

In the Lobbies' Construction Yard (p. 523)

Enrico Carloni, Marco Mazzoni

Essays and Articles

Lobbying in Italy: Weaknesses and Strengths of the Existing Legal Framework and the Possible Solutions for Completing It (p. 529)

Melania D'Angelosante

The study focuses on the nature and functioning of lobbying in Italy with the aim of placing it in the existing legal framework and suggesting possible solutions to complete this framework.

Lobbying and Quality of Regulation (p. 557)

Luca Di Donato

This paper explains the participation of pressure groups within legislative decision-making processes from a regulatory standpoint. The basic idea is that in some circumstances the (poor) quality of rules can provide a perverse incentive directly promoting illicit behaviour. In particular, this work analyses the case of "Tempa Rossa", with the aim to shed light on the so-called "corruptibility" of rules, i.e. the corruption risks that may affect both regulation and the decision-making process. In this perspective, some scholars and international organisations have recommended introducing regulatory reforms having the goal of enacting laws and other forms of regulation encouraging compliance rather than transgression.

The Lobbying Phenomenon within the National Legislation on "Débat Public" (p. 571)

Luca Caianiello

The paper examines the lobbying phenomenon in the light of Italian national legislation concerning public contracts. In particular, the main aim of this paper is to understand how lobbying has been addressed within the legislation on "débat public", enacted by article 22 of legislative decree no. 50/2016 and regulation no. 76/2018. In this perspecti-

ve, the analysis highlights the main critical issues of the new legislation, proposing a different developmental hypothesis, based on the “disjointed” application of directive principles and criteria, enacted by article 1, paragraph 1, letters ppp) and qqj), enabling Act no. 11/2016. In this context, the author also examines whether or not these directive principles and criteria entail a violation of the prohibition of “gold-plating”.

Lobbying as a Possible Remedy for the Crisis of the Democratic Representation Principle (p. 583)

Francesco Martines

In modern parliamentary democracies voting is the main participation tool. Data about voter turnout during the recent Italian elections highlights a participation crisis linked to the phenomenon of abstention. Firstly, this paper examines the causes of the crisis of representative democracy and the new frontiers of popular participation (developing, in particular, an alternative viewpoint about lobbying linked to e-democracy). Secondly, it analyzes the role that lobbies’ activity should have in this context. The final research goal is to offer an alternative vision of lobbying based on the potential it could have in the era of market and institutional globalization.

Lobby Regulation as a Form of Corruption Prevention: The Role of the National Anti-Corruption Authority (ANAC) (p. 605)

Cecilia Sereni Lucarelli

The absence of a direct regulation of lobbying in the national context has encouraged the emergence of the idea that lobbying corresponds to corruption. Adopting the view that this idea is unfounded, the article argues that the quality of regulation, rather than its quantity, is the most efficient tool to prevent corruption. However, the fact that the National Anti-Corruption Authority may be subject to the pressure of lobbies raises serious questions about its role.

Regional Laws on Lobbying through the Prism of Anti-Corruption and Transparency Policies (p. 631)

Daniele David

The article analyses the evolution of a set of regional legislative attempts – some recently approved and implemented (Lombardy, Calabria and Puglia regions) and others already enacted years ago (Tuscany, Abruzzo and Molise regions) – to regulate the representation of interests, or lobbying. Such regional experiences are a testing ground for understanding the process of “administrativization” of lobbying regulation, through which traditional mechanisms of regulating the representation of interests tend to meld with recent developments in anti-corruption and transparency legislation. Despite attempts undertaken by regional legislators and examples of the increasing quality of these regulatory systems, significant limits remain in terms of implementation.

Local Authorities’ Representation by Means of Associations: Notes for a Discussion on Lobbying (p. 651)

Roberto Medda

In the context of an increasing interest of Italian legal scholars for lobbying as a research field, this paper aims to analyze the associations of local authorities, which are considered as a special category of pressure group. In particular, the role played by ANCI (National Association of Italian Municipalities) and UPI (Union of Italian Provinces) within the State’s policy-making process are examined. This the paper focuses on the inner workings of the Conference of State, Cities and Local Governments. The case study shows that local government pressure groups have been progressively included in State institutions. This fact marks a substantial difference from other types of pressure groups, which have not been granted such recognition. Although the inclusion in State institutions of pressure group representatives is the bedrock on which an effective governance mechanism of central-local relationship has been built, there is a major critical issue: the real level of representation of pressure groups is uncertain, as there are no legal rules which can guarantee it. Yet this model is evaluated as a useful prototype for future general regulation of lobbying.

Storming the Stagecoach: Lobbying and Public Expenditure in the Regulation of Government Budget Approval Procedures (p. 677)

Flavio Guella

The article analyzes the problem of limiting the requests for allocation of public resources supported by lobbies and centers of sectoral interest, in order not to allow a loss of consistency and organicity of budget choices. In the Italian legal system the lobby phenomenon had not found – until recent years – a formal direct recognition, but the legislation against the fragmentation of the annual budget law is one of the few areas in which the representation of interests has received, in fact and indirectly, some normative attention. After an introductory section on the comparability of the U.S. experience, where the issue is addressed within a presidential frame of government and lobby transparency rules that allow specific solutions, the article analyzes the evolution of Italian legislation from “finanziarie omnibus” up to the discipline of the so-called “collegati fuori sessione” (and the reasons for their continuing relevance even in a context in which the constitutional revision of art. 81 has led to defining the budget law in not merely formal terms).

The Religion Lobby (p. 703)

Gianfranco Macrì

The essay addresses the legal conceptualization of religious groups in the context of interest representation in the public sphere. It is crucial to investigate the organizational dimension of religious interests in the context of the political transformations occurring at both the national and European levels, taking also into account current social changes involving multiculturalism. This complex entwinement highlights the adherence of religious lobbying to contemporary forms of interest representation in national and supranational institutional dynamics. Furthermore, it calls for conceptualizing the religious factor as any other social “product”, which should be regulated according to the rules of multi-level public law.

Centralisation of Public Purchasing Bodies, Transparency and Lobbyism in the Health System of the Campania Region: Preliminary Empirical Evidence (p. 723)

Ferdinando Pinto, Vinicio Brigante

The need to regulate lobbying groups appears and disappears cyclically from the Italian legislative landscape and from scholars' agenda, without ever reaching a final and definitive landing place. The lack of a specific discipline increases the perception of a phenomenon located on the border of legality, with potentially pathological misuse of public decisions. This issue assumes atypical and more marked characteristics when it is related to public spending on health care, where it is advantageous to ensure that lobbies play an effective and transparent role. The aim of this paper is to provide strike a difficult balance between lobbying, transparency and public procurement in a sector (healthcare) entailing specific challenges.

Lobbying in the European Union: Transparency Measures (p. 745)

Maria Cristina Marchetti

The role of lobbies in European decision-making has always been analyzed by scholars and professionals. On the one hand, they have attempted to highlight the fundamental differences separating European lobbies from the experience of more consolidated Anglo-Saxon lobbying; on the other hand, they have aimed to emphasize the specificities of European lobbies in relation to the complex European institutional architecture and the wide range of interests represented within it and which have made Brussels a world lobbying capital. Although lobbies continue to be considered a dysfunctional element of European democracy and the main cause of the lack of transparency in decision-making, their role as information channels is now recognized. This is specifically relevant for institutions which, like the European ones, are characterized by an endemic remoteness from citizens. The conspicuous presence of lobbies has prompted European institutions to embark on a path on transparency which is currently one of the most advanced and constantly evolving tools for regulating pressure groups.

“Phantom Regulation”, or 13 Years of the Polish law on Lobbying and What Did (Not) Result from It (p. 765)

Marcin Michał Wiszowaty

The 2005 Polish Act on lobbying was the second act of its kind in the European Union. The history of legal regulation of lobbying in Poland is an instructive example for other countries considering regulation of lobbying or wanting to improve their regulation. The Polish example teaches both... how not to do it. From the beginning it was known that this story simply could not end well. The screenplay contained all the features of a good thriller with elements of a comedy. First, a great political scandal against a backdrop of corruption, with the participation of a famous film-director and the head of a major newspaper. In response, an ambitious political project typical of Central European countries: to do what did not succeed in Western Europe and pass a lobbying act that meets U.S. standards. Then, a surprising decision to consult the project by... lobbyists and, as a result, to remove many important provisions from it. Finally, an ornamental addition of several non-lobbying institutions to the bill. The result is a very eclectic, but at the same time completely ineffective, act on lobbying. This article examines three main issues: a critical presentation of the existing Polish regulation of lobbying; the practice of lobbying in Poland, i.e. how to perform lobbying activities without being subject to the law on lobbying (with selected specific examples); the latest chapter in the history of lobbying in Poland, i.e. the “Law and Justice” 2017 Bill on Public Transparency blocked by a massive resistance of interest groups. The summary puts forth basic recommendations for necessary improvements in the Polish lobbying regulations, so that it would cease to be an example of “phantom regulation”.

Local Authorities and the Healthcare System (p. 789)

Fabio Saitta

After describing the role played by Italian regions and municipalities in the protection of health, from the establishment of the National Healthcare System up to its reorganization in 1992, the paper highlights the clear trend reversal, with respect to the model of the indirect regional administration outlined by Law no. 833 of 1978, marked by the aforemen-

tioned reform. The latter, having granted regions ample discretionary power in the definition of the rules governing the system, has promoted the creation of differentiated regional models. The paper also examines legislative decree no. 229 of 1999, which undertook a “re-centralization” of health, and the constitutional reform of 2001, following which constitutional jurisprudence clearly identified in the principle of loyal collaboration between the State and the regions the instrument for attaining a fair balance between the need for uniformity in protection of the right to health and differentiated organizational models. Finally, the text addresses how the debate reignited after some regions requested greater autonomy pursuant to art. 116, paragraph 3, of the Constitution.

After Forty Years, the Psychiatric Services Reform Still Holds an Important Lesson about Public Services and Their Role (p 817)

Alessandra Pioggia

After forty years, the Italian reform of psychiatric services still holds an important lesson for the regulation of public services. That reform focused on the relationship between service organization and the rights of the individual. The topic was addressed with full awareness of the fact that the right to health involves not only the right to be treated, but also other individual rights, first of all respect for individuals' dignity. The issue thus took on a general dimension, highlighting the relationship between a public service and the idea of society that it expresses. The reforms that have affected the national health service in the last thirty years have paid attention mainly, if not exclusively, to the efficiency aspect, focusing solely on the economic sustainability of services. This has made us lose sight of the political component underlying any choice of public service organization and today risks hiding its consequences.

Notes and Comments

The European Paradigm of Public Administration Efficiency (p. 839)

Riccardo Ursi

The European Lex fiscalis, developed after the 2011-2013 sovereign debt crisis, marks, directly and indirectly, a clear break with the evolution of

continental States' administrative system of the economy. The E.U. fiscal compact has led to a change in the legal paradigm of good administration based on the economic rule of containing public spending rather than administrative organization functionality. The revision of the Italian Constitution in 2012 recorded this change. The prevalence of budgetary interests over other public interests leads to a redefinition of the concept of public administration efficiency that art. 97 of the Constitution ties to cost savings and the obligation to link functionality to public debt sustainability. The article seeks to shed light on the fact that the constitutional amendment implies both greater responsibility for political choices in the use of public resources and a natural propensity for administrative action towards legalism.

Cultural Heritage and Territorial Development: The Role of the Landscape, the Code Approach, and New Normative Trajectories (p. 857)

Marco Brocca

The work aims to examine the relationship between the protection of the landscape and the socio-economic development of local territories, on the basis of an integration between territorial policies and a conception of the landscape as a local development resource and factor. Insights in this direction come mainly from the European Landscape Convention (Florence, 20 October 2000), which identifies the landscape as a “widespread”, “integrated” and “multifunctional” concept. With reference to Italian law, the code of cultural heritage and landscape (Legislative Decree 22 January 2004, no.42) provides a set of minimal elements, while the most useful and interesting ideas need to be derived from state, regional and special laws. This article aims to stimulate the debate on both the academic and institutional level, focusing on conceptual aspects (the notion of landscape and its classification as a common good), organizational profiles (center-periphery relationships, the role of local populations), and functional aspects (the adoption of consensual and not only authoritative administrative decision-making processes).

Conservation of Cultural Assets and Patronage: Competences, Some Comparisons with the Spanish Legal System, and the Art Bonus Case (p. 887)

Sandra Antoniazzi

Cultural heritage conservation, which involves the constant availability of public resources, the implementation of objectives expressed in the Code of Cultural Heritage, and the involvement of local authorities, can be materially implemented through charitable donations by private agents (persons and businesses) motivated by tax deductibility mechanisms, on the basis of cooperation between the public and the private sectors. Patronage corresponds to donors offering cash contributions without the receiving public authority's having to offer anything in return. The ways in which this may occur are defined by law in various normative sources, in a context of limited public resources. The ensuing debate has identified new patronage and sponsorship opportunities; a revival of patronage according to an accessible and convenient approach, in support of the preservation of cultural heritage, is promoted by Law decree no. 83 of May 31, 2014 (converted into Law No. 106 of 29 July 2014, with some subsequent amendments), which introduced the Art Bonus and provided for a relevant tax credit for cash donations in favour of cultural heritage and culture development. The article examines selected aspects of patronage in the Spanish system and provides a comparative perspective as regards financial participation of private individuals and companies in projects for the conservation and enhancement of cultural heritage.

Regional Observatory

The Metropolitan City of Bologna Four Years after Its Establishment: A Field Test (p. 917)

Marcello Mirfakhbraie