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## INTRODUCTION: COMPARATIVE PAPERS FROM THE ADMINISTRATIVE LAW DISCUSSION FORUM

*Russell L. Weaver* \*

The Administrative Law Discussion Forum is an international group of prominent administrative law schools who gather biannually (sometimes more often) to discuss matters of common interest. The most recent meeting took place on June 5-6, 2012, at the University of Luxembourg Faculty of Law.<sup>1</sup> The Luxembourg forum was dedicated to our recently deceased colleague, Professor Charles Koch of the William & Mary University, Marshall-Wythe College of Law, who suggested and advocated for one of the topics discussed at that forum: trans-territorial administrative law. However, his untimely death prevented him from participating. The forum also focused on comparative international law, and the papers being published here focused on that topic.

Included is Professor Vera Parisio's *The Italian Administrative Procedure Act and Public Authorities' Silence*. This article discusses the Italian Administrative Procedure Act, and in particular the obligation on the part of public officials to state reasons for their actions. As she notes, Article 41, paragraph 2 of the Charter of Fundamental Rights of the European Union recognizes the right to good administration, and so obligates administrative agencies to give reasons for their decisions. As a result, Professor Parisio describes public powers' silence as an example of "maladministration," and as a threat to Italy's economic development. She concludes by offering various suggestions for improving Italian administrative procedure, including introducing new models of organization, strengthening the liability of public officers, and more effective control by the State Court of Auditors.

Also included is Professor Yoav Dotan's *Informal Privatization and Distributive Justice in Israeli Administrative Law*. He argues that privatization has been perhaps the most important process in Israel's economic and societal life during the past three decades. From the 1980s onward, all Israeli governments have moved toward privatization. The inefficiency of many government industries, coupled with ambitions for integration into the global economy, have triggered

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<sup>1</sup> The forum was co-sponsored by the University of Luxembourg Faculty of Law, University, the Emory University School of Law, and the University of Louisville's Louis D. Brandeis School of Law, as well as by LexisNexis.

this movement. However, while Professor Dotan notes that privatization carries significant potential benefits (e.g., the encouragement of free market competition, and the enhancement of economic efficiency and improved resource allocation), he worries that it also brings potential drawbacks and dangers (e.g., massive layoffs, unemployment and social disorder). To the extent that privatization involves the delegation of governmental functions (e.g., prison management, security tasks, or welfare services) to privately owned actors, there are potential risks regarding a deterioration in the conditions and availability of the services and even regarding the possible infringement of human rights. As a result, Professor Dotan argues that, whenever the government proposes to privatize major public services, it should be required to present a clear legislative mandate and to meet due process requirements.

Last, but hardly least, is Professor Roberto Caranta's *Civil Society Organizations and Administrative Law*. This paper provides a systematic account of the role of civil society organizations ("CSOs") in administrative governance. Professor Caranta notes that CSOs play an important role in both policy design and policy delivery. Nevertheless, while some view CSOs as upholding the legitimacy of representative institutions, others lament the lack of legitimacy of the CSOs themselves. Professor Caranta argues that the most sensible way out of this conundrum is to enhance transparency in—and competition between—the CSOs. In this area of the law, he believes that E.U. administrative law is hindered by the traditions of corporatism. In Europe, generally, few large organizations are given privileged access to regulatory and administrative proceedings. The U.S. adversarial—or pluralist—approach, instead, sees many different CSOs competing for relevance and influence. The pluralist approach is obviously preferable, in that it makes the capture of the CSOs more difficult when compared with cozy corporatist arrangements. Professor Caranta believes that the role of law is to provide rules which force or at least encourage CSOs to disclose data concerning, for instance, memberships, sources of funding, ways funds are spent, and results achieved.