P. Carnevale, "*A Corte … così fan tutti?" Custom, Conventions and Practice in the Constitutional Court's Jurisprudence*

Abstract

This volume is a new attempt to propose to students, alongside the reassuring presentation of the legal phenomenon offered by the textbook literature, the study of a scholarly essay that shows the complexity and problematic nature of the life of the law.

Unlike my other books in this series, in which I have collected several essays written over several years on the same topic, on this occasion I propose a single study, prepared for the 2014 Annual Conference of the Italian Association of Constitutionalists on "Practices, customs and conventions in constitutional law", which deals with the actual constitutional law as observed and rejected by the Constitutional Court.

Compared to the original version, the essay has been divided into three parts – corresponding to the study on constitutional customs, conventions and practices – in order to make it easier to read.

The first part is devoted to the figure of constitutional custom, with which the Court has had to deal not only in the two well-known and certainly fundamental judgments of 1981 and 1996. The various decisions are examined not chronologically, but transversally, correlating the various pronouncements in order to draw common lines from them, albeit in an episodic jurisprudence such as that which originates in the "place" where custom almost exclusively comes to the fore: the conflict of attributions. What emerges is a picture in which the Court makes park use of constitutional custom, the existence of which the Court itself establishes and which is defined as a source "without degree", complementary to the Constitution and necessarily in conformity with it, but not conditioning the legislator.

In the Court's jurisprudence, however, references to the Constitutional Convention, the subject of the second part of the study, are extremely rare. It is, in fact, virtually unknown to the judges of the *Palazzo della Consulta* and is viewed with suspicion because of its "political nature", which strongly characterizes it and makes it problematic to use by a judge, however sui generis.

The third and final part of the study examines the use of practice by constitutional jurisprudence. In this case, however, it was necessary to limit the scope of the study, given that the Court is involved in the exercise of public power on almost every occasion. It was decided to carry out the study on the practices of the Chambers that have also been the subject of the Court's scrutiny: the practices of the Chambers, because of the specific weight that practice has in law and parliamentary life; the scrutinized practices, in order to focus the analysis on decisions in which the constitutional judge has dealt with what is and what ought to be. The analysis thus carried out returns to the idea of a jurisprudence that, on the one hand, has an expansive capacity, adopting a decision that goes far beyond the single case that gave rise to the Court's pronouncement, and, on the other hand, confirms and reinforces the Court's role as guardian of the constitutionality of the system.

The volume concludes with an essay by Daniele Chinni, who, following the methodological lines of the original study, critically examines the constitutional jurisprudence that, between 2015 and today, has come to terms with constitutional custom and the practice of the chambers: the result is a valuable "update" of the results of the original research, confirming some of the trend lines of constitutional jurisprudence with regard to constitutional factual law, albeit in the diversity of attitudes that the Court adopts in this regard.