

Governance/Government-Political Neutrality and the Constitutional State

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Description

The volume addresses the problematics of institutional neutrality from politics within and beyond the constitutional state.

Chapter Outline

The book will be divided into a theoretical-historical and an empirical part.

A first set of chapters will problematize the tendencies showcased by the antinomy governance/government, namely, the rise of politically neutral spaces of decision within and beyond the nation state. The contributions will follow three lines of analysis: i. history of neutralization in the nation state, ii. conceptualization of alternative justifications (e.g., technocracy, time-consistency, and expertise) for administrative neutrality as a complement or substitute to majoritarian democratic processes and decisions, and iii. the implications of supra- or international governance structures ('global governance' as a partial substitute for 'nation state constitutional government'), respectively.

A chapter will attempt to follow the narrative of independent agencies within their context of origin, while a second one (A. Czarnota) will deal with issues related to the legitimacy of the nation state in an age of global governance. This should come as an introduction to the second line of analysis, dealing both with the definition and new developments of the concept of agency as a politically neutral instrument of governance (B.Iancu) and its legitimation through arguments relating to technocracy and "neutral expertise" (L.Bojin). The impact of national agencies created as a consequence of EU accession will be assessed both on the internal balance of powers and on the institutional balance of the supranational organisation (S.Tanasescu).

The second part of the volume will illustrate the general tendencies of administrative neutralization in a number of paradigmatic jurisdictions. Several chapters will undertake comparative studies of autonomous agencies in established constitutional systems such as the United States, France, Italy (A. Febbrajo) and the distinct responses of these systems to the new phenomena (e.g., in France the regulatory power of independent agencies, inasmuch as it diverges from inherited categories, has traditionally been strictly scrutinized by the Conseil Constitutionnel, whereas their legitimacy is constantly questioned).

A second set of chapters will focus on new democracies that are also new EU member states, e.g. Romania (Iancu), Bulgaria (Smilov), Hungary. The chapter on Bulgaria will examine the implications of populism in the EU-driven process of ‘agencification’. The case study on Hungary offers a useful contrast to its Bulgarian counterpart. To wit, once a paragon of successful post-communist transition, Hungary has come as of late to epitomize the concept of an illiberal constitutional democracy. Nonetheless and apparently paradoxically, populist politics have been recently used to entrench ostensibly anti-populist autonomous institutions, such as the above-mentioned Budget Council. In Romania, both the process of EU accession and post-accession CVM monitoring have determined the hasty adoption of a congeries of autonomous agencies and an accelerated insulation of pre-existing structures, which have spruced up in an unstable, relatively dysfunctional constitutional system. The institutional grafts have thus far functioned less than optimally, due to both drafting-related reasons (internal constitutional antinomies) and to an inhospitable, often contradictory, Constitutional Court jurisprudence on the topic. The Romanian chapter (B. Iancu) will exemplify these tensions with the evolution of the anticorruption agencies.

The case studies centered on Taiwan, Norway, Russian and Brazilian developments, respectively, are of epistemologically relevance, insofar as they showcase a more general tendency towards neutral mechanisms of “governance”, a trend that is not confined to or predetermined by US and EU-related contexts. Brazil has for instance been selected because it illustrates a rather counterintuitive hypothesis, namely the reinforcement of neutral powers during times when the perception of the rationalization of public authorities is reduced, such as political crises (G.Bercovici). Likewise, Russia is an interesting case, providing the ideal ground for state capture disguised under apparent neutral and technocratic governance (S.Belov).

Relevance of the Project

This volume differs significantly from the existing literature. Firstly, the contributors address the phenomenon through a rigorous normative conceptual lens, that of constitutionalism and constitutional law. We are, that is to say, asking a foundational question about the implications of political neutrality on inherited normative categories, both at national and supranational level. Secondly and related, the edited collection combines a rich array of carefully selected case study analyses with the theoretical approach.

The book is in the result of a three-year collective research project funded by the Romanian Research Funding Agency and hosted by a Bucharest think tank (“Governance/Government: The Constitutional Semantics of Autonomy”, <http://sar.org.ro/governantagubernamant-semantic-constitucionala-a-autonomiei/?lang=en>)

Details of Manuscript Submission

The manuscript can be submitted by the end of 2015. It will comprise 15 to 20 chapters, yielding a printed work of roughly 400 pages.