
The new Italian public law scholarship

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1. Shifting paradigms in Italian public law scholarship: From Vittorio Emanuele Orlando to Massimo Severo Giannini

Traditional Italian public law scholarship was highly influenced by the German positivist and dogmatic approach to the study of law. As a consequence, it devoted greater attention to the “law in books” than to “law in action”; it adopted a systematic and conceptual attitude towards the legal order rather than a problem oriented view; and focused on interpreting the law, rather than on analyzing the conditions of legal change and reform.

Vittorio Emanuele Orlando (1860–1952), the founder of the Italian public law scholarship, declared in his 1889 “manifesto” that “the scholars of public law are too much interested in being philosophers, politicians, historians, and sociologists; and too little in being lawyers.”¹ He emphasized the need to keep public law scholarship autonomous from all forms of social science. Instead, he insisted that public lawyers should look for inspiration to their counterparts in private law, who, following the systematic and dogmatic reinterpretation of Roman law by the influential German jurist von Savigny and the Pandectists, had developed a consistent body of principles into a coherent doctrine. Orlando wielded a great deal of influence amongst his many followers, and thus was able to shape the entire field of public law scholarship in Italy in accordance with his ideas.

His “manifesto” was not merely an intellectual program. Orlando—who was born one year before the unification of Italy—had another purpose: to encourage the new

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¹ Vittorio Emanuele Orlando, *I criteri tecnici per la ricostruzione giuridica del diritto pubblico* (1889), in VITTORIO EMANUELE ORLANDO, *DIRITTO PUBBLICO GENERALE. SCRITTI VARI* (1881–1940) COORDINATI IN SISTEMA 3 (1954).

generations of lawyers to adopt a nationalistic attitude and to support the recently established state. The task of the lawyer was to harness his intellectual effort to the project of Italian state building.

Orlando's work and the school that he inspired were, however, full of unresolved tensions. In particular, while they emphasized the need for lawyers to remain neutral and faithful to the law, Orlando and many of his followers were also active either as politicians (Orlando himself was a Member of Parliament for thirty years, ten of which he spent in government), as administrators or judges (Orlando's star pupil, Santi Romano, was appointed by Mussolini as President of the Council of State, the highest administrative law judge in the country),² or as practicing lawyers, thus making an important contribution to the judicial process and to "law in action" more generally.

As a consequence, Italian public law scholarship prior to the mid-twentieth century—although working with a highly formalized body of concepts—was characterized by a number of defects. First, due to the heavy reliance on categories borrowed from the private law tradition, it lacked a conceptual apparatus capable of grasping the peculiar complexities of the state and its organization. Secondly, its exclusive focus on the "positive law," coupled with its decidedly nationalistic bent, meant that it had little interest in comparison. Thirdly, having glorified the law as a product of the will of the state, and therefore as a body of statutes and statutory instruments, it paid scant regard to more minor regulations, legal practices and customs, or constitutional conventions. Fourthly, as it was chiefly concerned with the nature and powers of the state as a legal person, the rights of citizens, and their relations with state authority were neglected. Finally, since the function of the lawyer was conceived as limited to the role of interpreter of the law, legal changes were viewed as irrelevant to jurisprudence.³

At the middle of the twentieth century, however, a shift in paradigms occurred. The need to rebuild the state after the collapse of the Fascist regime and the tragedy of the Second World War, the birth of the Republic in 1946, and the enactment of a democratic constitution in 1948 significantly transformed the Italian legal system. These changes engendered a new set of expectations, triggering a methodological shift in public law scholarship: legal analysis was no longer to be understood in the purely formal terms of conceptual jurisprudence. The actual impact of the new institutions of the democratic state could be appreciated and evaluated only by means of a genuinely interdisciplinary approach, combining insights drawn from the fields of history and

² Romano (1875–1947) is the author of a foundational work on the nature of the legal order, SANTI ROMANO, *L'ORDINAMENTO GIURIDICO* (1917), which has been translated into both German (*DIE RECHTSORDNUNG*, 1975) and French (*L'ORDRE JURIDIQUE*, 2002); surprisingly, however, not into English. Though written in 1917, Romano's theory still represents a basic point of reference for those seeking to address the concept of law and normativity: see Jan Paulsson, *Arbitration in Three Dimensions*, 60 *INT'L & COMP. L. Q.* 291, 307 *et seq.* (2011), and Benedict Kingsbury, *The Concept of "Law" in Global Administrative Law*, 20 *EUR. J. INT'L L.* 23 (2009).

³ These defects were also due to the fact that, in the first half of the twentieth century, another important source of inspiration for Italian public law scholars had been the Austrian jurist Hans Kelsen and his "pure theory of law," according to which ideologies and empiricism have no place in legal analysis, and lawyers cannot address questions as to the fairness of the law (i.e., legal scholarship must be "wertfrei").

sociology, political science and economics, and comparative law and institutions. A “realist revolution” was needed in order to address—and to harness—the transformations of the legal system.

The leading figure in this movement of intellectual renewal was Massimo Severo Giannini (1915–2000), a talented jurist and professor at the University of Rome “Sapienza” Law School whose legal work was heavily influenced by his broader cultural interests.⁴ Giannini and a few of his contemporaries (such as Feliciano Benvenuti and Mario Nigro) began a historical study of the concept of the state and the rise of administrative bodies: by mixing a dogmatic approach with a realist one, they were able to conceptualize the pillars of the new democratic state that came into existence in the aftermath of the Second World War.⁵ This was the first time in its history that Italian legal scholarship devoted attention to history and to politics, making use of quantitative data and analyzing administrative practices. Legal change became an important area of study, while the traditional private law approach lost its central role. However, the study of administrative law remained one of the last enclaves of nationalism within the legal academy. Even with the new focus on comparative perspectives, the French and German legal traditions were still the most important points of reference. Only Giannini was well-known abroad, particularly in Europe and in Latin America.⁶

2. The new Italian public law scholarship: Distinctive features and main achievements

Since the 1950s, then, as a result of the shift in paradigms outlined above, a new Italian public law scholarship has been developing. Despite the fact that it was initially composed only of a minority of scholars working in the field, it has managed to produce a number of significant results in a wide range of sectors in the last sixty years.⁷

⁴ See generally the work widely regarded as his “manifesto”: Massimo Severo Giannini, *Profili storici della scienza del diritto amministrativo*, 28 *STUDI SASSARESI* 133 (1940), reprinted in *QUADERNI FIORENTINI PER LA STORIA DEL PENSIERO GIURIDICO MODERNO* 179 (1973). On Giannini’s life and works, see *L’UNITÀ DEL DIRITTO*, MASSIMO SEVERO GIANNINI E LA TEORIA GIURIDICA (Sabino Cassese, Gaetano Carcaterra, Marco D’Alberti, & Andrea Bixio eds., 1994), and issue no. 4/2000 of the *RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO* [hereinafter *Riv. Trim. D. Pub.*]

⁵ MASSIMO SEVERO GIANNINI, *LEZIONI DI DIRITTO AMMINISTRATIVO* (1950); MASSIMO SEVERO GIANNINI, *DIRITTO AMMINISTRATIVO* (3d ed. 1993; 2d ed. 1988; 1st ed. 1970). The complete works of Giannini are now collected in 10 volumes, published between 2000 and 2008; see also MASSIMO SEVERO GIANNINI (Sabino Cassese ed., 2010). The complete works by Benvenuti were collected in 5 volumes published in 2006, and those by Nigro in 3 volumes published in 1996.

⁶ Some articles on the Italian administrative system by Benvenuti were published in Germany in the 1950s and 1960s: see, e.g., Feliciano Benvenuti, *Die italienische Verwaltung und der Entwurf eines Gesetzes über das Verwaltungsverfahren*, 49 *VERWALTUNGSRARCHIV* 1 (1958).

⁷ An overview can be found in Bernardo G. Mattarella, *Administrative Law in Italy: An Historical Sketch*, *Riv. Trim. D. Pub.* 1009 (2010), and Aldo Sandulli, *Administrative Law Scholarship in Italy (1800–2010)*, *Riv. Trim. D. Pub.* 1055 (2010). These two articles have been also published in German in *IUS PUBLICUM EUROPAEUM. GRUNDLAGEN STAALICHEN VERWALTUNGSRECHT IN EUROPA III* (Armin von Bogdandy, Sabino Cassese, & Peter M. Huber eds., 2010). See also *LA SCIENZA DEL DIRITTO AMMINISTRATIVO NELLA SECONDA METÀ DEL XX SECOLO* (Luisa Torchia, Edoardo Chiti, Rita Perez, & Aldo Sandulli eds., 2008).

The new Italian public law scholarship has several distinctive features. Although it originally developed in the field of administrative law, it has made important contributions to a number of key issues in constitutional law, such as the concept of the state and the study of the constitution more generally. It combines attention to tradition with a concern for innovation. It is not confined within the borders of the discipline of public law, but it confronts issues that are at the intersection of law, politics, economics, and sociology. It is characterized by lateral thinking and methodological pluralism. It complements the study of statutes with the study of judicial decisions. It is engaged not only in analysis of the law, but also in projects of legal reform, participating in numerous different ways in the legal process. It has established strong and permanent links with many European (French, German, British, Spanish), and some non-European (in particular American) legal cultures.⁸

These Italian scholars, drawing inspiration from historical work in related fields, have developed a sophisticated line of research into legal history and comparative law. They have analyzed the evolving organization and functions of legal institutions over time, making some significant contributions to the history of ideas in the process; and they have successfully reinterpreted the blueprint of the Italian administrative system through a comparative analysis with other European systems and a conceptual reworking of the public/private divide. Finally, their openness to and curiosity about emerging areas of their discipline led them to explore the supranational dimension of public law earlier than their other European and American colleagues; and they have greatly contributed to the increasingly important body of research on the Europeanization and globalization of law, in collaboration with foreign scholars.

2.1. The sensibility to the past: History involves comparison, comparison involves history⁹

Since the beginning of the 1970s, Italian scholarship has examined the convergences and divergences between national systems by adopting a historical-comparative approach.

According to this body of research, the system of administrative law emerged in tandem with the separation of executive powers from judicial functions. Both administrative systems and administrative law developed in the specific context of the

⁸ Foreign law professors regularly write in Italian public law journals, such as the *RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO* (founded in 1951) and *DIRITTO PUBBLICO* (founded in 1995); they are members of the *Associazione italiana dei professori di diritto amministrativo* and of the research institute on public administration *Istituto di ricerca sulla pubblica amministrazione* (IRPA). In 2009, a group of scholars from different Italian universities, with the support of scholars from other countries, established the *ITALIAN J. PUB. L.*, a law review published entirely in English, available at www.ijpl.eu. See also the European Integration-New Italian Scholarship (ELINIS) Project, launched in 2006 by the Faculty of Law at the University of Trento (Prof. Roberto Toniatti and Dr. Marco Dani) and the Jean Monnet Center at New York University (Prof. Joseph H.H. Weiler), which ended with the publication, in 2007 and in 2008, of several articles by Italian scholars in the NYU Jean Monnet Working Papers Series (see <http://www.jus.unitn.it/elinis> and <http://centers.law.nyu.edu/jeanmonnet/papers/index.html>).

⁹ See GINO GORLA, *IL CONTRATTO. PROBLEMI FONDAMENTALI TRATTATI CON IL METODO COMPARATIVO E CASISTICO I v et seq.* (1954), who first reverted the famous F.W. Maitland's sentence "History involves comparison."

nation-states. Whether in “stateless” countries like the UK, *étatiste* ones like France, or those with a low level of “stateness” like Italy or Poland, the legal environment within which all administrative systems developed was dominated by a national government within a unitary political body (the state). Given this parallel development in a number of different states, public administrations have normally been conceived of as belonging to a particular national community and as depending structurally upon national governments. Administrative systems and administrative law were, however, shaped according to the needs of different models of the state; and, as individual states developed along divergent lines, administrative systems diverged accordingly.¹⁰

The “Italian style”—elsewhere described by John Merryman—here consists in escaping from rigid and traditional oppositions between common law and civil law systems, monist and dualist legal orders.¹¹ Since then Italian scholars have produced numerous significant works on comparative administrative law in general, and on particular topics such as the regulation of administrative procedures, institutional frameworks, and judicial review.¹²

Furthermore, the new Italian public law scholarship, with its characteristically historical-comparative approach, has made major contributions both to the history of the Italian state and to the history of Italian public law thought.¹³

In terms of the former, it has highlighted the limited influence of the Napoleonic model on Italian state institutions; it has drawn attention to the important phenomenon referred to as the “southernization” of the civil service from the beginning of the twentieth century onwards; it has examined the strategic role played by the central bureaucracy in the process of economic development that took place from 1900–20 (in terms of which Italy was a relative latecomer, when compared to France and the UK); it has shed light on the ambiguities of the Italian “corporatist” State from 1925–43, in comparison with the experiences in Portugal and Spain; and it has studied the divergent natures of the Italian and French prefectures.

In terms of the history of ideas in Italian public law, it has highlighted the positivist revolution in Italian scholarship, led by Vittorio Emanuele Orlando, and its Germanic influences; and it has analyzed in detail the continuity of Italian legal thought from the end of the nineteenth until the middle of the twentieth centuries—and the crucial role played by Massimo Severo Giannini in bringing about a fundamental shift

¹⁰ Sabino Cassese, *The Rise of The Administrative State in Europe*, Riv. Trim. D. Pub 981 (2011); Bernardo Sordi, *Révolution, Rechtsstaat and the Rule of Law: Historical Reflections on the Emergence of Administrative Law in Europe*, in *COMPARATIVE ADMINISTRATIVE LAW 23* (Susan Rose-Ackerman & Peter L. Lindseth eds., 2010).

¹¹ The formula “Italian style” was used by John H. Merryman in his three seminal articles published in the eighteenth volume of *THE STANFORD LAW REVIEW* (1965–1966). He also edited, with Mauro Cappelletti and Joseph M. Perrillo, a book on *THE ITALIAN LEGAL SYSTEM: AN INTRODUCTION* (1967). The issue of the oppositions between common law and civil law systems, monist and dualist legal orders, has been thoroughly analyzed by SABINO CASSESE, *LA CONSTRUCTION DU DROIT ADMINISTRATIF: FRANCE ET ROYAUME-UNI* (2000).

¹² MARCO D’ALBERTI, *DIRITTO AMMINISTRATIVO COMPARATO* (1990), and *DIRITTO AMMINISTRATIVO COMPARATO* (Giulio Napolitano ed., 2007); see also *IL DIRITTO AMMINISTRATIVO DEI PAESI EUROPEI TRA OMOGENEIZZAZIONE E DIVERSITÀ CULTURALI* (Giandomenico Falcone ed., 2005).

¹³ ALDO SANDULLI, *CONSTRUIRE LO STATO. LA SCIENZA DEL DIRITTO AMMINISTRATIVO IN ITALIA (1800–1945)* (2009).

in paradigms with the consequential decline in influence of the German “dogmatic” approach to jurisprudence.¹⁴

2.2. Reframing the administrative state

Since the last two decades of the twentieth century, Italian scholars have devoted themselves to the analysis of the administrative state “in action,” and to the conceptual reframing of administrative law in an age of radical reforms. The best and worst practices of Italian public administration have been critically assessed, with a view to making concrete proposals for reform;¹⁵ and the conceptual basis of administrative law have been extensively reviewed, with traditional understandings of the scope and limits of the field subjected to sustained and critical scrutiny.¹⁶

The meaning of the distinction between public law and private law has been also reassessed. Moving beyond the ideological oppositions that dominate the English legal culture (in which such distinction barely exists) and the French one (in which it plays a crucial structuring role), Italian scholars have reconceived public and private law as “intersecting” legal orders. The public law/private law relation has thus been reinterpreted—within the field of administrative law at least—to be one of dialectical interaction rather than conceptual opposition and mutual exclusion: the scope of each fluctuates in every case in function of the particular public ends to which administrative action is directed.¹⁷

In addition, Italian scholars—who are generally more in favor of privatization and liberalization than their colleagues from continental Europe—have analyzed the similarities and differences between American and European modes of regulation and antitrust,¹⁸ and the new legal framework regulating “services of general interest.”¹⁹ In the aftermath of the global financial crisis, crucial questions relating to the role of the state—both referring to the management of the troubled markets and to the danger

¹⁴ SABINO CASSESE, *CULTURE ET POLITIQUE DU DROIT ADMINISTRATIF* (Marcel Morabito trans., 2008) (1971); see also PAOLO GROSSI, *SCIENZA GIURIDICA ITALIANA: UN PROFILO STORICO, 1860–1950* (2000).

¹⁵ SABINO CASSESE, *IL SISTEMA AMMINISTRATIVO ITALIANO* (1983), and *IL SISTEMA AMMINISTRATIVO ITALIANO* (Luisa Torchia ed., 2009).

¹⁶ At the end of the twentieth century, a comprehensive Treatise of Administrative Law was published: *TRATTATO DI DIRITTO AMMINISTRATIVO* (Sabino Cassese ed., 1st ed. 2000, 6 vols.; 2d ed. 2003, 7 vols.). A few years later a dictionary of public law was also published: *DIZIONARIO DI DIRITTO PUBBLICO* (Sabino Cassese ed., 2006, 6 vols.).

¹⁷ GIULIO NAPOLITANO, *PUBBLICO E PRIVATO NEL DIRITTO AMMINISTRATIVO* (2003). See also VINCENZO CERULLI IRELLI, *DIRITTO PRIVATO DELL'AMMINISTRAZIONE PUBBLICA* (2008), who underlined the role of private law in reforming of the public sector.

¹⁸ GIULIANO AMATO, *ANTITRUST AND THE BOUNDS OF POWER: THE DILEMMA OF LIBERAL DEMOCRACY IN THE HISTORY OF THE MARKET* (1997); *THE ANTICOMPETITIVE IMPACT OF REGULATION* (Giuliano Amato & Lauraine L. Laudati eds., 1997); Marco D'Alberti, *Administrative law and the public regulation of markets in a global age*, in *COMPARATIVE ADMINISTRATIVE LAW*, *supra* note 10, at 63; and *INDEPENDENT ADMINISTRATIVE AUTHORITIES* (Roberto Caranta ed., 2004).

¹⁹ Giacinto della Cananea, *The regulation of public services in Italy*, 68 *INT'L REV. ADMIN. SCI.* 73 (2002), and Giulio Napolitano, *Towards a European Legal Order for Services of Economic General Interest*, *EUR. PUB. L.* 565 (2005). See also DANIELE GALLO, *I SERVIZI DI INTERESSE ECONOMICO GENERALE. STATO, MERCATO E WELFARE NEL DIRITTO DELL'UNIONE EUROPEA* (2010).

of a sovereign debt default—have again come to the fore, and are now the subject of ongoing research projects and analyses.²⁰

2.3. Exploring new fields: Pioneering studies in EU and global law

Since the 1980s, Italian scholarship has played a pioneering role in the study of the new legal issues that have arisen in the context of European integration.²¹ Italian scholars have made important contributions to a whole host of issues, ranging from mixed administrative proceedings and composite administrations at the EU level, the nature and role of European agencies, the comitology process, and the various forms of legal integration between different levels of administration,²² not to mention issues relating to the constitutional basis of European public law and human rights.²³ They have been among the first to analyze the administrative law dimension of the European Community, publishing important textbooks,²⁴ founding a law journal on EU public law (the *Rivista italiana di diritto pubblico comunitario*), and editing the *Treatise on European Administrative Law*²⁵—the first ever work of its kind. This expertise has also permitted the new Italian public law scholarship to explore the increasing—if still under-researched—relations between global and European administrative law.²⁶

Since the start of the new century, Italian public law scholars have, alongside their counterparts in the American academy, been at the forefront of research into the legal effects of globalization.²⁷

²⁰ Giulio Napolitano, *The role of the State in (and after) the financial crisis*, in *COMPARATIVE ADMINISTRATIVE LAW*, *supra* note 10, at 569.

²¹ It is also worth bearing in mind that Italy was one of the six founding members of the European Community, and that the European University Institute was established in Florence in the 1970s.

²² See Giacinto della Cananea, *The European Union's Mixed Administrative Proceedings*, 67 L. & CONTEMP. PROB. 197 (2005); Edoardo Chiti, *An Important Part of the EU's Institutional Machinery: Features, Problems and Perspectives of European Agencies*, 46 COMMON MARKET L. REV. 1395 (2009).

²³ MARTA CARTABIA & JOSEPH H. H. WELER, *L'ITALIA IN EUROPA. PROFILI ISTITUZIONALI E COSTITUZIONALI* (2000); GIULIANO AMATO & JACQUES ZILLER, *THE EUROPEAN CONSTITUTION: CASES AND MATERIALS IN EU AND MEMBER STATES' LAW* (2007); Giacinto della Cananea, *Is European Constitutionalism Really "Multilevel"?*, *ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT* 283 (2010); Marta Cartabia, *Europe and Rights: Taking Dialogue Seriously*, 5 EUR. CONST. L. REV. 5 (2009); and also Federico Fabbrini, *The European Multilevel System for the Protection of Fundamental Rights: A 'Neo-Federalist' Perspective*, Jean Monnet Working Paper No. 15/2010 [<http://centers.law.nyu.edu/jeanmonnet/papers/10/101501.pdf>].

²⁴ MARIO PILADE CHITI, *DIRITTO AMMINISTRATIVO EUROPEO* (1st ed. 2000; 3d ed. 2008); Mario Pilade Chiti, *Forms of European Administrative Action*, 68 L. & CONTEMP. PROB. 37 (2004); GIACINTO DELLA CANANEA & CLAUDIO FRANCHINI, *I PRINCIPI DELL'AMMINISTRAZIONE EUROPEA* (2010).

²⁵ *TRATTATO DI DIRITTO AMMINISTRATIVO EUROPEO* (Mario P. Chiti & Guido Greco eds.; 1st ed. 1996, 3 vols.; 2d ed. 2007, 7 vols.).

²⁶ *GLOBAL ADMINISTRATIVE LAW AND EU ADMINISTRATIVE LAW* (Edoardo Chiti & Bernardo Giorgio Mattarella eds., 2011); Giacinto della Cananea, *Beyond the State: the Europeanization and Globalization of Procedural Administrative Law*, 9 EUR. PUB. L. 563 (2003); and Elisa D'Alterio, *From Judicial Comity to Legal Comity: A Judicial Solution to Global Disorder?*, in this issue. See also *GLOBAL AND EUROPEAN CONSTRAINTS UPON NATIONAL RIGHT TO REGULATE: THE SERVICES SECTOR* (Gulio Vesperini & Stefano Battini eds., February 29, 2008), available at <http://ssrn.com/abstract=1099844>.

²⁷ See STEFANO BATTINI, *AMMINISTRAZIONI SENZA STATO* (2003); Sabino Cassese, *Global Standards For National Administrative Procedure*, 68 L. & CONTEMP. PROB. 109 (2005); and 6(3) *GLOBAL JURIST Special Issue: Global Administrative Law and Global Governance* (Sabino Cassese & Martina Conticelli eds., 2006).

When compared to scholarship from other countries on this issue, however, the Italian one presents at least two distinctive features.

First, Italian scholars have examined global legal issues from a more comprehensive perspective: they have focused not only on global rule-making and adjudication (as in the US), or on the exercise and limits of public authority by global bodies (as in Germany), or on vertical relationships between States and international organizations (as in France), but also on many facets thus far neglected, such as the role of private actors both as authors and addressees of regulation,²⁸ the organizational aspects of international institutions, the role of the rule of law and due process in the global space,²⁹ the techniques of global governance,³⁰ the issuance of global standards for national democracies, and the enforcement of global decisions.³¹ The new Italian public law scholarship, therefore, has been able to reinterpret in terms of global law issues that have been traditionally studied by public international lawyers or international institutional lawyers,³² or even private lawyers,³³ thus illustrating on the legal implications of global governance.³⁴

Secondly, and consistently with this more comprehensive approach, the new Italian public law scholarship in many ways represents a synthesis of the various European and American legal traditions: freer than the Germans from dogmatism and normativity, less dominated than the French by the myth of the State, and keener than the British and Americans on confronting the organizational—and mainly

²⁸ Stefano Battini, *International Organizations and Private Subjects: A Move Toward a Global Administrative Law?*, ILLJ WORKING PAPER 2005/03 (Global Administrative Law Series); and Maurizia De Bellis, *Public Law and Private Regulators in the Global Legal Space*, in this issue.

²⁹ See Giacinto della Cananea, *Procedural Due Process of Law Beyond the State*, in *THE EXERCISE OF PUBLIC AUTHORITY BY INTERNATIONAL INSTITUTIONS: ADVANCING INTERNATIONAL INSTITUTIONAL LAW* 965 (Armin von Bogdandy, Rüdiger Wolfrum, Jochen von Bernstorff, Philipp Dann, & Matthias Goldmann eds., 2009); and Sabino Cassese, *A Global Due Process?*, in *VALUES IN GLOBAL ADMINISTRATIVE LAW* (Gordon Anthony, Jean-Bernard Auby, John Morison, & Tom Zwart eds., 2011). See also Mario Savino, *Global Administrative Law Meets “Soft” Powers: The Uncomfortable Case of Interpol Red Notices*, 43 N.Y.U. J. INT’L & POL. (2010); and Barbara Marchetti, *The WTO Dispute Settlement System: Administration, Court or “Tertium genus”?*, 32 SUFFOLK TRANS’N L. REV. 567 (2009). See also Sabino Cassese, *Global Standards for National Democracies?*, RIV. TRIM. D. PUB. 701 (2011).

³⁰ Giulio Napolitano, *The Two Ways of Global Governance after the Financial Crisis: Multilateralism versus Cooperation among Governments*, in this issue.

³¹ An overview can be found in *GLOBAL ADMINISTRATIVE LAW: CASES, MATERIALS, ISSUES* (Sabino Cassese, Bruno Carotti, Lorenzo Casini, Marco Macchia, Euan MacDonald, & Mario Savino eds., 2d ed. 2008; 3d ed. forthcoming 2012). See also the papers presented at the Global Administrative Law Seminar, which has been held yearly in Viterbo, Italy, since 2005, available at www.irpa.eu/category/gal-section/gal-seminars/.

³² Benedict Kingsbury & Lorenzo Casini, *Global Administrative Law Dimensions of International Organizations Law*, 6(2) INT’L ORGANIZATIONS L. REV. Special Issue: Global Administrative Law in the Operations of International Organizations 319 (Laurence Boisson de Chazournes, Lorenzo Casini, & Benedict Kingsbury eds., 2009).

³³ See Lorenzo Casini, *The Making of a Lex Sportiva by the Court of Arbitration for Sport*, 12 GERMAN L. J. 1317 (2011), and LORENZO CASINI, *IL DIRITTO GLOBALE DELLO SPORT* (2010).

³⁴ See Stefano Battini, *The Procedural Side of Legal Globalization: The Case of the World Heritage Convention*; and Lorenzo Casini, *“Italian Hours”: The Globalization of Cultural Property Law*, in this issue; see also Elena Mitzman, *The Proliferation of Independent Accountability Mechanisms in the Field of Development Finance*, Jean Monnet Working Paper n. 14/2010 [<http://centers.law.nyu.edu/jeanmonnet/papers/10/101401.pdf>].

administrative—dimensions of public authorities, Italian scholars have brought to bear a richer set of theoretical and practical perspectives on the debates surrounding global governance.³⁵

3. Future tasks: Towards a multipolar public law?

Where can the new Italian public law scholarship go from here? What will be its major tasks in the decades to come?

The first main task is to decouple the study of public law from its traditional nationalistic bases. According to this tradition, public law is of necessity national in character, and the “final frontier” of the lawyer is comparison meant as a pure scholarly exercise. On the contrary, public law is now grounded worldwide on some basic and common principles, such as proportionality, the duty to hear and provide reasons, due process, and reasonableness. These principles have different uses in different contexts, but they share common roots.

The second task is to take into account the bent of each national law toward regional law (such as EU law) and global law. If the leading figures of the past labored (to a very high degree in Germany and Italy, less so in France and the UK) to establish the primacy of national constitutional law (“*Verwaltungsrecht als konkretisiertes Verfassungsrecht*”), today the more pressing task is to ensure that the increasingly important role of supra-national legal orders is widely acknowledged. If once public law was state-centered, it should now be conceived as a complex network of public bodies (infranational, national, and supranational).

The third task is to rebuild an integrated view of public law. Within legal scholarship, constitutional law, administrative law, and the other branches of public law have progressively lost their unity: the field of constitutional law, for instance, is increasingly dominated by the institution and practice of judicial review; and most administrative lawyers have been overwhelmed by the fragmentation of legal orders, which has led them to abandon all efforts at a theoretically comprehensive approach. The time has come to seek to reestablish some form of unitary and systematic perspective on public law in general.

The new Italian public law scholarship seems well equipped to address these challenges. However, a condition for success is the ongoing cooperation with other scholars through a continuous exchange of legal traditions and by adopting a multidisciplinary approach, free from the limits imposed by artificial boundaries. This is what this Italian symposium has sought to achieve.

³⁵ Sabino Cassese, *The Globalization of Law*, 37 N.Y.U. J. INT'L L. & Pol. 973 (2005); Giandomenico Falcon, *Internationalization of Administrative Law: Actors, Fields and Techniques of Internationalization: Impact of International Law on National Administrative Law*, 18 REVUE EUROPÉENNE DE DROIT PUBLIC 217 (2006).