



CENTRO STUDI SUL FEDERALISMO

PERSPECTIVES ON FEDERALISM



ISSN: 2036-5438

Federalism and institutional structure

by

Giacomo Delledonne *

Perspectives on Federalism, Vol. 15, issue 1-2, 2023



Except where otherwise noted content on this site is licensed under a [Creative Commons 2.5 Italy License](https://creativecommons.org/licenses/by-nc-nd/4.0/)

Ed - I



As I am writing these lines, institutional developments on both sides of the Atlantic have shown, once again, how complex the interplay of federalism and democracy is.

In the European Union, the European Parliament election in June 2024 marked the beginning of the 2024-2029 institutional cycle. The results of the latest European election are not easy to decipher. On the one hand, in several member states, including France and Germany, the vote resulted in a major setback for the ruling political parties, with obvious implications on the political authority of some national leaders within the European Council and during the post-election negotiations. On the other hand, the overall result of the European elections throughout the twenty-seven member states did not point to a major shift in the voters' preferences. The three-party alliance which had supported Ursula von der Leyen during her first term as President of the European Commission, made up of the European People's Party, the Socialists and Democrats, and Renew Europe, 'was substantially confirmed as the only feasible [coalition], although by a narrower margin' (Lupo 2024: 20). Still, an arithmetic majority within the European Parliament is something different from a workable majority. Von der Leyen's moves prior to her re-election on 18 July 2024 testify to the need to expand her political base within the supranational assembly in Strasbourg and Brussels. In the following months, however, von der Leyen had to take into account opposing expectations and concerns in distributing portfolios to the members of her college of commissioners in the making. In so doing, she was confronted with the thankless task of reconciling the traditional three-party coalition – which, meanwhile, had expanded to The Greens/European Free Alliance – with the intergovernmental balance of power. The controversies that preceded and followed the confirmation hearings with Executive Vice-President nominees Raffaele Fitto and Teresa Ribera Rodríguez are a prime example of the dual logic that underlies the functioning of the EU's form of government. For the first time since 1999, no nominee has been rejected during the confirmation hearings. Critics have decried 'a step backwards for the Parliament, which has typically kept a check on the Commission's hold on power by rejecting or sending back a nominee for further questions in years past' (Griera and Wax 2024). In my opinion, assessments of this sort hit the mark only partially. There is no doubt that the European



Parliament has seen its leeway reduced by the disagreements among the European political families and among the national governments. However, the attitude of the European Parliament can also be explained in the light of the ongoing transformation in the form of government of the European Union, with a ‘strengthened dialectic relationship’ between the Parliament and the Commission¹. If this is true, the supranational institutions will clearly depart from a separation-of-powers model (see Kreppel 2009), and there will be less room for hard-fought confirmation hearings.

In the run-up to the presidential election in the United States, debates about the Electoral College and its outdatedness occasionally reemerged. One of the historical political safeguards of federalism (Wechsler 1959), the Electoral College has been criticised for facilitating the election of demagogues to the Presidency in recent times (Schor 2024). Since the election results were known, this debate has somewhat been dampened. Meanwhile, we can wonder about the evolution under a second Trump administration. Donald Trump’s first term of office was marked by the rise of punitive federalism, that is, an approach to federal decision-making ‘characterized by the federal government’s use of threats and punishments to suppress state and local actions that run contrary to its policy preferences’ (Goelzhauser and Konisky 2020: 312). Punitive federalism has emerged against the background of increasing partisan polarisation, a trend that was already visible under President Barack Obama. Democratic governors have already formed groups in the aftermath of the presidential election to coordinate efforts and resist federal policies (Epstein 2024), and punitive federalism may well resurface in the next few months.

The contents of this issue

The essays that compose this issue cover a variety of topics and jurisdictions. In the first essay, [Gábor Gulácsi and Ádám Kerényi](#) discuss the much-explored conflict between the Hungarian government and the European Union. After pointing to the combination of economic convergence and democratic backsliding in the years following the eastward enlargement, they describe the enforcement of rule of law conditionality vis-à-vis Hungary as a turning point. Based on that, Gulácsi and Kerényi suggest that several scenarios can be



imagined for the next few years. The conflict over the rule of law is most likely to continue, with limited room for institutional or political innovation. Other scenarios, most notably, a fully-fledged Hungarian Huxit or a restoration of the rule of law and constitutional democracy, are less likely to come true. Despite some differences, this concluding assessment resonates with a line of scholarship that has focused on an alleged *authoritarian equilibrium* within the EU (Kelemen 2020).

The subsequent piece provides a relevant contribution to the knowledge of a federal system that has not attracted great scholarly attention at the international level. [Nisrine Abiad](#) presents some of the basic features of the federal order of the United Arab Emirates. In his view, the dominant feature in this federal system is its inherent flexibility; therefore, it is difficult to categorise the constitutional order of the United Arab Emirates, let alone ascribe it to well-established theoretical and comparative models. Abiad identifies the supremacy clause in Article 151 of the Constitution and the gradual expansion of democracy and civic participation as crucial factors in the evolution of the system.

A piece by [Cristian Altavilla](#) discusses the state of the art of subnational constitutional law scholarship in Latin America, with specific focus on provincial constitutions in Argentina. Altavilla considers the federal-provincial balance throughout the constitutional history of the country, with alternations of periods of innovations propelled by the subnational layer, on the one hand, and the re-emergence of homogenising trends, on the other hand. In the concluding paragraph, his piece advocates an ‘intelligent, courageous and innovative’ approach to the subnational constitutional space.

[Francisco Pereira Coutinho](#) discusses approaches to secession within the European Union, a particularly topical issue that has resulted in significant academic contributions in recent times (see e.g. González Campaná 2024). In his piece, Pereira Coutinho highlights a paradoxical development: European integration contributed to preventing the collapse of national statehood in Europe after the end of World War II, but may have fuelled centrifugal tendencies in the last three decades or so. In this author’s view, the federal principle should play a key role in the political and academic conversation about ‘independence in Europe’, with the EU supposed to protect the ongoing political existence of its Member States.



Finally, [Jock Gardiner and Silvia Talavera Lodos](#) engage critically with a judgment rendered by the High Court of Australia that declared the policy of indefinitely detaining non-citizen, non-visa holders to be unconstitutional. The two authors discuss the relevant aspects of this judicial decision, in which the High Court resorted to structural arguments to protect the fundamental rights of non-citizens. Moreover, Gardiner and Talavera Lodos highlight the possible implications of the Australian case in comparative perspective, with strong emphasis on the supranational courts in Luxembourg and Strasbourg.

*Associate Professor of Constitutional Law and Public Law, Scuola Superiore Sant'Anna, Pisa, Italy. Email address: giacomo.delledonne@santannapisa.it. delledonne@csfederalismo.it

¹ Constitutional Court of Italy, judgment no. 239/2018 (see Delledonne 2019: 384-385).

References

- Delledonne Giacomo, 2019, “A goal that applies to the European Parliament not differently than it does to national parliaments”: The Italian Constitutional Court Vindicates the 4% Threshold for European Elections”, *European Constitutional Law Review*, XV(2): 376-389.
- Epstein Reid J., 2024, ‘Democratic Governors Form a Group to Oppose the Trump Administration’, *The New York Times*, 13 November 2024.
- Goelzhauser Greg and Konisky David M., ‘The State of American Federalism 2019—2020: Polarized and Punitive Intergovernmental Relations’, *Publius: The Journal of Federalism*, L(3): 311-343.
- González Campaña Núria, 2024, *Secession and European Union Law: The Deferential Attitude*, Oxford, Oxford University Press.
- Grier Max and Wax Eddy, 2024, ‘Second von der Leyen era on track to start Dec. 1’, *Politico*, 20 November 2024 (<https://www.politico.eu/article/european-parliament-ok-new-commissioner/>).
- Kelemen R. Daniel, 2020, ‘The European Union’s authoritarian equilibrium’, *Journal of European Public Policy*, XXVII(3): 481-499.
- Kreppel Amy, 2009, ‘Le implicazioni politiche delle riforme istituzionali: le relazioni tra esecutivo e legislativo nell’Unione europea’, *Rivista italiana di scienza politica*, XXXIX(3): 383-416.
- Lupo Nicola, 2024, ‘After the 2024 EP elections, the complexity and arrhythmias of EU parliamentary democracy have become even more evident’, in Cerruti Tanja and Savastano Federico (eds), *The European Parliament Elections in 2024*, Torino, Giappichelli, 17-35.
- Schor Miguel, 2024, ‘The Anna Karenina Principle and Democratic Erosion’, *I•CONnect*, 2 October 2024 (<https://www.iconnectblog.com/the-anna-karenina-principle-and-democratic-erosion/>).
- Wechsler Herbert, 1959, ‘The Political Safeguards of Federalism: The Rôle of the States in the Composition and Selection of the National Government’, *Columbia Law Review*, LIV(4): 543-560.