ADMINISTRATIVE LAW SCHOLARSHIP IN ITALY (1800-2010) *

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CONTENTS: 1. Subject and Structure. — 2. The Napoleonic Era (1802-1815). — 3. The Restoration Period (1816-1847). — 4. The Period of the Risorgimento (1848-1879). — 5. The Liberal Era (1880-1902). — 6. The Giolittian Era (1903-1921). — 7. The Fascist Era (1922-1945). — 8. The First Period of the Republic (1946-1970). — 9. The Second Period of the Republic (1971-1989). — 10. The European Era (1990-2010). — 11. The Reaction to the Legal Method: Achievements and Open Problems. — 12. Towards New Horizons.

1. The purpose of the present study is to examine the ground covered by Italian scholars of Administrative law during the two centuries that the academic subject has existed.

The goal is an ambitious one, given the limited space available, and certain decisions as to structure and method have been necessary in order to achieve it.

Firstly, the choice was made to take a chronological approach and set developments relating to the various themes and issues considered within their respective historical periods.

Secondly, the work has been divided into two parts. The first covers the nineteenth century and the second the twentieth century. These two parts have, in turn, been subdivided respectively into four and five periods more or less coinciding with the periods of Italian politico-social historical development. The main distinguishing features of each period have been described. The division into periods

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(*) To the published in German in A. VON BOGDANDY, S. CASSESE and P.M. HUBER (hrsg.), *Ius Publicum Europaeum. Grundlagen staalichen Verwaltungsrecht in Europa*, Heidelberg, C.F. Müller, vol. III, 2010. English translation by Catherìne Rose de Rienzo (née Everett-Heath).

constitutes a narrative artifice, however, and allowance must be made for the fact that, with the odd rare exception, there were no clear boundaries between one period and the next but, rather, what was essentially a form of continuity.

Thirdly, the choice was made to pay greater attention to the moments when scholars broke with the past or when the academic subject evolved. This has made the journey appear simpler and more schematic than it was in reality. As always, moments of change were in fact accompanied by tradition-bound conservative tendencies that could only be influenced by way of a slow metabolisation of demands for reform.

Fourthly, the choice was made to single out those legal scholars and works leaving the greatest mark on each period. Obviously, the closer one draws to the present period, the more blurred the picture becomes and the more subjectively influenced the writer's position will be. References to specific authors can only give a partial insight since these academics still have a part of their research journey to complete. Indeed, some of them have only just set out.

Lastly, I would like to make a comment on the history of administrative law as an academic subject in Italy. Whilst the last few decades have witnessed a considerable increase in the number of studies dedicated to a historical analysis of administrative law scholarship, there is still no one single work that retraces its progress in the whole. There have, in the past, been some admirable attempts at a general reconstruction (1) (just as there have been many that have

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(1) There are two main works effecting a historical analysis of the Italian science of administrative law: M.S. GIANNINI, *Profili storici della scienza del diritto amministrativo,* in *Studi sassaresi,* 1940 (also in *Quaderni fiorentini,* 1973, and in M.S. GIANNINI, *Scritti*, vol. II, Milan, Giuffrè, 2002, 210 et seq.), S. CASSESE, *Cultura e politica del diritto amministrativo,* Bologna, il Mulino, 1971. Alongside these, the reader should note: P. GROSSI, *Scienza giuridica italiana. Un profilo storico, 1860 - 1950,* which considers Italian legal science in its entirety and therefore only examines the key steps in the evolution of the science of administrative law; L. MANNORI and B. SORDI, *Storia del diritto amministrativo,* Laterza, Rome/Bari, 2001, which reconstructs the history of administrative law (and not just Italian administrative law either) rather than that of its study; M. FIORAVANTI, *La scienza del diritto pubblico. Dottrine dello Stato e della Costituzione tra Otto e Novecento,* Milan, Giuffrè, 2001, which examines the science of constitutional law and that of administrative law jointly in a collection of essays and, lastly, G. MELIS, *La storia,* in S. CASSESE (ed.), *Trattato di diritto amministrativo. Diritto amministrativo generale,* vol. I, 2nd ed.n, Milan, Giuffrè, 2003, and S. CASSESE, *Il diritto amministrativo: storia e prospettive*, Milan, Giuffrè, 2010, which conjointly examines not only the history

concentrated on specific themes or periods ([2]) or on individual scholars ([3])) but since their aim was a critical analysis of previous methodologies, they did not examine the science's headway in detail but contented themselves with an outline of the main developments. In short, the historical study of administrative law scholarship in Italy has taken some important steps forward in the last few years but still has considerable ground to cover.

2. In 1802, the University of Turin introduced a course entitled *Economia e amministrazione pubblica* (*Economics and Public Administration*), in compliance with French legislation (Piedmont was annexed to France at the time). The teaching was assigned to the 35-year-old, private-law academic, Giuseppe Cridis ([4]), who had just become a tenured professor at the College of Law. He collected his course of lectures together in a still unpublished volume entitled *De l'administration publique* (*On Public Administration*) and this work may be considered the first rudimentary attempt at analysing public administration to be made in Italy ([5]).

The birth of administrative law as an academic subject in Italy was thus the fruit both of French revolutionary aspirations and of reform resulting from the Napoleonic organization of the state. The science has recently celebrated its bicentenary. It should be noted, however, that the first eighty years constituted an era of primigenial experimentation.

If the study of administrative law had its birth in Turin, it was in Milan and Naples that it developed during the first half of the nine-

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of both public administration and administrative law but also that of the latter's academic study.

([2]) The main ones include, F. BENVENUTI, *Gli studi di diritto amministrativo,* in *Archivio Isap,* Milan, 1962, I et seq.; M.S. GIANNINI, *Diritto amministrativo,* in *Cinquanta anni di esperienza giuridica in Italia,* Milan, Giuffrè, 1982, 364 et seq.; S. CASSESE, *Science of Administrative Law in Italy from 1971 to 1985,* in *Jahrbuch des Öffentlichen Rechts der Gegenwart,* Tübingen, 1985; L. TORCHIA, *La scienza del diritto amministrativo,* in this Review, 2001, 1105 et seq., M. D'ALBERTI, *Gli studi di diritto amministrativo: continuità e cesure tra primo e secondo Novecento,* in this Review, 2001, 1293 et seq., and A. SANDULLI, *Costruire lo Stato. La scienza del diritto amministrativo in Italia (1800-1945)*, Milan, Giuffrè, 2009.

([3]) The reader is referred to the main text of this paper for further references relating to individual scholars.

([4]) 1766-1838. He was a professor at Turin.

([5]) The manuscript was found in the National Library in Turin by Vittorio Brondi, professor of Administrative Law at Turin University during the period 1895-1932.

teenth century. Cridis's teaching in Turin was interrupted after barely half a decade by a reform of the French university regulations and it developed no further after the House of Savoy was reinstated (6). It was necessary to wait until 1848 for the founding of a course on administrative law at the University of Turin. The teaching was entrusted to Antonio Lione (7).

The first important contribution aiming at giving some academic shape to the fragmentary legislation on public administration was the work of the most brilliantly gifted Italian jurist of the first half of the nineteenth century, Gian Domenico Romagnosi (8). An eclectic jurist (not only a jurisprudent and scholar of criminal, constitutional and private law but also a political scientist), he was called by Count Giuseppe Luosi, Minister of Justice in the Kingdom of Italy, to teach *Alta legislazione civile e criminale nei suoi rapporti con la pubblica amministrazione* (*High Civil and Criminal Legislation as related to Public Administration*) at the newly founded politico-legal School in Milan. He had previously taught public and private law at Parma and Pavia and held the teaching post from 1809 until 1817, when the Austrian government abolished the chair. In 1814, Romagnosi published *Principj fondamentali del diritto amministrativo italiano onde tesserne le instituzioni* (*Fundamental Principles of Administrative Law for Building Institutions*) and this may be considered the first important work in any overview of Italian administrative law as an academic subject (9).

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(6) As regards the teaching of administrative law at the University of Turin, see V. Brondi, *Gli inizi dell'insegnamento di diritto amministrativo in Piemonte*, 1900, in Id., *Scritti minori*, Turin, Regia Università, 1934, 55 et seq.

(7) 1809-1874. He was a professor at Turin.

(8) 1761-1835. He was a professor at Parma, Pavia and Milan.

(9) The title quoted in the text is, in reality, the title of the second edition, which was published in Florence in 1832. The use of such title is preferable because Romagnosi's work is universally known by it. Published in Milan in 1814, the first edition was entitled *Instituzioni di diritto amministrativo* (*The Basis for Administrative Law*). The work was divided into six books: the first three were, for the most part, philosophical in nature, the fourth bore an economic stamp and the last two were more properly legal in their content. It was subsequently republished many times. The first posthumous new edition published in 1937 (Milan, Silvestri) had an additional appendix containing nineteen short, practical notes on the Council of State and administrative litigation taken from the *Giornale di giurisprudenza universale,* the journal founded and directed by Romagnosi between 1812 and 1814. Of the other works on public law by the Emilian author, the following should be noted: *Introduzione al diritto pubblico univer-*

Romagnosi's construction accorded central importance to the notion of *«ragion pubblica»* («the public goal») i.e. the sum total of the means and actions directed at pursuing the public interest. According to Romagnosi, «the interest constitutes the purpose and the subordination of the means constitutes the structure or system. This public goal constitutes the first principle of public administration. It dictates the law that determines the positive public objectives both for those in power and for those who obey» ([10]).

Romagnosi's work was important for four main reasons. Firstly, he identified a demarcation line between administrative power and judicial power. Secondly, he attached greater importance to the role of associations, interpreting the role of the State as merely instrumental to the economic betterment of the community. Thirdly, he was the first to attempt classifying the functions performed by public administrations. Fourthly, he defined some important concepts of administrative law with precision, providing a definition of what we today conceive of as the principle of proportionality, for example. The guiding rule in administration, Romagnosi maintained, must be the prevalence of «public matters over private ones within the confines of genuine necessity» i.e. «making public matters prevail over private ones with the minimum possible sacrifice of private property or liberty».

The *Principles* was nevertheless a disjointed work of indefinite approach and content, being a confused mixture of philosophy, history, politics, economics and law. It was also abstrusely complex in its style. Furthermore, Romagnosi's contribution aroused little interest outside Lombardy-Veneto and Piedmont, primarily on account of the break caused by the abovementioned suppression of the Milanese chair in 1817. This prevented the consolidation and spread of Romagnosi's theories. It also prevented the laying of a cultural foundation based on the gradual integration, chiselling and polishing of his primigenial thinking by successors and disciples.

The cultural isolation imposed by the Austrian government prevented Romagnosi (and Italian academics) from enjoying an influen-

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sale, Parma, 1805, which was eminently philosophical in content; *Della Costituzione di una monarchia nazionale rappresentativa*, published anonymously in Milan in 1815, and *La scienza delle Costituzioni,* which was published posthumously in Milan in 1847 but, in all probability, tampered with.

([10]) G.D. ROMAGNOSI, *Principj fondamentali di diritto amministrativo onde tesserne le instituzioni*, 3rd ed., Prato, 1835 (1st ed., Parma, 1814), 8.

tial role in the evolution of administrative law. Thus it was that, since the first indigenous attempts at constructing a science of administrative law were nipped in the bud, at a certain point studies had to be reformulated along the lines of the French experience (11).

3. Between 1816 and 1840, the Italian study of administrative law went through a period of stasis, limited as it was to the reception of exegetic studies of transalpine origin including, most notably, those of Macarel, Gerando and Bonnin.

Only in the Kingdom of the Two Sicilies (and in Naples, in particular) did the study of administrative legislation continue to be cultivated, in a climate of lively cultural ferment. The works were unoriginal, as a rule, and were developed along French lines for the purposes of codification and exegesis. Francesco Dias' *Corso completo di diritto amministrativo* (*Complete Administrative Law Course*) offers one such example (12).

The year 1840, on the other hand, saw the publication of the most important Italian contribution to be made during the first half of the century. Written by the Neapolitan, Giovanni Manna (13), *Il diritto amministrativo del Regno delle Due Sicilie* (*The Administrative Law of the Kingdom of the Two Sicilies*) (14) enabled the Italian study of administrative law to take a huge step forward. Manna had a prevalently economic background, having taught *Economia politica* (political economy) at the University of Naples. A refined man of politics (he was a senator and minister, both in the Kingdom of the Two Sicilies and in the Kingdom of Italy), he was sensitive to the invigorating new climate in eighteenth-century «European» Naples

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(11) M.S. Giannini, *Profili storici della scienza del diritto amministrativo*, cit., 218.

(12) F. Dias, *Corso completo di diritto amministrativo, ovvero Esposizione delle leggi relative all'amministrazione civile ed al contenzioso amministrativo del Regno delle Due Sicilie*, Naples, Tipografia dell'Industriale, 1838.

(13) 1813-1865. He was a professor at Naples.

(14) G. Manna, *Il diritto amministrativo del Regno delle Due Sicilie. Saggio teoretico, storico e positivo*, vol. I, Insegna di Dante, Naples, 1840. The other two volumes were published in 1842 and 1847 respectively. A second edition of the first volume was published, with minor amendments, under the title *Partizioni teoretiche del diritto amministrativo ossia Introduzione alla scienza ed alle leggi dell'amministrazione pubblica*, in Naples in 1860. A third edition (identical to its predecessor but divided into two volumes) was republished posthumously in Naples in 1876. It contained appendices and notes on the current state of Italian legislation and administrative case-law as well as a comparison of the legislation in the main European States and America.

and shared its aims of opening legal studies up to philosophy, history, economics and the social sciences.

The greatest virtue of Manna's work was that, in reaction to French exegetics, it attempted to construct a system of administrative law through an «expository» method that aimed at identifying the subject's general principles.

Manna accorded the economic/administrative approach absolute supremacy. After a scrupulous historical analysis highlighting the events that led to «political law» acquiring its autonomy from private law, he placed administrative science at the point where economic theory met legal theory. Indeed, administrative law could not but develop in concomitance with economics and vice versa: both subjects were establishing themselves as instrumental in the break-up of feudal politico-economic structures. In Manna's opinion, the State had to accept the delicate task of regulating economic relationships. In such a context, the administration was called to create and distribute public assets whilst administrative law was to study the rules regulating the concentration and distribution of such resources. An autonomous branch of the law, administrative law was directed at tracing the limits and confines within which public administrations could act in their capacity as asset holders.

In a bipolar vision that saw the State as both instrumental and functional, Manna developed what could be called his «double movement» theory. According to this theory, the State must first work to achieve a «concentration of moral and physical energy i.e. of brain and brawn, through which an intelligent and active personality may be formed» (this the author called «State administration»). It must then express the thus-concentrated energy in a manner that is capable of allowing it to radiate from the centre, spreading to all the individuals in whose interest it was concentrated (this the author called «civic administration»). In such a context, administrative action assumed a central importance, both for the purposes of checking that pre-established goals had been attained and for those of determining how to limit the exercise of power. Manna's moderately statist and organicist vision re-established administrative action as a supplementary action directed at guaranteeing the free development of autonomous individual enterprise, private initiatives and market forces.

Manna's construction allowed him to identify a series of constant, invariable principles governing this «double movement» (which, borrowing today's terminology, could be divided into instrumental activity

and goal-oriented activity). Such principles included subsidiarity and proportionality (obviously, the author did not call his principles by those names but his definition effectively anticipates them), according to which «as much force collects at the centre as is strictly necessary to achieve the State's goals». Then came speed of action. According to this principle, «the double movement of the energy which collects and then spreads outwards» must be «brief and quick», since «the slower State action becomes, the greater the difficulties and the waste of that energy and the easier it becomes for personal interests to ambush the process». Lastly, there was the principle of the centrality both of the public interest and of the ban on the misdirection of power. This principle dictated that «if the social energy is diverted or distorted either during the course of its concentration or during that of its diffusion, that can only occur if personal interests have encroached upon the process». What mattered, therefore, was an effective evaluation as to whether administrative power had been exercised correctly. This was not for the purposes of protecting injured private interests (an irrelevant perspective in those days, since citizens were not deemed to enjoy rights capable of enforcement against the public administration) but, rather, for those of verifying whether pre-established goals had been achieved and whether the results were for the collective good. In a vision based on economy and good administration, it was therefore the failure to pursue a goal that constituted the point of reference for evaluating the activities carried out.

4. During the second half of the eighteenth century (and the post-unification period, in particular), Giovanni Manna's method gave impetus to a range of eclectic studies that basically had the aim of creating structures.

The majority of such contributions attached little importance to legislation and paid no attention to developments in case law. In contrast to the popularising, exegetic orientation, they contemplated openness to the other social sciences and consequently did not distinguish between administrative law and administrative science. They tended to apply the private-law regime also to administrative law and began to pay careful attention to German legal scholarship, albeit in a climate that inclined towards making the most of their own legal cultural heritage.

Several of the leading scholars active during this period deserve to

be noted. The Neapolitan, Federico Persico ([15]), developed the theory of organic nexuses, according to which the State-as-Person was composed of limbs and organs (i.e. local government and associations): all these were fundamental if the State was to exist and act in the context of a harmonious relationship between central and local government ([16]). Giovanni de Gioannis Gianquinto ([17]), from Cagliari, demonstrated a significant openness to the social sciences. He also conceived of administrative law both as the tool for achieving an evenly balanced relationship between the public administration and private parties and as the chosen ground for seeking a balance between the greatest social good and the protection of individuals' interests. He therefore held the main concepts of private law to be applicable to administrative law ([18]). The Roman, Lorenzo Meucci ([19]), developed a more genuinely legal construction of administrative law, albeit without marginalising the social sciences. Leaning towards a unitary concept of the law, such a construction was intended to deny the distinction between administrative law and private law. It also developed an ethical concept of the State that saw the latter as called to promote collective well-being and the country's economic and social development, with the consequence that any distinction from private law would be construed at a finalistic level ([20]).

These formulations directed at removing the distinction between public and private law and promoting openness to the social sciences were opposed during this period by a minority current composed not of academics but of Councillors of State. The Florentine, Giuseppe Mantellini ([21]), was the most important. Founding his arguments on the concepts of sovereignty and the State's juristic personality, he claimed that the special nature of administrative law was necessary, since the rules of the Civil Code could not be applied to the State ([22]).

([15]) 1829-1919. He was a professor at Naples.

([16]) F. PERSICO, *Principii di diritto amministrativo*, 2 vols, Stabilimento tipografico dei classici italiani, Naples, 1866-74.

([17]) 1821-1883. He was a professor at Cagliari, Pavia and, primarily, Pisa.

([18]) G. DE GIOANNIS GIANQUINTO, *Corso di diritto pubblico amministrativo*, 3 vols, Florence, Tipografia editrice dell'Associazione, 1877-81.

([19]) 1835-1905. He was a professor at Rome.

([20]) L. MEUCCI, *Instituzioni di diritto amministrativo*, 2 vols, Turin, Bocca, 1879-84.

([21]) 1816-1885. He was a Judge of the Court of Cassation in Florence, Chief Counsel for the State and Councillor of State.

([22]) G. MANTELLINI, *Lo Stato e il Codice Civile*, 3 vols, Florence, Barbera, 1879.

Mantellini developed a theory of the State's double personality, according to which the State is a political body «in its authority and in the exercise of its jurisdiction» whilst nevertheless assuming «the guise of a private citizen in its administration, if and insofar as it possesses property, if and insofar as it contracts and if and insofar as it instigates legal proceedings» (23). Mantellini was effectively attempting to use a romantic and reactionary conception of the State that was Hegelian in nature to describe administrative law as the «special» private law of the State, but one not bound by the rules of the Civil Code. Administrative law was to aim exclusively at identifying the means of guaranteeing that the public interest be pursued.

Finally, the period of transition from the Risorgimento to the Liberal era saw the contribution of another Councillor of State who was also a patriot, powerful political exponent of the Right and uncle to Benedetto Croce, namely, Silvio Spaventa (24). Influenced by German culture and Hegelian theories, in particular, Spaventa hoped for the realisation of a strong, centralised State ethically geared towards upholding the public interest and morally bound to concern itself with all those areas of social life in which growing industrialisation was requiring new forms of protective intervention. For this reason, he fought for the nationalisation of the railways (25). For Spaventa, «in the field of administration, freedom essentially means respect for law and justice; it is what the Germans call *Rechtstaat,* namely, the nature of modern monarchy under which not only the rights relating to private property but also every right and interest that every citizen has in the management of the common good, whether it be moral or economic, is reliably guaranteed and impartially administered» (26). Hence the need for an administrative court, for which he called insistently. Not by

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(23) G. Mantellini, *Lo Stato e il Codice Civile*, vol. I, cit., 33 et seq. and 54.

(24) 1822-1893, he was a Member of the Chamber of Deputies in the Kingdom of the Two Sicilies and the Kingdom of Italy, Minister of Public Works from 1873 to 1876, a Senator and a Councillor of State.

(25) S. Spaventa, *Discorso del deputato Silvio Spaventa pronunziato alla Camera dei Deputati sulla convenzione di Basilea e sul trattato di Vienna pel riscatto delle ferrovie dell'Alta Italia*, Rome, Botta, 1876.

(26) S. Spaventa, *Giustizia nell'amministrazione, discorso del commendatore Silvio Spaventa letto la sera del 7 maggio 1880 nella sala dell'Associazione costituzionale di Bergamo*, Gaffuri e Gatti, Bergamo, 1880. The two famous speeches are contained in S. Spaventa, *La politica della Destra*, writings and speeches assembled by Benedetto Croce, Bari, Laterza, 1910.

chance, when Francesco Crispi founded the fourth section of the Council of State in 1889 to deal with administrative litigation, it was none other than Silvio Spaventa whom he called to preside over it.

5. Up to the mid-1880s, Italian administrative law and its academic study had certainly existed but the former had yet to develop well-defined features and the latter, although it could already boast some important individuals, had been forged by scholars of the most varied geographical origins and even more widely varied academic backgrounds. Professors of administrative law were, moreover, utterly lacking in any ability to influence the production of administrative law since the only kind of recognition their authority received was in the context of university teaching. Greater importance, from this point of view, was attached to the contributions of those working in the field. Councillors of State, politicians and senior public administrators had a far greater say in defining the lines along which to reform administrative legislation.

Some elements of a positive openness to external influences may be noted, the main example being an eclectic approach to administrative studies. There was also, however, much improvisation and little intellectual rigour, possibly as a result of the marked eclecticism. Efforts were concentrated for the most part on publishing well-structured textbooks, but few monographs and no specialist journals or treatises were produced. In short, Italian administrative law existed as an academic subject and was beginning to make progress but it had yet to be truly established. Its establishment was seen to by a group of young academics headed by Vittorio Emanuele Orlando ([27]), a young public-law scholar from Palermo.

It must be said at the outset that Orlando grew up in a cultural environment ideally suited to honing his natural gifts. During the years he was studying at the Law Faculty in Palermo, Gaetano Mosca (the founder of Italian political science) and Francesco Scaduto (founder of the Ecclesiastical Law school) were both frequenting the same lecture halls. After graduating, Orlando spent a year in Germany, at Munich.

([27]) 1860-1952. He was a professor at Modena, Messina, Palermo and, primarily, Rome. Orlando was a Member of the Chamber of Deputies for more than quarter of a century, President of the Council of Ministers, Minister of Education, Minister of Justice and Religion, Minister of the Interior, President of the Chamber of Deputies and Senator.

Here he attended the lectures of Aloys Brinz, Puchta's private-law pupil. The experience was decisive: it was in Germany that Orlando deepened his knowledge of the theories developed by Savigny's Historical School and read the works of von Gerber and Laband on the *Rechtsstaat.* It was on the basis of these that he formulated his idea of a new method for studying public law, the so-called «legal method» ([28]).

Unlike those who had preceded him, Orlando had a clear idea of the objective to be pursued: a central role was to be claimed for jurists and public-law academics in the construction and safeguarding of a liberal and unitary State.

Orlando realised that affirmation of a State founded on the rule of law put jurists in a position to become a sort of *deus ex machina.* They would be able to create themselves the function of decisively influencing the production of public law and, more particularly, of administrative law (the subject-elect in the late nineteenth-century liberal State, since it was the authoritative nature of administrative dynamics that underpinned the sovereignty of the State-as-Person). Paradoxically, it was precisely on Orlando's theories of the distinction between the State and society and of the requirement that the latter did not upset the balance of the State founded on the rule of law that the importance assumed by jurists in the active conduct of politics in liberal Italy rested. In fulfilment of a moral duty, the jurist was called to put his repertoire of knowledge at the disposal of the State, both in Parliament and in government. Some examples may serve to illustrate this point. Both Orlando and Antonio Salandra were members of both Houses of Parliament, ministers and Presidents of the Council of Ministers. Luigi Rava was a senator and several times a minister. Santi Romano was a senator and President of the Council of State. Errico Presutti was Mayor of Naples and member of the Chamber of Deputies. Francesco D'Alessio was a member of the Chamber of Deputies and an undersecretary. Silvio Trentin and Giuseppe Menotti De Francesco were members of both Houses. Gustavo Ingrosso was

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([28]) There is an abundance of literature on the works by Vittorio Emanuele Orlando. As regards his youthful period, see, in particular, G. CIANFEROTTI, *Il pensiero di V.E. Orlando e la giuspubblicistica italiana fra Ottocento e Novecento*, Milan, Giuffrè, 1980, and M. FIORAVANTI, *La vicenda intellettuale del giovane Orlando (1881-1897)*, Florence, 1979, now entitled *Popolo e Stato negli scritti giovanili di Vittorio Emanuele Orlando (1881-1897)*, in ID., *La scienza del diritto pubblico. Dottrine dello Stato e della Costituzione tra Otto e Novecento*, Milan, Giuffrè, 2001, 67 et seq.

Mayor of Naples and President of the Court of Auditors. In short, public-law professors not only constituted the driving force behind the State and the legal order in late nineteenth-century Italy and during the first two decades of the twentieth century but they were also the main authors of the administrative law produced during the period. Hence the high degree of authority accorded to professors of public law in the Peninsula throughout the twentieth century.

That public-law scholars acted as «architects» of the State founded on the rule of law meant, *inter alia,* that constitutional law and administrative law were definitively re-channelled during this period into the common river-bed of public law and became the object of in-depth study by one and the same group of academics. The professor of public law was the State's jurist rather than a scholar of constitutional law or administrative law. Indeed, Orlando, Romano, Ranelletti and Donati were all great experts in both administrative law and constitutional law and frequently married such studies with those of public international law.

Orlando also had a rather precise idea as to methods for pursuing the objective of the public-law academic's central role in safeguarding the unity of the liberal State. In his opinion, a five-stage process of cultural transformation was to be developed and achieved over a period of little more than ten years. The five stages contemplated were the formulation of a manifesto on method, the creation of a school, the realisation of a platform of textbooks, the foundation of a specialist journal and the beginning of a detailed treatise. In short, not only was Orlando a great public-law scholar but he also had a great gift for organizing legal learning.

Orlando's contribution was essentially concerned with two issues: method and a legal concept of the State.

As far as method is concerned, the publication in 1889 of his essay *I criteri tecnici per la ricostruzione giuridica del diritto pubblico* (*Technical Criteria for a Legal Rebuilding of Public Law*) ([29]) was of fundamental importance, constituting as it did an ideological manifesto for the generation of public-law scholars who belonged to the so-called «Italian School of public law».

The criteria Orlando expounded were essentially three. It was

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([29]) V.E. ORLANDO, *I criteri tecnici per la ricostruzione giuridica del diritto pubblico*, in *Archivio giuridico*, 1889, as well as in ID., *Diritto pubblico generale: scritti varii (1881-1940), coordinati in sistema*, Milan, Giuffrè, 1940, 17 et seq.

necessary, in the Palermitan jurist's opinion, to cure public-law studies of the social sciences' influence. This was to be done by using a legal method and, in particular, by drawing inspiration from private law's methodological dictates. Then there was a need to combine theory with practice in such a way as to achieve a systematic reading of public law. Lastly, it was necessary to construct a national public law that aspired to preserving the unity and sovereignty of the State-as-Person.

Indications as to method were extremely meagre. But precisely in its shortcomings lay the strength and longevity of Orlando's message, since, as Massimo Severo Giannini has observed, «what [the message] lacked in terms of precision, it gained, one could say, in good sense: he avoided theorising (...) about technical criteria, preferring simply to indicate them and each person used them directly and used those they thought best, letting themselves be guided by their own legal instinct, without raising preliminary issues regarding the nature of one or other criterion or of the method in general» ([30]).

As far as the second issue is concerned, Orlando's concept of the State was firmly anchored to Laband's notion of juristic personality. Whether one considers his *Principii di diritto costituzionale* (*Principles of Constitutional Law*) («the State is therefore a legal concept and it is a subject enjoying legal capacity; these terms already contain the concept of the State's legal personality» ([31])) or the *Introduction* to the first volume of his *Treatise* («Sovereignty lies in the State and for the State: it flows from the organs that exercise it but does not emanate from them. A King or an assembly are not the source of sovereignty. Their power derives from the State, insofar as it appears vested with authority» ([32])), the influence of the constitutionalist from Breslau is evident. Yet Orlando was never a fan of a centralised, homogeous State, as were the other Italian mentors of his time. Indeed, on several occasions, the Sicilian jurist called attention to the risks of having «made Rome a sort of Mohammedan Mecca» ([33]). Over the course of

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([30]) M.S. Giannini, *Profili storici*, cit., 144. Giannini was to return to this subject a few years later, in his *Recensione a V.E. Orlando, Principi di diritto amministrativo*, in this Review, 1963, 147.

([31]) V.E. Orlando, *Principii di diritto costituzionale*, Barbera, Florence, 1889.

([32]) V.E. Orlando, *Introduzione al sistema amministrativo (i presupposti, il sistema, le fonti)*, in V.E. Orlando (ed.), *Primo trattato completo di diritto amministrativo italiano*, vol. I, Milan, Società editrice libraria, 1897, 60.

([33]) V.E. Orlando, *Sulla questione economica ed amministrativa in Italia*, in *Archivio di diritto pubblico*, 1897, 153.

time, moreover, the Palermitan jurist's conception of the State departed slightly from his original idea, as a result both of social transformations and of the new theories formulated by German, French and Italian public-law scholars. It must also be noted that Orlando did not always strictly apply the legal method that he himself had professed: his works occasionally reveal the strayings of a realist.

Orlando's most significant contribution to administrative law was, without doubt, his *Principii di diritto amministrativo* (*Principles of Administrative Law*) ([34]). Published in 1891, this textbook marked a clean break with the past. The volume followed three basic criteria: a systematic approach, a compact and organic arrangement and an exclusively legal form of analysis.

The result was one of the phenomena of its era. After a first chapter dedicated to methodology, the volume was subdivided into three parts covering organisation (central administration, public employment and local administration), administrative activities and administrative justice. The internal structure of the individual parts still revealed a certain archaism and an inadequate analysis of concepts but it nevertheless constituted a considerable step forward in its outline of the subject's main co-ordinates.

Orlando founded and edited four specialist public-law journals. These were the *Rivista di diritto pubblico* (*Public Law Review*) (1890-91), the *Archivio di diritto pubblico* (*Public Law Archives*) (1891-96), the *Archivio del diritto pubblico e dell'amministrazione italiana* (*Public Law and Italian Public Administration Archives*) (1902-06, founded with Luigi Luzzatti) and the *Rivista di diritto pubblico e della pubblica amministrazione in Italia* (*Journal of Public Law and Public Administration in Italy*) (founded in 1909, together with Antonio Salandra, Alfredo Codacci-Pisanelli and Carlo Calisse, other public-law professors at the University of Rome). They served as a genuine training ground for young enthusiasts of the so-called legal method.

Lastly, in 1897, he initiated and saw to the development of his *Primo trattato completo di diritto amministrativo* (*First Complete Treatise on Administrative Law*), which had the ambitious goal of ploughing in detail through the entire field of administrative law for the first time. All the main exponents of the late nineteenth-century/early twentieth-century academic generation subscribing to the legal method were

([34]) V.E. ORLANDO, *Principii di diritto amministrativo*, Florence, Barbera, 1891.

called to help write the monographs for this imposing work. Despite this fact, it was never completed.

It is generally said that Orlando founded the Italian School of public law. In reality, he did not found a genuine «school» in the Socratic sense that may be attributed to the term. His only direct pupil of any significance was Santi Romano. However, the expression «Italian School of public law» is conventionally used to indicate all those academics who followed Orlando in applying the legal method. Albeit with different careers behind them and working in different universities, they identified with Orlando's project and completed it in a co-ordinated fashion. The result was, more than anything else, a structured academic movement with its own distinct currents and trends.

By 1897, the year in which the not yet 40-year-old Orlando sat for the first time on the benches of the Chamber of Deputies, the reorganization of public-law studies had been fully and irreversibly achieved by way of the five phases indicated above. As of 1903 (the year he first became a minister), Orlando was taken up with increasingly pressing political commitments (he was President of the Council of Ministers from 1917 to 1919) and dedicated himself with less vigour to academic activities.

The path had already been traced by this time, however, and a group of young academics was ready to take over the reins of administrative law scholarship. Of these, Oreste Ranelletti, Federico Cammeo and Santi Romano stand out for their talent and industriousness.

Oreste Ranelletti ([35]) had studied Roman law under Vittorio Scialoja. Precisely by virtue of Scialoja's teaching (the latter was a disciple of the Historical School, but cleansed of its «sociological» traits), he applied the legal method accurately and was a loyal supporter of the State's legal personality. For Ranelletti, «the logical starting point is not freedom but the State» which was the sole «creator of the right to freedom» and «the guardian of every freedom» ([36]).

([35]) 1868-1956. He was a professor at Camerino, Macerata, Pavia, Naples and, primarily, Milan.

([36]) O. Ranelletti, *Concetto e contenuto giuridico della libertà civile*, Macerata, Bianchini, 1899, (now in Id., *Scritti scelti*, vol. I, cit., 189 et seq.). See also Id., *Per la distinzione degli atti di imperio e di gestione*, in *Studi di diritto romano, di diritto moderno e di storia del diritto in onore di Vittorio Scialoja (nel XXV anniversario del suo insegnamento)*, vol. I, Milan, Giuffrè, 1905, 703 et seq., (now in Id., *Scritti scelti*, vol. III, cit., 655 et seq.) and Id., *Il concetto di «pubblico» nel diritto*, in *Rivista italiana di scienze giuridiche*, 1905, 337 et seq. (now in Id., *Scritti scelti*, vol. I, cit., 249 et seq).

Without the State there was no law and no freedom. Consequently, any phenomenon that jeopardised the constituent elements of the liberal State could only be opposed. As regards method, Ranelletti transferred the Pandects' line and method of study to public law, advocating «a rigorously legal line (without even allowing the possibility that there could be any other), consideration of the rules of Italian positive law governing those subjects, the inference from those rules of the «legal principles» informing them (through a process of abstraction and generalisation) and, lastly, the reconstruction of «legal concepts» through the linking of those principles and the co-ordination of those «concepts» within a «system» ([37]). In Massimo Severo Giannini's opinion, Ranelletti was the greatest exponent of the contentual current. Studying administrative subjects according to their intrinsic, natural content, this current traced general principles from the rules of positive law which it then co-ordinated to create a system. Ranelletti contributed significantly to advances in practically every area of administrative law but particularly in relation to the theory on administrative acts and the law governing public assets. Although he had few direct pupils, Ranelletti had numerous disciples and his methodology was the one most followed during the first half of the twentieth century.

Federico Cammeo ([38]) had studied civil procedure and was Lodovico Mortara's pupil. Although he too, like the other academics of his time, was well versed in German culture, he also had a very good knowledge of English and the workings of public law in the common-law countries. Cammeo used concepts proper to the Pandects and introduced them into administrative law, sometimes simply transplanting them in cases where they required no adaptation to a new context (e.g. legal relations, subjective rights, validity and invalidity). More frequently, however, as emerges particularly clearly from his treatment of administrative acts in *Corso di diritto amministrativo* (*Administrative Law Course*) ([39]), he adopted a process that converted private-law concepts into formulae of a public-law nature. His treatment of issues also followed a scheme that was typical of the Pandects: reconstruction

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([37]) O. RANELLETTI, *Oreste Ranelletti nell'opera sua, 31 dicembre 1955*, in ID., *Scritti giuridici scelti*, vol. I, cit., 630.

([38]) 1872-1939. He was a professor at Cagliari, Padua and, primarily, Bologna and Florence.

([39]) F. CAMMEO, *Corso di diritto amministrativo*, Padua, Milani, 1914.

of the context in which the issue arose, close examination of the latter, modes of application and consequences. Contextual setting, analysis and effects, in other words. His use of the Pandects was nevertheless instrumental in nature, geared as it was to discovering public-law connotations in concepts by applying a method that could be called deductive. Furthermore, and unlike Ranelletti, Cammeo did not in any way see state power as sacrosanct. He favoured attempts to delimit such power in relation to individuals' rights and freedoms, emphasising that administrative action should respect the principles of justice, equity and reasonableness in addition to that of legality ([40]). According to Giannini, he was a combination of the acute and elegant exegete and the solid and precise systematician. These gifts allowed him to reach the pinnacles in his time: «of the founders of administrative legal scholarship, he was the one who ploughed the vastest fields and proposed long-lasting theories in every area. So much so that many of his publications are still withstanding the test of time» ([41]).

Santi Romano ([42]) had a public-law background, being a direct pupil of Vittorio Emanuele Orlando's. Like Orlando, Romano was precociously talented: he was barely eighteen when his first legal publication came out and he produced eight monographs during the five years following his graduation. The most important of his early works is unquestionably the textbook entitled *Principi di diritto amministrativo* (*Principles of Administrative Law*) ([43]). Being more organic and complete than Orlando's work, it constituted a substantial step forward and provides a good example of Romano's method, particularly in its dogmatic and systematic approach to legal reasoning. Such approach «divided the subject of administration into various general theories and then grouped concepts founded on common principles under these «umbrellas», without it mattering greatly within which branch of administrative activity these principles might be

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([40]) In this respect, see B. Sordi, *Giustizia e amministrazione nell'Italia liberale. La formazione della nozione di interesse legittimo*, Milan, Giuffrè, 1985, 379 et seq., and P. Grossi, *Stile fiorentino. Gli studi giuridici nella Firenze italiana 1859-1950*, Milan, Giuffrè, 1986, 130 et seq.

([41]) M.S. Giannini, *Federico Cammeo il grande*, in *Quaderni fiorentini*, 10.

([42]) 1875-1947. He was a professor at Camerino, Modena, Pisa, Milan and Rome and then, for sixteen years, President of the Council of State, from 1928 to 1944.

([43]) S. Romano, *Principi di diritto amministrativo*, Milan, Società editrice libraria, 1901.

practically applied» (44). Romano's *Principles* «constituted the most notable attempt made by our science to construct its own set of issues» (45). This it did by subdividing administrative law into nine areas of legal theory: administrative relationships, administrative organization, legal protection against the administration, the regulation of certain private activities, services provided to administrative bodies, public ownership, the public regulation of private property rights and public-body relationships governed by private law. It was an arrangement that was destined to leave its mark on textbooks for the following half century but it was also criticised by his contemporaries for its excessively dogmatic and theoretical approach. Yet it was an approach that did not in any way signify a disregard for reality: not by chance, Romano was the first in Italy to grasp the implications of the social transformations occurring during the early twentieth century. Such matters properly concern the height of the Giolittian era, however, and shall therefore be treated in the first part of the following section.

Before concluding a consideration of the liberal era (also known as the Golden Age or the age of the Masters, on account of the unusual concentration of talent in the same academic generation), it is necessary to mention three trends that helped to establish Orlando's legal method definitively.

In the first place, any formulations differing from Orlando's *Criteri tecnici* (*Technical Criteria*) were marginalised. From this point of view, Giovanni Vacchelli (46) remained in an isolated position as he had (particularly in his early writings) subscribed to Gierke's *Genossenschaftstheorie* (47). Another great public-law scholar of the period, Ugo Forti (48), was forced to take a step backwards. Whilst rejecting the Realist theories of Gumplowitz (and Duguit and Hauriou, above all), his early works had advocated a greater openness to the social sciences and sociology, in particular (49). He subsequently (and more tra-

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(44) M.S. GIANNINI, *Profili storici*, cit., pp. 151-152.

(45) M.S. GIANNINI, *Profili storici*, cit., 160.

(46) 1866-1940. He was a professor at Macerata, Pavia, Pisa and, primarily, at the Catholic University in Milan.

(47) G. VACCHELLI, *Le basi psicologiche del diritto pubblico*, Milan, Hoepli, 1895.

(48) 1878-1950. He was a professor at Camerino, Florence, Cagliari, Messina and, primarily, Naples.

(49) U. FORTI, *Il concetto di Stato secondo le teorie del Gumplowicz*, in *Il Filangieri*, 1902, 829 et seq. and ID., *Il realismo nel diritto pubblico (a proposito di un libro recente)*, Camerino, Savini, 1903.

ditionally) joined the ranks of the legal method's enthusiasts, making contributions that were highly valuable in their use of the legal technique as well as sensitive to the social needs of the time. There then followed a marginalisation of administrative science and the academics studying it (Carlo Francesco Ferraris ([50]) and Luigi Rava ([51]), in particular). Orlando and the supporters of his method maintained that it was an area of study within administrative law, coinciding with it and, in any case, afferent and instrumental to it. In actual fact, administrative science was included within the academic discipline of administrative law (which was called «administrative law and the science of administration») until 1935. As a consequence, although it was taught as a separate subject (the science of administration was first taught in its own right during the last quarter of the nineteenth century, at the universities of Pavia, Genoa, Rome and Bologna), it was professors of administrative law who held the teaching posts.

In the second place, Orlando and supporters of the legal method gained full control of the official public competitions for university posts. Once he became a full professor, Orlando sat on the selection committee for almost every post of full professor and untenured professor over the following decade. Thus he contributed decisively, on the one hand, to the selection of the new generation on the basis of their support of the method and, on the other, to gradually making the competition for administrative law posts impervious to attempts by academics from other legal areas to invade the field. From the beginning of the twentieth century onwards, Ranelletti, Cammeo and Romano were nearly always on the selection committees.

In the third place, academics acquired a sort of monopoly over scholarly publications and left very little room for those practising law or seeing to its practical application. There were Councillors of State and *grands commis* of the State who made some valuable contributions (Attilio Brunialti, for example) but it was the «cathedral builder» or professor of public law who enjoyed the sole voice of authority in the creation of legal theory. Alongside the judge, he alone could legitimately interpret the law. Case-law acquired increasing importance at an instrumental level, supplying jurists with elements to support their theses, and there were those who specialised in commenting on judgements for important journals [e.g. Cammeo for *Giurisprudenza italiana*

([50]) 1850-1924. He was a professor at Pavia and Padua.
([51]) 1860-1938. He was a professor at Pavia and Bologna.

(*Italian Case-Law*) and Forti for *Il Foro italiano* (*The Italian Courts*)]. It was, however, publication by the most famous public-law scholars that counted and this often turned into a debate conducted exclusively within theoretical confines, directed as it was at producing abstract hypotheses and refuting unsustainable theses. The only relationship between equals contemplated was that existing between the jurist and the law.

Thus, with the intention of protecting the unity of the liberal bourgeois State, the science of administrative law was founded in Italy. It was, however, rendered deaf to transformations deriving from socio-political implications and was devoted exclusively to an analysis of positive law and to dogmatic/systematic formulations.

6. From the very beginning of the twentieth century, nineteenth-century theories had difficulty in holding conceptual water in the face of new social demands. Increasing complexity, industrial change, the affirmation of monopolistic capitalism, the emerging voice of the lower middle and working classes and interdependent groups and increasing conflict between the latter and the ruling powers, extended suffrage and developments in education all posed a formidable challenge (52). Thus, if the nineteenth century ended with a sacralization of the liberal State and support for Hegelianism, the twentieth century opened with an «eclipse» of the State (53) as the Stuttgart philosopher's theories were superseded.

In the Italian legal field, the crisis of the State and the surfacing of social and corporate forces with interests that conflicted with those of the national legal order were first and most clearly perceived by Santi Romano, protagonist of the «most extraordinary intellectual adventure that any twentieth-century Italian jurist ever lived» (54). In 1917, after a gestation period lasting almost a decade, he developed his theory of the institutions in an essay entitled *L'ordinamento giuridico* (*The Legal Order*) (55). Adopting a Realist perspective, this followed a different direction from that of Hariou in France.

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(52) R. RUFFILLI, *Santi Romano e la «crisi dello Stato» agli inizi dell'età contemporanea*, in this Review, 1977, 312.

(53) S. ROMANO, *Lo Stato moderno e la sua crisi*, in *Rivista di diritto pubblico*, 1910, pp. 98, 101 and 113.

(54) P. GROSSI, *Scienza giuridica italiana. Un profilo storico (1860-1950)*, Milan, Giuffrè, 2000, 109.

(55) S. ROMANO, *L'ordinamento giuridico*, Pisa, Mariotti, 1918.

The structure of *L'ordinamento giuridico* was quite simple and comprised two parts. The first was dedicated to the concept of a legal order, whilst the second examined the plurality of legal orders and their relations. According to Romano, before constituting rules proper, the law was «organization, structure and the position of such structure in society» ([56]). Within an objective or purely abstract legal system, the legal order was to be identified with the concept of «institution», understood as every social body. Institutions and rules were thus two distinct aspects of the law, both equally necessary. Hence the importance of organisation in administrative law. From this conception of the legal order as an institution there derived the corollary that there were as many legal orders as there were institutions. Thus there was a plurality of legal orders, all entirely and exclusively traceable to the law of the State. There was not necessarily a nexus between law and the State and the former was not the exclusive product of the latter. The State was, rather, simply a species of the genus «Law». One legal order could be important for another and there existed varying degrees of importance, but it could equally be totally irrelevant, just as there were spheres of individual activity that were irrelevant for national law.

It was a slender volume with a skeletal structure and a direct style that was quite without frills. Yet the ideas the essay contained called for a radical transformation of the constitutional and administrative panorama of the time. Dealing a firm blow, on the one hand, to the pre-eminence accorded the law and the concept of the State-as-Person and, on the other, to the Italian school of public law founded on the legal method (of which Romano was himself one of the main exponents), the ideas implied a new way of approaching the study of administrative law: analysis should focus on organisation and institutions in a pluralistic and complex vision of administration directed at making the most of the role of intermediate bodies.

Precisely the revolutionary consequences that would have derived from Romano's theory ensured that his contemporaries did not follow his indications. On the contrary, they subjected Santi Romano's innovative theses to severe criticism. One reason for this was that the fascist period began barely five years after *L'ordinamento giuridico* was published and certainly did not offer the ideal *humus* for developing theses smacking of pluralist dynamics. It was necessary to wait until

([56]) S. ROMANO, *L'ordinamento giuridico*, cit., 27.

after the Second World War before Romano's theories were fully appreciated.

Most scholars of administrative law continued to prefer the legal method's traditional approach in a centralist and statist key, with slight modifications. Ranelletti's line was particularly favoured. Examples of such a position include Ranelletti's direct pupils, Arnaldo De Valles ([57]), Francesco Rovelli ([58]) and Giuseppe Menotti De Francesco ([59]) but also some academics who shared his methodological approach, such as Umberto Borsi ([60]), Errico Presutti ([61]), Luigi Raggi ([62]) and Cino Vitta ([63]). Taking positive law as their starting point and favouring classification and subdivision into *genera* and *species,* these continued Ranelletti's in-depth study and detailed dissection of concepts, particularly in the areas of administrative action and public assets.

There were others (like Donato Donati ([64])) who took the legal method to its limits i.e. purism and positivist formalism. Donati's greatest contribution to administrative law was his early monograph on the complex nature of administrative measures ([65]), although the volume *Le lacune dell'ordinamento giuridico* (*Lacunae in the Legal Order*) ([66]) represents the most significant example of purism. As Giannini has noted, Donati «armed with his great learning and a subtle logic, dealt with the issues in a masterly fashion but sometimes became a «virtuoso» and his subtlety dissolved into sophistry or a conceptual game, the consequences of which could and did, sometimes, carry him off in the wake of consequential methodological rigours» ([67]). Carmelo

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([57]) 1887-1964. He was a professor at Camerino, Macerata and, primarily, Pavia.

([58]) 1878-1964. He was a professor at Camerino and, primarily, the Catholic University of Milan.

([59]) 1885-1978. He was a professor at Urbino, Messina, Pavia and, primarily, Milan.

([60]) 1878-1961. He was a professor at Macerata, Siena, Pisa, Padua and, primarily, Bologna.

([61]) 1870-1949. He was a professor at Cagliari, Messina and, primarily, Naples.

([62]) 1876-1954. He was a professor at Macerata, Messina and, primarily, Genoa.

([63]) 1873-1956. He was a professor at Florence, Cagliari, Modena and Turin.

([64]) 1880-1946. He was a professor at Camerino, Macerata and, primarily, Padua.

([65]) D. Donati, *Atto complesso, autorizzazione, approvazione*, in *Archivio giuridico*, 1903, 12 et seq.

([66]) D. Donati, *Il problema delle lacune dell'ordinamento giuridico*, Modena, Unione tipo-litografica modenese, 1907.

([67]) A. Giannini, *Donato Donati. 1880-1946*, in *Rivista internazionale di filosofia del diritto*, 1947, 244.

Caristia famously described Donati's constructions as giving «the impression of a magnificent castle, home to the most beautiful fairies rather than to men of this earth; of a splendid dialectical tournament in which the most agile of moves are directed against his adversaries; of a long sequence of wonderfully linked deductions and counter-deductions; of an organic and harmonious whole, but — if one may use a German expression for a book that belongs more to German literature than to Italian — *in seiner Ganz auf Sand gebaut*» ([68]).

Donati was, however, extraordinarily gifted in organising legal learning. A great expert in the German science of public law, he created the Paduan school. This was a genuine school, in the traditional sense of the term, and the only scientific laboratory of its kind in the first century and a half of administrative law's existence. It attracted young academics from all corners of the Peninsula. Donati also founded and directed journals and series of university publications.

One career that went against the current must at least be given a mention. A pupil of Vacchelli, Silvio Trentin ([69]) promoted a realist and functionalist method both in his Italian works and in those he formulated during his French exile (Trentin, who was also a socialist member of the Chamber of Deputies, resigned from his post as full professor in 1926 and crossed the Alps into voluntary exile). His method was a source of inspiration for some of the jurists in the second postwar period, particularly Feliciano Benvenuti. Not by chance, Trentin was totally marginalised by his nation's academic community.

7. The Fascist period was, in some respects, a period of reflection and structuring for scholars of administrative law. In others, it was one of real regression. A change in the jurist's social role was central to this. Originating during the Giolittian era and by now well established, Kelsenian notions denying legal theorists social authority and holding judges to enjoy a merely descriptive role had shaken the public-law scholar's pre-eminence to its foundations. Scholars of public law were gradually relegated to the role of attending on politicians (all the more so in a totalitarian State) and thus were no longer the direct producers of law but, rather, jurisconsults at best. There were other reasons for this regression as well, however.

([68]) C. Caristia, *Il diritto costituzionale italiano nella dottrina recentissima*, Turin, Bocca, 1915, 147.

([69]) 1885-1944. He was a professor at Camerino, Macerata and Venice.

Firstly, the founding fathers of the liberal period continued to be academically active and to set academic trends during this period, too. The younger generations did not need to forge new paths, nor did they attempt to do so. As Feliciano Benvenuti has observed, they were content to adopt the position of their teachers: the path to follow had been indicated and all that remained was to complete part of the journey. Thus they turned themselves primarily to the work of «ploughing the soil», in-depth study and classification, along the furrow indicated during the previous period. In short, there was no break in ideological and methodological continuity between the scholars of the fascist generation and those of the liberal period. On the contrary, an essential continuity and unity of intention may be noted, although greater attention (of a post-Pandectist stamp) was paid to analysing legislation during the fascist era.

Secondly, whether because academic research underwent a general process of specialisation or whether as a result of competitive selection methods, there developed a clearer distinction between constitutional law and administrative law. Thus, scholars of administrative law increasingly frequently concerned themselves exclusively with matters conventionally regarded as falling within their subject area, without trespassing into constitutional territory, and *vice versa.* Such fact led to a sclerotization in individual academic development and as regards areas of enquiry.

Thirdly, the great masters had theorised both the separation of administrative law from the social sciences and administrative science's mere instrumentality. This they had done, however, having njoyed a basic training in the round that involved an in-depth knowledge of philosophy, history, economics and political studies. Subsequent generations were not in the same position (although there were obviously some exceptions) and such fact was precisely by virtue of the lead taken by their teachers. Thus they followed in their mentors' wake along the path of dogmatics and a positivist contentual approach but with an ever narrower cultural vision. That the new generations of legal scientists did not participate in the great cultural debates of the era is clear demonstration of such fact.

Fourthly, it must be noted that the socio-political context was unfavourable to the formulation of innovative lines of enquiry. The fascist period marked a return to a strong centralism, a weakening of the local autonomies and a reduction of the intermediate bodies within state institutions and the party alike. It also saw a massive extension of

the public administration's powers and functions. What is certain is that legal science was unable to grasp either the significance of the main legislative reforms occurring during this period, or that of the main transformations marking it (as evidenced by the credit legislation and the new forms of direct State economic intervention applied during the Thirties, for example).

Lastly, academic monographs increasingly concentrated on the themes of active administration and administrative justice. These were, admittedly, the topics evaluated most benevolently during selection for academic posts: the idea that the young professor of administrative law should have proved his academic maturity in two areas by publishing his first book on administrative acts and the second on administrative judicial protection (or vice versa) was gradually gaining ground. The fact that thirty-five monographs on administrative measures were published between 1930 and 1945 provides clear confirmation of such fact. It has been noted that the hidden reason for this stream of studies on administrative measures was to be found in a desire to disregard fascist institutions and a refusal to introduce the fascist political line into the study of administrative law. In actual fact, such an approach resulted in legal research in the administrative field becoming increasingly sterile.

The frailty of legal scholarship was partly compensated by the increasing authority of administrative case-law. Mainly under the guidance of Santi Romano (President of the Council of State as of 1928), this acquired growing importance in terms of its ability to direct the development of concepts and principles of administrative law. Amongst other things (and as recent studies have shown), the Council of State even managed to preserve an appreciable degree of independence and impartiality, suffering only slight political conditioning at the regime's hands.

How did scholars of administrative law relate to fascism? Obviously, a synthetic reply runs the risk of falling into generalisations. Positions were varied and some figures succeeded in maintaining an independent stance. It may nevertheless be said that, at least until the racial laws were adopted, the majority of Italian public-law scholars (generally conservative or liberal bourgeois) essentially gave moderate support to the fascist government. Fascism asserted itself as an authoritative force directed at stifling social riots and the demands made by the trades unions and workers after the First World War. Scholars of administrative law accepted it as the necessary lesser evil, in the

mistaken conviction of being able to transform it from the inside into a sort of off-shoot of the late nineteenth-century liberal State. Later, they adopted a detached indifference towards politics that sometimes deteriorated into blindness and sometimes became a conscious rejection. Their indifference was supported by a rigorous application of the legal method. This required the jurist not to let his approach to issues be conditioned by political matters: the latter acquired significance only if they led to changes in the institutional framework (and sometimes even this was not sufficient to ensure that public-law scholars addressed the issue).

The most talented scholar from the fascist period was unquestionably Guido Zanobini ([70]). A pupil of Santi Romano but even more rigidly tied to the legal method and post-Pandectism than his teacher, he had the finest of organisational skills and an uncommon gift for exposition. Coming from a constitutional law background and having also written about ecclesiastical law and corporate law, Zanobini was one of the few «fully formed» public-law scholars of his generation ([71]).

During his youth, he published a considerable number of monographs and essays. Of these, the volume from the *Trattato Orlando* (Orlando's *Treatise*) on *L'esercizio privato delle funzioni e dei servizi pubblici* (*The Private Provision of Public Functions and Services*) ([72]) stands out, being the first important study of this complex subject and one that was extraordinarily detailed in its analysis. Equally noteworthy was his essay *L'attività amministrativa e la legge* (*Administrative Action and Legislation*) ([73]) in which, as Giannini notes, «the Pandect-inspired theoretics of the necessary legal basis for public administration were established with the greatest transparency and precision they were ever to achieve» ([74]).

Beginning in the Thirties, Zanobini dedicated twenty years to formulating his main work, the monumental treatise entitled *Corso di*

([70]) 1890-1964. He was a professor at Sassari, Siena, Pisa and, primarily, Rome.

([71]) See G. ZANOBINI *Corso di diritto ecclesiastico*, Vallerini, Pisa, 1933, and ID., *Corso di diritto corporativo*, Milan, Giuffrè, 1936. The latter, in particular, is considered one of Zanobini's most significant works.

([72]) G. ZANOBINI, *L'esercizio privato delle funzioni pubbliche e dei servizi pubblici*, in *Primo trattato completo di diritto amministrativo*, edited by V.E. Orlando, vol. II, part 3, Milan, Società editrice libraria.

([73]) G. ZANOBINI, *L'attività amministrativa e la legge*, in *Rivista di diritto pubblico e la giustizia amministrativa*, 1924, 383 et seq.

([74]) M.S. GIANNINI, *Vita e opere di Guido Zanobini,* in this Review, 1965, 7.

diritto amministrativo (*Administrative Law Course*). This was divided into five volumes covering, respectively, general principles, administrative justice, organization, assets and tools and administrative action. A sixth contained indices ([75]). In this case, too, the approach was typically Pandectist. The work was unique not only in the Italian landscape of administrative law but also in the European one because it provided a complete, full-spectrum and systematic picture of the subject. It was not just a question of arrangement: he brought order to many areas in which confusion had reigned and provided new solutions to various problems. Above all, the *Corso di diritto amministrativo* gave the subject the stable and solid foundation it had formerly lacked. For a while, academics had the illusion that it was truly possible to construct the «perfect system» for administrative law. They were to discover shortly afterwards that it was only an illusion and that the construction was flawed in its static, statist, purist and formalist qualities.

At least three other scholars active during this period should be mentioned. Giovanni Miele ([76]) was a pupil of Zanobini's. After writing a series of essays during the Thirties [including a book entitled *La manifestazione di volontà del privato nel diritto amministrativo* (*The Expression of Private Parties' Will in Administrative Law*) ([77])], he published his *Principi di diritto amministrativo* (*Principles of Administrative Law*) ([78]) in 1945. This was a volume on general theory as applied to administrative law. It was a theoretical distillate consciously removed not only from social reality but also from its positive-law context, insofar as Miele's main objective was not so much to describe the rubble of the present as to indicate the road to a future reconstruction. Antonio Amorth ([79]) was an indirect pupil of Ranelletti's (he experienced Ranelletti's teaching through De Valles and, primarily,

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([75]) G. Zanobini, *Corso di diritto amministrativo*, Milan, Giuffrè, 1936-50. His *Corso di diritto ecclesiastico* (Vallerini, Pisa, 1932) and the *Corso di diritto corporativo*, (Milan, Giuffrè, 1935) should also be remembered.

([76]) 1907-2000. He was a professor at Cagliari, Modena, Pisa and, primarily, Florence.

([77]) G. Miele, *La manifestazione di volontà del privato nel diritto amministrativo*, Rome, Are, 1931. But see, also, the following essays: G. Miele, *Pubblica funzione e servizio pubblico*, in *Archivio giuridico*, 1933, and Id., *La distinzione tra ente pubblico e privato*, in *Rivista del diritto commerciale*, 1942, 1 et seq.

([78]) G. Miele, *Principi di diritto amministrativo*, Pisa, Tornar, 1945.

([79]) 1908-1986. He was a professor at Modena and, primarily, Milan.

Rovelli) and enjoyed close ties with Giuseppe Dossetti. His was the most talented application of the «contentual» method during the central period of the twentieth century; first in studies on hierarchy and the merits of administration ([80]) and then, after the Second World War, in essays on the Constitution ([81]) and the Regions ([82]). Enrico Guicciardi ([83]) was a pupil of Donati and transferred the latter's logico-mathematical rigour to the field of administrative law, achieving significant results in the study of administrative justice ([84]).

Also to be remembered from the Thirties are some important essays by Ugo Forti (particularly those on administrative action ([85])), Arnaldo De Valles' studies on organisation ([86]) and early studies by Roberto Lucifredi ([87]), Pietro Bodda ([88]) and Pietro Gasparri (the latter was an atypical and somewhat whimsical scholar who advocated the possibility of applying mathematical models to the reasoning underpinning administrative law studies) ([89]).

As is well known, the fascist era ended dramatically with the matters tied to the disgraceful racial laws of 1938 and the Second

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([80]) A. AMORTH, *La nozione di gerarchia*, Vita e pensiero, Milan, 1935, and ID., *Il merito dell'atto amministrativo*, Milan, Giuffrè, 1939.

([81]) See, in particular, A. AMORTH, *La Costituzione italiana*, Milan, Giuffrè, 1948. But see, also, ID., *Corso di diritto costituzionale comparato (Stati Uniti d'America, Inghilterra, Svizzera, Unione delle Repubbliche Socialiste Sovietiche, la nuova costituzione di Francia)*, 1947.

([82]) A. AMORTH, *Il problema della struttura dello Stato in Italia (Federalismo, Regionalismo, Autonomismo)*, 1945, and ID., *L'attività amministrativa delle Regioni*, in Publications from the first Study Conference on the Regions, Padua, Cedam, 1955, 306 et seq.

([83]) 1909-1970. He was a professor at Cagliari and, primarily, Padua.

([84]) See, in particular, E. GUICCIARDI, *La giustizia amministrativa*, Padua, Cedam, 1942.

([85]) See, in particular, U. FORTI, *Atto e procedimento amministrativo (note critiche)*, in *Rivista di diritto pubblico*, Padua, Cedam, 1930, 349 et seq.

([86]) A. DE VALLES, *Teoria giuridica dell'organizzazione dello Stato*, 2 vols, Padua, Cedam, 1931 and 1936.

([87]) R. LUCIFREDI, *Le prestazioni obbligatorie in natura dei privati alle pubbliche amministrazioni*, 2 vols, Padua, Cedam, 1934 and 1935; and ID., *L'atto amministrativo nei suoi elementi accidentali*, Milan, Giuffrè, 1939.

([88]) P. BODDA, *I regolamenti degli enti autarchici*, Bocca, Turin, 1932; ID., *La nozione di causa giuridica della manifestazione di volontà nel diritto amministrativo*, Turin, Istituto giuridico della R. Università di Torino, 1933.

([89]) P. GASPARRI, *L'invalidità successiva degli atti amministrativi*, Pisa, Nischi Listri, 1939; ID., *Studi sugli atti giuridici complessi*, Nischi Listri, Pisa, 1939, and ID., *La causa degli atti amministrativi*, Pisa, Pacini Mariotti, 1942.

World War. The former swept away a whole generation of public-law scholars of Jewish origin (such as Federico Cammeo, Donato Donati, Ugo Forti, Cino Vitta ([90]) and Giuseppino Treves ([91])) whilst the latter cost Silvio Trentin his life (he was actively involved in the Resistance) and Aldo M. Sandulli four years as a prisoner in Russia (he had been an artillery captain on the Don front).

Four bright stars nevertheless shone during this dark period, lighting the way towards a renaissance for the academic study of administrative law in Italy after the Second World War.

The Neapolitan, Aldo M. Sandulli ([92]), had studied under Forti and Donati and was a member of the traditional school of legal dogmatics (although, like Forti, he was gifted with a rare ability to marry logical purism with systematic purpose and attention to legislation). After studying in Germany, in 1940 he published a fundamental monograph entitled *Il Procedimento amministrativo* (*Administrative Proceedings*) ([93]). As observed by Giannini, this volume allowed the Italian science of administrative law not only to regain lost ground but also to lead continental Europe in formulating the issues relating to administrative action. Sandulli's work redirected attention from administrative measures to procedure. The latter was understood, at a structural level, as a co-ordinated sequence of measures and activities aimed at achieving a public goal. Attention was re-directed to the point in the sequence where the administrative will became manifest. The pandectistic framework was abandoned and attention was turned to the various interests simultaneously present and the dynamics involved in the sequential forming of an administrative decision. All this in a perspective that emphasised the special nature of administrative activity.

Three works published in quick succession by Massimo Severo Giannini ([94]) in 1939 and 1940 constituted a genuine dissociation from the traditional method, without (at least in their declared intention) breaking genetic ties with dogmatics. These were the treatises entitled *Il potere discrezionale della pubblica amministrazione* (*The Public*

([90]) 1873-1956. He was a professor at Florence, Cagliari, Modena and, primarily, Turin.

([91]) 1909-1976. He was a professor at Trieste, Pavia and, primarily, Turin.

([92]) 1915-1984. He was a professor at Trieste, Naples and, primarily, «La Sapienza» University, Rome.

([93]) A.M. SANDULLI, *Il procedimento amministrativo*, Milan, Giuffrè, 1940.

([94]) 1915-2000. He was a professor at Sassari, Perugia, Pisa and, primarily, «La Sapienza» University, Rome.

Administration's Discretionary Powers) and *L'interpretazione degli atti amministrativi* (*The Interpretation of Administrative Acts*), (both dating to 1939) and the essay on *I profili storici della scienza del diritto amministrativo* (*Historical Outlines of Administrative Law Scholarship*), dating to 1940 ([95]). A pupil of Santi Romano and Zanobini, Giannini was an antiformalist and a historicist with a vast cultural spectrum and a particular propensity for sociology. Enjoying a very solid legal background (in private law, in particular), he introduced the realist method into the study of Italian administrative law. His volume on discretionary power had the potential to devastate the established theories of the time. Taking the theoretical repercussions of the administrative judges' decisions as its starting point, the book demonstrated the plurality of public interests and the need for a balanced weighing of the different interests at stake for the purposes of reaching an administrative decision. The keystone of Giannini's first theorisations was nevertheless his study on interpretation. This examined the relationship between rules and legal interpretation and, highlighting the primary role of the person interpreting them, released the exercise of administrative power from the tight embrace of legislative supremacy.

Lastly, Giannini's historical study articulately took stock of the conceptual developments occurring during the first century and a half that administrative law had existed as an academic subject. Drawing together the historical and methodological threads from the two previous studies, this work emphasised the extreme historical significance of the contribution that both the legal method and the Italian School of public law had made to administrative law's progress. Giannini nevertheless pointed out the need for a change of course as far as methods for studying administrative law were concerned and advocated close contact with politico-social reality and total harmony with historical dynamics. The route that was to lead from totalitarian statism to democratic pluralism had been traced.

Thus the tail end of the greatest period of regression that the Italian science of administrative law has ever experienced already

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([95]) M.S. GIANNINI, *Il potere discrezionale della pubblica amministrazione: concetto e problemi*, Milan, Giuffrè, 1939; ID., *L'interpretazione dell'atto amministrativo e la teoria generale giuridica dell'interpretazione*, Milan, Giuffrè, 1939, and ID., *Profili storici della scienza del diritto amministrativo*, cit.

contained the co-ordinates for a renaissance during the period of the Republic.

8. Federico Cammeo died in 1939, shortly after being removed from his teaching post as a consequence of the racial laws. Donato Donati made a daring escape to Switzerland to avoid deportation but died during an operation in 1946, not long after his return to Italy. Santi Romano died the following year, after publishing his academic legacy, *Frammenti di un dizionario giuridico* (*Fragments of a Law Dictionary*). Ugo Forti dedicated the last years of his life to postwar Italy's administrative reorganisation, presiding over the commissions responsible for reforming the State during the period 1945-46. He died in 1950. Vittorio Emanuele Orlando died in 1952, aged 92. He remained fully involved in his parliamentary, teaching and professional activities right up to the very end. Lastly, Oreste Ranelletti died in 1956, a couple of months after completing his academic autobiography in which he reasserted his full allegiance to the legal method and a Moloch State. Thus the great masters of the liberal age all died within a few years of each other, signalling the end of an era.

The end of the war and the Republican Constitution's entry into force created conditions favouring a renewal in administrative law studies. It was, amongst other things, a period that saw the horizons of public intervention broaden considerably. Change was slow and occurred by fits and starts, nevertheless. Tendencies to maintain a certain continuity with the past were not lacking. There were essentially four reasons for this. Firstly, some legal scholars remained tied to the cultural tradition of their mentors. Secondly, even those who introduced highly innovative ideas tried to do so within the traditional framework, seeking to modify the overall situation from the inside by enriching the legal method with historical awareness. Thirdly, only a small minority grasped the implications for public administration of the altered constitutional context (which could have been the main force for change). Such fact partly depended on the fourth point that administrative legislation accommodated the new constitution's principles extremely slowly.

A series of events occurring in the early Fifties nevertheless marked the passage to a period of rebirth for administrative law as an academic subject. The process involved scholars distancing themselves from the conceptualism that had dominated the first half of the century.

In 1950, Massimo Severo Giannini published his *Lezioni di diritto*

amministrativo (*Lectures on Administrative Law*) ([96]) which, to quote Paolo Grossi, was an «extraordinary teaching experiment». Taking specific pieces of legislation as its starting point, this lecture course placed them in their historical and sociological context, the structure of the framework for their interpretation, the multiplicity both of the parties involved and of the forms of interaction between them and, last but not least, the authority/freedom dialectic. It also provided, *inter alia*, a thorough discussion of the nature and form of administrative acts and a classification of measures according to their effect. Whilst applying the main results that his first mentor, Santi Romano, had achieved with his theory on legal systems, Giannini was nevertheless still pursuing a methodical goal with his *Lectures* (in the wake of his second teacher Guido Zanobini), albeit in a pluralist rather than centralist perspective.

In the same year, Feliciano Benvenuti published his essay *Eccesso di potere amministrativo per vizio della funzione* (*Ultra Vires through Defecting Goals*) ([97]) and a provisional draft of the monograph *L'istruzione nel processo amministrativo* (*Preliminary Investigations in the Administrative Trial Process*) (the definitive draft saw the light of day in 1953 ([98])). The first work saw the improper use of discretionary power as resulting in defects in the overall administrative function. The second outlined the distinctive role of the administrative judge during trials and the close connection between administrative action and the dynamics of administrative trials. The following year, Benvenuti published *Appunti di diritto amministrativo* (*Notes on Administrative Law*) ([99]). Written with mainly «architectural» goals in mind, this work sought to trace a harmonious and all-encompassing outline of administrative law. Two years later, he published his fundamental essay *Funzione amministrativa, procedimento, processo* (*Administrative Goals, Proceedings and the Trial Process*), directed at describing administrative procedure as the concrete embodiment of the administrative function ([100]). It was through these four early works that Benvenuti's

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([96]) M.S. GIANNINI, *Lezioni di diritto amministrativo*, Milan, Giuffrè, 1950.

([97]) F. BENVENUTI, *Eccesso di potere amministrativo per vizio della funzione*, in *Rassegna di diritto pubblico*, 1950, 1 et seq.

([98]) F. BENVENUTI, *L'istruzione nel processo amministrativo*, Padua, Cedam, 1950 (definitive draft, Padua, Cedam, 1953).

([99]) F. BENVENUTI, *Appunti di diritto amministrativo*, Padua, Cedam, 1951.

([100]) F. BENVENUTI, *Funzione amministrativa, procedimento, processo*, in this Review, 1952, 118 et seq.

«functionalist» line took shape. The concept of administrative functions was to influence the direction of Giannini's studies heavily as well.

In 1951, Zanobini founded the *Rivista trimestrale di diritto pubblico* (*Public Law Quarterly Review*). Destined to continue for more than fifty years, this united the best academic articles on public law. Zanobini ran the journal for the first few years until serious health problems forced him to pass the editorship to his pupils, Massimo Severo Giannini and Giovanni Miele.

In 1952, Aldo M. Sandulli published the first edition of his *Manuale di diritto amministrativo Administrative Law Handbook*) ([101]). This work enjoyed an extraordinary success and gradually replaced Zanobini's *Corso,* both for the purposes of university teaching and for those of general common use. Sandulli's was, perhaps, the last attempt to encompass the entire framework of administrative law in a single work of systematic intent. That it became increasingly difficult to maintain structural consistency is demonstrated by the fact that, in its effort to achieve completeness, the *Handbook* gradually mushroomed: published in 1989, the fifteenth (and last) edition counted more than two thousand pages, thereby losing its compact and coherent quality.

The first Varenna Conference (an annual Conference dedicated to the science of administration, this year in its 56th edition) was held in 1955 ([102]). With papers delivered by Giannini, Benvenuti and Gianfranco Miglio, amongst others, it refocused attention on this subject and the question of its role. Under the academic aegis of Giannini and Benvenuti, in particular, administrative science was established during the Sixties as an autonomous science concerning itself with political studies. This was achieved through the academic commitment of «La Sapienza» University in Rome, the Catholic University in Milan and, most particularly (in terms of its constancy and dedication) the University of Bologna. Benvenuti founded the Institute for the Science of Public Administration at the Catholic university (referred to as ISAP, this important research centre produced some valuable studies) and a post-graduate school was founded at the Bolognese university immediately after the war. Known as the *S.P.I.S.A. in Bologna* (*Scuola*

([101]) A.M. SANDULLI, *Manuale di diritto amministrativo*, Naples, Jovene, 1952.

([102]) VARIOUS AUTHORS, *La scienza dell'amministrazione*, Publications from the first Study Conference on the Science of Administration in Varenna, Villa Monastero, Milan, Giuffrè, 1955.

di Specializzazione in Studi sulla Pubblica Amministrazione (*Post-graduate School for Studies on Public Administrations*), the latter was founded by Silvio Lessona and run first by Renato Alessi and then by Fabio Alberto Roversi Monaco and Luciano Vandelli. It is still fully active today and enjoys sound overseas links.

Lastly, the Constitutional Court began its work in 1956. It was to play an increasingly important part in the headway made by Italian administrative law during the second half of the century.

The most important scholars of administrative law during this era essentially numbered five. Some of them have already been mentioned but it is now necessary to consider them in greater detail.

Massimo Severo Giannini was certainly the academic who gave the study of administrative law the greatest impetus during this period. Head of ministerial staff in the Ministry responsible for the new Constitution from 1945 to 1946 and Minister for the Civil Service from 1979 to 1980, Giannini had several direct pupils but a considerable number of Italian and foreign academics also came to Rome to seek his advice. His academic output was vast and constant. Over fifty years, it totalled more than eight hundred publications ([103]). The main works dating to the Thirties have already been mentioned, as have the *Lezioni di diritto amministrativo* (*Lectures on Administrative Law*) published in 1950. Giannini made his greatest contribution to administrative law between the Fifties and Sixties, however, with his formulation of fundamental new concepts such as the multi-class State ([104]) and multiple legal sub-orders (e.g. the rules governing sport, banks etc). It was his abandonment of Zanobini's vision of a system and the emergence of a complex «architecture» in a realist key that should be remembered, above all. Considering it impossible to reduce administrative law to a mere system (at most, a series of «invariants» might be identified), Giannini rendered it «plural and choral». He published *Corso di diritto amministrativo* (*Administrative Law Course*) in 1965 ([105]). This work reached beyond the authority/freedom dichotomy to exploit the concept of a plurality of interests and their

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([103]) The essays are now collected in M.S. GIANNINI, *Scritti*, 10 vols., Milan, Giuffrè, 2000-2008.

([104]) See, amongst others, M.S. GIANNINI, *I pubblici poteri negli Stati pluriclasse*, in this Review, 1979, 389 et seq. See also S. CASSESE, *Lo «Stato pluriclasse» in Massimo Severo Giannini*, in *Revue européenne de droit public*, 1993, 207 et seq., on this subject.

([105]) M.S. GIANNINI, *Corso di diritto amministrativo*, Milan, Giuffrè, 1965.

emergence in procedures. It also dedicated greater space to the place private law should occupy in public administration. His two-volume work *Diritto amministrativo* (*Administrative Law*) ([106]) came out in 1970. This was a more mature and better-consolidated version of his *Corso* and may be considered both the *summa* of the Roman scholar's theoretical formulations and one of the most significant works to be produced by the Italian science of administrative law. In it, Giannini made maximum use of the realist method when examining an issue or a concept. His was a process of enquiry that one could call kaleidoscopic and that involved passing (according to the issue to be tackled) from the legal measure in question to jurisprudential considerations, statistics, political lines, historical origins, methodology and general theory. As Sabino Cassese has observed, Giannini «developed to the nth degree a «cubist» technique directed at providing *l'image totale* of an institution» ([107]). Giannini considered that a «field» analysis of administration should be directed principally at «drawing distinctions» and thus carrying out a work of excavation and separation into parts. He was also a myth-debunker: his critical acumen naturally led him not to settle for deep-seated, standardised conclusions but, rather, to highlight their defects and, sometimes, the legal fictions they embraced.

Mention has already been made of Feliciano Benvenuti's ([108]) main works dating to the early Fifties. These gave a considerable boost to the reform of administrative legal studies. It should be added, however, that whilst Benvenuti was a pupil of Guicciardi's in Padua, he quickly distanced himself from both Donati's and Guicciardi's purism (the works cited were already demonstrating a very different direction) and gave his own, original line to the study of administration. Enjoying a very solid cultural grounding, he had a particular propensity for sociology, philosophy and historical research. Indeed, some of his pupils specialised in the history of public institutions. There were essentially three strands to his theory of administration. The first concerned the need to reach beyond a statist form of centralism, make the most of local authorities and intermediate bodies and work from

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([106]) M.S. Giannini, *Diritto amministrativo*, 2 vols, Milan, Giuffrè, 1970.

([107]) S. Cassese, *Cultura e politica del diritto amministrativo*, cit., 131.

([108]) 1916-1999. He was a professor at Padua and, primarily, at the Catholic University in Milan and at Venice. His essays are now collected in F. Benvenuti, *Scritti giuridici*, 5 vols., Milan, Vita e Pensiero, 2006.

the bottom upwards in a subsidiarity-based vision of the relationship between the various levels of government. The second saw administrative functions as central to the construction of the administrative apparatus. The third regarded the «democratisation» of the relationship between the public administration and citizens and, in addition, the latter's absolutely central position within the legal order. Benvenuti's concept of the State was also fundamental. For him, the Nation state was an exclusively relative and contingent solution responding to the needs of a historically determined era and society: the difficulty in arriving at a knowledge of this fact derived, in his opinion, from a culture that brought people up to venerate it. From a methodological point of view, Benvenuti was the main exponent of a «reforming realism» that accepted a piece of legislation and its contingent, ambient context up to the point at which a free thinker or jurist felt able to accept the potential landscape that loomed. His was nevertheless a realism that did not hesitate to follow a totally different line of theoretical development when such a rule or context appeared to be leading in an undesirable direction. As some have noted, such an approach ran the risk of over-abstraction and diverting attention away from the «reconstruction of the legal system then in force, which was basically rejected: the author contented himself with indicating a few essential features before immediately moving on to propose a different new model» ([109]). A few decades on, however, it must be recognised that some of Benvenuti's prophetic theorisations had a concretely positive effect on the dynamics of subsequent reform (development of the principle of self-government or of safeguards for citizens in administrative processes, for example). In some respects, they also (albeit obliquely and indirectly) rendered the jurist once more the author and protagonist of the legal order's politico-social transformation. Benvenuti also played a notable part in the organisation of learning: he had numerous pupils, set up publishing initiatives and founded ISAP.

Giovanni Miele has already been mentioned with reference to his early studies dating to the fascist era. During the period of the Republic, he contributed to developments in legal science for a limited number of years (more or less fifteen) between the end of the Forties and the Fifties. Of the postwar academics, Miele was certainly the most deeply rooted in the early twentieth-century formalist tradition and yet his contribution to the rebirth of legal studies was important, primarily

([109]) S. CASSESE, *Cultura e politica*, cit., 139.

on account of the sensitivity that he showed towards the new constitutional substratum. The Constitution showed the way and provided the necessary starting point. It mattered little that it was not taken into account during concrete developments: it stimulated a renewed commitment to transforming both the institutions and administrative law. Miele was the first to publish a monograph on the regions (in 1949) and one of the first to publish «public law» reflections on the economy. These took their cue from article 41 of the Constitution ([110]).

Aldo M. Sandulli, too, has been mentioned in connection with his early works. It should be said at this point that Sandulli's career veered away from the study of administrative law at the end of the Fifties, when he was appointed a Judge of the Constitutional Court ([111]). He later returned to teaching at «La Sapienza» University, Rome, where he taught constitutional law. Although he continued to publish works on administrative law as well, he dedicated himself primarily to constitutional studies. Sandulli was tied to the dogmatic tradition and became Forti's most important teaching heir. His writings were characterised not only by a cast-iron logic and a hammeringly direct style but also by a liberal interpretation of those principles and concepts of public law that aspired, above all, to safeguarding individual rights. He played an important part in the headway made in studies of administrative justice ([112]) and the law governing town-planning and building. In 1959, he founded the *Rivista giuridica dell'edilizia* (*Building Law Review*) which he edited for more than thirty years.

Mario Nigro ([113]) was a self-taught Calabrian who claimed to be a pupil of Costantino Mortati. After studying philosophy for many years, he obtained a university chair relatively late in life (in 1961). Although Nigro was a rigorous jurist who reasoned linearly and was, in some respects, close to the theories of the Liberal Golden Age, his studies were imbued with historicism and revealed a full command of

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([110]) G. Miele, *La regione nella Costituzione italiana*, Barbera, Florence, 1949, and Id., *Problemi costituzionali e amministrativi nella pianificazione economica*, in this Review, 1954, 782 et seq.

([111]) Sandulli became its President in 1969. He was also Chairman of Rai (the Italian Broadcasting Corporation), Senator and Vice-Chairman of the bicameral Commission for constitutional reform.

([112]) A.M. Sandulli, *Il giudizio davanti al Consiglio di Stato e ai giudici sottordinati*, Naples, Morano, 1963.

([113]) 1912-1989. He was a professor at Messina, Florence and, primarily, at «La Sapienza», Rome.

philosophical and general theoretical grounding. For this reason, his conception of the jurist's role and method brought him close to the realism propounded by Giannini and Benvenuti. Nigro's contribution to administrative law's progress was particularly tied to his studies of administrative justice ([114]) and his writings on administrative action, especially those proposing a substantialist conception of procedure and the need for procedural safeguards of a participatory type. Nigro presided over the Ministerial commission that, during the Eighties, formulated the bill on administrative procedure destined to become Law no. 241/1990.

Other noteworthy academics active during the Fifties and Sixties include Vittorio Bachelet ([115]), Eugenio Cannada-Bartoli ([116]), Elio Casetta ([117]), Flaminio Franchini ([118]), Giuseppe Guarino ([119]), Franco Levi ([120]), Vittorio Ottaviano ([121]), Aldo Piras ([122]) Vincenzo Spa-

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([114]) M. NIGRO, *Giustizia amministrativa*, Bologna, il Mulino, 1953.

([115]) 1926-1980. He was a professor at Trieste, the «Luiss» University, Rome, and «La Sapienza» University, Rome. Of his works, see, in particular, V. BACHELET, *L'attività di coordinamento nell'amministrazione pubblica economica*, Milan, Giuffrè, 1957, and ID., *L'attività tecnica della pubblica amministrazione*, Milan, Giuffrè, 1967. Bachelet was a politically committed Christian Democrat and Vice-President of the Supreme Council of Magistrature (1976-80). He was killed by the Red Brigades on 12 February 1980 in the Political Sciences Faculty at «La Sapienza» University, Rome.

([116]) 1925-2001. He was a professor at Trieste, Catania and, primarily, «La Sapienza» University, Rome. Of his works, see, in particular, E. CANNADA-BARTOLI, *L'inapplicabilità degli atti amministrativi*, Milan, Giuffrè, 1950, and ID., *La tutela giudiziaria del cittadino verso la pubblica amministrazione*, Milan, Giuffrè, 1956.

([117]) 1923. He has been a professor at Camerino, Trieste and, primarily, Turin. Of his works, see, in particular, E. CASETTA, *L'illecito degli enti pubblici*, Milan, Giuffrè, 1953, and ID., *Attività e atto amministrativo*, in this Review, 1957, 315 et seq.

([118]) 1916-1999. He was a professor at Sassari, Pisa and, primarily, «La Sapienza», Rome. Of his works, see F. FRANCHINI, *Il parere nel diritto amministrativo*, vols. I and II, Milan, Giuffrè, 1944-45, and ID., *Le autorizzazioni amministrative costitutive di rapporti giuridici fra l'amministrazione e i privati*, Milan, Giuffrè, 1957.

([119]) 1922. He has been a professor at Sassari, Siena, «Federico II» University of Naples and, primarily, «La Sapienza» University, Rome. Of his works on administrative law, see, in particular, G. GUARINO, *Potere giuridico e diritto soggettivo*, Naples, Jovene, 1949, and ID., *Atti e poteri amministrativi*, in IDEM (ed.), *Dizionario amministrativo*, Milan, Giuffrè, 1978, 165 et seq.

([120]) 1937-1980. He was a professor at Venice, Cagliari and, primarily, Turin. Of his works, see, in particular, F. LEVI, *L'attività conoscitiva della pubblica amministrazione*, Turin, Giappichelli, 1967.

([121]) 1916-2007. He was a professor at Cagliari and, primarily, Catania. Of his works, see, in particular, V. OTTAVIANO, *Studi sul merito degli atti amministrativi*, in

gnuolo Vigorita ([123]), Fabio Alberto Roversi Monaco ([124]), Franco Bassi ([125]) and Giuseppe Palma ([126]).

It should also be observed that, during this period, the output of judges and other figures working in the sector began to flank that of academics in a significant manner. The contribution made by some Councillors of State was particularly important. Gabriele Pescatore should be noted, amongst others.

It may be helpful to end an examination of the first period of the Republic with some brief observations.

Firstly, despite the fact that the process of subject specialisation in public-law studies continued during the quarter-century under consideration, all the academics referred to dedicated a considerable effort to in-depth constitutional studies. This in the conviction that, as the republican Constitution came into force, it would not be possible to grasp how the administrative framework had changed without having fully metabolised the transformations the constitutional landscape had undergone. Such fact further demonstrates the need that scholars of administrative law have of a broad-based, in-depth preparation in all the public-law subjects. The role of the jurist nevertheless remained more or less that of the previous period, namely, jurisconsult to the

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Annuario di diritto comparato e degli studi legislativi, 1952, 308 et seq., and Id., *Considerazioni sugli enti pubblici strumentali*, Padua, Cedam, 1959.

([122]) 1928-1990. He was a professor at Cagliari, Perugia and, primarily, «La Sapienza» University, Rome. Of his works, see, in particular, A. Piras, *Oggetto del ricorso amministrativo e istruzione probatoria,* Milan, Giuffrè, 1957, and Id., *Interesse legittimo e giudizio amministrativo,* 2 vols, Milan, Giuffrè, 1960-62.

([123]) 1931. He has been a professor at Macerata, the Naval Institute at Naples, and, primarily, «Federico II» University, Naples. Of his works, see, in particular, V. Spagnuolo Vigorita, *L'iniziativa economica privata nel diritto pubblico*, Naples, Jovene, 1959, and Id., *Attività economica privata e potere amministrativo*, Naples, Morano, 1962.

([124]) 1938. He has been a professor and chancellor at Bologna. Of his works, see F.A. Roversi Monaco, *Gli enti di gestione (Struttura-funzioni-limiti)*, Milan, Giuffrè, 1967, and Id., *Profili giuridici del decentramento nell'organizzazione amministrativa*, Padua, Cedam, 1970.

([125]) 1929. He has been a professor at Sassari and, primarily, Parma. Of his works, see, in particolar, F. Bassi, *La norma interna. Lineamenti di una teorica*, Milan, Giuffrè, 1963.

([126]) 1936. He has been a professor at Naples. Of his works, see G. Palma, *Beni di interesse pubblico e contenuto della proprietà*, Jovene, Naples, 1971, and Id., *Indirizzo politico statale e autonomia comunale. Tratti di una parabola concettuale*, Naples, Jovene, 1982.

political classes. The teaching of administrative law acquired increasing importance as the public sphere expanded.

Secondly, although the academics active during the second post-war period introduced some significant new elements in terms of content and method, they did not break with legal dogmatism, at least at a formal level. Transformations were inscribed within a stable framework: the supremacy of public power, the special status of administrative law and a separate administrative jurisdiction constituted the basis on which change could sediment. There was, moreover, no great change in method: the legal method was simply married to historical awareness. There was also a certain reluctance to assert possible new methods: Giannini was significant, in this respect, frequently including as he did references of a sociological, historical and philosophical nature in his writings, whilst always making a point of specifying where the legal boundary lay. Nevertheless, at the level of substance, the break was made and it was significant. Concepts such as Giannini's multi-class State and Benvenuti's notion of procedure as a form of the administrative function were not mere verbal syntheses but constituted, rather, the instrument for definitively dismantling and disposing of the myths belonging to the first half of the twentieth century.

Thirdly, the parameters for comparative reference began to change during the period following the Second World War. Most academics were still sensitive to the strong German (or, alternatively, French) influence but they also began to look across the Channel. Giannini's introduction to the Italian translation of Sir William Wade's *Administrative Law* ([127]) is significant, for example, whilst it should not be forgotten that, particularly during the Sixties, the debate on the science of administration had developed through references to developments occurring in the United States during the first half of the century. Thus the still prevalent German ascendancy was cautiously being partnered by one of Anglo-Saxon origin.

Fourthly, after the intellectual limitations of the fascist period with its monographs concentrating on administrative acts and administrative justice, the subject began to breathe again. New territories were explored, forgotten themes were taken up once more and traditional ones were studied from new perspectives. For example, considerable

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([127]) M.S. GIANNINI, *Presentazione*, in H.W.R. WADE, *Diritto amministrativo inglese*, Milan, Giuffrè, 1969, I et seq.

renewed interest was taken in administrative organization. This acquired a fundamental instrumental importance once the central position of functions in the new administrative legal framework had been established. New analyses of co-ordination and planning enjoyed a period of particular development. Studies on methods of public intervention in the economy abounded. Sectors that had remained all but unexplored during the fascist era (such as credit protection) were examined, as was the virgin ground of the Welfare State. There was debate on the principal of self-government and primigenial reflections on administrative agreements and the role private law was to play in administration. In short, it was a period of experimentation in which administrative law annexed new areas.

Last but not least, administrative law was no longer reduced to a simplistic relationship between public power and private freedom. In developing the concepts intuited by Romano, Giannini and Benvenuti, it had become «plural». Its science had freed itself of its formalist encumbrances and had arrived at the realist method. Its first objective during the first two decades of the post-war period was to break the preceding era's concepts down, dissect them and subject them to critical scrutiny in order to redefine their content. Thus, public administration became levels of public administration, public interest became public interests, the administrative function became administrative functions and so on. Nevertheless, as has been observed, once the dissection had been effected, it was no longer possible to proceed to a rearrangement and this resulted in jurists losing their sense of direction. With the publication of Giannini's two-volume *Diritto amministrativo* (*Administrative Law*) in 1970, the «dissection» objective could be considered achieved. It then became necessary to focus attention on other goals and other tools.

9. The second period of the Republic opened under the insignia of the Regions with the founding of the ordinary Regions, the introduction of the Regional Administrative Courts as the court of first instance for administrative judges and the first attempts at functional decentralisation. The process by which the state was gradually losing the position of absolute centrality it had enjoyed during the nineteenth century and the first half of the twentieth century was therefore reinforced.

As regards academic developments, the period was marked by a lively cultural and political ferment in the historico-social field from

which the majority of legal scholars kept a haughty and conservative distance. The era opened with the monograph *Cultura e politica del diritto amministrativo* (*The Culture and Politics of Administrative Law*). This caustic manifesto for methodological transformation in administrative studies was written by Sabino Cassese ([128]), a young full professor and pupil of Giannini's.

Through a historical reconstruction of Italian public-law learning, the book denounced all the «pathologies» of Italian administrative law: fitful and fragmentary legislation and an essential opposition to progress; standardising centralism; an exclusively authoritarian perception of administration; the administration's capture by organised lobbies and its inadequate «socialization» and, last but not least, a failure to perceive the emergence both of a new *ius commune* and a different role for administration *vis à vis* politics and society. The work also denounced all the failings of Italian administrative law as an academic subject: dogmatism and purism; a narrow approach to forensic techniques and to the role of jurists blindly applying the law; a refusal to commit to reform and, lastly, German cultural hegemony. It then went on to indicate a new programme for administrative research which included: opening legal studies up to the social sciences and developing administrative science as an autonomous subject; an openness to Anglo-Saxon administrative culture; the application of a truly realist method through concrete appraisal in the field; new instruments of enquiry that did not focus analysis solely on legislation but also made the most of case-law, soft-law and the analysis of statistics and archives; new research techniques (that developed group research, for example); an ideological commitment to reform as a legal policy and, lastly, the production of law by public lawyers who were conscious of their role in a well-defined project to develop and transform society.

The intention was to make a clean break with the methodology of the past. The work took a dialectical stand not only in relation to the generations of jurists active during the first half of the twentieth century but also in relation to the renaissance generation of the second post-war period. The break that occurred, however, was not traumatic or sudden (as general policy might have considered desirable), but was

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([128]) 1935. He was a professor at Urbino, Ancona, the «Federico II» University of Naples and, primarily, «La Sapienza» University, Rome. Cassese has also been Civil Service Minister (1993-94) and is currently a Judge of the Constitutional Court.

achieved slowly, with the considerable conservatism that always accompanies processes of change.

As previously observed, the preceding generation of academics had in reality already allowed the science of administrative law to take some significant steps forward. The majority of jurists nevertheless remained in what was essentially an isolated position, cut off from the national cultural debate. In some respects, however, their detached attitude did not so much signify a lack of commitment as the safeguarding of a social *status quo*. Furthermore, the period under consideration took a clear step towards accurately recognising the field of enquiry. During the twenty-year period between the beginning of the Seventies and the end of the Eighties, the goal was to modernise the object of study and the methods of enquiry through a multidimensional analysis of the administrative institutions. The purpose of this was to understand (from concrete factual reality) to what extent the territory of administrative law had increased and whether (as was effectively noted, subsequently) the importance of some administrative phenomena in clear expansion had been underestimated and, conversely, analysis had not concentrated excessively on subject areas of decreasing importance.

Thus it was primarily a question of exploring and breaking new ground, without any claims to completeness but working, rather, on the methodological premise of incompleteness. If myths were smashed during the previous era, now even the «invariants» were called into question and sometimes debunked.

Such new study methods involved two kinds of risk. The first (already present during the previous period but now more pronounced) was of an overly descriptive style. In some studies, realism ended up degenerating into exegetics and a mere description of the legislative situation (and of documents and data, where the research was in-depth) without any real academic contribution in terms of interpretation or proposals and without any contextual comparisons.

The second, given the asserted impossibility of reducing analyses to a system, was that of a loss of bearings. A sense of direction previously provided by a series of system invariants was now lacking. This loss of bearings was to be the basis of the alienation and uncertainty marking the period to follow. Not by chance, during a period without clear co-ordinates, case-law's creative role acquired greater importance than it had enjoyed in the past.

In terms of inspirational models at a comparative level, the way

was more decidedly paved for comparison with Anglo-Saxon countries (approached timidly during the previous period) and the United States in particular. To their traditional comparisons with French and German culture the more conscious scholars of public law in the second republican period added periods of study at American universities. Thus they came into contact with a different approach to law studies and academic life: one that was panoptic, eclectic, pragmatic, applicative and merit-based.

As regards areas of study, the horizons broadened further during this period. Some examples include the regions, local self-government, planning, public management, health, education, welfare, public finance, collective bargaining in public employment and models of administrative organisation, to say nothing of public law instruments for regulating the economy, around which a wealth of studies sprang up. In general, academics became aware that the part of administration involving payments and the supply of services was far bigger and more important than that concerned with order and authority. Traditional topics were examined under a new lens that scrutinised the public/private relationship and the private sector's active role in relations with the administration. This new lens was applied to public assets, administrative procedure and administrative trials. In addition, new areas of study were launched. For example, with his customary peerless foresight, Massimo Severo Giannini published the first Italian essay on environmental protection ([129]) in 1973. This area of study was to expand irrepressibly as of the 1990s, establishing itself as a separate subject for university teaching, amongst other things.

Precisely in relation to this last aspect, the science of administration also acquired full autonomy. It was recognised as a branch of political studies. The university posts advertised for administrative scientists were often awarded to public-law academics, however. The teaching of administrative law expanded on two fronts. «General» administrative law became a two-year course, usually dealing with the substantive law during the first year and the procedural law governing trials during the second. Optional courses on specialist areas of administrative law also increased and included regional law, the law governing local bodies, public economic law, town-planning law, health

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([129]) M.S. GIANNINI, *Ambiente: saggio sui diversi aspetti giuridici*, in this Review, 1973, 23 et seq. See also M.S. GIANNINI, *Primi rilievi sulle nozioni di gestione dell'ambiente e del territorio*, in this Review, 1975, 479 et seq.

law and legislation on education. These were sometimes more of a pretext for creating a new university chair than a response to the pressing needs of teaching programmes, however.

As regards competition for university posts, a significant novelty was introduced in 1975. From the Thirties onwards, competitions had been advertised by the interested university but the candidate assessment had been carried out at a national level by a committee who selected three suitable candidates. This old system was now replaced by one single national selection process which was still marked at a national level by a committee (acting on behalf of the entire community of administrative law professors) but in such a way as to produce a number of suitable candidates that matched the total number of posts advertised by the various universities. This led to a considerable increase in the number of full professors (to which associate professors and research fellows must then be added, as these new teaching categories were also introduced during the period). Such increase may be demonstrated by the fact that during the period 1802-1974, full professors of administrative law totalled 120 whereas, during the period 1975-1999, 115 new full professors of administrative law were appointed. Thus, in a mere 25 years, the same number of new recruits was selected as had been over the preceding 170 years. The main reasons for this must be sought in the passage from a university for the elite to one for the masses but the easily observable consequences have been a gradual decline in teaching standards and in the quality of scientific output, above all.

During this period, too, academic output was flanked by that of judges and figures operating in the sector. Part of this output had a practical/applicative purpose. As in the previous period, however, some judges (Councillors of State, in particular) made a significant contribution to the science of administrative law. Renato Laschena, Alberto De Roberto and Giovanni Paleologo should be remembered, for example.

Of the academics active during the period, Sabino Cassese is certainly the one who has enjoyed the greatest prominence. The sheer volume and multifaceted nature of his output and the wealth and variety of his interests ([130]) make it difficult to gauge his impact

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([130]) The fruit of over fifty years of study, his publications currently number over a thousand. Cassese was also Civil Service Minister during the period 1993-94 and is currently a Judge of the Constitutional Court. Of his monographs, see S. CASSESE,

accurately, however. His conception of administrative law has certainly been realist but his realism is different from previous realism and could be defined as «empirical» or «pragmatic». The resulting framework is a dialectical, plural and panoptically fragmented one. Resting on an unstable platform, it is capable of adapting to variable historio-social conditions (131). As far as general theory is concerned, Cassese's greatest contributions numbered three. The first was to carry the subject towards pluralism by demonstrating that the concept of the state's centrality had been definitively superseded (132). The state was, by now, only one of many public bodies charged with administrative functions. So eroded was it, both from the outside and from within, that it could be seen as prefiguring a form of (administrative) law existing beyond the State and without the State (133). The second was to oversee the transition from a merely formal legality to the rule of law and respect for the law, through acknowledgement of the possibility that law could be generated from sources other than Acts of Parliament (and this resulted in an enhancement of the judge's role). The third was to foster the emergence of a sort of mixed law or *jus commune* governing public/private relations, in the sense of a transition from their opposition and separation to a form of co-existence and overlapping in certain sectors of administrative law, particularly following European integration. Cassese also made notable contributions to the organisation of legal learning. He launched great numbers of publishing initiatives, nurtured many pupils (creating a well-knit school) and founded IRPA, the Institute for Research on Public Administration.

Partecipazioni pubbliche ed enti di gestione, Milan, Edizioni di Comunità, 1962; ID., *Imparzialità amministrativa e sindacato giurisdizionale,* in *Rivista italiana per le scienze giuridiche*, 1968, 47 et seq.; ID., *I beni pubblici. Circolazione e tutela*, Milan, Giuffrè, 1969; ID., *Il privato e il procedimento amministrativo. Un'analisi della legislazione e della giurisprudenza*, in *Archivio giuridico*, 1970, 25 et seq.; ID., *Il sistema amministrativo italiano*, Bologna, il Mulino, 1983, and ID., *La nuova costituzione economica*, Bari Laterza, 1995.

(131) This depiction of administration emerges, in particular, in his main textbook, S. CASSESE, *Le basi del diritto amministrativo.* This textbook was atypical in that it concentrated on legal complexities, was rich in data and examples and had the aim of calling the preceding era's certainties into question.

(132) Of the numerous contributions on the topic, see, for example, S. CASSESE, *Fortuna e decadenza della nozione di Stato*, in *Scritti in onore di Massimo Severo Giannini*, vol. I, Milan, Giuffrè, 1988, 91 et seq.

(133) As regards these aspects, see the following section as well.

Fabio Merusi's (134) contribution was also highly significant. His studies were often ahead of their time and, sometimes going against the current, anticipated themes that were only to be developed decades later. His approach was realist and open to a dialogue between law and economics, in particular. Two apparently conflicting notions assume particular prominence in Merusi's work : that of «legal fact» (i.e. the nature of things as the tool for integrating and interpreting the legal system) and the principle of legality (as the cornerstone on which the administrative system was to be built). His works on good faith, reasonableness and equity in administrative law deeply influenced the ways in which administrative decisions are reached, especially those through which the use of administrative power is judicially reviewed (135). His essays on public economic law were also highly influential. Those concerning public services and the protection of competition made a decisive contribution to academic progress in the sector (136).

Continuity with tradition was guaranteed primarily by Franco Gaetano Scoca (137) and Alberto Romano (138) during the period under consideration. Their works were mainly concerned with the traditional topics of subjective rights and legitimate interests, legal measures and administrative justice. A pupil of Giannini's, Scoca not only produced important works in the areas indicated but was also a point of reference for those scholars of administrative law inclined towards a «classical» approach to such studies (and, for the most part, tending to marry research with advocacy). He supported many pupils

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(134) 1938. He has been a professor at Siena and, primarily, Pisa. He has been the Chairman of banking institutions, including the Banca Toscana.

(135) F. Merusi, *L'affidamento del cittadino*, Milan, Giuffrè, 1970, and Id., *Sull'equità della pubblica amministrazione e del giudice amministrativo*, in this Review, 1974, 367 et seq.

(136) F. Merusi, *Le direttive governative nei confronti degli enti di gestione*, Milan, Giuffrè, 1964; Id., *Trasformazioni della banca pubblica*, Bologna, il Mulino, 1985, and Id., *Servizi pubblici instabili*, Bologna, il Mulino, 1990.

(137) 1935. He has been a professor at Teramo, Perugia, the «Luiss» University, Rome and «La Sapienza» University, Rome. Of his works, see F.G. Scoca, *Il silenzio della pubblica amministrazione*, Milan, Giuffrè, 1971, and Id., *Contributo sulla figura dell'interesse legittimo*, Milan, Giuffrè, 1990.

(138) 1932. He has been a professor at Ferrara, Turin and «La Sapienza» University, Rome. Of his works, see A. Romano, *Limiti all'autonomia privata derivanti da atti amministrativi*, Milan, Giuffrè, 1960, and Id., *Giurisdizione amministrativa e limiti della giurisdizione ordinaria*, Milan, Giuffrè, 1975.

in their studies and initiated numerous publishing projects. Alberto Romano was one of Miele's pupils and a grandson of Santi Romano. The editor of important legal reviews, he also co-ordinated many other publishing initiatives.

Feliciano Benvenuti's pupils (including Umberto Pototschnig ([139]), Giorgio Berti ([140]) and Giorgio Pastori ([141]), in particular) concentrated on according importance to intermediate bodies and regional and local self-government and constructing a more democratic administration. Pototschnig's contribution was particularly important for the repercussions his original and piercing reading of the text of the constitution had for the concept of public service in an objective sense ([142]). Berti's studies of administrative organisation and local self-government ([143]) and Pastori's of procedure ([144]) should also be noted.

In terms of its repercussions for administrative law, the work of the Palermitan, Guido Corso ([145]), was marked by an analogous sensitivity and originality in its interpretation of the Constitution. His more liberal reading was of particular significance for studies on public order, the regions and civil rights ([146]).

Two Florentine pupils of Miele's, Domenico Sorace ([147]) and

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([139]) 1929. He has been a professor at Pavia, Trent and, primarily, the Catholic University in Milan.

([140]) 1927-2007. He was a professor at Ferrara, Padua, Florence and, primarily, the Catholic University of Milan.

([141]) 1937. He has been a professor at Trent, Padua and, primarily, the Catholic University of Milan.

([142]) U. POTOTSCHNIG, *Insegnamento, istruzione, scuola*, in *Giurisprudenza costituzionale*, 1964, 362 et seq. and ID., *I pubblici servizi*, Padua, Cedam, 1964.

([143]) G. BERTI, *Caratteri dell'amministrazione comunale e provinciale*, Padua, Cedam, 1967, and ID., *La pubblica amministrazione come organizzazione*, Padua, Cedam, 1968.

([144]) G. PASTORI, *La procedura amministrativa. Introduzione generale*, in IDEM (ed.), *La procedura amministrativa*, Neri Pozza, Vicenza, 1964, and ID., *Discrezionalità amministrativa e sindacato di legittimità*, in *Foro amministrativo*, 1987, 3165 et seq.

([145]) 1940. He has been a professor at Palermo and «Roma Tre» (the third university in Rome).

([146]) G. CORSO, *L'efficacia del provvedimento amministrativo*, Milan, Giuffrè, 1969; ID., *L'ordine pubblico*, Bologna, il Mulino, 1979 and ID., *I diritti sociali nella Costituzione*, in this Review, 1981, 755 et seq.

([147]) 1939. He has been a professor at Macerata and, primarily, Florence. Of his works, see D. SORACE, *Espropriazione della proprietà e misura dell'indennizzo*, 1974,

Andrea Orsi Battaglini ([148]), attempted a «de-specialisation» of administrative law, directing all their work at refuting the «special characteristics» hitherto accepted as part of the discipline's framework.

Marco Cammelli ([149]), Luciano Vandelli ([150]), and Donatello Serrani ([151]) pursued an academic line intended to renew an exchange between administrative law and the science of administration.

Of Giannini's pupils, Giampaolo Rossi ([152]) should also be noted. His contributions to the subject of administrative organization and in the area of economic law are of particular interest.

The next generation was active from the Eighties onwards. Noteworthy individuals include Marco D'Alberti ([153]) (particularly for his studies of public contracting and public economic law and his attention to legal comparison), Giuseppe Caia ([154]) (particularly for his contributions on public services and administrative justice), Mario P. Chiti ([155]) (particularly for his contributions on European and com-

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and ID., *L'ente pubblico fra diritto comunitario e diritto nazionale*, in *Rivista italiana di diritto pubblico comunitario*, 1992, 357.

([148]) 1941-2005. He was a professor at Siena and, primarily, Florence. Of his works, see A. ORSI BATTAGLINI, *Le autonomie locali nell'ordinamento regionale*, 1974; ID., *Gli accordi sindacali nel pubblico impiego. Pluralismo giuridico, separazione degli ordinamenti e forme di comunicazione*, 1982, and ID., *Attività vincolata e situazioni soggettive*, in *Rivista trimestrale di diritto e procedura civile*, 1988, 3 et seq.

([149]) 1944. He was a professor at the Venice University Institute of Architecture, at Modena and, primarily, Bologna. Of his works, see M. CAMMELLI, *L'amministrazione per collegi. Organizzazione amministrativa e interessi pubblici*, Bologna, il Mulino, 1980.

([150]) 1946. He has been a professor at Trieste and, primarily, Bologna. Of his works, see L. VANDELLI, *L'ordinamento regionale spagnolo*, Milan, Giuffrè, 1980, and ID., *Amministrazione centrale e servizio sanitario*, Maggioli, Rimini, 1984.

([151]) 1941-1979. He was a professor at Ancona. Of his works, see D. SERRANI, *Lo Stato finanziatore*, Franco Angeli, Milan, 1971, and ID., *Il potere per enti. Enti pubblici e sistema politico in Italia*, Bologna, il Mulino, 1978.

([152]) 1941. He has been a professor at Perugia and, primarily, «Roma Tre». Of his works, see G. ROSSI, *Enti pubblici*, Bologna, il Mulino, 1991; *Diritto amministrativo*, 2 vols., Milan, Giuffrè, 2005.

([153]) 1948. He has been a professor at Ancona and, primarily, at «La Sapienza» University, Rome. D'Alberti has also been a commissioner at the Italian Competition Authority. Of his works, see M. D'ALBERTI, *Le concessioni amministrative. Aspetti della contrattualità delle pubbliche amministrazioni*, Milan, Giuffrè, 1981, and ID., *Diritto amministrativo comparato. Trasformazioni dei sistemi amministrativi in Francia, Gran Bretagna, Stati Uniti, Italia*, Bologna, il Mulino, 1992.

([154]) 1954. He has been a professor at Bologna. Of his works, see G. Caia, *Arbitrati e modelli arbitrali nel diritto amministrativo*, Milan, Giuffrè, 1989.

([155]) 1944. He has been a professor at Cagliari and, primarily, Florence. Of his

parative administrative law), Marcello Clarich ([156]) (particularly in the areas of public economic law and administrative justice), Vincenzo Cerulli Irelli ([157]) (particularly for his work on public assets), Giandomenico Falcon ([158]) (particularly in the field of public-law agreements), Guido Greco ([159]) (particularly for his study on public-law agreements), Carlo Marzuoli ([160]) (particularly for his contributions on the workings of private law within public administration), Alberto Massera ([161]) (especially for his studies of public economic law), Giuseppe Morbidelli ([162]) (especially for his work on administrative proceedings), Antonio Romano Tassone ([163]) (particularly for his work on adminis-

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works, see M.P. CHITI, *Partecipazione popolare e pubblica amministrazione*, Pacini, Pisa, 1977; ID., *Diritto amministrativo europeo*, Milan, Giuffrè, 1999; and ID., *Mutazioni del diritto pubblico nello spazio giuridico europeo*, Clueb, Bologna, 2003.

([156]) 1957. He has been a professor at Siena and, primarily, at the «Luiss» University, Rome. Of his works, see M. CLARICH, *Le grandi banche nei paesi maggiormente industrializzati*, Bologna, il Mulino, 1985, and ID., *Giudicato e potere amministrativo*, Padua, Cedam, 1989.

([157]) 1947. He has been a professor at Perugia, Florence and, primarily, at «La Sapienza» University, Rome. Of this works, see V. CERULLI IRELLI, *Proprietà pubblica e diritti collettivi*, Padua, Cedam, 1983, and ID., *Lineamenti di diritto amministrativo*, Turin, Giappichelli, 2006.

([158]) 1945. He has been a professor at Ferrara and, primarily, Trent. Of his works, see G. FALCON, *Le convenzioni pubblicistiche (ammissibilità e caratteri)*, Milan, Giuffrè, 1984.

([159]) 1946. He has been a professor at the «Bicocca», Milan and, primarily, the «Statale» (the State University) in Milan. Of his works, see G. GRECO, *Provvedimenti amministrativi costitutivi di rapporti giuridici tra privati*, Milan, Giuffrè, 1977; ID., *I contratti dell'amministrazione tra diritto pubblico e privato. I contratti ad evidenza pubblica*, Milan, Giuffrè, 1986, and ID., *Accordi amministrativi tra provvedimento e contratto*, Turin, Giappichelli, 2003.

([160]) 1946. He has been a professor at Cagliari and, primarily, Florence. Of his works, see C. MARZUOLI, *Principio di legalità e attività di diritto privato della pubblica amministrazione*, Milan, Giuffrè, 1982, and ID., *Potere amministrativo e valutazioni tecniche*, vol. I, Milan, Giuffrè, 1985.

([161]) 1946. He has been a professor at Macerata and, primarily, Pisa. Of his works, see A. MASSERA, *Partecipazioni statali e servizi di interesse pubblico*, Bologna, il Mulino, 1978, and ID., *Contributo allo studio delle figure giuridiche soggettive nel diritto amministrativo*, vol. I, *Stato-persona e organo amministrativo. Profili storico dogmatici*, Milan, Giuffrè, 1986.

([162]) 1944. He has been a professor at Florence and, primarily, at «La Sapienza» University, Rome. Of his works, see G. MORBIDELLI, *La disciplina del territorio tra Stato e Regioni*, Milan, Giuffrè, 1974, and ID., *Procedimento amministrativo*, in VARIOUS AUTHORS, *Diritto amministrativo*, Bologna, Monduzzi, 1990.

([163]) 1952. He has been a professor at Reggio Calabria and Messina. Of his

trative action), Maria Alessandra Sandulli ([164]) (particularly for her studies on administrative action and administrative justice), Aldo Travi ([165]) (particularly as regards administrative action and administrative justice), and Riccardo Villata ([166]) (particularly for his contributions on administrative justice).

The interesting rise of both private and university research institutes must also be recorded. These united groups of academics who worked jointly with a significant degree of cohesion and agreement regarding the basic co-ordinates of administrative law. The ISAP in Milan has already been mentioned in the context of the previous period, when it was directed by Benvenuti. The Department of Public Law at Florence University must now also be noted. This constituted a fairly atypical example of academic community life in Italy. The case of the *S.P.I.S.A.* at Bologna is also note-worthy.

Lastly, working groups and groups for discussion between academics of the same generation began to spring up. Examples include the «Tirrenia Group» during the Seventies and the «San Martino Group» during the Eighties (similar experiences were to follow during the subsequent period). Such symptoms demonstrated the need for a different way of conceiving university research and one that involved more dialogue and teamwork.

10. Contemporary administrative law in Italy is characterised by two main elements. In the first place, the Nineties marked a decade of administrative reform. Having submitted to phases of very slow and

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works, see A. ROMANO TASSONE, *Motivazione dei provvedimenti e sindacato di legittimità*, Milan, Giuffrè, 1987.

([164]) 1956. She has been professor at Brescia, Milan and, primarily, «Roma Tre». Of her works, see M.A. SANDULLI, *La potestà sanzionatoria della pubblica amministrazione*, Milan, Giuffrè, 1981.

([165]) 1952. He has been a professor at Cagliari, Pavia and the Catholic University in Milan. Of his works, see A. TRAVI, *Sanzioni amministrative e pubblica amministrazione*, Padua, Cedam, 1983; ID., *Silenzio-assenso ed esercizio della funzione amministrativa*, Padua, Cedam, 1985, and ID., *Lezioni di giustizia amministrativa*, Turin, Giappichelli, 1998.

([166]) 1941. He has been a professor at Cagliari, Padua, Pavia and, primarily, the «Statale» in Milan. Of his works, see R. VILLATA, *L'esecuzione delle decisioni del Consiglio di Stato*, Milan, Giuffrè, 1971; ID., *Autorizzazioni amministrative e iniziativa economica privata. Profili generali*, Milan, Giuffrè, 1974; ID., *Disapplicazione dei provvedimenti amministrativi e processo penale*, Milan, Giuffrè, 1980; ID., *Pubblici servizi. Discussioni e problemi*, Milan, Giuffrè, 1999.

gradual change in the past, the face of administration underwent a total transformation in just a few years. Such transformation was fuelled during the first half of the Nineties by European integration and the inherent weakness of Italian political parties. Administrative procedure, local self-government, the privatisation of public-sector employment, new public management, the monitoring of administration, independent authorities, public contracts, functional devolution, the Presidency of the Council of Ministers and the ministries, agencies, reform of Title V of the Constitution and administrative trials were just the main areas for reforming legislation that profoundly altered the co-ordinates of Italian administrative law.

In the second place, the process of European integration has greatly accelerated since Maastricht and the European institutions have become the driving force behind the transformation of public law in Europe. Furthermore, growing economic globalisation has led to the framework underpinning relations between legal orders, institutions and society becoming increasingly «fluid». To a large extent, administrative law has now become «extra-statal».

The supranational context provides a helpful starting point since it also constitutes the basis for administrative and institutional reform.

The Europeanization of administrative law studies is now a well-established fact no longer questioned by even the most traditional and conservative of stances. Yet Italian scholars of public law were very slow to accept the phenomenon of European integration. One may consider, by way of illustration, that Massimo Severo Giannini's last important publication [his short volume entitled *Il pubblico potere* (*Public Power*) (167)] totally ignored the influence of community law. Thus even a public-law scholar as refined as Giannini (always happily intuitive in identifying new territories) failed to grasp the huge repercussions of the functionalist integration that was already fully under way (the Single European Act was imminent and decisions issuing from the Court of Justice had already developed the founding principles of European law).

Sabino Cassese's pioneering role has been decisive in this area of study. His first important essay on the topic dates to 1987 (168). Demonstrating the existence of administrative apparatus at a Euro-

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(167) M.S. GIANNINI, *Il pubblico potere*, Bologna, il Mulino, 1986.

(168) S. CASSESE, *Divided Powers: European Administration and National Bureaucracies*, in S. CASSESE (ed.), *The European Administration*, IISA, Brussels, 5 et seq.

pean level, it laid the foundations of European administrative law. This was followed, in 1989, by a whole chapter of *Le basi del diritto amministrativo* (*The Bases of Administrative Law*) dedicated to the organisation and operation of community administration and by numerous other essays on the topic spanning the last twenty years ([169]). Most public-law academics were sceptical about such developments in public-law studies. Partly conditioned by the Constitutional Court's resistance to the European Court of Justice's drive towards integration, constitutional lawyers were very slow to consider these topics. Of this group, Cesare Pinelli and Marta Cartabia have paid the greatest attention to European themes. In the field of administrative studies, only a few academics began to explore the new European area with determination. Mario P. Chiti and Guido Greco [the founders and editors of the *Rivista italiana di diritto pubblico comunitario* (*Italian Review of European Public Law*) and editors of *Trattato di diritto amministrativo europeo* (*Treatise on European Administrative Law*) ([170])] should be noted, in particular.

Nowadays, European law permeates nearly all sectors of administrative law and no theme of administrative law may be analysed without taking the community framework as a starting point. In the context of university teaching, too, European topics have seen many developments. On the one hand, the general course on domestic administrative law ends up continually overlapping with notions of European administrative law. On the other, European administrative law has been introduced into many Italian Law Faculties as a separate optional subject (even if it is considered to fall within the discipline of administrative law and is taught by administrative lawyers). It must also be noted that there remains a significant lack of communication between academics teaching European law (now a specific academic subject-area) and those teaching administrative law. This despite the clear need to establish a dialogue since European law and the various branches of domestic law are so interwoven that it is no longer possible

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([169]) See, amongst others, S. Cassese, *La Costituzione europea*, in *Quaderni costituzionali*, 1991, 487 et seq. and Id., *L'influenza del diritto amministrativo comunitario sui diritti amministrativi nazionali*, in *Rivista italiana di diritto pubblico comunitario*, 1993, 329 et seq.

([170]) Of the other academics who have dedicated themselves to the study of European administrative law, Eugenio Picozza, Claudio Franchini, Luisa Torchia, Roberto Caranta, Giacinto della Cananea and Daria de Pretis should be remembered.

to think of them as separate subjects: they can only be conceived in terms of harmonisation.

As a result of huge technological progress, the Nineties also marked the beginning of a full awareness that the consequences of economic and cultural globalisation were rendering the boundary lines and relationships between legal orders increasingly uncertain and unstable.

The beginning of the new millennium marked the development of an area of administrative studies that Italy currently leads. That this is so is, once again, thanks to Sabino Cassese's pioneering work. In 2002, he published his essay on *Lo spazio giuridico globale* (*The Global Legal Space*) ([171]), thereby laying the conceptual foundations for a global administrative law. Subsequent essays of his ([172]) developed the theme further. Although they are too recent and too embryonic to be considered in any depth at present, the trend that they are setting should certainly be noted.

Comparative studies of administrative law fostering a positive process of cross-fertilization and hybridisation have also been strongly emphasised during the period under consideration. Amongst other things, the emergence of European and global studies and the increase of comparative analyses has raised the urgent issue of the relationship between Italian legal scholars (particularly those of administrative law) and the European and international public-law academic community. The latter is, by now, a well-knit, ramified community at both a European and a world level. Public-law experts from the main European countries publish regularly in the major American and European journals. Italian academics and their studies in this area are, with some exceptions, practically ignored outside their country on

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([171]) The essay is now published in the volume S. CASSESE, *Lo spazio giuridico globale*, Laterza, Rome/Bari, 2003. See, also, the essays collected in S. CASSESE, *Oltre lo Stato*, Laterza, Rome/Bari, 2006.

([172]) Of the academics who have concerned themselves with global administrative law, it is worth remembering Stefano Battini (S. BATTINI, *Amministrazioni senza Stato. Profili di diritto amministrativo internazionale*, Milan, Giuffrè, 2003, and ID., *Amministrazioni nazionali e controversie globali*, Milan, Giuffrè, 2007), Giacinto della Cananea (G. DELLA CANANEA, *Al di là dei confini statuali. Principi generali del diritto pubblico globale*, Bologna, il Mulino, 2009), and Lorenzo Casini (L. CASINI, *Il diritto globale dello sport*, Milan, Giuffrè, 2010, and L. BOISSON DE CHAZOURNES, L. CASINI, and B. KINGSBURY (eds.), Symposium on *Global Administrative Law in the Operations of International Organizations*, 6:2 *International Organizations Law Review*, 2009).

account of their traditionally narrow-minded, provincial approach and, more importantly, the language gap. This is a problem with which Italian scholars of administrative law must now reckon.

As regards the academic output more properly dedicated to developments in the national sphere (obviously with the above-mentioned *caveat* regarding the impossibility of tackling any domestic topic without also considering its European dimension), monographs have concentrated primarily on analysing the reform processes marking the Nineties. Such processes basically all ended up considering the transformation of the public-law/private-law relationship. It is beyond doubt that the «private/public» conflict has been and still is the central point of academic debate. This topic essentially raises questions as to the type of administration to be achieved and what kind of relationship between citizens, intermediate bodies, society and the administration is considered desirable. Hence studies have concentrated on the transition from an administration founded on power (and subject to legitimacy-based monitoring) to one founded on performance (and subject to results-based monitoring). The subject was probably also influenced during the period under consideration by what may be called an apology for private law, according to which it was deemed sufficient to privatise and liberalise structures in order to make them more efficient and provide better services and greater freedom. Such fact, of itself, may in no way be taken for granted, insofar as tools and models need to be adapted to historico-social and economic variables as well as the environmental and cultural context. Moreover, it is pure myth that private law always guarantees fair treatment whereas public law involves abuse of power: positions of power also exist in relationships between private parties, just as there may, in some cases, exist greater forms of protection in relationships governed by public law. Lastly, it must also be considered that the application of private-law concepts in a public-law context has resulted in hybridising phenomena through which contexts have ended up determining alterations of the original concept, thereby giving rise to a sort of *jus commune*, mixed law or «special» private law. The debate over these aspects, too, is still in full spate and it will therefore be necessary to monitor future developments.

The reforming drive of the Nineties associated with the legal framework's increased fragmentation and instability has heightened the climate of incertainty and alienation already prevailing during the previous period. It has even forced academics to consider whether the

subject still possesses the inspiration needed to maintain an autonomous existence. The notion that one may no longer speak of administrative law but should refer, rather, to the law of public administrations seems to express an awareness of a loss of identity ([173]).

Thus Italian scholars of administrative law are now discovering the need to restructure the general picture and return to a systematic vision of administrative law if they are to perceive an overall framework and establish a new direction. There are various signs of such a trend. Firstly, a new *Trattato di diritto amministrativo* (*Treatise on Administrative Law*) ([174]) was formulated in 2000, with the intention of reconstructing the subject's boundaries in terms of general and specialist aspects alike. Secondly, a considerable number of academics have felt the need, during the period in question, to flex their muscles by attempting to formulate new textbooks ([175]). Thirdly, recent years have witnessed a marked increase in historically oriented studies not only of administration but also of administrative law and the latter's academic study. These satisfy the need to analyse the ground previously covered for the purposes of verifying both the position reached and prospects for the future ([176]). They further evidence an aspiration to a different kind of reconstruction that cannot fail to take account of

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([173]) D. SORACE, *Diritto delle amministrazioni pubbliche. Una introduzione*, Bologna, il Mulino, 2000.

([174]) S. CASSESE (ed.), *Trattato di diritto amministrativo*, Milan, Giuffrè, 2000 (2nd ed., 2003).

([175]) See, amongst others, VARIOUS AUTHORS, *Diritto amministrativo*, Bologna, Monduzzi, 1993; V. CERULLI IRELLI, *Corso di diritto amministrativo*, Turin, Giappichelli, 1996; G. PALMA, *Itinerari di diritto amministrativo*, Padua, Cedam, 1996; E. CASETTA, *Manuale di diritto amministrativo*, Milan, Giuffrè, 1999; D. SORACE, *Diritto delle pubbliche amministrazioni. Una introduzione*, cit.; R. FERRARA, *Introduzione al diritto amministrativo. Il diritto amministrativo nell'era della globalizzazione*, Rome/Bari, Laterza, 2002; S. CASSESE (ed.), *Istituzioni di diritto amministrativo*, Milan, Giuffrè, 2004; G. CORSO, *Manuale di diritto amministrativo*, Turin, Giappichelli, 2004; G. ROSSI, *Diritto amministrativo*, 2 vols., Milan, Giuffrè, 2005; V. CERULLI IRELLI, *Lineamenti di diritto amministrativo*, Turin, Giappichelli, 2006, and E. PICOZZA, *Introduzione al diritto amministrativo*, Padua, Cedam, 2006.

([176]) References are limited to the following volumes: S. CASSESE (ed.), *Il diritto pubblico nella seconda metà del XX secolo*, Milan, Giuffrè, 2002, L. TORCHIA, E. CHITI, R. PEREZ AND A. SANDULLI (eds.), *La scienza del diritto amministrativo nella seconda metà del XX secolo*, Editoriale scientifica, Naples, 2008, and A. SANDULLI, *Costruire lo Stato. La scienza del diritto amministrativo in Italia (1800-1945)*, cit. The second volume also contains a «family tree» of Italian professors of administrative law, from the subject's beginnings to the present day.

the prismatic, iridescent and polymorphous quality administrative law has acquired. As has been noted, «it would appear that the new journey's starting point may be identified in the abandonment of a model-based reasoning in favour of a search for principles and the conditions in which those principles are to be applied. (...) Indeed, reasoning according to general principles allows the said reasoning to be conducted in terms of compatibility rather than supremacy and allows a tempering of principles with the values they reflect, without always imposing a (predetermined) order of priorities or hierarchy in any event» ([177]).

The debate on method has been energetically revived during this period of rapid change and uncertainty. Here, too, the most innovative contribution has been that of Sabino Cassese ([178]), who considered the disciplinary palisades and boundaries between different areas of study to be artificial distinctions. In his opinion, the question of method is a false one: there exists no one single method but, rather, a plurality of methods, no individual one of which is either valid or invalid *a priori.* There are simply problems to be solved and the method adapts according to the type of problem. Obviously, jurists are concerned with problems regarding the law but, in order to tackle them, they will have to use the widest-ranging of tool kits and sometimes borrow clothes that are not their own.

The vastness of the area of enquiry, the multiplicity of the levels at which research is carried out, the speed at which parameters change and the plurality of analytical angles have all heightened the sense of inadequacy felt by experts in administrative law. Such fact has also had an impact on study and research methods. The impossibility of an individual academic fruitfully tackling the fifteen-year labour to which Guido Zanobini subjected himself during the Thirties and Forties when he drafted his *Corso* has made group research projects increasingly necessary. They alone allow imposingly vast pieces of work to be done within timeframes that are compatible with administrative law's rapidly changing co-ordinates. In this respect (although here, too, there are obvious exceptions), it must be emphasised that the Italian academic community is still showing a certain degree of backwardness: administrative legal research is still prevalently considered a solitary,

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([177]) L. Torchia, *La scienza del diritto amministrativo*, cit., pp. 1129-1130.

([178]) S. Cassese, *Il sorriso del gatto, ovvero dei metodi nello studio del diritto*, in this Review, 2006, 597 et seq.

«handcrafted» work. And, to a certain extent, it is precisely that. Nevertheless, it is also necessary to activate more modern forms of research involving group cohesion as well as organisational and managerial skills.

European, constitutional and administrative rulings have continued to gain ground during this period, too. Administrative judges have increasingly frequently turned into judge-academics through their contributions at an academic level. Those made by some Councillors of State (including Giuseppe Barbagallo, Alessandro Pajno and Filippo Patroni Griffi) have been particularly valuable. So have those provided by Judges of the Court of Auditors (the studies of Gaetano D'Auria, above all, but also those of Manin Carabba, Francesco Battini and Enrico Gustapane).

As regards the selection of university professors, it has already been observed that the last quarter of the twentieth century saw a notable increase in the number of full professors. The period under consideration witnessed a significant new rise: if 115 new full professors of administrative law were appointed during the period 1975-1999, a further 85 were appointed in the short period 2000-2008 and new selection processes are imminent. The quality of the teaching and research cannot fail to have been affected and, in fact, this period has seen a proliferation of «selection» monographs (i.e. prepared for the purposes of participating in university selection processes, often within a limited timeframe). All too often, they have been merely descriptive.

Administrative law as a teaching subject has recently seen its scope reduced, perhaps partly as a result of the privatisation process. Generally speaking, it remains important in law faculties but is losing ground in economics, political science and sociology faculties. Professorial lectures on theory still constitute the main teaching model for administrative law but the Anglo-Saxon approach based on cases and materials has recently been spreading (primarily amongst professors of the new generation and in relation to courses taught during the final two years). Previously taught by administrative lawyers, public economic law has become part of the discipline of economic law and may also be taught by private-law lecturers. New sectoral subjects afferent to administrative law have also emerged. The law governing cultural and landscape heritage is one such example. Environmental law, too, is acquiring an ever-greater importance in university courses.

If the teaching of administrative law is experiencing a period of impasse, it should be noted that the reviews in this field are, on the

contrary, constantly multiplying. Alongside the journals already up and running before 1990 [*Rivista trimestrale di diritto pubblico* (*Public Law Quarterly Review*), *Foro amministrativo* (*The Administrative Courts*) and *Diritto processuale amministrativo* (*Administrative Trial Procedure Law*)], four others with a general orientation were founded during the period under consideration: *Diritto amministrativo* (*Administrative Law*), *Diritto pubblico* (*Public Law*), *Diritto e processo amministrativo* (*Administrative Law and Trial Process Law*), and *Italian Journal of Public Law* (the first Italian public law review published directly in English). To these must be added the numerous specialist journals that have also seen a marked increase in number.

It appears that the vitality of academic reviews may be a good sign for future administrative law scholarship. So is the high quality of the monographs produced by the leading academics over the last twenty years ([179]). The latter have shown themselves to be more open to the

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([179]) In this context, references are limited to some of the most important monographs produced by young academics during the last twenty years: L. Torchia, *Le amministrazioni nazionali*, Padua, Cedam, 1988; C. Barbati, *Inerzia e pluralismo amministrativo. Caratteri, sanzioni, rimedi*, Milan, Giuffrè, 1992; R. Caranta, *Giustizia amministrativa e diritto comunitario*, Naples, Jovene, 1992; L. Torchia, *Il controllo pubblico della finanza privata*, Padua, Cedam, 1992; S. Cognetti, *Profili sostanziali della legalità amministrativa. Indeterminatezza della norma e limiti della discrezionalità*, Milan, Giuffrè, 1993; C. Franchini, *Amministrazione italiana e amministrazione comunitaria. La coamministrazione nei settori di interesse comunitario*, Padua, Cedam, 1993; G. Vesperini, *La Consob e l'informazione del mercato mobiliare*, Padua, Cedam, 1993; D. De Pretis, *Valutazione amministrativa e discrezionalità tecnica*, Padua, Cedam, 1995; F. Manganaro, *Principio di buona fede e attività delle amministrazioni pubbliche*, Naples, Edizioni scientifiche italiane, 1995; F. Saitta, *Contributo allo studio dell'attività amministrativa di esecuzione*, Naples, Edizioni scientifiche italiane, 1995; M.M. Cafagno, *La tutela risarcitoria degli interessi legittimi*, Milan, Giuffrè, 1996; G.D. Comporti, *Il coordinamento infrastrutturale. Tecniche e garanzie*, Milan, Giuffrè, 1996; G. della Cananea, *Indirizzo e controllo della finanza pubblica*, Bologna, il Mulino, 1996; M. Dugato, *Atipicità e funzionalizzazione nell'attività amministrativa per contratti*, Milan, Giuffrè, 1996; L. Ferrara, *Diritti soggettivi ad accertamento amministrativo*, Padua, Cedam, 1996; F. Fracchia, *Autorizzazioni amministrative e situazioni giuridiche soggettive*, Naples, Jovene, 1996; A. Zito, *Le pretese partecipative del privato nel procedimento amministrativo*, Milan, Giuffrè, 1996; A. Police, *La predeterminazione delle decisioni amministrative*, Edizioni scientifiche italiane, Naples, 1997; M. Renna, *Le società per azione in mano pubblica*, Edizioni scientifiche italiane, Naples, 1997; F. Fracchia, *L'accordo sostitutivo*, Padua, Cedam, 1998; D.U. Galetta, *Principio di proporzionalità e sindacato giurisdizionale nel diritto amministrativo*, Milan, Giuffrè, 1998; P.L. Portaluri, *Potere amministrativo e procedimenti consensuali. Studi sui rapporti a collaborazione necessaria*, Milan, Giuffrè, 1998; A. Sandulli, *La proporzio-*

social sciences and more inclined to a European, international and comparative approach.

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nalità dell'azione amministrativa, Padua, Cedam, 1998; M. IMMORDINO, *Revoca degli atti amministrativi e tutela dell'affidamento*, Turin, Giappichelli, 1999; G. VESPERINI, *I poteri locali*, 2 vols, Donzelli, Rome, 1999-2001; S. BATTINI, *Il rapporto di lavoro con le pubbliche amministrazioni*, Padua, Cedam, 2000; S. COGNETTI, *«Quantità» e «qualità» della partecipazione. Tutela procedimentale e legittimazione processuale*, Milan, Giuffrè, 2000; F. DE LEONARDIS, *Soggettività privata e azione amministrativa*, Padua, Cedam, 2000; G. DELLA CANANEA, *Gli atti amministrativi generali*, Milan, Giuffrè, 2000; F. MANGANARO, *Principio di legalità e semplificazione dell'attività amministrativa*, Naples, Edizioni scientifiche italiane, 2000; B.G. MATTARELLA, *L'imperatività dell'atto amministrativo. Saggio critico*, Padua, Cedam, 2000; A. POLICE, *Il ricorso di piena giurisdizione davanti al giudice amministrativo*, 2 vols, Padua, Cedam, 2000-01; M.M. CAFAGNO, *Lo Stato banditore. Gare e servizi locali*, Milan, Giuffrè, 2001; M. DUGATO, *Le società per la gestione dei servizi pubblici locali*, Ipsoa, Milan, 2001; G. NAPOLITANO, *Servizi pubblici e rapporti di utenza*, Padua, Cedam, 2001; A. PIOGGIA, *La competenza amministrativa*, Turin, Giappichelli, 2001; C. BARBATI, *L'attività consultiva nelle trasformazioni amministrative*, Bologna, il Mulino, 2002; S. BATTINI, *Amministrazioni senza Stato. Profili di diritto amministrativo internazionale*, cit.; A. BARTOLINI, *Nullità del provvedimento nel rapporto amministrativo*, Turin, Giappichelli, 2002; E. CHITI, *Le agenzie europee*, Padua, Cedam, 2002; M. OCCHIENA, *Situazioni giuridiche soggettive e procedimento amministrativo*, Milan, Giuffrè, 2002; G.D. COMPORTI, *Torto e contratto nella responsabilità civile delle pubbliche amministrazioni*, Turin, Giappichelli, 2003; G. DELLA CANANEA, *L'Unione europea. Un ordinamento composito*, Laterza, Rome/Bari, 2003; L. FERRARA, *Dal giudizio di ottemperanza al processo di esecuzione*, Milan, Giuffrè, 2003; D.U. GALETTA, *Violazione di norme sul procedimento amministrativo e annullabilità del provvedimento*, Milan, Giuffrè, 2003; G. GARDINI, *L'imparzialità amministrativa tra indirizzo e gestione*, Milan, Giuffrè, 2003; B.G. MATTARELLA, *Sindacati e pubblici poteri*, Milan, Giuffrè, 2003; G. NAPOLITANO, *Pubblico e privato nel diritto amministrativo*, Milan, Giuffrè, 2003; P.L. PORTALURI, *Poteri urbanistici e principio di pianificazione*, Jovene, Naples, 2003; A. SANDULLI, *Il sistema nazionale di istruzione*, Bologna, il Mulino, 2003; M.R. SPASIANO, *Funzione amministrativa e legalità di risultato*, Turin, Giappichelli, 2003; M. GNES, *La scelta del diritto*, Milan, Giuffrè, 2004; A. PIOGGIA, *Giudice e funzione amministrativa. Giudice ordinario e potere privato dell'amministrazione datore di lavoro*, Milan, Giuffrè, 2004; M. RENNA, *La regolazione amministrativa dei beni a destinazione pubblica*, Milan, Giuffrè, 2004; A. BARTOLINI, *Il risarcimento del danno tra giudice comunitario e giudice amministrativo*, Turin, Giappichelli, 2005; L. CASINI, *L'equilibrio degli interessi nel governo del territorio*, Milan, Giuffrè, 2005; F. DE LEONARDIS, *Il principio di precauzione nell'amministrazione di rischio*, Milan, Giuffrè, 2005; A. MALTONI, *Il conferimento di potestà pubbliche ai privati*, Turin, Giappichelli, 2005; B. MARCHETTI, *Pubblica amministrazione e Corti negli Stati Uniti*, Padua, Cedam, 2005; G. PIPERATA, *Tipicità e autonomia nei servizi pubblici locali*, Milan, Giuffrè, 2005; M. SAVINO, *I comitati dell'Unione Europea. La collegialità amministrativa negli ordinamenti compositi*, Milan, Giuffrè, 2005; S. CIVITARESE MATTEUCCI, *La forma presa sul serio. Formalismo pratico, azione amministrativa, illegalità utile*, Turin, Giappichelli, 2006; M. COCCONI, *Il diritto europeo dell'istruzione*, Milan, Giuffrè, 2006; L. TORCHIA, *Il*

These positive aspects are nevertheless flanked by at least two of a negative nature that must persuade legal science to self-reflection.

The first is to be found in an increasingly marked repetitiveness in the topics for study. These now rotate almost exclusively around domestic organisational models, the principles and instruments of administrative action and the administrative trial process. On the one hand, this denotes a lack of courage in the choice of topics, since such choice is decreasingly dictated by an exploratory intention to seek out new territories and increasingly shaped by dialogue with constitutional and administrative case-law i.e. reconstructive analysis of an abstract, theoretical kind. The end result is a legal science built on a reproduction of itself, directed at developing books out of other books rather than trying to show the new or hidden faces of administrative science. On the other hand, it is a worrying indication that the science of administrative law is suffering a crisis or state of stasis. Such condition derives, in some respects, from the difficulty that the current generation of mentors (i.e. academics growing up in the 1960s, 1970s and 1980s) is having in directing new generations towards «cutting-edge», ambitious, probing topics capable of leaving their mark. In other respects, it derives from the younger academics' inability to free themselves of the «protection» of the generations preceding them. Thus they persist in a hierarchical vision of the system that was formerly justified by the doubtless academic superiority of their mentors (one may think of the generations active at the beginning of the

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twentieth century or during the period after the Second World War) but that is now, with some exceptions, unjustifiable.

The second is to be found in the multiplication of «languages» used by scholars of administrative law. Following a process by which the academic community (fairly close-knit until the 1960s) has gradually become increasingly «splintered», one has the impression of operating in a sort of «administrative Babel». The younger generations' poor awareness of both the past and historical tradition as well as their increasingly marked «block» membership of small academic groups or schools has led to a now chronic difficulty in dialogue between academics operating in different areas. Such difficulty is not only encountered at a theoretical or conceptual level (which could just about be understandable) but actually involves questions of terminology and legal language.

The younger generations have a duty to construct a new system. Such duty primarily implies a significant and decided effort to orchestrate the best energies in a renewed commitment towards universities and research.

11. In recent years, the transformations affecting administrative law have been the subject of energetic and wide-ranging debate in some countries within the European Union (and in Germany, in particular). The increasing influence of economic, sociological and historico-political factors has been particularly noted. In this respect, Italy began renewing and reforming legal studies decades ago. As noted earlier and thanks to Massimo Severo Giannini and Feliciano Benvenuti, the study of administrative law has been increasingly influenced by the social sciences from the period immediately following the Second World War onwards. In 1955, Gianfranco Miglio was already noting the need for «the administration to re-find its own unitary science and thereby invert the centrifugal force of jurisprudential particularism». However, it was primarily from the mid-1960s (and with Sabino Cassese, in particular) that administrative law gradually forged connections not only with the other branches of law, in a unitary and «de-specialising» perspective, but also with the whole body of social sciences. Moreover, those years saw the beginning of a de-provincialisation of studies through closer comparative links with the main legal cultures (and not only the German and French ones to which Italian legal studies had traditionally been indebted). As of the 1980s and 1990s, Europeanisation and, subsequently, globalisation

resulted in a further acceleration of the process that opened legal studies to the influence of the other social sciences. So much so that jurists are nowadays also engaged in reassuming the leading role in the cultural debate that they had lost as a result of administrative law scholarship's isolation for the best part of the twentieth century. All the tesserae in this evolutionary mosaic converge upon the same focal point: an increasingly decided dissociation from the Orlandian legal method and the latter's definitive substitution.

As we have seen, the legal method introduced by Orlando had two main goals, both of which were dictated by circumstances arising at a precise moment in Italy's historical development. There was the politico-social aim of preserving both the unity of the State and the managerial role of the upper middle class and there was the legal policy aim of affirming the autonomy of a new area of legal study through a process of reduction and simplification that might allow the identification and study of specialist subjects. Thus, at the time, Orlando's theories constituted a significant innovation for late nineteenth-century Italian administrative law. The problem was that once the goal proposed by the Palermitan jurist had been achieved, no one realized that times had changed during the twentieth century. For more than fifty years, everything remained rigidly anchored to the starting point (indeed, some areas of public-law studies still are, even today). The greatest criticism that can be levelled against the major exponents of the Italian science of administrative law during the first half of the twentieth century is precisely that they were unable to look beyond their own administrative-law «patch» and thereby allowed the main processes of change to escape them. Thus, the factors resulting in administrative law's demise (caused by the grave world economic crisis during the late 1920s and 1930s) were totally lost on scholars of administrative law. They continued to cherish the illusion that they had encompassed the entire universe of administrative legal knowledge within a «perfect system».

Nowadays, facing an economic crisis of similar proportions and disoriented by the period of deconstruction and an era of frenetic reformism, administrative law scholars must be on their guard against falling victims to the same short-sightedness, albeit for reasons that differ from those of the past. Fragmentation, complexity, pluralism and development at various levels all make attempts at reconstruction, perception of the lines of development and even, in some cases, the identification of the principles governing the subject fraught with

difficulty. The reaction to the Orlandian method and openness to the other social sciences freed scholars of administrative law from the isolation into which they had fallen. The risk now is the opposite one, however. Jurists may allow their fascination for the other social sciences to distract them from legal analysis and prevent them from using the arsenal of their own legal techniques which, however one may choose to look at legal science, continue to be fundamental working tools for the legal craftsman. Thus the minutely descriptive style that manifested itself some time ago exclusively through an exegetic approach (directed merely at assembling rules and materials and devoid of any reasoning) is nowadays re-proposing itself in other guises (the transposition and application of exogenous notions in the legal field). Such guises are more persuasive but are equally incapable of achieving useful results unless they are accompanied by an appropriate legal elaboration. In short, whilst remaining open to interaction with the other social sciences, jurists must not renounce being jurists.

Comparative legal studies pose the same problem. In the past, administrative law was associated with excessive provincialism. It was held that legal comparison had no significant advantages to offer this branch of law, traditionally tied as it was to the evolution of nation States. Nowadays, the problem that presents itself is the opposite one: comparison is a widely used tool but, in operating by way of legal transplants, there is not always sufficient thought about the environment and cultural context in which the exogenous institutions and principles find themselves operating. The growing process of hybridization cannot do without the use of legal comparison but that use must be conscious and mature, aiming at improvements and not just change for change's sake.

The relationship between public law and private law has always been a focal point for the science of administrative law but the topic has become even more important in recent years. Private law's penetration of the administrative legal sphere can raise two separate issues. On the one hand, private law is an instrument of administrative law's «de-specialisation»: through its workings, the latter has become more egalitarian and the gap between citizens and the state has gradually been reduced. On the other, privatisation has led to a gradual reduction of the public sphere, based on the argument that privatisation and liberalisation could guarantee greater competitiveness, lower social costs, more efficient structures and better activities and services. From this last point of view, besides noting that the result

has not been totally positive (since the expected results have not been fully achieved), it should be considered that the tools and models require adaptation both to the historico-social and economic variables and to the environmental and cultural context. If this is so, the question arises as to whether the current difficult period of economic crisis might not foreshadow a new modification of the balance between public and private.

The process that has gradually led towards a unified law has also had an impact on the relations between administrative law and constitutional law. In this respect, the journey has been a circular one. During the foundational period spanning the late nineteenth century and the early twentieth century, the tie between constitutional law and administrative law was extremely close. Although Orlando and his contemporaries concentrated on demonstrating administrative law's scientific autonomy, they were at the same time enthusiasts of constitutional law, writing about one and the other subject indiscriminately in their capacity as scholars of public law. The fundamental German influence also played its part. So they were essentially scholars of *Staatsrecht* and were leaders of the State founded on the rule of law, with the consequence that the jurist also had a public (and political) role of fundamental importance. The situation gradually changed towards the beginning of the First World War. An autonomous disciplinary sector was created and the number of public competitions to select professors of administrative law increased, with the result that the two subjects slowly went their separate ways. However, during both the 1930s and the period following the Second World War, the greatest administrative law scholars were also enthusiasts of constitutional law (one may think of Zanobini, Giannini, Benvenuti and A.M. Sandulli, for example). The process of specialisation nevertheless led the majority of administrative law scholars to concentrate almost exclusively on the technical developments linked to that area of legal studies. Scholars of constitutional law did the same. From the 1960s onwards, they increasingly concentrated on the judgements issued by the Constitutional Court and these sometimes became the pre-eminent and almost exclusive area of interest for such academics. The gap between the two subjects was therefore emphasised during the period following the Second World War. Even between the 1960s and the 1990s, however, the best scholars of administrative law were those who also developed important contributions to constitutional law, thereby demonstrating the impossibility of splitting the two subjects. The

Europeanization of administrative law has led to another distancing, however, because administrative law scholars resolutely opened their subject to European law during the 1990s, whereas scholars of constitutional law adopted a more closed position, partly by virtue of the analogous attitude adopted by the Constitutional Court. It is only recently that some of the latest generation of academics have gone back to cultivating the original idea that one is not so much a scholar of administrative law or constitutional law as of law in general. Such notion is nevertheless accompanied by the idea that law cannot usefully be studied without developing an understanding of the other social sciences (history, philosophy, economics, sociology and political science). Account should nevertheless be taken of the fact that some scholars of administrative law continue to consider it a separate and autonomous subject. This group pays particular attention to the Council of State's orientations (and, nowadays, following the infiltration of European law, those of the European Court of Justice as well).

12. Italian administrative law has covered much ground over the last two centuries. Originally the law of the State, it is now, to a great extent, a law operating beyond the State. Formerly identified with the exercise of public power, it has become the vehicle for supplying services and disbursing funds. Once characterised by its special status, it increasingly frequently uses instruments governed by private law and, in many cases, creates a *jus commune* or mixed, public/private law.

The science of administrative law has played a fundamental part in this long journey. Very often it has guided law-making and case-law in the direction of development and reform. Periodically during these two centuries (particularly during periods when public intervention has appeared to retreat or enter a phase of regression, in concurrence with repeated crises of the State), it has been asked whether administrative law (and, consequently, its science) has not come close to extinction. As would emerge from previous observations, however, whether or not there is a withdrawal of public intervention depends on natural cycles in the economy and socio-political life of a civilisation: such intervention constitutes an indispensable element for any developed social community. Furthermore, administrative law has shown that it has the antibodies to be able to survive the greatest of changes and, indeed, extend to contexts that only a few years earlier would have been unthinkable. Administrative law had been seen at one with the

concept of the modern State (coming into existence with it) and inconceivable outside it. Nowadays, we know that there exists an active European administrative law that is capable of extending its area of influence and that global administrative law is also rapidly expanding its sphere of action. To conclude, it seems legitimate to predict that administrative law still has much ground to cover and that its science still has much to research and consider. The future of the subject is in the hands of a new generation of academics and depends on their creativity and ability to build. Their building must be based not only on a knowledge of the past (and its mistakes) but also on an awareness of the need to begin new explorations in order to discover, in a broader perspective and in what is as yet unfathomed, the *fil rouge* that holds the subject together.