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29 OTTOBRE 2014

BRICS as Constitutional Inhomogenous Dynamics

by Michele Carducci e Anna Silvia Bruno

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e

Anna Silvia Bruno**

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1. Introduction.

This paper fits into the line of research of the "Centro Didattico Euroamericano sulle Politiche Costituzionali" of the University of Salento and wants to study the consequences of the BRICS phenomenon in the context of contemporary constitutionalism[1].

In literature, the BRICS phenomenon is usually analyzed in the context of international relations and experiences of economic blocs. In this perspective, the fundamental differences between the BRICS and supranational economic blocs are classified in terms of "absence, lack": the absence of geographical proximity; the absence of bilateral and multilateral relations that are common among the BRICS countries; the absence of converged economic systems; the absence of stable

* Draft version of the paper to be presented at the international Conference BRICS in the spotlight, University of Parma 6th and 7th November 2014.

** Michele Carducci & Anna Silvia Bruno; Centro Didattico Euroamericano sulle Politiche Costituzionali, Università del Salento – Italia; michele.carducci@unisalento.it. M. Carducci is author of the following paragraphs, nn. 4, 5; A.S. Bruno is author of the paragraphs nn. 1,2,3.

[1] M. CARDUCCI, A.S. BRUNO, *The BRICS Countries as a Legal Dymanic Network and the Multilevel "Hard" EU Regional Structure: a Comparative Survey*, in S. KIERKEGAARD (ed.), *Law, Governance and World Order*, Athens, International Association of IT Lawyers (IAITL), Athens, 2012, pp. 246-258, and in *International Journal of Public Law and Policy*, 1/2014, pp. 1-13; M. CARDUCCI, *A realidade do Países BRICS e o papel do Direito constitucional comparado*, in *Revista de Direito Administrativo & Constitucional*, 50/2012, pp. 205-218; M. CARDUCCI, A.S. BRUNO, *The Brics Countries between Justice and Economy. Methodological Challenges on Constitutional Comparison*, *Sociology and Anthropology*, 2/2014, pp. 46-58.

organizational structures to represent the economic bloc; the absence of an internal leadership; the absence of direct or indirect democratic legitimacy in the promotion of the BRICS phenomenon; the absence of common tariff, customs and monetary policies[2].

However, these are descriptive distinctions, say anything about the differences of the constitutional impact that the BRICS phenomenon can produce if compared with the already experimented dynamics of supranational and international cooperation.

The paper aims to deepen the study of the dynamics of the BRICS as a particular practice of interstate relations that produces legal flows and communication vectors that are different from those experienced in the supranational integrations and in the regional processes; but, the BRICS does not create standardization, harmonization and unification of the law of the member States.

For this reason, the article begins with an analysis of contemporary theories in relation to the three main themes specified in the premise to this study:

- The differences between supranational and regional processes;
- The differences between legal harmonization, standardization and unification;
- The differences between the legal flows, from which hypothesis of legal transplants or Policy Transfer may result.

On these basis, we will observe how the BRICS functions inside a completely different and original logic if compared with supra-nationality and regionalism.

First of all, in comparison with the cross-border processes, the BRICS is different because it is not based on the principle of homogeneity nor operates according to the functional logic of the "non-controversial areas", with reference to the theories of D. Mitrany. The BRICS is not only uninterested to the formal and structural un-homogeneity of the member countries, but uses this un-homogeneity as competitive element of international cooperation that does not require any kind of structural "conditionality"[3].

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[2] J.P. NOGUEIRA (org.), *Os BRICS e as transformações na ordem internacional*, Rio de Janeiro: Editora PUC-Rio, 2012.

[3] About the concept of "conditionality" see: S.L. BABB, B.G. CARRUTHERS, *Conditionality: Forms, Function, and History*, *Annual Review of Law and Social Science,* 4/ 2008, pp. 13-29; F.N. BOTCHWAY, *Is IMF Conditionality Anachronistic?*, 2009 Working paper *Social Science Research Network*, http://papers.ssrn.com/sol3/papers.cfm?/En.pdf; A. WILLIAMS, *Enlargment of the Union and Human Rights conditionality: a policy of distinction*, *European Law Review,* 6/2000, pp. 601- 617; A.M. VITERBO, M. DI DIO, *Recenti evoluzioni delle politiche di condizionalità europee*, *Il Diritto dell'Economia*, 2/2006, pp. 343- 376; P. VAN ELSUWEGE, *The European Union and the Belarus Dilemma: Between Conditionality and Constructive Engagement, Proceedings of the Institute for European Studies Journal of Tallinn University of Technology*, 7/2010, pp. 7-20, http://www.ies.ee/iesp/No7/iesp_no7.pdf; G. CRAWFORD, *Foreign Aid and political reform: a comparative analisys of democracy assistance and political conditionality*, New York, Palgrave, 2001; R.W. STONE, *The scope of IMF Conditionality: How Autonomous is the Fund?*, University of Rochester, 2008.

Second, with respect to regional processes, the BRICS does not pursue the harmonization or standardization of the law[4]. The countries that make up the legal systems are different from each other because there is the coexistence of multiple legal traditions (the Western, indigenous, Muslim, Hindu, and the Confucian tradition). The paper suggests the conclusion that the BRICS functions because the partner countries share a common "political formula": the "deliberative dictatorship" of their system of government.

2. BRICS between "deep" and "soft" regionalism.

In the analysis of this phenomenon, the importance of the constitutional perspective has recently been highlighted by the BRICS Report "*State of Power 2014*", promoted by the TNI, in cooperation with Occupy.com[5]. This report highlights the "State" leading role of the BRICS phenomenon. In other words, it certifies what Gina Pompeu called the "return to the Nation-State"[6]. On the one hand, the BRICS countries, belie the hegemony of the United States government as a "single-state world", but, on the other hand, they arise as an "imitable model" of regional "quad-continental soft" institutionalization between "continental-States": an alternative model to the imitation of the complicated "mono-and multi-continental hard" regional structure of the European Union.

The difference is clear: if the European Union has promoted, within its integrative logic, the effect of "Hollowing out of the State"[7], the BRICS instead allows an experiment of Legal Network, useful to strengthen each individual partner-State in its internal, regional and international role, articulating a path that is alternative to the creation of the so-called global law, with its "certainties" of "spoliation" of the State right[8]; if the European Union seems to pass from the "Multilevel Constitutionalism" to the "Constitutional Synallagma", based on common cultures and legal traditions[9], the BRICS does not seem to need either of them to be united in the geopolitical competition of the new millennium; if the European Union certifies the need of a

[4] ALI YAKHLEF has suggested that adaptation and standardization are not the only alterantieves for international strategies: see *The Trinity of International Strategy: Adaptation, Standardizaation, and Transformation*, *Asian Business & Management*, 9/2010, p. 47.

[5] TNI, *State of Power 2014. Exposing the Davos Class*, 2014 http://www.tni.org/stateofpower2014, pp. 36 ss.

[6] G.M. POMPEU, *O retorno do Estado-Nação na geografia da mundialização*, in G.M. POMPEU (ed.), *Atores do desenvolvimento econômico e social do século XXI*, Fortaleza, Unifor, 2009, pp. 129-150.

[7] R.A.W. RODHES, *The Hollowing out of the State*, *The Political Quarterly*, 2/1994, pp. 138–151.

[8] G. TEUBNER, *Constitutional Fragments. Societal Constitutionalism and Globalization*, Oxford, Oxford Univ. Press, 2012.

[9] On the *Constitutional Synallagma*, as a retrenched of the role of the State in Europe, see G. MARTINICO, *Complexity and Cultural Sources of Law in the EU Context: From the Multilevel Constitutionalism to the Constitutional Synallagma*, *http://www.germanlawjournal.com/index.php?pageID=11&artID=802.*

material democracy as a precondition of regional coexistence, the BRICS demonstrates the ability to live peacefully outside the "'ark of normal democracies"[10], without taking into account from a material sharing of democracy.

In short, the BRICS is "another thing" and it is a phenomenon between States that mutually interact and contaminated through "flows" that do not replicate the western asymmetry of the "*dominant/ dominated*" relationship[11].

For this reason, the inter-BRICS dynamic cannot be compared with the processes of supranational integration or with the regional processes. Outside Europe, more or less inspired by the "model" of the European Union-Community and by the regional processes of creation of economic and geopolitical blocs, built on different institutional and organizational dimensions compared with the EU, the processes of regional integration are increasingly rising in differentiated ways[12].

Consider, for everyone, the regional processes of UNASUR in Latin America, and the Eurasian Union, in Central Asia[13]. This differentiation is particularly congenial to the strategies of the international leadership of the United States, insofar as it allows you to keep the "deep" regionalism, strongly institutionalized and supported in Europe, and the "soft" regionalism, sponsored by the United States because useful to the creation of spaces of supranational free trade, but, at the same time, it is very little worry to build up institutional structures of integration[14].

The BRICS is a *tertium genus* if compared with the mentioned bifurcation proposed by comparative law. In fact, the BRICS operates as a "Legal Network" without referring to any structured and stable supranational organization, but it does not have the creation of an economic bloc of free trade among its goals[15].

Its "institutional" purposes lie midway between "deep" and "soft" regionalism.

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[10] E. SOMAINI, *Geografia della democrazia*, Bologna, il Mulino, 2009, p. 50 ss.

[11] R.J. LIEBER, *The Rise of the BRICS and American Primacy*, *International Politics*, 51/2014, pp. 137–154

[12] On this point, compare with J. ROY (ed.), *Después de Santiago: integración regional y relaciones Union Europea-América latina*, Miami, Jean Monnet Chair Miami Univ., 2013.

[13] About the recent Asian phenomenon, see T. GRAZIANI, *L'integrazione euroasiatica: un nuovo raggruppamento nel mondo che cambia*, *www.geopolitica-rivista-org.*

[14] G. GRIEGER, *EU-Latin America Relation: Briefing 17/03/1014*, European Parliamentary Research Service, 2014*, www.eprs.ep.parl.union.eu.*

[15] See J.V. DE SÁ PIMENTEL (org.), ***O Brasil, os BRICS e a agenda internacional*, Brasilia DF,** Ministério das Relações Exteriores, 2013. About the idea of "Legal Network", see M. CARDUCCI, *Il BRICS come "Legal Network" e le sue implicazioni costituzionali*, in *Costituzione, Economia, Globalizzazione. Liber amicorum in on. Carlo Amirante*, Napoli, ESI, 2013, pp. 1097-1109, and L. SCAFFARDI, *BRICS, a Multi-Centre 'Legal Network'?*, *Beijing Law Review*, 5/2014, pp. 140-148.

From this viewpoint, it requires overcoming both the functionalism and the isomorphism that marked the models of supranational organization of the northern hemisphere. Euro-North American theories on isomorphism believe that legal experience can be "uniform" on the base of shared objectives. These theories have provided the basis for the "functionalism", which allowed the start of the European integration process and supported the praesumptio similitudinis between all the legal realities of the world: think, for example, of the theories of Organizational Fields, with whom the "imitations" of the institutions of the Northern hemisphere and the global dialogue around them are institutionalized[16]. According to the most important theorist of "functionalism," the Rumanian David Mitrany[17], this approach was legitimized on the basis of a "gradualist" conception of international relations: the inter-state cooperation and supranational integration, in order to not being mutually in conflict, should proceed trough "specific areas", not through "matters" or "functions" to be removed from States, but through "common technical fields" to the States, mutually advantageous from an economic point of view and, for this reason, "non-controversial". The integration of these "peaceful areas/sectors" would gradually led to the transfer of "functions" and "matters" from the States towards supranational organizations.

As it is well known, this pragmatism has supported the institutional architecture of the European Communities and the European Union, with the gradual and unstoppable "transfer of sovereignty" by the member States.

It, however, had to be measured with a specific constitutional problem: that of the "indicators of sustainable statehood"[18]. Assuming the constitutional requirement of these supranational processes are all the same, the "non-controversial" reasons of the "technical fields" prevailed on constitutional and therefore cultural identities of the States through functionalism and isomorphism.

3. Brics in the constitutional comparison

[16] Compare with C.L. MACHADO DA SILVA, EDSON R. GUARIDO FILHO, L. ROSSONI, *Organizational Fields and the Structuration Perspective: Analytical Possibilities*, 3 *BAR*, 2/2006, p. 32 ss. (*www.anpad.org.br/bar*); and referring to the *Judicial Dialogue*, see O. FRISHMAN, *Transnational Judicial Dialogue as an Organizational Field*, *European. Law Journal*, 19/2013, p. 739 ss.

[17] D. MITRANY, *The Prospect of Integration: Federal or Functional?*, *Journal Common Market Studies*, 4/1965, p. 33 ss.; and *A Working Peace System: an Argument for the Functional Development of International Organizations*, London, Royal Institute of International Studies, 1943. See T. ITO, *The Politics of Expertise and the Liberal Origin of European Integration*, in *Rivista AIC*, 3/2014, pp. 1-24.

[18] The formula was proposed by A. PAPISCA, *Dallo Stato confinario allo Stato sostenibile*, *Dem. Dir.*, 2-3/1994, p. 273 ss.

The analysis on the BRICS countries can be open to an interesting critical scenario about constitutional comparison.

The contemporary extra-western dynamics cannot be taken into account as a specular imagine of the Euro-American center of constitutionalism. When the material and immaterial "flows" between States do not cross the West, the constitutional realities arise as a constellation of processes or as the result of multiple factors that cannot be classified within any paradigm of universal comparison. The problematic connection between economic modernization and democratization of political life, that is offered by the experience of the BRICS countries, demonstrates this aspect. The BRICS phenomenon does not put us in front of a simple "spread" of an already known, analyzed and experimented constitutional modernity. It is an "elsewhere" that disorientates us because highlights the "leakage" from the previous "certainties".

In this perspective, the methodological reductionism of the BRICS analysts that pursue the Legal Origins Theory or the Ground Rules Theory, becomes clear. In fact, the mentioned theories accept the heuristic presumption of the split between "modernity as a *telos*" (that is to say as a goal of a process developed over time) and "modernity as a *status*" (that is to say, as a privilege of the modernity)[19]: the West world holds the "status"; the BRICS reality describes a "*telos*". Comparative scholars have to address these realities toward the concretization of the "*telos*".

In the approaches of Legal Origins Theory and Ground Rules, the intention is exactly this[20]: the emphasis is shifted from the search for what it might mean legal and constitutional modernity-which is taken for granted – to the description of the path that makes the individual countries and their legal processes "modern"[21]. For this reason, the study and the comparison of these "new" realities become a predetermined path; they also serve the "modernization" of social relations, which is useful to the economic logic of the West[22]. Evidently, the background of these theories is purely political and ideological; their analysis are based on a normative model that is considered universally convergent to the Western approach in all fields of the social observation[23].

However, one thing is questioned by the BRICS phenomenon: it concerns exactly the ethnocentric presumption that imagines the constitutional processes as never ending "replicas"

[19] J. FERGUSON, *Global Shadows. Africa in the Neoliberal Order*, Durham, Duke Univ. Press, 2006, p. 191.
[20] R. MICHAELS, *Comparative Law by Numbers? Legal Origins Thesis, Doing Business Reports, and the Silence of Traditional Comparative Law*, *American Journal of Comparative Law*, 57/2009, p. 765.
[21] B. MARKESINIS, *Il metodo della comparazione*, it.tr., Milano, Giuffrè, 2004.
[22] A. MARTINELLI, *La modernizzazione*, Bari, Laterza, 2004.
[23] See M. BERMAN, *L'esperienza della modernità*, it.tr., Bologna, il Mulino, 1985; M. DI MEGLIO, *Lo sviluppo senza fondamenti*, Trieste, Asterios, 1997.

of the West. This does not mean that we do not witness a processes of "modernization", but that manifestation of "modernity" is different from the ethnocentric ideal type proposed by the comparatist scholar. Moreover, the emergence of the BRICS also reduces approaches *à la Wallerstein*[24]: how can the distinction between centers and peripheries of economy survive, when the axis of the system, with its activities and its strategic decision-making power, seems inexorably away from the "center"?

Among other things, as has been mentioned, the BRICS does not want to be an "alternative world" (in comparison with the West)[25]. But then, if the BRICS does not represent an "alternative" or a "repetition" of the West, what can it become within the constitutional processes developed inside the West?

This is the unprecedented challenge of contemporary comparative constitutional law.

Evidently, for comparative law, it is time to handle the "scale of values" that support dialogue and cooperation between legal systems that are so different, just as those of the BRICS, competing with multiple dimensions of experience[26], including the legal experience, that are neither uniform nor universalizable, but however sustainable and comparable, because "multivalent".

Furthermore, from a methodological standpoint, the reality of the BRICS requires to take into account the necessity of abandoning that intellectual attitude of "constitutional protectionism" which produced and reproduced standardized understanding of la[27]. However, it is possible that the BRICS can be analyzed and understood as a "not equal" phenomenon, because based on a "multiple" interstate dynamic: a serial dynamic, we can say, according to the Fuzzy logic actually practiced in comparative law[28], to understand how very different complex systems can "live

[24] I. WALLERSTEIN, *Il sistema mondiale dell'economia moderna*, it.tr., Bologna, il Mulino, 1978-1995.

[25] It is not useful to describe the BRICS phenomenon according to the approach of an "*alternative modernity*" (about this, P. GAONKAR (ed.), *Alternative Modernities*, Durham, Duke University Press, 2001).

[26] The molteplicity of modernity, developed by S.N. EISENSTADT (it.tr.: *Sviluppo, modernizzazione e dinamica delle civiltà*, in *Civiltà comparate*, Napoli, Liguori, 1990; *Non una ma molteplici modernità*, in *Sulla modernità*, Soveria Mannelli, Rubettino; *Comparative Civilizations and Multiple Modernities*, Leiden and Boston, Brill, 2003), is the main theme that arises together with the globalization (see P. JEDLOWSKI, *Memoria, esperienza e modernità*, Milano, Franco Angeli, 2002).

[27] Compare with M. CARDUCCI, S.P. MORENO FLÓREZ, *Teoría constitucional de las necessidades pedagógicas como metodo de enseñanza en la investigación*, in *Memoria del X Congreso Iberoamericano de Derecho Constitucional*, vol. 2, Lima, Idemsa, 2009, p.55.

[28] See S. BALDIN, *Riflessioni sull'uso consapevole della logica fuzzy nelle classificazioni fra epistemologia del diritto comparator e interdisiciplinarità*, *Revista General de Derecho Público Comparado*, 10/2012.

together" through "serial similarities"[29]. Of course, the effect of this process is a " hybrid" subject.

But the future of the global institutionalism is probably marked by forms of "hybridism"[30]

4. Constitutional consequences of BRICS dynamics.

What are the constitutional consequences offered by the dynamics of the BRICS to comparative law? We can summarize them in five thematic groups.

a)

The dynamics of BRICS does not undermine the "statehood", nor as a system of sources neither as a reduction of the sovereignty of the partner States. Indeed, if the "statehood" is understood as the monopoly of the system of the sources and exclusivity in the production of rules and interpretations, it is evident that the BRICS system, unlike "deep" and "soft" regionalisms, does not activate any parallel system of legal competitive, or even substitutive sources, if compared to those of each individual State. From this point of view, we can say that the BRICS does not contribute to the building of various forms of "global constitutionalism" because they are supported by all other forms of supranationalism[31].

Therefore, the BRICS does not develop a simple "expansion" of an already known constitutional semantics. It is an "elsewhere" that disorientates us because it marks the "leakage" from those coordinates[32].

In fact, compared with "deep" or "soft" regionalisms, the competitive advantage of the BRICS lies in its internal constitutional inconsistency. This element clearly arise from a comparison with the European Union. Consider the articles 4.2 and 6 of the Treaty on European Union after the Lisbon reform: in Europe it is called "the constitutional traditions common to the member States" and the "respect of the national identities". It is known that there are two elements that have contributed to the building up of the process of integration and strengthening of its "Constitutional Synallagma". In the BRICS phenomenon, there is no constitutional requirement

[29] The concept of "*serial similarities*" has been developed, among others, by R. Needham, *Polithetic Classification: Convergence and Consequences*, *Man*, 3/1975, p. 775.

[30] S. DRICHEL, *The Time of Hybridity*, *Philosophy Social Criticism*, 34/2008, p. 587.

[31] A. VOBKUHLE, CH. BUMKE, F. MEINEL (eds.), *Verabschiedung und Wiederentdeckung des Staates im Spannungsfeld der Disziplinen*, Berlin, Duncker & Humblot, 2013.

[32] Cfr. M. CARDUCCI, A.S. BRUNO, *The Brics Countries between Justice and Economy. Methodological Challenges on Constitutional Comparison*, cit., p. 45.

of homogenization and there is no a "Constitutional Synallagma"[33]: this is because the BRICS wants to be competitive and alternative to the worldwide, without having their structural conditioning in its various constitutional identities. Paradoxically, their constitutional unhomogeneity becomes a very strong global competitive advantage, because it does not produce any "cost" of those structural adjustment required by regionalism[34]. It is understandable why does not emerge any commitment to the convergence of the standards of protection of human rights from the BRICS agenda. During the summit, the BRICS countries talk about human rights, but only with reference to each individual State, not in terms of "common heritage". Similarly, they call for the promotion of freedom as expectation to access to goods and services, or as basic needs (education, health etc ...).

b)

Furthermore, the BRICS have a second global competitive advantage: they activate an economic cooperation without any clause of economic conditionality. This is also a very strong difference compared with the current European context. As you know, the revision in a simplified form of article 136 of the Treaty of the European Union, adopted by the European Council on 25 March 2011, adds a paragraph stating that, for member States in the Euro-zone, "the granting of any required financial assistance ... will be subject to strict conditionality". The criterion of a "strict conditionality" is entered then the process of European integration. This mechanism was considered "a copy of the regional IMF" and it is totally intergovernmental, helping to increase the complexity of the institutional structure of the Union as a communitarian integration and making the perspective of a true federation and constitutional process even more difficult[35].

c)

The third difference concerns constitutional checks. Any regionalism, apart from the fact that it can be "deep" or "soft", assumes a more or less homogeneous system for legal checks within each single member State.

In the well known classification of Karl Loewenstein[36], the legal checks are basically of two types: they operate within the organization of each individual power, and in that case they are a kind of "intra-organic" tools; or they can be related to different external power holders, cooperating

[33] G. MARTINICO, *Complexity and Cultural Sources of Law in the EU Context: from the Multilevel Constitutionalism to the Constitutional Synallagma*, cit., p. 205.

[34] M. BODENSTEIN, H.W. URSPRUNG, *Political Yardstick Competition, Economic Integration, and Constitutional Choice in a Federation*, *Independent Institute Working Paper*, 37/2001, p. 1.

[35] M. RUFFERT, *The European Debt Crisis and European Union Law*, *Common Market Law Review*, 2011, p. 1789.

[36] K. LOEWENSTEIN, *Verfassungslehere*, Tübingen, Mohr Siebeck, 2000, pp. 232-266.

through "inter-organic" tools. In addition, these two different forms of checks make up jointly the category of "horizontal" checks. The "vertical" checks operate between all of the power holders, and all other forms of socio-political organization that exist on/within that State (territories, political parties, subjects of pluralism etc ...)[37].

It is clear that the BRICS States, concerning the dynamics of constitutional checks, are not homogeneous.

This is demonstrated by the fact that China continues to claim its "diversity" from the traditions of constitutionalism[38]. At the end of the third plenum of the XVIII Congress of the Chinese Communist Party, held in November 2013, operative decisions in order to improve the socialist system through the "Project 3-8-3" (3 concepts, 8 areas of reform, 3 correlated pairs) have been made, for a new phase of market management with a fair, open and transparent but mostly united approach, whose leading ideology is the development of science and technology, together with Marxism-Leninism, Mao Zedong thought, the theory of Deng Xiaoping, in the perspective of a pluralism that is different from the capitalist and democratic pluralism of the West[39].

d)

Furthermore, the States of the BRICS system, even if they can be classified as "macroterritorial spaces" [40], do not seem interested in the promotion of a common political cohesion that aim at the management of socio-territorial inequalities and at the government of differences[41].

This peculiarity plays a great geo-political role: it means that the BRICS, as an organization of international relations, does not want to be a problem of "identity" and "border". It is not and does not want to become a defined space in its content and its geography. For this reason, it does not need of either homogeneous political cohesion within individual States, nor with its own

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[37] About this perspective in European Union, see J. TRONDAL, *An Emergent European Executive Order*, Oxford, Oxford Univ. Press, 2010, and W. WESSELS, O. ROZENBERG (eds), *Democratic Control in the Member States of the European Council and the Euro Zone Summits*, Brussels, 2013, *http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=90910*.

[38] W. GU, *The Judiciary in Economic and Political Transformation:* Quo Vadis *Chinese Courts?*, *The Chinese Journal of Comparative Law*, 2/2013, pp. 303-334.

[39] E. ESPOSITO MARTINO, *Struttura costituzionale cinese tra tradizione e innovazione*, www.associazionedeicostituzionalisti.it, *Osservatorio AIC*, 2014, p. 1.

[40] See the analysis proposed by P. LOGROSCINO, *Spazi macroterritoriali e coesione. Premesse di comparazione costituzionale*, Lecce-Cavallino, Pensa, 2007; *L'integrazione europea tra gradualismo e dissimulazione costituzionale*, in *Scritti on. Vincenzo Starace*, III, Napoli, ESI, 2008; *A questão estrutural da desigualdade entre territóris e a intervensão do poder público para o re-equilíbrio do Brasil*, *Revista Brasileira de Estudos Constitucionais*, 5/2008; *Governare le differenze*, Bari, Cacucci, 2008; *Spazi macroterritoriali*, in L. PEGORARO (ed.), *Glossario di diritto pubblico comparato*, Roma, Carocci, 2009.

[41] B. BLASIO, *Health Budgetary Allocation in BRIC Countries: has their Economic Boom contributed to Improvement in the Quality of Human Life?*, *Rivista Elettronica di Diritto, Economia, Management*, 2/2013, pp. 162-222.

"cohesion" as an international system. The silence of the BRICS as an international subject on the matter, concerning the "boundaries" of Ukraine, seems to be a confirmation of the further peculiarity of this phenomenon with reference to the level of constitutional identities.

e)

Therefore, the BRICS is not a "counter-hegemonic" alternative to the models of international relations so far experimented, including "deep" and "soft" regionalisms. Rather it is a model of a "world alternative hegemony", also from the constitutional point of view.

Considering constitutional theories that were developed during the twentieth century to describe the various phenomena of "internationalization" of constitutional law[42], it can be say that the international relations of BRICS do not produce any effect within the States, either in terms of "general constitutional right" (ie on sources of law, as occurs with "substitutive" European supranationalism) or in terms of "constitutional culture" (ie, as a supplement to judicial interpretations mainly on rights, on the basis of the supranational goals to be achieved) [43].

5. Split in unity.

The western constitutional law has been marked by the parabola of the link between territorial change "between" States and constitutional change "within" the States: this relation was characterized by the mutual agreement, developed in the nineteenth century, to respect the "common intrastate constitutional standard", belonging to the *private non-state area*, that is to say, for example, the economic relations (what Schmitt called *Konstitutionelle Verfassung*), that cannot be changed by the powers and forms of government resulting from (and conditioned by) the territorial changes. The States may change as both territories and constitutions, but the "common constitutional standard" should remain unchanged: the economic relations cannot change; the *Konstitutionelle Verfassung* resists to any *Verfassungsänderung*.

The BRICS marks the end of this alleged western universalism of constitutional law.

As it has been correctly pointed out, «*the innovative nature of the BRIC perspective lies precisely in the fact that these countries can take care of themselves and, at the same time, formulate a new model of international insertion and cooperation*»[44].

[42] See the "classical" B. MIRKINE-GUETZÉVITCH, *Droit constitutionnel international*, Paris, Sirey, 1933, and Y. GOUET, *La coutume en droit constitutionnel interne et en droit constitutionnel international*, Paris, Edition A. Pedone, 1932.

[43] See M. CARDUCCI, V. DE OLIVEIRA MAZZUOLI, *Teoria tridimensionale das Integrações supranacionais*, Rio de Janeiro, Ed. Forense, 2014, p. 58 ss.

[44] P. BORBA CASELLA, *BRIC: a l'heure d'un nouvel ordre juridique*, Paris, Edition A. Pedone, 2011, p. 38.

This model introduces a cooperative action, which respecting the cultural belonging and legal traditions of its member States, does not reflect the settings based on the individualistic and mercantile criteria that are usual conceptions of the Western-style.

The new structure, although born for obvious economic reasons, seems to be moving towards a conception of the relations between States, that it seems to be pragmatic, not dominant, founded not on identities but on the real interests of the various ethno-cultural communities who live in their own state communities.

The motto of the BRICS is not "united in diversity", but rather "split in unity".

If the former formula has been able to legitimize the various "deep" and "soft" regionalisms in the name of the common constitutional traditions or in the name of functionalism of economic interests, the new perspective introduced by BRICS model seems to overcome the myth of the so-called "global regulation" (the Global Governance of Anglo-American school) that, precisely in the name of "unity in diversity" leads to the homogenization and "standardization" of legal forms and constitutional guarantees (according to the logic of the Legal Origins Theory).

Rejecting the "standardization," the BRICS essentially rejects the myth of the Global Governance and the "Global Constitutionalism" itself.

Allowing international relationships, within which "the threshold of resistance" of each State constitutional identity is not threaten by the other partners, because of the lack of mechanisms of conditionality or functional integration[45], the BRICS represents an evolutive path towards models of "not euro-centric dependence" of interstate relations and able to overcome the "peripheral realism" of the role of each State within its own foreign policy[46].

[45] On the concept of "threshold of resistance" in the international relationships and on the hegemonic relationships between States, see M. GULLO, *Insubordinación y desarrollo. Las claves del éxito y el fracaso de las Naciones*, Buenos Aires, Biblos, 2012, pp. 44 ss.

[46] On the concept of "not-dependence", see J.P. PUIG, *Doctrinas internacionales y autonom a latinoamericana*, Caracas, Ed. Universidad Simón Bolívar, 1980, p. 154. On the concept of "peripheral realism", see C. ESCUDÉ, *Realismo periférico. Una filosofía de política exterior para Estados débiles*, Buenos Aires, UCEMA, 2009.