Book Reviews

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Constitutional Sunsets and Experimental Legislation: A Comparative Perspective
by Sofia Ranchordàs
Cheltenham: Edward Elgar, 2015; 238 pp.
€ 115,07; Hardback

*Mario Esposito**

By showing both competence and an unusual ability to keep readers' attention, Sofia Ranchordàs is addressing a charming yet complex theme, which has not (yet) been the subject of research in Italy; it is therefore highly desirable that her book is widely circulated.

For one thing, it is fair to point out that, against the background of the topic of sunset clauses and of experimental legislation, there is a sharp research about the techniques for a good legislation, for possible systems to preserve, or, even better, to improve, the role of the legislative function in a democratic country.

Both sunset clauses and experimental legislation are characterized by a precise relationship with time; their duration is temporary. Yet, the formers fix a deadline themselves – which is useful also in the effort to judge, *ex post*, whether they have or have not fulfilled their target; the latter is a more complex phenomenon, and, a part from being temporary, it derogates from ordinary law and applies to a specific community, smaller than the general one.

Of course, the issues are manifold, and Sofia Ranchordàs succeeds in pointing them all out and, by avoiding to be prejudicial, she suggests also concrete possible solutions. After a careful examination of the two notions, she precisely underlines their common components and differences. She then compares them with the essential principles of *Rechsstaat*, *i.e.* the division of powers (with particular regard to legislative delegation), legal certainty, equal treatment, the principle of proportionality, and the safeguard of fundamental rights.

The Author points out the legal doctrine's *topoi* on such essential topics (with bibliographic references referring to quite recent works), and she successfully tries to avoid "extreme" conclusions, finding the balance in a careful examination of the reasons that brought the United States, Germany, and the Netherlands to use sunset clauses and experimental legislation; she also underlines the differences, on legal and factual circumstances, between those countries.

The book suggests – and this is another merit of hers, as Ranchordàs' work can be an excellent starting point for other researches – several reflections, deserving deeper analysis. This would, however, go beyond the scope of a review, and I will therefore only briefly touch upon a few points.

As the Author writes in the conclusion of her work:

> "experimental legislation and sunset clauses are stepping stones on the pathway to Brandeis' 'living law'; allowing laws, to sunset and sunrise, and to go through experimental periods (and their ordeals) is to give life to legislation and eternity to its role as 'the mirror of society'" .

Praiseworthy and topical targets, in a time where (even in Italy) other powers and functions often trespass, "with intrusions into the field of the legislator"; yet, those powers, although more efficient, are much less democratically legitimate. But the worst is that the legislator itself has developed an inclination to the delegation of its functions and role in favor of both administrative agencies (model case being the independent administrative authorities) and judges. As a consequence, it is giving up on its essential task

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and primary goal – determining and defining –; and this can't but affect the above mentioned fundamental principles of the rule of law.

Nevertheless, as every law has its sunrise and its sunset, the question is whether the two systems can determine the period of time, after which temporary legislation is supposed to expire. The Author puts forward epistemological and organizational arguments in her attempt to prove the advisability of sunset clauses and of experimental legislation; such arguments highlight the necessity of a reform of the legislative procedure, to be done, if possible, by constitutional laws.

The idea is that the procedure should be able to make *ex ante* a preliminary investigation; this ought to make possible, *ad instar* to legal and trial procedures (and the *iter legis* should be one of the kind), the participation of those citizens whose interests are concerned by the act that has to be approved (e.g. the hearings and, more in general, the debate also about contradictory opinions – the Chambers have, in fact, some means allowing them to do so): the Italian doctrine gave us some important works on such topics (cfr. Alberto Predieri, *Contraddittorio e testimonianza del cittadino nei procedimenti legislativi*, Giuffrè, Milano, 1964). If we wanted to use the distinction of Léon Duguit, we could say those reforms may concern the *normative legislation* (the institutional rules) too, and not only the *constructive* one, that is the field on which sunset clauses and experimental legislation work. This complex topic also entails the necessity of a fairer political representation of interests that can hardly (and surely not in a clear way) be represented by Parliaments; in fact, their participation to the law-making procedure could be a great benefit, if it was only to conform to the principle of fairness of political choices.

In view of this, a possible solution could be creating a body of non-political representation of people, but representative of only those interests belonging to the social groups that it is made up of. The social and economic organization would be reflected in such body and this would allow them to take part in the law-making procedure, in the attempt to "advice" the Chambers and the Executive with their final decisions, and also to facilitate the pursuance of law. In other words, it would be some kind of permanent interlocution between the above mentioned powers, and this would eliminate the springing up of the "temporary technical authorities" that occasionally take part in the law-making procedure; conversely, the voice of social groups would finally be heard. The creation of procedures and authorities to subject laws (after some time from their approval) to revision could be useful too. The Italian experience of corrective legislative decrees is an example of this: the Parliament, in fact, can delegate the Executive, setting some principles to which the Government must conform and fixing a time period after which the delegation shall expire, to enact decrees improving other rules and legislations.

As far as the sources of law are concerned, Sofia Ranchordàs' book points out the necessity to distinguish between different forms of performing the legislative function: in fact, because of the government's intervention in fields that were once entirely in the hands of private autonomy, and because of the several challenges technological evolution has brought, those acts can't be anymore united in the only category of "general and abstract provisions". Experimental legislations and temporary ones remind us (at least us Italian people) of incentive legislations and, in some cases, of "provision-laws" (leggi provvedimento): new means of the *Rechtsstaat* (that was becoming *Staat der Industriegesellschaft*) with a content often similar to that of contracts. As the Italian Constitutional Court stated, the regime of these laws and legislations has to take into account the specificity of their content, with particular regard to the "time component", and, consequently, the abrogation.

Whatever solution is preferred – solution, by the way, that will have to conform to the constitutional guarantees of the individual, as Sofia Ranchordàs fairly points out –, one thing is sure: in a democratic system, every change in the relationship legislations-time has to deal with the majority principle and, by extension, with the freedom of Parliaments to modify laws already in force. Considering this principle, it paradoxically seems that, although sunset clauses and experimental legislation are supposed to give each legislation its "natural" temporariness, they end up providing some legislations with a certain length; while, without them, such legislations could be repealed anytime.

As a consequence, legislative "self-ties" can steadily rest and find stable grounds only on rules of constitutional level.