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Dear Colleague,

It is my pleasure to extend to you an invitation to the conference “Governance/Government-The Constitutional Semantics of Autonomy”, to be held on the 18th of May 2012, starting with 16.00, at the Faculty of Law of the University of Bucharest (Stoicescu Hall). The conference, part of a 27-month team research project funded by the Romanian Research Council, will be organized jointly by the Centre for the Study of Constitutional Law and Political Institutions at the University of Bucharest and the institutional host of the research project, the Romanian Academic Society.

This event invites collective reflection on the constitutional problematic, phenomenon, and implications of administrative autonomy from majoritarian politics. Classical constitutional theory and law regarded bureaucratic autonomy from politics in a 'Weberian' logic of machine-like "discharge of business according to calculable rules". That framework corresponded to the bright-line distinctions, in terms of both justifications and actual practices, which characterized classical constitutionalism. To wit, in the classical paradigm, the only institutions that could claim a constitutionally guaranteed autonomy from the political branches were the courts of law (although not necessarily the judiciary in its entirety). Judicial independence has been predicated on impartiality-related considerations and on the belief that interpretation of the law is in essence a politically neutral exercise. National banks are also recognized a degree of autonomy from politics, albeit less clear-cut than judicial independence. It is telling in this respect that both the constitutional entrenchment of the principle of granting judicial commissions “during good behavior” and the establishment of the Bank of England, the first national financial institution autonomous from both Parliament and the Crown, can be traced back to the same historical moment, the aftermath of the Glorious Revolution.

The idea that administration as such could be insulated from politics is of a more recent vintage and fraught with dissimilar ambiguities and difficulties. Beginning with the end of the 19th century, regulatory commissions were created (initially in the United States, starting with the ICC in 1887 and the FTC in 1914) whose functions could not be ascribed to either of the classical branches of government and whose “fourth branch of government” status was, from the beginning, very hard to justify in either a political-constitutional or a constitutional-legal sense. Namely, it was from the onset difficult to pinpoint with precision the reason why the relative autonomy of these institutions from the reach of majoritarian political choice was justified (expertise? the need to create an institutional environment that would promote expert decisions? impartiality considerations? the need to foster impartiality? the need for policy credibility and consistency over the time-span of the regular political cycles?, etc.). In strictly legal terms, this uncertainty translated into difficulties regarding the scope of review in constitutional and administrative adjudication.

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Even though the answers to these questions have thus far remained at best mixed, the model of bureaucratic decision-making insulated from politics has been progressively exported to other constitutional jurisdictions and even beyond the confines of the nation state (the vagaries of ‘constitutionalism’ in the European Union are only the most apparent case in point). Not only was bureaucratic autonomy generalized *within* national constitutional systems and supranational structures such as the European Union but, somewhat paradoxically, international organizations (the EU Commission, the World Bank, the IMF) started to develop “bureaucratic recipes” for assessing the orthodox parameters of democracy and constitutionalism within nation-state jurisdictions.

The conference is an occasion to debate the tensions brought about by this new paradigm and explore the conditions of the possibility governing the autonomy of administrative decisions within the contemporary constitutional paradigm. As a working hypothesis, the problematic of constitutionally entrenched administrative autonomy is regarded as a process of gradual isolation of decisional spaces within the structure of the constitutional state. In this epistemological context, the concept of ‘governance’ is employed contrast with the term ‘government’, in order to highlight the ambiguity of the contemporary neutralization, autonomization, fragmentation, and formalization of public decision-making processes and the ensuing transformation of classical legitimacy models.

I hope you will be able to attend the event and look forward to hearing from you.

Sincerely,

Dr. Bogdan Iancu (Convener)

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