Giorgio Bongiovanni
Giovanni Sartor
Chiara Valentini
Editors

Law and Philosophy Library 86

Reasonableness and Law

Springer

The second type of *intra*-value conflict is had when the subjective (personal) dimension and the objective (collective or public) dimension of the interests rotating around the same constitutional value are in contrast. Aside from the cases explicitly provided for by the Constitution,[76] one can also refer here to the core content of the principle contained in Article 51 of the Constitution, establishing at once the right to vote and an interest in having a transparent electoral campaign.[77] Another example is a teacher's interest in teaching and the public interest in a good educational system as can be gathered from Articles 97 and 33(2) of the Constitution.[78] Moreover, the subjective interest in a healthy environment may come into conflict with the objective or general interest in safeguarding the environment.[79]

4.4 Balancing of Conflicting Interests (b): "Inter-Value" Conflicts

Inter-value conflicts are when the contrast between interests involves the content of heterogeneous constitutional values. The many examples that can be adduced in this regard can be broken down into three main types.

First, there are conflicts between heterogeneous subjective legal situations (private, public, or collective), as in the case of an adopted child's right to personal identity where the right to know who the parents are comes into conflict with the biological mother's right to anonymity.[80] Another possible conflict may arise when a differently-abled person's right to a social life translates into his or her interest in a right of way resulting in an easement of necessity on the condominium where he or she resides. This right can contrast with the right to undertake business initiatives, a right that admits such easement of necessity exclusively for agricultural and industrial reasons but not for social purposes.[81]

Second, we may have conflicts between a subjective legal situation and an objective interest of the constitutional system. Here too, numerous Constitutional Court decisions can be brought as examples: the conflict between the right to annual holidays of employed prison inmates and the objective need to secure the proper execution of prison sentences[82]; the right to the *status filiationis* for children born of incest, a right that has been found to prevail upon the rules of so-called family public order, and so upon the protection the Constitution affords to legitimate families[83]; the conflict between the right to defence and the judicial system's efficiency in case

[76] See Article 32 of the Italian Constitution, establishing the right to health care as a subjective right and as a collective interest.
[77] Constitutional Court, Decision 5/1978.
[78] Constitutional Court, Decision 212 /1983.
[79] Constitutional Court, Decisions 641/1987 and 281/2000.
[80] Constitutional Court, Decision 425/2005.
[81] Constitutional Court, Decision 167 /1999.
[82] Constitutional Court, Decision 158/2001, commented in Morrone (2001b).
[83] Constitutional Court, Decision 494/2002, commented in Tega (2003).

of long-distance discovery[84]; the conflict between the right to initiate a legal proceeding and the general interest in not overloading the courts' docket (this last issue is one that comes up especially where the parties in civil cases are required to resort to alternative dispute resolution in civil cases and see if they can reach a pre-trial settlement)[85]; the conflict between the right to due process (at both the discovery stage and the trial stage) and the interest in collecting taxes if payments have to be made to the judicial register in order to have copies of documents[86]; the conflict between the right to an education and the interest in maintaining a balanced public budget (one that is not in deficit) despite limited resources[87]; the contrast between freedom of expression (under Article 21 of the Italian Constitution) and the dignity of the state, as protected under the provision concerning the crime of desecration of the national flag.[88]

Third, there are *inter*-value conflicts between two opposite needs. For example, in a decision that upheld the crime of incest (under Article 564 of the Criminal Code) the Court found that the *ratio legis* was the protection of the family and not a generic *ratio* linked to eugenetics. The court accordingly recognized that the lawmaker had found a reasonable balance between the need to punish an illicit act that is also socially reprehensible and the need to secure serenity and stability for the lives of families.[89]

4.5 Balancing and Its Limits: (a) Is there a Hierarchy of Constitutional Interests?

How can conflicts among interests be solved? This question makes it necessary to take up another question, namely: Are there predetermined criteria (whether explicit or implicit) that guide the Constitutional Court in its judgments? This second question is essential because reasonableness is a form by which the exercise of legislative power is reviewed, and is thus closely connected to the Constitutional Court's legitimacy. The court has the power to strike down or substitute a law by looking at the balance of constitutional interests effected by the lawmaker. The issue, then, is how to define the limits of reasonableness, which is the equivalent of setting limits on both Parliament's discretionary power and the Constitutional Court's power of judicial review.

The issue concerns the existence in the Constitution of a hierarchy of values (or of Constitutional rights or interests). A widely shared opinion is that the Italian

[84] Constitutional Court, Decision 342/1999.
[85] Constitutional Court, Decision 276/2000.
[86] Constitutional Court, Decision 522/2002.
[87] Constitutional Court, Decision 219/2002.
[88] Constitutional Court, Decision 531/2000.
[89] Constitutional Court, Decision 518/2000.

Constitution does not establish a hierarchical order to values and rights.[90] German legal theorists, by contrast, acknowledge that the *Grundgesetz* does establish such a hierarchy. Since the Italian Constitution does not have a clear hierarchy of values, a pluralistic interpretive process and implementation of the Constitution is allowed, but at the same time, this also encourages a broad exercise of the Constitutional Court's powers, thereby making the limits of the reasonableness test that much more uncertain. Empirical analysis shows that no ranking of values has ever been formally or substantially established, but it also underlines that constitutional interests are fungible and that the scope of review based on the reasonable-balancing test is quite wide.

The Constitutional Court normally solves conflicts between rights by using criteria directly provided for in the Constitution. Article 21 establishes freedom of expression and also prohibits forms of expression that disregard "public morality," thereby entailing the need to carry out a balancing test based on the reasonableness of the lawmaker's choices. For example, when the Constitutional Court considered the law making it a crime to publish disturbing or otherwise repulsive material that could offend common morality, upset the family order, or induce people to commit murder or suicide,[91] it rejected a claim filed by the judge *a quo*: the court found this law to be constitutionally legitimate, arguing that the primacy accorded to freedom of the press is limited, this on the basis of an understanding of public morality as the "common sense of morality."[92] The balance found to exist between these interests (freedom of the press and public morality) cannot be made to derive directly from the Constitution itself. In fact, it is only in this particular case that the interests behind this provision of the Criminal Code override the opposite recessive interest, meaning that the primacy of freedom of the press is relative rather than absolute (in fact, it is *never* absolute). The limit posed by public morality, the court argued, should be interpreted as a diachronic criterion, i.e., as a *rebus sic stantibus*,[93] since it is a limit expressing "what is common not only to the different moralities of our time, but also to the plurality of ethics that coexist in contemporary society." Second, this limit is very narrowly construed as having a "minimum content," consisting in nothing more than "the respect owed to the human being, which is the inspiring value behind Article 2 of the Italian Constitution. The provision of the Criminal Code under review should therefore be read in light of this principle." In fact, "the legal system is legitimated to react to horrifying and repulsive publications or images only if they are repugnant to human dignity and therefore offensive to society as a whole. Such a prudent attitude towards limiting freedom of expression is reinforced by the duty of ordinary courts to carefully consider the facts relevant to

[90] The one exception in this regard is Baldassarre (1991; 1989). The first Italian scholar to introduce the concept of constitutional value was Barbera (1962).

[91] See Article 15 of Law n. 47/1948 (regulating the press).

[92] Constitutional Court, Decision 293/2000.

[93] Constitutional Court, Decision 368/1992.

the cases brought before them, and to recognize the fundamental role of freedom of expression. Notwithstanding the importance of freedom of expression in the specific case under review, the provision of the Criminal Code is legitimate because it has been introduced in order to protect the fundamental value of human dignity."[94]

4.6 Balancing and Its Limits: (b) Balancing and the "Supreme Principles" of the Legal System

The parameters of judicial review based on reasonableness are not codified in the Constitution and hence fall (or at least seem to fall) under such rubrics as the "supreme principles" of the Constitutional order and the "core content" of fundamental rights.

The Constitutional Court introduced the concept of "supreme principles" when it addressed the issue of the limits placed on the Constitutional-amendment procedure (Article 138 of the Constitution). The famous Decision 1146/1988 put an end to an ongoing debate by recognizing that "the Italian Constitution contains certain supreme principles that cannot be modified or overthrown in their essential content by any Constitutional-amendment law or any other Constitutional law. These supreme principles include not only those qualified by the Constitution as limitations on the power to amend the Constitution itself—an example being the principle establishing the republican form of state (Article 139 of the Constitution)—but also the unwritten ones that define the essence of the highest and founding values of the Italian Constitution." The Constitutional Court affirms its jurisdiction to review the constitutional legitimacy of laws amending the Constitution itself and of other Constitutional laws, because if this were not possible "the jurisdictional system that safeguards the Constitution would be imperfect and ineffective when the most important of its rules are at stake."

The decision in question does not actually list these principles, but by referring to them as a class, it seems to invoke Carl Schmitt's famous distinction (2003, 20ff.) between the constitution (*Verfassung*) and constitutional law (*Verfassungsgesetz*). The supreme principles are thus the ones determining the "form and essential characteristics of the political unity" of a people. It is not incidental that among the principles outlined in the Constitutional Court's caselaw, the court has made reference to the value of human dignity and of inalienable human rights and to the principles of popular sovereignty, of pluralism, of the separation between church and state, of equality, and of jurisdictional protection of fundamental rights.[95]

[94] In a similar vein, see Constitutional Court, Decisions 243/2001 and 190/2001.

[95] Constitutional Court, Decisions 37/1992, 479/1987, 366/1991, 382/1992, 238/1996, 62/1992, 30 and 31 of 1971, 18/1982, 203/1989, and 232/1989. See, by contrast, Constitutional Court, Decision 2/2004.

Despite this decision—and a few other judgements where the court mentions the value of certain supreme principles as a rhetorical argument—the court has never taken these theories any further.

One can refer, for example, to the caselaw on fundamental rights, and particularly to its caselaw on what are qualified as primary rights or primary values, meaning all subjective legal situations relevant to the "supreme" value of the human being.[96] When one talks of the "primacy" of certain fundamental rights, this does not mean that these rights are univocal in meaning and in their concrete consequences. In certain cases, the term *primary* is used to define rights that are not subordinate to any other right or value. In other cases, a right's "primacy" is relative. In fact, so-called primary rights can be treated as constitutional interests and hence brought into comparison with other interests by balancing the relative levels of protection.[97]

One can certainly say that the concept of primary rights is a metaphor for the "primacy" of the human being and of his or her fundamental rights. Primacy is not only affirmed in abstract terms, i.e., as a matter of classification, but also in concrete terms. In fact, rights are "primary" not only when brought into comparison with interests having no constitutional status (the rights remain primary to the interests because the minimum condition of homogeneity is lacking which would admit of any balancing between them),[98] but also when they refer to subjects or legal situations whose peculiar status can justify a differential treatment (as in the case of human rights in so-called special jurisdictions, as in the armed forces or in prisons, that are increasingly influenced by an obligation to grant equal protection to all, as provided for in the Constitution).[99]

Even if fundamental human rights are "primary" or the expression of supreme principles, it can be said of them that they inevitably get reshaped in the process through which they are balanced with other constitutional rights or interests or with

[96] Examples here are the right to defence (Constitutional Court, Decision 194/1992); freedom of expression (Constitutional Court, Decision 112/1993); freedom and privacy of personal correspondence (Constitutional Court, Decision 366/1991); freedom of religion (Constitutional Court, Decision 14/1974); the right to life (Constitutional Court, Decision 135/1985); the right to health (Constitutional Court, Decision 184/1986); the interest in protecting minors (Constitutional Court, Decision 1 /1987 and 215/1990); freedom of conscience (Constitutional Court, Decision 149/1995); the right to have a name (Constitutional Court, Decisions 13/1994 and 297/1996); the right to housing (Constitutional Court, Decisions 3/1976, 404/1988, and 559/1989); the interest in protecting the environment and the landscape (Constitutional Court, Decision 151/1986 and 259/1996); the right to be respected as a person (Constitutional Court, Decision 283/1997); the right to honour, respectability, reputation, privacy, and intimacy (Constitutional Court, Decision 38/1973). Moreover, it should be pointed out functional rights are sometimes also defined as primary. Examples are the right to participate in the country's political life (Constitutional Court, Decision 84/1994); the "supreme" interest in national security (Constitutional Court, Decision 31/1969); the rights of political parties democratically taking part in the framing of national policy (Constitutional Court, Decision 84/1969).

[97] Constitutional Court, Decisions 151/1986 and 39/1986.

[98] Constitutional Court, Decision 41/1974.

[99] On the limits of special jurisdictions, see Constitutional Court, Decision 278/1987.

specific constitutional limits. Moreover, they are also influenced by the specific concrete context of implementation.[100]

4.7 *Balancing and Its Limits: (c) Balancing and the "Essential Content" of Fundamental Rights*

The Italian Constitutional Court has been framing its caselaw in light of the German doctrine known as *Wesensgehaltgarantie*, thereby increasingly making reference to the so-called "minimum content" or "essential content" of fundamental rights, this to affirm the inviolability of such rights as well as to place a limit on balancing.

Decision 341/1999 was a clear example. The case was about the very delicate issue of the right to legal assistance of a profoundly deaf person under trial, and more in general, it was about due process protection in criminal trials. The Criminal Procedure Code stated that a profoundly deaf defendant who could read and write and wanted to give a statement before the court had to have all questions, warnings, and cautions put in writing. In the case of a profoundly deaf defendant who was also illiterate, one or more interpreters had to be appointed, preferably among the people from the public prosecutor's office who usually communicated with him or her (Article 119(1)(2) of the Criminal Procedure Code). The judge *a quo* believed that this provision violated the defendant's right to defence because it prevented this person from having a full understanding of what was happening during the trial sessions. Moreover, the judge also claimed that Article 119(1)(2) of the Criminal Procedure Code infringed the principle of equality because of the differential treatment it set up between three different legal situations: (i) a profoundly deaf defendant who was also illiterate (this person had the right to an interpreter); (ii) a defendant who could not speak Italian (this person had the right to the free assistance of an interpreter); and (iii) a mentally incapacitated defendant incapable, on that account, of taking part in the proceedings (this person had the right to the appointment of a special guardian). The court decided to review this case on the basis of Article 24 of the Italian Constitution because "the Constitutional protection of the right to defence includes the defendant's effective and conscious participation in the trial, and especially during hearings and sessions; and so the right to defence also includes the effective possibility of the defendant's perceiving [. . .], and communicating." If this protection is not granted, "the defendant's right to be informed personally, promptly, and fully of everything concerning the trial is irredeemably violated." And it would constitute a breach of the "right of defendants to [. . .] defend themselves even when they are conducting their own defence without a lawyer." It is evident that the lack of protection concerns the "essence" of the right. In fact, the court found that Article 119(1)(2) of the Criminal Procedure Code was "clearly insufficient [. . .] in satisfying the need for an effective protection of the

[100] See Constitutional Court, Decision 112/1993, on freedom of information, and Constitutional Court, Decision 264/1996, on the freedom of movement.

deaf or profoundly deaf defendant (but also of the mute defendant who can read and write and can only communicate in writing). Not only does the provision ignore that the defendant's right to comprehend and communicate, and more in general, the right to consciously take part in the proceedings, goes well beyond merely giving statements, but it also does not grant the assistance of an interpreter for a defendant who can read and write."

The court referred more explicitly to "minimum content" in the "Di Bella multi-treatment" trial, this in order to place limits on laws that balance fundamental rights. The Di Bella multi-treatment was a cancer treatment consisting of the administration of somatostatin. It was a free, experimental, and temporary treatment provided for a limited number of terminal patients. Patients who were not admitted into the program, and consequently had to purchase the medicine, claimed that this was a breach of the principle of equality with respect to the right to health care. Decision 185/1998 granted them protection by striking down the law. The Constitutional Court underlined in particular that "in cases of urgent therapy having no alternative, as in certain cancer pathologies, the expectations that may arise should entitle one to the minimum content of the right to health care." Protecting this expectation, understood as a "therapeutic hope" placed in presumably effective medical treatment, means that "the principle of equality requires the full protection of this fundamental right, which cannot depend on an individual's economic situation."

In conclusion, the Constitutional Court's protection of the essential content of rights amounts to bringing under judicial review the balance the lawmaker effects between constitutional interests. More precisely, in the words of the court itself, "the Court guarantees the minimum essential protection of subjective legal situations which the Constitution qualifies as rights."[101]

4.8 Conflict Resolution Techniques: The Necessity, Sufficiency, and Proportionality Tests

How does the balancing of interests work in practice? The Constitutional Court's review is aimed at evaluating whether the balance effected by the lawmaker is reasonable, and is an evaluation made by determining the law's coherence with three standards: necessity, sufficiency, and proportionality.

As previously discussed, balancing involves making a decision between several conflicting interests in a specific context. The lawmaker ranks interests according to the criterion of necessity, that is, there must be proof that the limitation of the constitutional interest in question is justified by the need to afford protection for an interest of equal importance. This test is clearly applied in Decision 219/1994, with which a law that admitted a protraction of pre-trial custody with a postponed hearing was struck down because it violated the right to defence. Article 24 of the Italian Constitution could be legitimately limited only to avoid completely sacrificing

[101] Constitutional Court, Decisions 27/1998 and 432/2005.

another interest, that is, only for procedural efficiency. In fact, an anticipated hearing would have jeopardized the trial's efficiency, and the right to defence could have been protected anyway by following judicial instruments that the law already provides for. The court found that this could have applied only to so-called impromptu orders, as in the case of pre-trial custody ordered for the first time. In fact, these measures achieve their aim because the person under custody ignores them, but the same cannot be said of a reenacted measure, as in the case under review.[102]

This same decision is also relevant to the test of sufficiency. In order to pass this test, the balancing behind a provision that limits a conflicting constitutional interest has to be such that the limitation is confined to what is strictly sufficient to protect the privileged interest. The court applies this test as follows: it "solves a possible conflict by taking into account the mutual interaction between one interest's increased protection and another interest's corresponding decreased protection resulting from a balance effected by the lawmaker."[103] If the test is not met and "insufficiency" is proved, the court will strike down the law, that is, it will strike down the lawmaker's transactional solution. For example, in a case concerning a conflict between the state's fiscal interest and the citizens' right to seek justice, the court struck down as unreasonable as law making the continuation of an executive proceeding conditional on the payment of the tax due for issuing a judgment or any other judicial order with executive effect. In fact, the law did not consider sufficient the court chancellor's obligation to inform the tribunal's financial office of the unregistered order. The court, by contrast, considered this obligation sufficient with respect to the delivery of documents necessary to continue or to close the trial's pre-executive phase. A provision that limits the right to seek justice in order fulfil the state's fiscal interest is therefore insufficient in one case and sufficient in the other.[104]

Finally, the balance effected by the lawmaker must meet a standard of proportionality. The limitation of a constitutional interest must be proportionate, that is, it is permitted only if it protects the right's essential content. For example, Decision 27/1975 struck down a law that criminalized consensual abortion (Article 546 of the Criminal Code) when there is no state of necessity (Article 54 of the Criminal Code), even if the pregnancy posed a danger to the mother's physical or mental health. The mother's right to health (Article 32 of the Costitution) was clearly placed under a disproportionate burden, especially in the case of a physically and psychologically dangerous pregnancy, as a consequence of the balance effected by the lawmaker with the baby's constitutionally protected interest (as can be inferred from Articles 31(2) and 2 of the Constitution). The Constitutional Court underlines that "a pregnant woman's status is important in a very peculiar way, and her protection cannot be provided under a general rule, as in the case of Article 54 of the Criminal Code.

[102] Constitutional Court, Decisions 366/1991 and 63/1994.
[103] As clearly stated in Constitutional Court, Decision 372/2006.
[104] Constitutional Court, Decision 522/2002; see also Decisions 310/2000, 341/1999, and 167/1999.

In order for this article to be applied, the threat or damage in question needs to be not only serious and unavoidable but also contextual, in contrast to the damage that can derive from carrying through a pregnancy, which can be foreseen even though it does not always immediately show its effects." This application of Article 54 was based on the idea that the two interests at stake, the mother's and the baby's, were equivalent. Yet the facts show, by contrast, that "where the rights in question—not only to life but also to health—are rights ascribed to someone who already is a person, they are not equivalent to an embryo's right to protection, since an embryo has yet to become a person." The court thus relied on analogy and applied the same *ratio* the lawmaker had applied in excluding certain special states of necessity (Article 384 of the Criminal Code) from the common condition of criminal liability (Article 54 of the Criminal Code): the court decided by analogy that "the same consideration" had to be reserved to the "peculiar state of necessity of a pregnant woman whose health is in grave danger."[105]

4.9 The Result of Balancing

As the foregoing discussion shows, the judicial review the Constitutional Court carries out on the basis of reasonableness is not simply aimed at finding a compromise by which to solve a conflict; in fact, the balance contained in the law has usually already determined some kind of priority. Moreover, balancing of constitutional interests can have a range of outcomes because the Italian Constitution does not establish a hierarchy: the limits encountered in deciding on a reasonable balance are those determined by the reasonableness test itself. These limits must apply in the area covered by the supreme principles of the constitutional order and by the essential content of the fundamental rights. Other limits are those inherent in the logics of the balance itself, namely, the logic or relativity and that of concreteness. The priority of constitutional interests is not decided once and for all, thus crystallizing the Constitution as interpreted by the Constitutional Court, but rather derives from the constitutional framework's interpretation as implemented by the lawmaker and as inferred from the context in which the decision will take effect. The right to annual holidays for employed detainees is justified on the basis of the values ascribed to the human being, such as these values are explicitly recognized by the Constitution.[106] However, this does not mean that the public interest in properly carrying out a punishment is shoved aside. In fact, guaranteeing effective punishment means implementing a series of provisions that will in practice reconcile constitutional interests whose conflict appears impossible to solve. Subordinating freedom of enterprise to the duty of acquiring "the most advanced technology available," in order to reduce air pollution, is constitutionally legitimate because it protects the right to a clean environment and the right to health. However, this decision does not

[105] See also Constitutional Court, Decisions 127/1995 and 433/2002.

[106] The justification is found, among other places, in Constitutional Court, Decision 190/2001.

translate into a final order, nor would it justify limiting Article 41 of the Constitution to protect the environment and health: it simply upholds the limits deriving from the different contexts where the law in question is implemented.[107]

5 Concluding Remarks

Reasonableness can be considered a general principle that forms the basis of and shapes all the decisions through which the Constitutional Court brings statutes under judicial review. The decisions previously discussed each have their distinctive peculiarities, to be sure, but they all share the common trait of proceeding on the principle of reasonableness. Reasonableness is the instrument used to identify valid law through a complex mediation involving the Constitution itself, the statutes through which the Constitution is implemented and developed, and the context of application. So it is not unwarranted to consider reasonableness a metaphor for the experience of law in pluralist constitutional state. In a legal system characterized by pluralism, one has to juggle the facts of life with laws and with fundamental principles in an attempt to construct a coherent legal framework.

One last point should be made with regard to the analysis carried out in this article. As much as the principle of reasonableness has a place in many different legal systems, its use entails many critical points where questions and doubts come up as to the validity of this method of reasoning. However, whatever opinion one may hold, any inquiry into reasonableness should not ultimately fail to take into account, among other things, a cost-benefit analysis. In other words, we should ask whether or not the solution the principle of reasonableness offers in meeting demands for equality, justice, and freedom has had a positive outcome. If we look at Italy's experience over the last sixty years and assess it in terms of the enhancement of freedom and equality, there is absolutely no reason to be pessimistic in this respect.

References

Baldassarre, A. 1989. Diritti inviolabili. In *Enciclopedia giuridica*, vol. 11. Rome: Treccani.
Baldassarre, A. 1991. Costituzione e teoria dei valori. *Politica del diritto* 4: 639–58.
Barbera, A. 1962. Pari dignità sociale e valore della persona umana nello studio del diritto di libertà personale. *Iustitia* 1: 117–46.
Cappelletti, A. 1955. *La giurisdizione costituzionale delle libertà. Primo studio sul ricorso costituzionale con riguardo agli ordinamenti tedesco, svizzero e austriaco*. Milan: Giuffrè.
Cerri, A. 1994. Ragionevolezza delle leggi. In *Enciclopedia giuridica*, vol. 25. Rome: Treccani.
D'Andrea, L. 2005. *Ragionevolezza e legittimazione del sistema*. Milan: Giuffrè.
Esposito, C. 1954. Il controllo giurisdizionale sulla costituzionalità delle leggi in Italia. In C. Esposito, *La Costituzione italiana. Saggi*, 263–81. Padua: Cedam.
Fuller, L. 1964. *The Morality of Law*. New Haven, Conn.: Yale University Press.
Manes, V. 2005. *Il principio di offensività nel diritto penale*. Turin: Giappichelli.

---

[107] Constitutional Court, Decision 127/1990.

Morrone, A. 2001a. *Il custode della ragionevolezza*. Milan: Giuffrè.
Morrone, A. 2001b. Il diritto alle ferie per i detenuti. *Giurisprudenza costituzionale*, n.3: 1270–79.
Paladin, L. 1965. *Il principio generale di eguaglianza*. Milan: Giuffrè.
Paladin, L. 1984. Corte costituzionale e principio generale d'eguaglianza: aprile 1979-dicembre 1983. *Giurisprudenza costituzionale*, n.1: 219–62.
Scaccia, G. 2000. *Gli "strumenti" della ragionevolezza nel giudizio costituzionale*. Milan: Giuffrè.
Schmitt, C. 2003. *Verfassungslehre*. Berlin: Duncker & Humblot. (1st ed. 1928.)
Tega, D. 2002. L'addio al celibato (e al nubilato) dei militari. *Giurisprudenza costituzionale* 6: 3652–58.
Tega, D. 2003. Il principio di verità della nascita e il diritto all'identità personale del "figlio incestuoso": le colpe dei padri non ricadano sui figli! *Giurisprudenza Costituzionale*, n.2: 1076–83.
Tega, D. 2006. Le Carte dei diritti nella giurisprudenza della Corte costituzionale (e oltre). In *Corte costituzionale e processo costituzionale nell'esperienza della Rivista "Giurisprudenza costituzionale" per il cinquantesimo anniversario*. Ed. A. Pace, 953–86. Milan: Giuffrè.