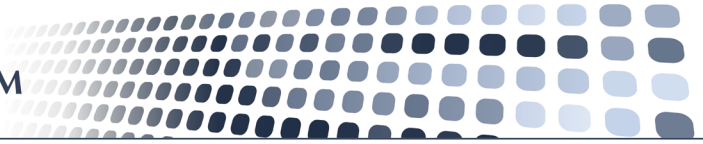
Abstract

Subnational constitutions are constitutions within constitutions. They constitute governments that work within larger, national governments. Their characteristics, the subject of comparative study, differ in each federation.

A group of younger scholars such as Giuseppe Martinico and Giacomo Delledonne have picked up the cause and are bringing new life to the scholarly enterprise, as indicated by this Special Issue. Many of those appearing in this Special Issue have not published, at least in English, on the topic before.

Key-words

Sub-national constitutions, special issue, subnational constitutionalism



Giuseppe Martinico, Giacomo DelleDonne and *Perspectives on Federalism* are to be commended for taking subnational constitutions seriously. Federal states in many instances utilize two different kinds of constitutions: federal (national) and subnational. Until recently, scholars of federalism, constitutional law and comparative constitutional law have followed an exclusive focus on the national constitutions of these federal states. What about the subnational constitutions of Länder, cantons, provinces, regions and states? These are real constitutions too, and only now are receiving long-overdue scholarly attention. This Special Issue will make a major contribution to this new branch of comparative constitutional law.

Subnational constitutions are constitutions within constitutions. They constitute governments that work within larger, national governments. Their characteristics, the subject of comparative study, differ in each federation. First, each country that permits or authorizes its component units to adopt their own constitutions will vary in the amount of “subnational constitutional space” that it permits or recognizes.^I Such space may be quite wide, as in the United States, or quite narrow, as in South Africa. Subnational constitutional space is demarked both by the texts of national constitutions and by authoritative interpretations thereof, and can change over time. In other words, this space or competence can be expanded or contracted through constitutional amendment to the national constitution or changing interpretations of it.

Next, within each of these countries the extent to which the component units actually utilize their subnational constitutional space, and how they utilize it to adopt their own constitutions will vary. Therefore, even within a single federal state the subnational constitutions may reflect wide differences in their content, the processes for their adoption and amendment, and mechanisms for their interpretation. Some component units may not even adopt constitutions at all even though they have such competence. In addition to such variation within federal states, there is also great variation across federal states. All of these features have been ignored in the past, with very few exceptions.

Now, after years where comparative constitutional law and federalism scholars analyzed only national constitutions, the fledgling subfield of comparative subnational constitutional law is emerging.^{II} A group of younger scholars such as Giuseppe Martinico and Giacomo DelleDonne have picked up the cause and are bringing new life to the scholarly enterprise,



as indicated by this Special Issue. Many of those appearing in this Special Issue have not published, at least in English, on the topic before.

Comparative research and analysis of subnational constitutions is important because political interest in regionalism is increasing with the pace of globalization. There are, of course, other forces that may push in the other direction, causing a simultaneous reduction in importance of subnational constitutions.^{III} Still, these constitutions are the highest form of law within subnational, component entities. There are important lessons to be learned from a comparative study of their characteristics. Those of us who pursue these studies will have will have to master the methodologies of comparative constitutional law, modified to fit the analysis of subnational constitutions.^{IV} This special Issue is the next important step in the development of this sub-field of comparative constitutional law.

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^I Williams - Tarr, 2004.

^{II}Williams, 2011.

^{III}Gardner, 2008.



^{IV}Williams, 2011, 1109-1110.

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