

Comparative Law Review

Vol. 17 · No. 2
2026



REGULAR ISSUE

ISSN 2038 – 8993

COMPARATIVE LAW REVIEW

The Comparative Law Review is a biannual journal published by the
I. A. C. L. under the auspices and the hosting of the University of Perugia Department of Law.

Office address and contact details:
Email: complawreview@gmail.com

EDITORS

Giuseppe Franco Ferrari
Tommaso Edoardo Frosini
Pier Giuseppe Monateri
Giovanni Marini
Salvatore Sica
Alessandro Somma
Massimiliano Granieri

EDITORIAL STAFF

Fausto Caggia
Giacomo Capuzzo
Cristina Costantini
Virgilio D'Antonio
Sonja Haberl
Edmondo Mostacci
Alessandra Pera
Giacomo Rojas Elgueta
Tommaso Amico di Meane
Lorenzo Serafinelli

REFEREES

Salvatore Andò
Elvira Autorino
Ermanno Calzolaio
Diego Corapi
Giuseppe De Vergottini
Tommaso Edoardo Frosini
Fulco Lanchester
Maria Rosaria Marella
Antonello Miranda
Elisabetta Palici di Suni
Giovanni Pascuzzi
Maria Donata Panforti
Roberto Pardolesi
Giulio Ponzanelli
Andrea Zoppini
Mauro Grondona
Biagio Andò
Marina Timoteo

SCIENTIFIC ADVISORY BOARD

Christian von Bar (Osnabrück)
Thomas Duve (Frankfurt am Main)
Erik Jayme (Heidelberg)
Duncan Kennedy (Harvard)
Christoph Paulus (Berlin)
Carlos Petit (Huelva)
Thomas Wilhelmsson (Helsinki)

COMPARATIVE
LAW
REVIEW
VOL. 17/2 - 2026

5

VINCENZO ZENO-ZENCOVICH

For a Theory of Duties: A Roadmap

12

ALESSANDRO SOMMA

Tra moderno e postmoderno: ha ancora senso discutere di una funzione sovversiva della comparazione giuridica?

39

ENRICO BAFFI

Mistake as a Defect of Consent: Strengths and Weaknesses of the Italian Rules Compared with the U.S. Approach

67

MOHAMMED ABDELAAL

Beyond Borders: The Reception Of Foreign Law In The Jurisprudence Of Egypt's Supreme Constitutional Court

Spazio europeo dei dati sanitari

121

MARIO NATALE - ONOFRIO TROIANO

L'ambito di applicazione oggettivo e soggettivo del Regolamento (UE) 2025/327 sullo Spazio Europeo dei Dati Sanitari.

149

LUCIA BOZZI

Uso primario dei dati e fascicolo sanitario elettronico: non è solo una questione di privacy...

175

ADRIANA ADDANTE

Vicende circolatorie ed esercizio dei diritti nell'uso primario dei dati sanitari

205

VALENTINA VINCENZA CUOCCI

Spazio Europeo dei Dati Sanitari: uso secondario dei dati sanitari elettronici e interesse generale alla ricerca

230

MARIELLA CUCCOVILLO

Uso secondario dei dati sanitari e tutela dell'interessato: tra rimedi e sanzioni

246

MIRIAM I. NIGRO DI GREGORIO – ALESSIA P. MANGIACOTTI

Il sistema sanzionatorio dell'*European Health Data Space*: tra armonizzazione e frammentazione normativa.

270

ROBERTA PICCOLO

Biobanche sotto esame: dall'incertezza giuridica alla prospettiva regolatoria.

FOR A THEORY OF DUTIES: A ROADMAP^Ψ

Vincenzo Zeno-Zencovich

“Duties” is a highly unpopular term¹. The last 80 years – after WW2 – have been characterized by the exaltation of rights. This clearly is the response to the complete annihilation of every basic right – whether individual or collective, private or public – by the multiple dictatorships which flourished between the two wars and ultimately dragged the whole of Europe in a carnage in which over ten million civilians were wilfully murdered or killed in warfare operations.

“Rights” were the flag of restored liberty and democracy. A flag that must be hoisted not only in Europe but in the whole world. These rights are absolute, fundamental, universal, international and are enshrined first of all in the covenants signed in those first years and subsequently framed in post-war Constitutions, first of all the Italian (1948) and German (1949) ones, i.e. the two countries responsible for having unleashed the horrors of the war, after having put them into practice in their homeland. “Rights” is the *mot d’ordre* inspiring the United Nations Organization and is multiplied in the sectorial agencies which mushroom under its umbrella: right to food, to health, to a dignified living, to education. One cannot avoid noting – in hindsight – that the “universalism” of rights had the very clear aim of “westernizing” the rest of the world. This aspect will not be investigated here but it is mentioned to point out that it has been (and still is) very difficult to counter the fascination of the ideology of rights also because these have for a long time – by now nearly a century – been considered so universal and innate that challenging them has appeared as merely provocative and intimately anti-democratic.

The syllogism is that democracy has as one of its fundamental components individual rights. Democracies must grant and ensure rights and the more rights there are, the more democratic society is. *Ergo* denying rights is antidemocratic and those who deny them must be denounced and fought.

However – setting aside a critique (which, as already said, is mostly the result of hindsight and of the inexorable change in geopolitical seasons) of such ideology – in the apparently unstoppable thrust towards the amplification of the catalogue of rights, there are two internal – and therefore logical – contradictions.

^Ψ Questo contributo è pubblicato su invito dell’Editorial board della rivista, secondo le modalità previste dall’art.13 c.3 del regolamento per la classificazione delle riviste, Delibera del consiglio direttivo Anvur, n.306 del 21/12/2023.

* I am grateful to Giorgio Pino for his generous critical comments on a first draft of this paper.

¹ The following pages are the introductory remarks to the 17th Annual Conference of the Legal Research Network held at the Roma Tre University Law Department in September 2025 and devoted to the topic of duties. The term appears sparsely in legal writings, overwhelmed – especially in these troubled times – by its international trade homonymous. For some monographs by philosophers where one can find also a rich bibliography see D. Selbourne, *The principle of duty : An essay on the foundations of the civic order*, U. Notre Dame P. 2001; C. Wellman (ed.), *Rights and duties*, Routledge 2002. The philosophical approach obviously leads to the broader field of deontology: again, for further references see J. Wolff, *An introduction to moral philosophy*, W.W. Norton 2021; P. Rawling, *Deontology*, Cambridge U.P. 2023.

Multiplying rights has – just as with a currency – a devaluating effect. And elevating some of them to a superior level (“fundamental rights”) in no way is a solution, but simply generates a competition – political, legislative, judicial – as to which rights are “fundamental” and which ones should prevail over another one² (the typical example is the conflict between freedom of religion and worship, and equality between man and woman and non-discrimination among sexes).

The result is the trivialization of “fundamental” rights which at the end of the day must coexist with so many others that their actual value ends up by being simply symbolic, a flag waved among dozens of others.

But there is a second logical inconsistency in the multiplication of rights and which any legal scholar familiar with the basic notions of private law should have very clear: if someone holds a right there is – there must be – someone else – an institution, an individual, an entity – who is burdened with a duty – or to use the private law term – an obligation. Therefore, duties are functional to the existence of rights³.

Multiplying rights – which appears to be an inescapable result of the democratic process – results in multiplying duties⁴. And here we come to our topic.

Most of the rights which have emerged in these decades come with – if this crude expression is allowed – a price tag⁵. Someone must pay for their effectiveness: the best example are the absolutely fundamental rights to education and health which are the pillars of any State, whatever its ideology. We can – we must – surely discuss the contents, the level, the beneficiaries of these rights but it would be naïf to imagine that they are without a cost (generally and ultimately for the taxpayer).

The general trend in Europe (I will not consider the US) has been that these rights should be granted and guaranteed by the State.

It is a duty for a democratic State to ensure that these rights exist not only in some legislative text but are effectively enforced. Let us take for example a case on which no doubt, well beyond any political belief, basic principles of human decency should bring us to agree: the rights of people with physical or mental disabilities. It is sufficient to think at the multiple charitable (both public and private) institutions which flourished in the 19th century for the blind, the deaf and dumb, and which were very much places of segregation. Thankfully this attitude has significantly changed and we believe that is a basic duty of the State to ensure, inasmuch as it can, equal opportunities and treatment also for these less fortunate citizens.

However, one cannot ignore that such a right – fundamental, if one believes in basic human dignity – sees the State as provider of services, which must be paid by the whole community which on one side provides here and now the moneys through taxation, or indirectly and with effects on the future generations, through public debt.

³ “The common, and in my view distorted, perception of duties which is supposed to make plain their subordination to rights, in fact leads to a belittling of the role of rights” (J. Raz, *infra* at fn. 6).

⁴ D. Selbourne, *The principle of duty*, cited at fn. 1, at § 10 speaks of “the irreconcilability of any presumed ‘absolute’ rights in one citizen with the same presumed right in another” with the consequence that “There are no absolute rights, whether to life, liberty, property, happiness, or any other good” (*ibidem*).

⁵ See S. Holmes, C. Sunstein, *The Cost of Rights. Why Liberty Depends on Taxes*, W.W. Norton 1999; G. Pino, *Il costituzionalismo dei diritti*, Il Mulino 2017 (especially ch. VI).

But this is only one side of the coin. Increasingly, and especially after the expansive growth of the European Union welfare rights to do not impose a duty only on the State (with a subsequent transfer of its cost), but also and directly on its citizens, typically its enterprises. This is the result of a legal principle – whose foundations cannot be appropriately analyzed in this paper – that of “horizontal effects”. The duty to ensure such rights is imposed not only on the State, but also on the private persons (mostly legal entities) who enter in a relation with the bearer of the right. A typical example is the right not to be discriminated on the workplace. There is no doubt that female employees “cost” more than male ones (maternity leave, caregiving for children and elderly relatives etc.), but if the right has any sense, it implies burdening the employer with expenses he would – if not bound by a legal duty – probably avoid.

The first conclusion is that rights and duties are inextricably inter-twined. Increasing rights means increasing duties (and the costs that are related with them). Reducing duties – or even simply suggesting that they should be reduced because of their cost for the State or for individuals – implies reducing rights which are seen as vested. A move that has obvious and negative political and legal consequences.

The question therefore – which in the first place is theoretical – is if and how one can decouple the relationship between rights and duties and give to the latter an autonomous role⁶. This implies a different approach which is both grounded in political theory and in constitutionalism. The first step is qualifying duties as a prerequisite to bear rights⁷. If citizens are equal without distinctions of any kind, this implies that (setting aside differences in taxation, based on income and wealth), there are duties that all should comply with.

Let us take as example a duty that 80 years of extraordinary peace in western Europe has generally swept under the carpet: that of military conscription or, in a less conflict-oriented approach, community service. In this case we have a duty which has as counterpart the whole nation: a duty without a right. But one can try to reconstruct the category with a series of other situations which only apparently are hidden and *in incertam personam*. Let us take as a further example the duty to preserve natural resources, well beyond the pervasive legal (often criminal law) discipline. Again, here we have a duty towards the whole community and future generations which does not have an immediate counterpart⁸. Or to enter into a highly debatable field, should one have a duty to conduct a healthy life-style

⁶ Not surprisingly J. Raz titles his contribution on the topic “*Liberating Duties*” [8 *Law and Philosophy* 3 (1989)] and these few pages try to follow its path: “Ever since the Second World War, the march of rights has seemed unstoppable” with “various rights-oriented theories as the leading contender for the status of the moral and political orthodoxy of today”. Raz’s article wishes “to contribute a challenge to this orthodoxy by pointing out the inherent limitations of right-oriented doctrines, and to the need to regard rights as subsumable under and derived from a more fundamental doctrine of well-being on the one hand, and a complementary need to give duties a central role in our understanding of moral and political life, which is independent of their role in protecting and promoting rights”.

⁷ Which obviously leads (in a US context, which probably could be extended to Europe) to the notion of “ordered liberty”: see J. E. Fleming, L. C. McClain, *Ordered Liberty. Rights, Responsibilities, and Virtues*, Harvard U.P. 2013

⁸ “Typically, individuals do not have rights to common goods (...) The continued existence of common goods depends on cooperative behaviour of many individuals” (J. Raz, cited at fn. 6, p.10).

avoiding excesses in eating, drinking and smoking, or must this be governed exclusively by the fundamental right of individual freedom?⁹

A normative theory of duties-without-rights (or of duties as requisite to enjoy rights) therefore requires a thorough re-interpretation of our democratic constitutions in order to provide it with solid foundations¹⁰. Clearly this in no way is meant to belittle fundamental rights but is necessary to put duties on the same footing.

This approach not only implies drafting an open to discussion catalogue of duties¹¹, their common and/or distinctive features and inter-relationships but also set their limits¹² (which we find already, *in nuce*, in the 1789 Declaration¹³), their functionality and in what manner the principle of proportionality applies.

At the same time – mirroring what we have fruitfully been doing in the last eight decades – it would be useful to understand if and to what extent international charters can be the source – or support – for paramount duties.

But side-to-side with this inspiring theory-building it is necessary to take into account a different view of the cathedral (or is it only a much humbler chapel?).

If one looks at it from the perspective of these pages, the whole construction of the theory of social norms concerns in its essence the existence of duties towards others – individuals or the community – which do not find their basis in some normative or judicial provision¹⁴. And this approach can be easily extended to very common non-egoistic economic behaviours which go against the abstract neo-liberal Chicago-school theory of perfectly informed and rational transactions.

Whatever the label we wish to affix on this behaviour (morality, altruism, solidarity¹⁵, social reputation, custom of the trade, etc) it implies a duty on one side without there being a right on the other side. This means that the latter cannot claim enforcement of the duty on the former.

⁹ P. Schofield, *Duty to self: moral, political, and legal self-relation*, OUP 2021; J. Raz, cited at fn. 6, p.15

¹⁰ Explicitly in the Italian Constitution, article 2 (which recognizes and guarantees fundamental rights and “requires the fulfilment of imperative duties of political, economic and social solidarity”); article 4 (“Every citizen has the duty, in accordance with their capability and choice, to perform an activity or function that contributes to the material or spiritual progress of society.”); article 48 (“Voting shall be a civic duty.”); article 52 (“The defense of the Fatherland is the sacred duty of every citizen”); article 54 (“All citizens shall have the duty to be loyal to the Republic and to comply with its Constitution and laws.”). The Spanish 1978 Constitution (which was inspired also by the Italian one) states at article 30 that “1. Los españoles tienen el derecho y el deber de defender a España.” And the same article states that “Mediante ley podrán regularse los deberes de los ciudadanos en los casos de grave riesgo, catástrofe o calamidad pública”; article 45 focuses on environmental protection (“Todos tienen el derecho a disfrutar de un medio ambiente adecuado para el desarrollo de la persona, así como el deber de conservarlo”). The German *Grundgesetz*, instead, does not explicitly state the duties of citizens, and refers, only and incidentally, in article 12, that “community services” are “a traditional duty”.

¹¹ The parallel with rights suggests (in the US) a theory of “Unenumerated Duties” [R. West, 9 U. Pa. J. Const. L. 221 (2006)].

¹² “There are no absolute rights, whether to life, liberty, property, happiness, or any other good” (D. Selbourne, *The principle of duty*, cited at fn. 1, at § 10)

¹³ Article 4: “La liberté consiste à pouvoir faire tout ce qui ne nuit pas à autrui : ainsi, l'exercice des droits naturels de chaque homme n'a de bornes que celles qui assurent aux autres membres de la société la jouissance de ces mêmes droits. Ces bornes ne peuvent être déterminées que par la loi.” The principle can aptly be applied to duties.

¹⁴ Y. Feldman, *The law of good people. Challenging States' ability to regulate human behavior*, Cambridge U.P. 2018

¹⁵ The foremost reference is to G. Alpa, *Solidarity. A normative principle*, Wolters Kluwer 2023 and in particular to § 6.03 where the notion is inter-twined with the “dimension of duty”.

Also, here a tentative catalogue appears necessary, distinguishing between self-imposed duties within an economic activity, within a family group, or small communities, whether geographical, social, or in the workplace¹⁶.

One should also consider duties that are not permanent but are triggered by external events such as personal tragedies of third parties, illnesses, poverty, natural disasters, conflicts¹⁷.

A possible taxonomy could also distinguish between unilateral duties, reciprocal duties, cooperative duties and collective duties, each of which present distinctive features. But most of all what appears necessary is a strong interaction between lawyers and social scientists to examine certain aspects which explain, justify, promote duties as social norms such as efficiency, cost reduction (typically those tied to enforcement and redress), flexibility according to the context, the persons involved, the effort or detriment required, and finally, the social cohesion effect that compliance can produce¹⁸.

Having underlined the importance of a social norms approach to duties, one cannot however ignore some of problematic issues.

Self-imposed duties may be effective when looking at individuals; one can raise doubts on their extension when considering businesses; and surely, they cannot apply to public institutions which must operate under strict rules of law and judicial and financial accountability.

Two final remarks: a theory of self-imposed duties appears to be – of necessity – very far away from the universalistic approach we have seen as typical of rights: they can survive in small and cohesive social environments as a sort of bio-diverse behaviour¹⁹. A second point, that clearly cannot be examined here but is unavoidable, is the question if charity – as practically all religions posit – is not only a transcendent duty, but also a civic one.

As a conclusion I feel that an Italian scholar has a duty to quote one of the most enlightened spirits of the 19th century who not only drew the path, from his exile, for the unity of a democratic Italian republic, but lit the torch for human dignity throughout Europe and the Americas:

“The theory of Rights may suffice to arouse men to overthrow the obstacles placed in their path by tyranny, but it is impotent where the object in view is to create a noble and powerful harmony between the various elements of which the nation is composed.(...) We have, therefore, to seek a Principle capable of guiding

¹⁶ See with a general view on industrial relations G.Proia, *La relazione “offuscata” tra diritti e doveri (nel diritto del lavoro per una ripresa sostenibile, ma non solo)* [“The ‘blurred’ relationship between rights and duties (in ‘labour law for a sustainable recovery’ but not only)”], in *Massimario Giurisprudenza del Lavoro* 2021, 924. The author focuses on the centrality of duties in relation to social rights and cohesion.

¹⁷ H.M. Roff [18 *Jahrbuch Recht und Ethik* 533 (2010)] elaborates the notion of “Kantian Provisional Duties”.

¹⁸ This social and utilitarian understanding of duties is very clearly set out by J. Raz (*retro* fn. 6, at p. 18 ff.): “Duties may be internally related to their justifying goods”: “Intrinsic goods have a normative aspect. They are not patterns of action and interaction which we stray into accidentally”; “Their [of duties] existence creates valuable opportunities, constitutes valuable options”.

¹⁹ From a strictly legal point of view the English law of torts has as one of its fundamental principles, that of “proximity”. The duty of care is not owed *erga omnes* but only towards “your neighbour”, a notion which receives a restricted reply: see the landmark 1932 House of Lords decision *Donoghue v. Stevenson* (per Lord Atkin).

*mankind onwards toward their own improvement and uniting them with their fellow-men, without making them dependent either on the idea of a single man or the force of the majority. This principle is DUTY*²⁰.

²⁰ G. Mazzini, *Essay on the duties on man*, 1858. Incidentally one should note that the repeated reference to duties in the Italian 1948 Constitution is due to the presence in its Constituent Assembly of a strong number of MPs of the Italian Republican Party (PRI) which explicitly inspired itself to Mazzini's ideas.

