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# **THE GLOBAL ECONOMY, ACCOUNTABLE GOVERNANCE, AND ADMINISTRATIVE REFORM**

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The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations or its Member States.

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## 1. The Impact of Globalization on the State

The processes of administrative reform in the major European countries have undergone a sudden acceleration in the last quarter of the 20<sup>th</sup> century. In this period, public administration reform became a stable and autonomous policy, occupying a prominent position on the political agenda.<sup>1</sup> One of the factors often mentioned to explain this acceleration is “globalization”, a complex phenomenon linked to the internationalization of markets, the increased transnational transactions in goods and services, the success of multinational corporations, the spread of new information technologies and the extension of the effects of national decisions beyond States’ territorial boundaries.<sup>2</sup>

There are many global pressures to change the machinery of the State. First of all, economic globalization creates competition between different national regulators and administrative systems, exposing them to the judgment of the market. Moreover, we are seeing a widespread diffusion of techniques, originating in the private sector and known as *New Public Management*, for increasing the efficiency of the public sector. A further push towards reform is tied to technological development: public administrations are expected to keep pace with technological innovation to improve their own efficiency, to bear comparison with private enterprises and to protect the national system from being displaced by global dynamics.<sup>3</sup>

The impact of globalization on the machinery of the State introduces at least three other tendencies, to be examined below. Each one of them challenges a postulate of the traditional theory of the State.

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<sup>1</sup> S. Cassese, *L'età delle riforme amministrative*, in *Rivista trimestrale di diritto pubblico*, 2001, n. 1, p. 81 s.

<sup>2</sup> For an evaluation of the impact of globalization on States’ main social and economic indicators and institutions, see United Nations – Department of Economic and Social Affairs, *World Public Sector Report: Globalization and the State*, New York, 2001; especially interesting are two statistics set forth in this report: according to the first, from 1990 to 1998, the percentage of the world’s population that lived on less than one dollar a day fell from 29 percent to 24 percent (p. 22); according to the second, the proportion of democratic countries rose from less than 30 percent in 1974 to over 60 percent by 1998 (p. 73). The somewhat contradictory nature of these statistics suggests the complexity of the phenomenon.

<sup>3</sup> Cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report 2003: E-Government at the Crossroads*, New York, 2003.

### 1.1. The Network of Supranational Public Powers

The first tendency is the emergence of ultra-state powers, both at the global level (the United Nations, the World Trade Organization, the World Bank, etc.) and at the regional level (the European Union, Mercosur, NAFTA, etc.). The rise of a system of global governance undermines the postulate according to which the State is the only (or the main) actor on the international scene. This system enables States to keep globalization under control. The absence of a sovereign means that we cannot speak of a *global government*: the global legal space is instead an aggregate of general and sectoral organizations, structured in a weblike – rather than hierarchical – form.<sup>4</sup>

In the course of the 20<sup>th</sup> century, most international organizations have assumed the following characteristics: they are open to the participation of all States and they have intergovernmental decision-making bodies and independent secretariats charged with proposal and implementation. In the second half of the 20<sup>th</sup> century, however, two changes occurred. The first regards the functions of such powers: alongside the traditional international public powers, conceived as *fora* for discussion, bodies emerged which were endowed with regulatory powers and specific tasks. The second change consists in the exponential increase in the number of such organizations. They were 123 in 1951,<sup>5</sup> while currently there are some two thousand international organizations.<sup>6</sup> By contrast, there are only around two hundred States. This fact suggests the mutated picture of public powers in the age of globalization: from an international legal order dominated by States, as it was a century ago, it has become a global legal order made up, for the most part, of ultra-national public powers. This phenomenon thus calls State-centric model into question: the State has not been “overcome”;<sup>7</sup> still, “it is no longer the only public power, dominating, directing and overseeing minor bodies,

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<sup>4</sup> S. Cassese, *La crisi dello Stato*, Roma-Bari, Laterza, 2002, p. 14 ss.; Id., *Lo spazio giuridico globale*, Roma-Bari, Laterza, 2003, p. 6 ss.

<sup>5</sup> S. Cassese, *Relations between International Organizations and National Administrations*, in IISA, *Proceedings, XIXth International Congress of Administrative Sciences*, Berlin, 1983, p. 165.

<sup>6</sup> Not to mention some three thousand non-governmental organizations: cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report: Globalization and the State*, cit., p. 30.

<sup>7</sup> Cfr. K. Ohmae, *The End of the Nation State: The Rise of Regional Economies*, London, Harper Collins, 1995.

but it is one of the many existing public powers, conditioned – to use a generic term – by other public powers, some at the supra-state level, others at the domestic level”.<sup>8</sup>

The development of *global governance* has a number of implications for the State machinery. The most obvious is the State’s transferal of functions to international bodies. The State’s field of action has narrowed, especially in the area of regulation. This creates the need to establish more effective means of coordinating the national executive with supranational powers, both in the “upwards” phase, in order to represent national interests before supranational bodies, as well as in the “downwards” phase, in order to properly implement their decisions.

## **1.2. Networks of Global-Based National Powers**

The second tendency is the rise of national powers that act on a global basis. The States disaggregate. Individual administrations establish cooperative relationships with corresponding bodies in other States. A second postulate of the theory of the State, the State as a unitary actor at the international level, thus enters into crisis.

It is no longer the State as such that acts in international relations through its government, but rather individual sectoral administrations, both governmental and non-governmental. This is demonstrated by the example of national independent agencies, like the antitrust authority or the regulatory authority. In the last twenty years such authorities have multiplied in many OECD countries.<sup>9</sup> Their functions are increasingly defined at the supranational level. These sectoral administrations are organized into regulatory networks at both the European level (for example, the European Group of Regulators in the telecommunications sector) and the global level (the Basel Committee, IOSCO and IIAS). Their independence from their national governments facilitates cooperation with the corresponding administrations in other countries and the creation of stable transnational networks, based on credibility and mutual trust. Domestic polycentrism is thus reflected beyond the national legal systems.

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<sup>8</sup> M.S. Giannini, *Amministrazione pubblica*, in *Enciclopedia delle scienze sociali*, vol. I, Rome, Istituto della Enciclopedia Italiana, 1991, p. 193 (here translated from Italian); see also Id., *Il pubblico potere. Stato e amministrazioni pubbliche*, Bologna, Il Mulino, 1986.

<sup>9</sup> A contrary tendency can be seen in the American and Australian experiences: in these systems, the maturity of market competition has enabled some regulatory authorities to be abolished.

Like the creation of supranational powers, the cooperation between national authorities on a global scale is another way for States to compensate for the “deterritorialization” of economic activities. Law and public institutions follow the lead of the economy. The expansion of the “parastate” bodies accentuates the fragmentation of powers. The central government loses control over the many administrations that enter into the web of transnational networks: it no longer has absolute power to direct their policy choices. As a consequence, the paradigm of the State as a unit brakes down.

This phenomenon creates further pressure for change. First of all, the rising number of national authorities acting at the international level creates a “Balkanization” of the executive power. This requires corrective measures: in order to prevent polycentrism from weakening their capacity to govern the internal administrative system, central powers test new mechanisms for internal coordination. Secondly, the administrations operating at the global level are challenged by partner administrations to become more efficient. The authorities that best represent their respective States at the global level – in terms of expertise, credibility, implementation capacity, etc. – are more likely to influence the outcome of supranational and international decision-making processes.

### **1.3. Global Standards for National Powers**

This brings us to the third tendency, which regards the subjection of national powers to global standards. Global procedural standards dictating the principles and criteria to which national administrations ought to conform are particularly widespread in the area of trade in services. Some examples are the *Agreement on the application of sanitary and phytosanitary measures* (SPS), the *Agreement on technical barriers to trade* (TBT) or the *General Agreement on trade in services* (GATS), all laid down by the *World Trade Organization*; or the *Principles for food import and export inspection and certification system* (FIEIC), defined by the *Codex Alimentarius Commission*. These norms seek to prevent barriers to international trade (i.e. health or consumer protection measures effectively introduced in order to favor national products and impede the importation of foreign products). To this end, these international norms establish duties of transparency, standards to be respected, procedures of notice and comment and procedural requirements upon the national activities of certification and oversight.

On the one hand, national administrations are required to respect the procedural principles and criteria laid down by international bodies. On the other hand, private actors, even those belonging to legal systems other than that of the relevant administrations, may enjoy rights (for example, to participation) deriving from global standards.<sup>10</sup>

This strikes yet another blow at the traditional theory of the State. Not only does the postulate of the exclusivity of the State as the creator of (domestic) law reveal itself as misplaced. The dualist conception that isolates international from national law falls victim as well. The existence of global standards imposed upon national administrations to the advantage of private actors refutes the assumption underlying this conception: that international law can directly effect national administrations and the private actors operating in their jurisdiction only by means of a national incorporating law.

## 2. Effects

The three tendencies described above – the emergence of supranational powers, the development of globally-based networks of national powers, and the subjection of national powers to global standards – have called the following traditional characteristics of the State into question: *centrality*, because supranational organizations are now at the center, rather than the State; *unity*, because the external action of the State is entrusted to individual organs of the State, which may pursue interests beyond those of the State itself; *exclusivity*, because the regulation of the domestic public and private spheres is no longer the monopoly of the State.

It is thus necessary to consider two of the main effects of the emergence of a polycentric global legal order. The first regards the impact – both vertical and horizontal – of global or supranational regulation. The second concerns the legitimation of the action performed by ultra-state powers.

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<sup>10</sup> Cfr. S. Cassese, *Gamberetti, tartarughe e procedure: standards globali per i diritti amministrativi nazionali*, in *Rivista trimestrale di diritto pubblico*, 2004, n. 3, p. 1 ss.

## 2.1 “*Ius Commune*” and the Communication between Legal Systems

The existence of ultra-state public powers conditions the action of national administrations in various ways. These administrations are subjected to norms that may come from above, as the outcome of a process of harmonization, or to rules that stem from lateral contaminations with, and influences from, the administrations of other States. In the case of harmonization, international or supranational regulation produces a vertical effect: it penetrates into national legal systems, circumventing the national *iura particularia* and imposing itself upon the domestic administrations as *ius commune*. In the second case, the effect is horizontal: the norm emerges out of the communication between legal systems, from the lateral opening produced by the principle of mutual recognition.

There are however some important differences between global regulation (deriving from organizations like the WTO) and supranational regulation (imposed by legal orders like the European Union). The first regards the way in which each produces the vertical effect. The second difference lies in the way each produces horizontal effects. A third difference has to do with the way in which the vertical and horizontal effects relate to each other.

The first difference derives from the principles of supremacy and direct effect established by the European Court of Justice. By virtue of these principles, Community law trumps conflicting domestic law (which national courts and administrations are required to set aside) and is directly applicable in the Member States’ legal systems. International law, by contrast, lacks analogous qualities. It binds States only to the extent that they adhere to the norm agreed upon: international law has to do with self-restraint, as the result of an explicit manifestation of will on the part of bodies representing States. There are cases in which the international rule is formulated by bodies not totally representative of States. Such is the case with norms drawn up by transnational committees. These collegial bodies are made up of national civil servants acting as national experts and, therefore, they do not express the will of the States.<sup>11</sup> In these cases, the international norm as such is not binding upon the State. The binding

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<sup>11</sup> The legal explanation is that the collegial body’s members are not representatives of their respective countries in the strict sense, and thus they do not have the capacity to bind their States.



rule emerges indirectly, as a consequence of the States' participation in the international organization that sets the standard. At the global level, therefore, harmonization occurs in an indirect way and not – as in the Community legal system – as a result of the direct effect or the supremacy of the ultra-state law in the domestic system.

The second difference regards the different manifestations of the principle of equivalence (or mutual recognition) in the European and global legal systems. With respect to the European Union, the principle of the “negative integration” of markets is set forth in Article 28 of the EC Treaty, according to which “quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States”. The exceptions to this principle are provided by Article 30 of the EC Treaty, which sanctions limitations on the free circulation of goods when they can be justified by such reasons as public morality, health or safety: a national measure which limits intra-European trade for reasons of public health may therefore be permitted, since it falls under the exception set forth by Article 30 of the EC Treaty. Given the extent of this provision, technical barriers could have compromised the realization of the single market. To remove them, the Community pursued the harmonization of national legislation.<sup>12</sup>

With the deepening process of integration, however, the idea of a total harmonization of national laws has proved impracticable: the areas in which the European lawmaker would have to intervene are too many and too vast, and the decision-making process for approving the necessary supranational norms (which until 1986 required a unanimous Council) too laborious. For this reason, the European Union changed its strategy in the mid-1980s. Following the approach set forth by the European Court of Justice in an important 1979 decision,<sup>13</sup> the Commission presented a new harmonization strategy in the White Paper of 1985, based on mutual recognition<sup>14</sup>: a Member State may not

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<sup>12</sup> Already in 1969 the Council set forth a detailed harmonization program: cfr. «*General Program for the elimination of technical barriers to trade that result from disparities between the provisions laid down by law, regulation or administrative action in the Member States*», adopted by the Council 28 May 1969, in OJ C 76 of 17 June 1969, p. 1

<sup>13</sup> Case 120/78 *Rewe-Zentral AG v. Bundesmonopolverwaltung fuer Branntwein (Cassis de Dijon)* [1979] ECR I- 649.

<sup>14</sup> White Paper on Completing the Internal Market, COM (85) 310 def. This change in strategy had been anticipated by the Communication from the Commission concerning the consequences of the

prohibit the trade of a product of another Member State for such reasons as public order, human health, consumer or environmental protection when the exporting State's norm, though different, pursues equivalent objectives. The duty to demonstrate non-equivalence falls upon the importing State. Mutual recognition thus becomes a principle of «material» constitution: national norms acquire a “lateral” efficacy without the need for any further referral or norm.

At the international level, the principle of equivalence is similarly important in promoting free trade, but is structured differently. First of all, the burden of proof is inverted compared to the European system. Here it is the exporting State's duty to demonstrate that the national rules ensure the same level of protection as required by the laws of the importing State. If the exporting State demonstrates that this condition is met, the importing State must accept the exporting State's measures as equivalent. States may also rely on bilateral or multilateral agreements to obtain the recognition of the equivalence of specific measures.<sup>15</sup>

The third and final difference has to do with the relationship between harmonization and the principle of equivalence or mutual recognition. In the international system, the two strategies for eliminating trade barriers are employed independently: the principle of equivalence is used only when there are no international standards or when there is no desire to follow them. In the European Union, by contrast, the harmonization norm and the principle of mutual recognition are complementary. Mutual recognition does not preclude European legislative intervention, but only the need for detailed and comprehensive Community norms. The Council establishes the essential safety requirements of a product and the European standardization bodies set forth the technical specifications: the rest is left to the principle of equivalence, which is enforced by the Court of Justice. In this case, therefore, mutual recognition does not exclude, but rather presupposes, a degree – however minimal – of harmonization.

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judgment given by the Court of Justice on 20 February 1979 in case 120/78 ('Cassis de Dijon'), in OJ C 256 3 October 1980, p. 2.

<sup>15</sup> See the following international law measures: SPS, Article 4; TBT, Article 2, paragraph 7; GATS, Article VII; FIEIC, Article 13.

## 2.2. Weak Legitimation through Consent

A second effect of the proliferation of supranational bodies and transnational networks has to do with the legitimation for their action. Many commentators maintain that ultra-state public powers suffer from an intractable democratic deficit. They lack directly representative institutions, a public debate, a common language, a people: these arguments are raised again and again to deny the possibility of a cosmopolitan democracy. According to this view, “the safest and best option is simply to retreat to what we are familiar with, the nation-state, even if we acknowledge its imperfection. The nation-state is the true and only possible locus of democratic politics”.<sup>16</sup>

The democratic deficit thesis has three defects. In the first place, it overvalues the role of democracy at the State level. The ideal of direct democracy – government *by* the people – is not applied in any state system, except within very circumscribed limits. Indirect democracy, on the other hand, presents many imperfections of its own; among these, the “tyranny of the majority”, which is the danger that the victorious faction will violate the rights of minorities. It is no coincidence that in all the main democratic systems, non-elective powers (independent authorities, impartial administrations and courts) have been instituted in order to counter-balance the power of elective bodies and thus protect minority rights. Democracy is ultimately also government *for* the people. This explains why legitimation based on results is assuming an increasing weight in citizens’ evaluation of their government.

The second problem with the democratic deficit thesis is that it undervalues the protections offered by the global legal system. Its polycentric and fragmented structure is itself a protection against the concentration of power. Dispersion is a check on power functionally equivalent to parliamentary accountability, which would itself be hard to practice at the global level. One of the main manifestations of globalization is that decisions in one State may have transnational effects: for example, the adoption of a permissive national environmental law may harm the health of other peoples, who participate neither directly nor indirectly in making that decision. A partial remedy to this representation deficit is the transfer of the decision-making power to the ultra-state

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<sup>16</sup> With these words D. Curtin, *Postnational democracy*, The Hague, Kluwer, 1997, p. 4, summarizes the above-mentioned point of view.

level. The existence of international or supranational decision-making *fora* forces national governments to take other peoples' interests into account.

The third and final defect is the belief that the democratic theory elaborated for the State can be mechanically applied to non-state public powers. Historically, the principle of popular sovereignty arose to counter-balance the executive power. Popular sovereignty is the foundation legitimating the legislative power, which is thus vested with the power of checking the action of the government. The main function of the democratic principle is thus to protect the citizens from executive abuses and interferences. It presupposes the supremacy of the executive power over the other powers. And yet this cannot be presupposed at the international level. The legislative and judicial functions are much more developed in international organizations than the executive function. The executive function, in fact, is firmly in the hands of the States, which remain the executors of international law.

International institutions have no power to raise taxes; they allow all States to participate in the decisions that regard them, thus indirectly attributing new political rights to their respective citizens; they check the actions of the national powers in order to widen the zone of fundamental rights' protection. These are "benign powers"<sup>17</sup>: they do not shrink the sphere of private freedom, but rather widen it, because they only bind national governments, by requiring them to respect ultra-national protective norms. Their legitimation is not based on the direct consent of peoples, because they do not require any kind of individual obedience.<sup>18</sup> They instead require the consent of State authorities, because they are the ones who will be bound by international institutions' decisions. The democratic character of ultra-state systems must therefore be evaluated in relation to the representation and participation guaranteed to States, rather than to citizens.

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<sup>17</sup> In reference to the European Union, see T. Padoa Schioppa, *Europa, forza gentile*, Bologna, Il Mulino, 2001.

<sup>18</sup> In this perspective, if a problem of democracy exists, it derives from the international bodies' observance of the principle "one State, one vote": the formal equality of States hides their different demographic weight, in violation of the principle "one person, one vote."

### **2.3. Legitimation through Law**

In addition to intergovernmental legitimation based on the consent of States, the ultra-state power has a further source of legitimation: that derived from law, understood as a body of positive and judge-made norms and principles.

Legal regulation has achieved a greater complexity in the global legal order than in the States. New sources now supplement the traditional sources of custom and treaty. The most important of these are norms produced by international and supranational organizations and directed at States or sub-state entities. Moreover, alongside prescriptive rules (like the more than one thousand normative provisions laid down every year by the European Union) there are indicative rules (like, for example the standards set forth by the *Codex Alimentarius Commission*). The scope of the precepts may vary: some have a general reach (like the rules on transparency and participation, established by the International Court of Justice or the European Court of Justice), others set forth principles applicable in specific sectors (in the area of food safety, consumer protection, etc.). Finally, the efficacy of such norms in state systems may rest upon the adoption of internal incorporating acts, or their efficacy may be direct, as in the case of Community law.

Respect for this global law is guaranteed by the existence of dispute resolution mechanisms. Judicial bodies (the International Court of Justice, the European Court of Justice, the European Court of Human Rights, the WTO Dispute Settlement Body, as well as various international tribunals) and quasi-judicial bodies (like arbitration bodies), which intervene to settle conflicts, develop a judge-made law that is then binding on States in their international relations.

Therefore, the action of ultra-state public powers is subject to limitations deriving from a dense network of norms, principles and judgments. Law is thus the main source of the legitimation of international and supranational systems.

### 3. Consequences

The development of a body of law deriving from ultra-state sources grafts a *ius commune* onto a complex of state *iura particularia*. This is not without consequences: one consequence regards private actors' ability to choose the most favorable law; the other, strictly connected consequence is the competition between legal systems, triggered by this ability to choose. Both of these consequences require some explanation.

#### 3.1 The Choice of Law

Through the principle of equivalence (or mutual recognition) imposed by the international or supranational *ius commune*, Member States (of the European Union, the WTO, etc.) are generally obliged to guarantee the application of other States' norms (*lex alius loci*). This duty leads to a lateral opening of the national systems, enabling private actors to compare the different regulations in the various legal systems.

It thus becomes possible for private actors to choose the individual laws most convenient to them. The decision of the Danish couple, the Brydes, to form a British corporation to operate in Denmark, is a classic case of a legal «shopping trip».<sup>19</sup> In this case, private actors sought out the law most favorable to business incorporation and thus forced the authorities of their State to recognize its equivalence with the domestic law. And notwithstanding the absence of an explicit norm connecting the two legal systems, the European Court supported this choice on the basis of the principle of mutual recognition.

Lateral opening – the reciprocal recognition of legal acts, facts, personal qualities, etc. – is produced by private actors, who are the main subjects in this negotiation between equivalent but asymmetrical regimes. This is the feature that distinguishes the contemporary global legal system from the multiplicity of statutes and regimes also existing in the Middle Ages. There is also a second unique feature of the contemporary global system. The communication between legal systems does not wholly depend on bilateral agreements between States and national incorporation laws. It happens instead

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<sup>19</sup> Decision of the European Court of Justice C- 212/97 *Centros Ltd v Erhvervs-og Selskabsstyrelsen* [1999] ECR I-01459. For the expression “shopping trip”, C.M. Tiebout, *A Pure Theory of Local Expenditures*, in *Journal of Political Economy*, 1956, vol. 64, p. 422.

because there is a global legal space with a *ius commune* which promotes the communication between different legal systems.

### 3.2. Competition between Legal Systems?

It has been said that the existence of a global legal space and a *ius commune* leads to a lateral opening between legal systems, enabling private actors to compare the *iura particularia* and choose the most favorable law. This raises the question of whether this opportunity to choose leads to a competition between legal systems.

We need to recognize, first of all, that the national laws are partially harmonized (so as to preclude arbitrage operations), and partially separate, mutual recognition being not a general principle but one applied in specific areas. For this reason, the choice regards individual norms, in such areas as corporate or tax law, rather than the legal systems as a whole. Therefore, if we want to speak of competition, we can do so only in reference to specific subject matters.

Secondly, the dynamic of supply and demand in the public sphere is nothing like that in the market context. Only in exceptional cases does private actors' choice of law stimulate a process of norm correction on the part of public authorities. Inefficient administrations do not go out of business. Rather, States try to reach agreements between themselves to lessen the harmful effects of the flight of clients. In other words, there is no empirical evidence to suggest that the communication between legal systems triggers a genuine competition process. For this reason, the concept of regulatory competition, which has been invoked to explain this phenomenon, may only be used if one bears in mind the differences between the working mechanisms of the "public arena" and the rules of the market.<sup>20</sup>

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<sup>20</sup> On the paradigm of the public arena, S. Cassese, *L'arena pubblica. Nuovi paradigmi per lo Stato*, in *Rivista trimestrale di diritto pubblico*, 2001, p. 601 ss., now in S. Cassese, *La crisi dello Stato*, cit., p. 74 ss., especially p. 127-129, where institutional competition is examined.

## **4. The Reactions of State Systems**

### **4.1. A Different Legislation**

States are the main targets of the countless norms emanating from the global legal system. Such norms challenge the territorial exclusivity of state law because they may regulate sub-state or infra-state bodies, as well as individuals. State systems respond to this by modifying the scope and nature of their legislation.

Looking at scope, the competition coming from ultra-state sources of law narrows the national legislature's field of action. The law governing certain subject matters is currently laid down, mainly or exclusively, by international or supranational bodies. Take the area of agriculture, which is almost entirely governed by Community law, or the circulation of goods, guaranteed by the converging law of the European Union, which ensures intra-European free trade, and the WTO, which constrains European legislatures in their relations with third countries.

Looking at changes in the nature of state legislation, States are ever more likely to legislate in the interests of the global order, rather than in just their own interests. The need to respect obligations deriving from ultra-national norms – *in primis*, the principle of competition – produces a twofold change. First of all, the character of legislation changes: from a regulation of ends, by which the State required private actors to pursue specific goals, it has passed to a regulation of conditions, that is, setting forth the conditions for exercising a specific economic activity. This in turn changes the order of competences: regulation gets transferred away from the parliament to independent authorities, to avoid the politicization of regulatory choices.

### **4.2. A Different Administration: Administrative Reform**

State sovereignty, now lost in the legislative sphere, lives on in the executive sphere. The implementation of ultra-national norms depends on domestic administrations. There are few cases in which the supranational apparatus directly executes its decisions in domestic systems. This complicates the job of national civil servants, as a national incorporating norm is often lacking. The bureaucracies of the EU Member States must, for example, take account of the Community norms that have direct effect and, if



necessary, disregard contrasting national law. Moreover, in undertaking particular activities, they must take account of the procedural standards imposed by international organizations, which might require, among other things, the consultation of other States' administrations. States thus remain the final executives in the global legal system.

This is not the only reason for the persistent centrality of state administrations. These administrations are increasingly active in the decision-making processes that take place at the international and supranational levels. Community decision-making is largely entrusted to trans-governmental collegial bodies, made up of civil servants representing the national interests on the instructions of their administrations. It is up to them (in concert with the political leadership) to consult the other domestic bodies and interested private parties, in order to define the national interest in relation to a specific ultra-national normative provision. An analogous phenomenon is produced in the context of the World Trade Organization and many other international organizations, where national administrations do participate in decision-making through the medium of trans-governmental committees.

The execution of international norms and participation in ultra-national decision-making processes are only some of pressures towards the modernization of the state apparatus. The proliferation of international institutions and arenas accentuates polycentrism and internal fragmentation, in that each international organization establishes direct contacts with the national and infra-national bodies in its sector. The principle of hierarchical, pyramid-like coordination is set aside, and the search for new means of coordination becomes urgent. In addition, transnational flows of goods and capital expose administrative systems to the market's judgment, motivating them to perform more efficiently.

These and other global pressures lead States to reform their administrations. In the following sections we will examine first the administrative reforms in Italy and then, in section 6, similar reforms in the major European state systems.

## 5. Administrative Reform in Italy

The first comprehensive program for reforming the Italian public administration was set forth in the 1979 *Rapporto sui principali problemi dell'Amministrazione dello Stato* (so called *Giannini Report*), which specified the main causes of inefficiency in the public sector and proposed a series of innovations regarding administrative techniques, technology, personnel and organization. It took a decade to begin implementing these proposals. The first important reform laws go back to 1990: that year several fundamental laws were enacted, like Law 8 June 1990, n. 142 on the new system of local bodies, Law 30 July 1990, n. 218 on the privatization of public banks, Law 7 August 1990, n. 241 on administrative procedure and Law 10 October 1990, n. 287 on competition.

Three reform cycles followed. The first took place in 1993-1994. The Ciampi government set forth a broad plan for reform in two important documents: the *Rapporto sulle condizioni delle pubbliche amministrazioni* and the *Indirizzi per la modernizzazione delle pubbliche amministrazioni*. The first document examined in depth the problems affecting the public administration, while the second set forth possible remedies. Notwithstanding the brief duration of the Ciampi government, many reforms were carried out: the reorganization of mechanisms of control, the introduction of citizen's charters, the launching of a policy of simplification and the development of a plan for the privatization of public employment (already delineated by the previous government). Other reforms – the reorganization of the central administration, in particular – were not completed, due to the brief life of the government.

After three years of relative stasis, a second cycle of reforms took place between 1997-2000. A new round of decentralization was launched (realized first through regular legislation, and then by amending Title V of the Constitution), the central administration was reorganized (reducing the number of ministries and creating agencies), the privatization of public employment was carried forward, new changes were made in the management of public administrations, the policy of simplification was pursued and the reorganization of the system of controls and evaluation was completed (at least at the normative level).

Finally, in 2001, the center-right coalition came to power. The current government, after an initial period of relative inaction, has also launched a series of initiatives. We have thus seen another reform of the high bureaucracy, a new effort to reform the central administration and the implementation of simplification and decentralization policies. We shall now move on to a closer analysis of the reforms summarily mentioned in this section, taking into consideration the following aspects: functions, organization, personnel, finances, control mechanisms and procedures.

### **5.1. Reform of the Functions: Decentralization and Privatization**

The Italian administrative system in the late 1980s was highly centralized. The delayed establishment of the regions and the failure of the first two attempts at “regionalization” in the 1970s can at least partially explain this situation. Moreover, banking and insurance services were still mostly in the hands of public actors. At the organizational level, this created a serious overburdening of central government apparatuses. In addition, the State was facing a growing public debt.

The reforms launched in the nineties reversed these tendencies. A far-reaching process for redistributing administrative functions emerged at this time. The following phenomena began to take effect: the decentralization of state functions in favor of the regions and local bodies and the privatization of public enterprises, which helped to balance the budget and gave the exercise of some economic activities back to private actors.

*Decentralization.* An important early measure was Law 8 June 1990, n. 142 on the system of local bodies.<sup>21</sup> This law, however, did not affect the sphere of state functions, but rather transferred regional functions to local bodies and required that this transfer respect the principle of subsidiarity. A far-reaching decentralization of state functions was instead foreseen by Law 15 March 1997, n. 59, in which the legislature reallocated public functions in two ways. First of all, it defined the State’s functions and tasks as deriving from a series of expressly enumerated subject matters (Article 1, Law n. 59/1997), and conferred all other functions upon the regions and local bodies. Secondly,

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<sup>21</sup> Later subjected to a comprehensive revision by Law 3 August 1999, n. 265 and incorporated in the Single Text of the Law of Local Bodies, approved by the Legislative Decree of 18 August 2000, n. 267.

it required that the distribution of competences between the various levels of government adhere to a series of principles, among which are subsidiarity, differentiation and proportionality.

While the resources necessary for the exercise of the reallocated competences were being transferred to carry out this reform, Parliament approved Constitutional Law 18 October 2001, n. 3, adopting a new reform by directly amending the Constitution. With respect to the structure set forth by Law n. 59/1997, the constitutional law confirmed the reversal of the relationship between center and periphery in the relocation of administrative functions. The principles of subsidiarity, differentiation and proportionality moreover achieved a constitutional dignity.<sup>22</sup> There was, however, a decisive element of novelty: municipal governments were given preference in the attribution of administrative functions, and then, only in a subsidiary and subordinate way, provinces, regions and the State. The two principles at the heart of the 1948 Constitution – the principle of residual state power and the principle of parallelism between legislative and administrative functions – were thus turned upside down. The first principle was inverted into the opposite principle of residual municipal power. The principle of parallelism was supplanted by an asymmetrical division of legislative competences on the one hand, which were shared by the regions and the State, and administrative competences on the other, which give a preeminent role to the municipalities. These fundamental features of the reform have become even more prominent with the current “federalist” constitutional reform.

*Privatization.* Though this policy was launched only in 1990,<sup>23</sup> it has had particularly important results. According to a recent report by the Ministry of the Economy, Italy is in second place in the world ranking (after Japan) for selling off public holdings, and first among the countries of the European Union. The revenues from the sale of public shares between 1992 and 2003 came to 88 billion Euros, of which 16.6 billion was realized in 2003 alone (which amounts to 34 percent of the proceeds from privatization

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<sup>22</sup> Article 118 of the Constitution.

<sup>23</sup> The first legislative measures were Law n. 218/1990, on the privatization of public banks, laws 29 January 1992, n. 35 and 8 August 1992 n. 359 on the transformation and privatization of public economic entities, and law 30 July 1994, n. 474, on the privatization of publicly owned corporations.

in the whole world).<sup>24</sup> The engine behind this policy has not yet run out of steam: the current government has announced that it wants to sell another 100 billion Euros worth of state holdings in the next four years.

As a consequence of decentralization and privatization, the exercise of public functions is no longer generally entrusted to the state ministerial administrative level: the State has lost its exclusivity in the exercise of these functions and has transferred them to both sub-state public powers and private actors.

## **5.2. Reform of the Organization: Specialization, Reform of the “Center” and Coordination with the European Level**

Organizational reform has affected three aspects of the Italian administrative system: specialization, size and coordination.

*Specialization.* This was pursued mainly by the establishment of independent administrations and agencies.<sup>25</sup> Before 1990, there were only three independent authorities: the *Consob*, for financial markets (1974), the *Garante per l'editoria*, for publishing (1981) and the *Isvap*, for insurance (1982). During the 1990s, some ten more were established: the most important examples are the *Autorità garante della concorrenza e del mercato*, for the protection of competition (1990), the *Commissione di garanzia per l'attuazione della legge sull'esercizio del diritto di sciopero nei servizi pubblici*, regulating the right of strike in public services (1990), the *Autorità per l'energia elettrica ed il gas*, regulating electric energy and gas (1995) and the *Autorità per le garanzie nelle comunicazioni*, regulating communications (1997). Lately, the independent authorities have seen an erosion of their competences as they have been re-appropriated by the executive. This tendency is, however, counterbalanced by European and global powers: ultra-national regulatory norms and networks require an independent exercise of most of the regulatory functions exercised at the national level.

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<sup>24</sup> Cfr. Sole-24-ore, 7 September 2004, p. 13. For more detailed, but less updated data, see Ministry of the Treasury, Budget and Economic Planning, *White Paper on Privatization Measures 1996-2001*, April 2001.

<sup>25</sup> C. Pollitt and G. Bouckaert, *La riforma del management pubblico*, Milano, Egea, 2002, p. 100 s., mention a reverse tendency: in some strongly fragmented administrative systems, like New Zealand and the United Kingdom, there is an ever more heated debate on the need to reduce administrative polycentrism.

With respect to the administrative agencies, prior to the reorganization of the central government in 1999 there were the following bodies: a regional health services agency (1993), an agency representing public administrations in collective bargaining (1993), a national environmental protection agency (1994), an independent agency for the management of municipal secretaries' registers (1997), a national agency for energy and the environment (1998) and an Italian space agency (re-formed in 1998). The 1999 reform set forth a general model and provided for thirteen new agencies. Still, many of these were never established, others were abolished,<sup>26</sup> and still others were subsequently transformed.<sup>27</sup> Lastly, a new agency was recently established, but with characteristics somewhat different from those provided by the general model, currently in decline.<sup>28</sup>

The differences between independent authorities and agencies stem mainly from their different relations with the central administration (only independent authorities are completely excused from the principle of ministerial responsibility) and the different nature of their functions (rule-making and adjudication in the case of independent authorities, technical and operative functions in the case of agencies). Still, these two organizational models share some features as well: they represent an alternative to the ministerial model; they are examples of the growing organizational importance of technical administrative activities; they enable the ministries to lighten their functional responsibilities; they highlight, on the organizational level, the separation/distinction between politics and administration.

The establishment of these sectoral administrations, outside the ministerial apparatuses and free (to various degrees) from governmental control, creates a “Balkanization” of the executive: the government’s ability to coordinate the action of state administrations

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<sup>26</sup> For example, the *Agenzia per la protezione civile*, formally created by Legislative Decree n. 300/1999, Article 79 ss., was not established until, at the end of 2001 – with Legislative Decree 7 September 2001, n. 343, converted by Law 9 November 2001, n. 401, it was transformed into a first-level office (department) in the ministry of the interior. The same fate befell the *Agenzia per il servizio civile*, abolished by Article 3 of Law 16 January 2003, n. 3.

<sup>27</sup> The *Agenzia del demanio* (an agency for the management of state property) was transformed into an economic public entity (Article 1, Legislative Decree 3 July 2003, n. 173).

<sup>28</sup> This refers to the *Agenzia italiana per il farmaco*, established by Article 48, l. 24 November 2003, n. 326. Only some of the tasks assigned to this agency have a technical or operative character, like those of the other agencies created by the 1999 reform.

is reduced. Specialization thus translates into a fragmentation of the administrative system, which is no longer “compact”, but multi-organizational.

*Size of the central administrations.* An early reform initiative, set forth by Law n. 537/1993, provided for a broad reorganization of the ministries. However, the government in office at the time fell before the reforms could be implemented. Notwithstanding this, a first step towards streamlining was made with the elimination of the Ministry of the Merchant Marine.

A second, more far-reaching reorganization would have been required by the implementation of Law n. 59/1997, which provided for the reordering of the central administrations as a consequence of decentralization. The reform, set forth in Legislative Decree n. 300/1999, reduced the number of ministries from eighteen to twelve, which then went back up to fourteen. This reduction did not, however, really slim the size of the governmental apparatus. First of all, in reducing the number of the ministries, unification was privileged over elimination: not only the tasks, but also the offices and resources of the new ministries were determined by simply summing together the old, now unified, ministries. Moreover, the introduction of departments – originally envisaged in nine out of twelve ministries – was not counterbalanced by the elimination of preexisting general directorates. For that reason, the total number of internal offices actually increased, as did their overall costs. Finally, if one counts the agencies created by the 1999 reform (some of which are larger than a ministry), one sees that the total number of central apparatuses has increased with respect to the past.

The reordering of the ministerial structures does not seem to be over. Law n. 137/2002 delegated to the government the power of adopting, within a year and a half, amendments and corrections to the reform of the ministries implemented in 1999, and the deadlines for exercising these powers were extended one year by the recent Law 27 July 2004, n. 186. It remains to be seen whether this reorganization will produce a real downsizing in the central state administrations. Until now, this has not been the case.

*Coordination with the European level.* Looking finally at the reform of coordination mechanisms, it must be said that the state administrations’ conformity with the Europeanization process has not yet proved sufficient. With regard to general

coordination functions, there is a clear overlap between many different institutional actors: the President of the Council of Ministers, the Council of Ministers, the Department for European Community Policies, the Secretary General of the Presidency of the Council, the Ministry of Foreign Affairs, the Permanent Conference of the State, Regions and Local Bodies and the Inter-ministerial Committee for Economic Planning. Legislative Decree 30 July 1999, n. 303 recognized the guiding role of the Department for European Community Policies, but only partially eliminated the overlap and fragmentation of existing competences. A bill currently in Parliament (A.S. 2386) provides for the establishment, in the Presidency of the Council, of another coordination body – the Inter-ministerial Committee for European Community Affairs –, to be charged with defining the Italian government’s position in the initiative phase of European Community and Union acts. The problem, however, remains: there continue to be too many coordinators and, as we know, “too many coordinators do not coordinate”,<sup>29</sup> but simply fragment responsibility.

The relationships between individual ministries and community bodies also need to be rationalized. The task of managing relationships with European bodies has been entrusted, in some cases, to one office; in other cases, it is carried out by the various offices competent in the interested sector, based on a model of dispersion; other offices do a little of both. Therefore, even in this area, there seems to be no unitary plan for the coordination of ministerial apparatuses with the European level.

In conclusion, the reform of the ministries failed to further its goal of territorial decentralization. It also neglected the organizational pulls towards the supranational level. The total outcome is contradictory: while the system tends towards decentralization and pluralism, the center grows and loses its ability to dialogue with the other levels of government.

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<sup>29</sup> Dipartimento per la funzione pubblica, *Rapporto sulle condizioni delle pubbliche amministrazioni*, Roma, Istituto Poligrafico e Zecca dello Stato, 1993, p. 37.



### 5.3. Reform of Personnel: Privatization of Public Employment and Reform of the High Bureaucracy

In the last quarter of the 20<sup>th</sup> century, public employment has been the object of particularly intense reform activities in the major Western legal systems. These reforms all pursued the same four main objectives: more flexible management of personnel; greater attention to effectively achieving results; more competent public employees; quantitative containment of human resources and thus costs.

The achievement of these goals in the Italian administration required the preliminary resolution of two problems. With regard to civil servants, the pursuit of efficiency meant supplanting a public law system with a private law one. In the past, the relationship between the state administrations and their employees had been set up as a unilateral relationship, rigidly governed by public law. With respect to the high bureaucracy, the main obstacle to the pursuit of such objectives as flexibility and responsibility was the functional overlap between political bodies and senior officials. The system rested on the exchange between power (of the ministers) and job security (of the high bureaucrats).<sup>30</sup> The political leaders used their power of appointment of directors in order to obtain their support; the senior officials, then, had to conform to the ministers' choices if they wanted to keep their jobs. The reform of the last decade has resolved the first problem and aggravated the second one.

*Privatization of public employment.* It was foreseen by Legislative Decree n. 29/1993, followed by corrective laws (Legislative Decree 10 November 1993, n. 470 and Legislative Decree 23 December 1993, n. 546), which launched a reform considered "the most important development in administrative law of this century".<sup>31</sup> This reform, first of all, subjected public employment relations to civil law and collective bargaining. Secondly, it changed the sources of law governing the employment relationship with public administrations, privileging bargaining over public law dispositions, which assumed a derogable and residual character: hiring in the public administrations now

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<sup>30</sup> S. Cassese, *Grandezza e miserie dell'alta burocrazia italiana*, in *Politica del diritto*, 1981, p. 234. For a historical treatment, J.Y. Dormagen, *Pourquoi il n'y a plus de haute fonction publique en Italie*, in *Rivista trimestrale di diritto pubblico*, 2004, p. 59 ss.

<sup>31</sup> S. Cassese, *Le ambiguità della privatizzazione del pubblico impiego*, in S. Battini and S. Cassese (eds.), *Dall'impiego pubblico al rapporto di lavoro con le pubbliche amministrazioni*, Milano, Giuffrè, 1997, p. 77.

takes place through an individual employment contract. Thirdly, the privatization has transferred the controversies arising out of public employment (with few exceptions) from administrative to civil courts. Thus, the principle of the exclusive jurisdiction of administrative courts, which went back to 1923, has been set aside.

For this reason, the “problem of the public employee” can be considered as resolved, at least on the normative level. But the rise of a new private law contractual regime is only one of the conditions for making public employment more like private employment and for achieving the reformist goals of efficiency and flexibility. Privatization does not in fact automatically or spontaneously make a public administration like a business. Among the residual obstacles to achieving this goal is the failure of collective bargaining in regulating job classification, seniority systems and productivity awards.<sup>32</sup>

*Reform of the high bureaucracy.* The senior officials’ regime has been affected by three reforms in the last decade. The first, set forth by Legislative Decree n. 29/1993, was inspired by the principle of separation between politics and administration. The power to make policy and to review outcomes was entrusted to the political leadership, the power of day-to-day administration to the high bureaucracy. The appointment of directors was to be governed by strong guarantees of stability. In this way, the foundations were laid for an impartial administration, managed exclusively by the senior officials.

Less than five years later, the legislature intervened again (with Legislative Decree n. 80/1998 and with d.P.R. n. 150/1999). The desire to make public directors like private managers led it to extend privatization to the general directors’ employment relationship. But the main innovation was in granting a wide discretion to political leaders in choosing the directors. The declared goal was to increase flexibility. But concretely, this reduced the senior civil servants’ autonomy from politics. It established that: a) with the implementation of the law, all existing directorship positions would terminate, if not confirmed within ninety days (a so-called spoils system «*una tantum*»); b) the duration of senior directorship positions would depend on the executive, as secretaries-general and departmental heads would have to be confirmed, revoked,

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<sup>32</sup> Cfr. Dipartimento della funzione pubblica, *La valutazione e la retribuzione delle prestazioni*, Soveria Mannelli, Rubbettino, 2001.

modified or renewed within ninety days by a confidence vote of the government; c) all directorship positions would be conferred for a determinate period of no more than seven years and no less than two, with the possibility of renewal.

The third reform (Law 15 July 2002, n. 154) further compromised the high bureaucracy's job stability. First of all, it reintroduced an *una tantum* version of the spoils system with regard not only to the general directors (to be nominated *ex novo* within sixty days from when the law takes effect), but also the non-general directors (confirming the rule of silent assent at the expiration of a ninety days from when the law takes effect, a rule which, in 1998-1999, was used only for general directors). Moreover, in the case of a failure to renew an appointment, there is no more guarantee of holding onto director status and the relative pay: the rule becomes an appointment as a consultant for no more than one year. Secondly, senior directors' offices expire ninety days from the confidence vote on the government (without the possibility that they might tacitly continue until their natural expiration). Thirdly, the minimum duration of employment contracts (formerly two years) was abolished, while the maximum duration (formerly seven years) was reduced to three years for first-level offices and five years for second-level ones.

The overall outcome of this process of reform has been the high bureaucracy's capture by politics. The introduction of the principle of non-permanence and of various forms of the spoils system has made senior officials' tenure precarious. Directors have become easy to manipulate and even to blackmail. The political leadership has thus taken over the management of the public administration, without however assuming the necessary responsibility, which still belongs to the directors.

This reform, though originally aimed at separating politics from administration and strengthening the high bureaucracy, has had the opposite effect. Senior level positions have become precarious, politicized and thus weakened. The Italian administration continues to be a "headless" administration.

#### **5.4. Reform of the Budget: From the Budget as a Means of Spending Containment to Super Budgeting**

Many OECD countries have attempted budgeting reforms in order to contain public spending and alleviate the public deficit. In some of these countries, the reform strategy was more sophisticated: the goal of savings was accompanied by the goal of improving the performance of the public administration. Thus, the advent of “super budgeting”: the budget becomes more than a mere instrument of political economy by taking on other functions connected to the process of administrative reform.<sup>33</sup>

The Italian system has experienced similar developments. Beginning with the reforms of 1978 and 1988 (completed in 1999),<sup>34</sup> the legislature intervened in the budgeting process in order to maximize the Parliament’s and the executive’s ability to govern and control financial resources. To this end, rules (of the financial coverage of expenses) and instruments (the finance law and the economic and financial planning document) were introduced to overcome the rigidity of the budget law<sup>35</sup> and to ensure the containment of expenses. These reforms were pursued from the traditional perspective which understands the budget simply as a tool for setting the levels of revenues and spending.

In the 1990s, the pursuit of efficiency in the use of financial resources led to a widening of the purposes of the budget (super budgeting). Two other functions were added to the regular function of spending containment. The first function is related to the distinction between politics and administration. The 1997 reform distinguished the competences of the ministers from those of the high bureaucrats. The ministers were assigned the role of financial planning: they were to determine and divide resources among the general directorates on the basis of programs and objectives set forth in their directives. Senior officials were instead to be responsible for the management of resources, that is the management of the budget and the related activity of micro-planning.

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<sup>33</sup> The concept of “super budgeting” is used by N. Caiden, *Shaping Things to Come*, in I. Rubin (ed.), *New Directions in Budget Theory*, Albany, Suny Press, 1988, p. 43 ss., describing the tendency to reform the budget by widening its scope and purpose.

<sup>34</sup> This refers to Law 5 August 1978, n. 468 and Law 23 August 1988, n. 362, which was supplemented by Law 25 June 1999, n. 208.

<sup>35</sup> This rigidity stems from Article 81 of the Constitution, which provides that new taxes and expenditures cannot be established through the budget law.

The budget assumed a second new function with the 1997 reform, related to the changes in controlling and evaluating administrative activities. A system of economic accounting based on cost analysis was introduced. This accounting system ought to have helped in evaluating the results of administrative action. A delay in implementing internal evaluation units hindered the realization of this ambitious project.

We see that even the Italian system has experienced a “super budgeting”: its budget fulfills not only the traditional function of political and economic policy-making, but also serves as an instrument for separating politics and administration and as a parameter for evaluating administrative performance.

At the same time, the State’s margin of discretion has been eroded in two directions. On the one hand, rigorous Community obligations require a basically balanced budget and make the State completely responsible for excessive public debt through the external Stability Pact. On the other hand, there has been increasing pressure for local autonomy: financial autonomy has been reinforced, first at the legislative level,<sup>36</sup> then at the constitutional level, with the new Article 119 (the so-called fiscal federalism). The multi-level system of governance has thus reduced the State’s ability to govern public finance.

### **5.5. Reform of the Instruments of Control: Evaluation of Outcomes and the Citizen’s Charter**

A decade ago, review and evaluation of administrative activities in the Italian system was still conceived of as preventive controls of the legitimacy and accounting regularity of individual acts. This approach responded to a twofold need: to preventively protect (before the administrative acts were to become effective) citizens from authoritative acts of the public power harmful to their legal interests; and to make sure that the financial resources were employed for the authorized purpose (auditing).

Other needs emerged in the course of the 20<sup>th</sup> century. The advent of the “pluriclass” State<sup>37</sup> led to the growth of public social services.<sup>38</sup> For this reason, contemporary

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<sup>36</sup> With Law 13 May 1999, n. 133 and Legislative Decree 18 February 2000, n. 56.

<sup>37</sup> On the concept of the “pluriclass” State, M.S. Giannini, *I poteri pubblici negli stati pluriclasse*, in *Studi in onore di F. Satta*, Padova, Cedam, 1979; Id., *Il pubblico potere*, cit., p. 69 ss; S. Cassese, *Lo «Stato pluriclasse» in Massimo Severo Giannini*, in S. Cassese, G. Carcaterra, M. D’Alberti and A. Bixio

public controls also tend to check whether public services fulfill the prescribed goals and ensure the quantitative and qualitative satisfaction of the public's needs. As a consequence, the reform of checks on administrative activity proceeded in two directions. An evaluation of the results of the total activity replaced preventive checks of the legitimacy of individual acts; and the so-called citizen's charter imposed fixed standards upon public service providers.

The first phase of the reform coincided with the Ciampi government (1993-1994). Legislative Decree 29 of 1993 provided for the establishment of evaluation units within administrations: this is the first attempt to introduce a culture in which results are reviewed. Law n. 20 of 1994 then redesigned the system of administrative controls, decentralizing them and introducing three innovations. First of all, it provided for the establishment of internal review services in each administration. Secondly, the Court of Auditors ceased performing preventive reviews of the legitimacy of individual administrative acts (with the exception of acts of the government) and became responsible for a second-level review of the correct functioning of the internal controls. Thirdly, it palpably reduced reviews of legitimacy and introduced evaluations of the results, which required fixing objectives, declaring costs and measuring the degree of efficiency in fulfilling the objectives.

The second phase of the reform (Legislative Decree 30 July 1999, n. 286) addressed internal controls. In addition to the traditional reviews of administrative and accounting regularity (aimed at verifying the legitimacy, the regularity and the correctness of administrative activity), other forms of control were made subject to law: control over management (carried out on the basis of such parameters as the efficiency, effectiveness and economy of administrative activity), evaluation of senior officials (to evaluate directors and general directors) and the evaluation and oversight of strategy (to verify the adequateness and the congruence of the management choices with respect to the objectives set forth by the public policy makers).

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(eds.), *L'unità del diritto*, Massimo Severo Giannini e la teoria giuridica, Bologna, il Mulino, 1994, p. 11 ss.

<sup>38</sup> On these developments, and the related jurisprudential debate, see L. Mannori and B. Sordi, *Storia del diritto amministrativo*, Roma-Bari, Laterza, 2001, p. 418 ss.

This reform of mechanisms of control and evaluation has remained mostly unimplemented. Not all of the administrations have established internal evaluation units. Moreover, controls over administrative and accounting regularity have not been set up in accordance with private sector criteria of internal accounting (though required by Article 2, comma 2, Legislative Decree n. 286/1999). The evaluation of the directors has not been implemented, except for some rare exceptions. Also, ministerial policy directives, which ought to set administrative management goals and thus the parameters for evaluating the results, are either not issued or they are so generic as to be useless for the purpose of evaluation (except in the case of a few ministries).

The need to evaluate the results of public service activities also extends to those public and private actors that perform essential public services. To this end, an apposite instrument was established in 1994, inspired by Anglo-American citizen's charters: the so-called *Carta dei servizi*.<sup>39</sup> The purpose of this charter is to improve the quality of public services and thus the public's satisfaction. The charter fixes qualitative and quantitative performance standards and simplifies procedures. Moreover, it provides for the participation of public service users in the definition of the standards and complaints procedures to obtain reimbursement for services that do not reach the qualitative and quantitative levels set forth in the charter.

#### **5.6. Reform of the Procedures: Law 241/1990 and the Policy of Simplification.**

For a good part of the 20<sup>th</sup> century, procedure has been the emblem of the distance between public powers and civil society. An administrative provision was the outcome of a "closed" procedure in which the administration *chef de file* weighed one public interest with the other public interests involved. The consideration of private interests was excluded. Law n. 241 of 1990 profoundly changed the character of the administrative proceeding, establishing mechanisms of protection (duty to adopt an express provision, maximum duration, duty to give reasons), transparency (responsibility for the proceeding, right to access administrative documents) and participation (communication of the initiation of a proceeding to interested parties, right to review the acts of a proceeding and to present written memoranda and documents,

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<sup>39</sup> The norm was first set forth by a directive of the President of the Council of Ministers of 27 January 1994, then by Law 11 July 1995, n. 273, and later by Article 11 of Legislative Decree n. 286/1999.

agreements additional to or in substitution of the provision). By virtue of Law n. 241/1990, the proceeding has the function of democratizing administrative activity. It has become a place in which citizens participate in the public decisions that most directly affect them. It has likewise become a place of transparency, where the administrative power's decision-making process is visible and subject to review. Thus, a conception of administration as a (relatively) autonomous power emerges: an administration that – according to the interest representation model – has its own head and is legitimated from below.

A further objective of recent reforms has been the simplification of administrative proceedings, which has unfolded in three phases. At the outset, Law n. 241/1990 simplified the structure of the proceeding, introducing instruments to promote the contextual (through the conference of services) or consensual (through agreement between administrations or between administration and citizens) decisions and the elimination of phases. In addition, it enabled the public to better deal with the consequences of administrative inertia, through mechanisms of reporting the initiation of activity and silent assent. In the second phase, Law n. 537/1993 widened the scope of the application of some of the simplification instruments provided by the 1990 law (in particular, those regarding the initiation of commercial activities). In its third phase, simplification policy took two main roads. First, simplification was institutionalized by an annual law, by adopting codification measures and by the creation of a Simplification Observatory within the Presidency of the Council (in addition to a Unit for the simplification of law and procedures, later abolished). In addition, the simplification of proceedings was pursued through non-legislative measures. Some limits to this process are however evident. From 1990 to the present only a few hundred proceedings have been simplified, out of the nearly six thousand that crowd the Italian administrative panorama. Moreover, because of the different rules governing different sectors, the rate of complication grows more rapidly than the rate of simplification. The politics of simplification is like an “immense Penelope's cloth”.<sup>40</sup>

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<sup>40</sup> This metaphor is borrowed from G. Vesperini, *La semplificazione dei procedimenti amministrativi*, in *Rivista trimestrale di diritto pubblico*, 1998, p. 674.



A final area in which progress can be seen is public communication and information. In the mid-1990s, public relations offices (URP) were introduced, along with a language style manual (to facilitate the comprehension of administrative language) and a code of conduct for civil servants. Law n. 150 of 2000 set forth comprehensive rules for administrations' activities of external information and communication, including appropriate modalities (publicity, organization of demonstrations, fairs, congresses) and structures (public relations offices, press offices, spokespersons, information windows for the public and business). A February 2002 circular of the minister of the public function gave new impetus to the policy of public communication, providing for on-line data banks and services to facilitate public relations.

As far as e-government is concerned, a norm was introduced at the end of 2000 for the electronic management of administrative documentation.<sup>41</sup> A minister (without portfolio) for innovation and technology was then nominated and, in 2003, a fund for financing technological innovation projects in the public administration was established, along with a national agency for technological innovation.<sup>42</sup> The main successes have been in the area of *e-procurement*, by which the administration acquires goods and services through electronic calls for tender and the construction of a virtual marketplace. Not only have contractual procedures been streamlined and accelerated, but consistent savings in the acquisition of goods and services have been realized.<sup>43</sup>

In a 2000 survey on the degree of e-government development,<sup>44</sup> Italy came in next to last out of the twenty-two countries examined, followed only by Mexico. From 2000 to today however, the development of e-government has become more intense and the

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<sup>41</sup> D.P.R. 28 December 2000, n. 445, single text of the legislative dispositions and the regulations in the area of administrative documentation. This also includes the norms governing the digital signature, previously contained in d.P.R. 10 November 1997, n. 513. On these innovations, Dipartimento della funzione pubblica, *Semplifichiamo*, edited by S. Paparo, Soveria Mannelli, Rubbettino, 2001, p. 49 ss. and 63 s.

<sup>42</sup> A Digital Administration Code is currently being approved. It would simplify and improve the dialogue between public institutions and the public through the use of information technology.

<sup>43</sup> The norms are contained in Article 26, l. n. 488/1999 (financial law of 2000), Article 24 of l. n. 340/2000, Articles 58 and 59, l. n. 388/2000 (financial law of 2002), D.P.R. 4 April 2002 and Article 24, l. n. 289/2002 (financial law 2003).

<sup>44</sup> Accenture, *E-Government Leadership. Rhetoric vs. Reality – Closing the Gap*, 2001 (www.accenture.com).

results can be considered positive on the whole, even if the delay with respect to the Anglo-Saxon countries is still considerable.<sup>45</sup>

### **5.7 An Assessment of the Italian Reforms**

In 1993, an important document on the modernization of the public administration, published by the Department of the public function,<sup>46</sup> set forth several reform objectives to guide future programs. To evaluate the results of Italian administrative reform, we shall assess whether these objectives have been reached in last decade.

One goal outlined in the document was to decentralize decision-making, leaving the central administrations with just the work of policy-making and coordination. Notwithstanding the important recent legislative and constitutional innovations, the realization of this project continues to be blocked by several factors: a) the irrational allocation of administrative functions between the various levels of government, which creates much fragmentation and a growing constitutional conflict between the regions and the State; b) the limited financial autonomy of the regions and local bodies, which prevents them from being fully responsible for the implementation of their policies; c) the transfer of work to still fragile (especially in the South) local and regional administrations; d) the irrational binary system of the decentralized administration, in which local and regional bodies, plus the peripheral offices of the State, all operate in the same area, inevitably overlapping with each other.

A second objective – to reduce the size of the public sector – has not been fulfilled. The process of privatization illustrated above has had important results, like thinning out the jungle of public economic entities. Still, a downsizing of central apparatuses has not taken place. As noted above, if one counts agencies, the number of central government administrative bodies actually increased following the 1999 reform, as did the size of the new ministries, which were created by simply unifying the old ones. Reform of the central administration did not even reinforce the presence of the public administrations

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<sup>45</sup> In the world ranking of e-government readiness, Italy came in twentieth, while it is in sixteenth place in the web measure index and thirteenth in e-participation: cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report 2003: E-Government at the Crossroads*, cit., p. 15 ss.

<sup>46</sup> Presidenza del Consiglio dei ministri – Dipartimento per la funzione pubblica, *Indirizzi per la modernizzazione delle pubbliche amministrazioni*, Roma, Istituto poligrafico e Zecca dello Stato, 1993.

in Europe, in as much as the problems of redundancy and dispersion, which characterized their coordination with the Community level, were not resolved.

Another purpose of the reform was to make public employees more productive. To this end, various forms of temporary employment contracts were introduced. But their impact has been limited. Around 20 percent of Italian public administration employees have a time-limited contract, which is an average rate for Europe.<sup>47</sup> The criteria of merit has yet to be seriously implemented, there being frequent departures from the constitutional principle of hiring by means of a public competition. The merit system mechanisms of award and sanction are still inadequate, in part because unions resist them in collective bargaining.

Turning to the goal of separating politics from administration, the management tasks of the administrative head have been formally distinguished from the political representatives' work of agenda-setting and review. The establishment of the independent authorities and agencies insulated those administrative activities that could be exercised independently from political interference. At the end of the 1990s, however, the greater stability of governmental structures prompted the return of politics. The directorate's autonomy was compromised by the broadened scope of political nomination and the new precariousness of its offices. At the same time, the powers of regulatory authorities were partly eroded to the advantage of the ministers, and the general model of the agencies, delineated in the 1999 reform, has been progressively dismantled.

The slogan "spend less and spend better" has translated into a reform of the budget and controls that, notwithstanding its comprehensiveness, has not produced the expected results. Lacking an adequate planning of administrative activity, spending levels continue to be determined by previous expenses rather than future projects. Furthermore, the inefficiency of management oversight precludes examining the relationship of spending to output, and thus eliminating waste.

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<sup>47</sup> Cfr. Dipartimento della funzione pubblica, *I rapporti di lavoro flessibile nelle amministrazioni pubbliche*, Soveria Mannelli, Rubbettino, 2004, p. 18 s., which reports that, according to a survey carried out by the Ministry of the economy through the annual census, the total of the work force analyzed in 2001 included 3.196.583 employees with a permanent position and 307.047 with a time-limited employment contract; of the "contractualized" employees, subject to a private law employment relationship, there were 2.688.240 with an unlimited contract and 299.153 (10 percent) with a time-limited contract, for a total of 2.987.393.

The goal of “putting the citizen in the driver’s seat” has been realized only in part. The citizen’s charters have established quality standards and the relative rights of public service users. But administrative output has not been measured and the introduction of competition has been delayed, because competition between public and private operators occurs only in a few sectors and because there are no comparative assessments of the output of the different administrative units. Therefore, resources are not allocated according to productivity criteria and there is no incentive to improve quality.

Finally, the goal of simplifying governmental activity and decision-making and freeing the public administration from legislative obligations has been realized only to a limited degree. On the one hand, the reduction of the number of ministries has led to a corresponding reduction in the interests represented in the Council of Ministers, thus facilitating government action. New technologies enable the modernization of internal communications systems and record-keeping. On the other hand, only a few of the new ministries have been unified around homogenous functions. As a consequence, proceedings have not been freed of those procedural burdens (acts of agreement, requests for opinions) that come from the irrational distribution of competences among departments. Simplification and administrative rationalization measures cannot keep up with the rate of administrative complication.

To conclude, the process of administrative modernization in Italy is full of contradictions. Two factors conspire to explain the mentioned failures. First, Italian reformers’ “textual obsession”<sup>48</sup> makes them as careful in the definition of the normative framework as they are indifferent to its concrete implementation. The second factor, produced by the majoritarian logic of alternation, is represented by administrative reforms *à la carte*. The quick succession of reformist attempts, without any review of the efficacy of the previous government’s reforms, is fruitless, because it prevents the progressive adjustment of the framework to the reality. Furthermore, it fuels a resistance to changing bureaucratic structures, inducing a *saturation psychosis*.<sup>49</sup>

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<sup>48</sup> Y. Meny, *Le riforme amministrative in Italia e in Europa*, in *Le riforme amministrative italiane: un confronto europeo*, Spisa Conference, 8 March 1999, Bologna, Clueb, 2000, p. 18.

<sup>49</sup> The expression *saturation psychosis* comes from G.E. Caiden, *Administrative Reform. Proceed with Caution*, in *International Journal of Public Administration*, 1999, vol. 22, n. 6, p. 818, which

## **6. Administrative Reform in Other Legal Systems and at the Global Level**

Having examined the Italian administrative reforms of the 1990s, let us turn now to other European countries, particularly the United Kingdom, France, Spain and Germany. The analysis shall be carried out from two points of view: the relationship between politics and administration on the one hand (§ 6.2), and efficiency on the other (§ 6.3). We then shall attempt to evaluate the influence of the dominant reformist paradigm – *new public management* – on the modernization processes under consideration (§ 6.4). But first we must explain the way in which the national and the global levels interact in the processes of reform (§ 6.1).

The overall purpose of this part of the examination is to demonstrate how reforms that look the same on paper may produce different practical results. Modernization programs are often analogous and they thus foreshadow a convergence of administrative systems. But their implementation is conditioned by the diversity of specific institutional and cultural contexts. Convergence is therefore only partial.

### **6.1. Relationships between the National and Global Levels**

The global level affects national administrative reform both directly and indirectly. Its direct effects can be seen in that state authorities are not the only public powers guiding the national administrative modernization process. Take for example the influence of the European Union on the transformation of the Member States' legal systems. European law sets forth functions, organizational requirements and proceedings that national administrations are obliged to respect. Many of the changes in domestic public administrations are thus triggered by the direct intervention of the European legislator. The little attention given to Community-driven transformation processes can probably be explained by looking at the particular characteristics of such changes. First of all, unlike the pattern followed by national reforms, Community-driven reform is not cyclical, since the European norms are enacted by politically independent authorities (mainly the Commission), whose continuous action is shielded from the destabilizing

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explains that: “[w]hen rulers change, as frequently they do, they have reform proposals of their own and often abandon their predecessors’ reforms without caring whether they are working out. When governments do this in quick succession, administrators throw up their hands until the dust settles” (*ibidem*, p. 824).

effects of electoral cycles. European norms also follow an incremental logic: innovations generally come from multiple sectoral norms, which individually escape political attention, rather than from grand reform projects. A similar explanation also holds true for the changes brought on by international norms and decisions.

With respect to indirect effects, the internationalization of States' and sub-state bodies' activities has two consequences worth considering. The dispersion of state functions in favor of other (supra- and infra-national) levels of government attenuates the States' centrality as producers of norms. Moreover, the State participates in the decision-making processes of the composite systems to which it belongs. It takes part in these composite systems mainly through its own administrations, which send their representatives to the many international and European committees which elaborate norms and standards. This creates a need to reform national administrations in order to ensure adequate mechanisms for coordination with ultra-state public powers and to enable an active participation in ultra-state decision-making processes.

## **6.2. Relationships between Politics and Administration**

In the major European legal systems, administrative reforms have affected the relationships between politics and administration by triggering two opposite tendencies: on the one hand, they have given rise to "agencification" processes, that is the establishment of administrations enjoying a certain degree of autonomy from the government and its policy-making power, thus weakening the relationship between politics and administration; on the other hand, they have reinforced this relationship by making the high bureaucracy more dependent on the political leadership.

The paradigmatic experience of agencification is no doubt the British one. Bringing together some suggestions of the 1968 Fulton Report, the Next Steps program (*Improving Management in Government: Next Steps*), launched in 1988, led to the establishment of over 130 executive agencies in ten years.<sup>50</sup> The Next Steps agencies

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<sup>50</sup> According to the data contained in Chancellor of the Duchy of Lancaster, *Next Steps: Agencies in Government – Review*, London, The Stationery Office, 1997, and published in C. Pollitt in G. Bouckaert, *La riforma del management pubblico*, cit., p. 100 s. e 353, in the mid-1990s there were over 140 agencies. E. Gualmini, *L'amministrazione nelle democrazie contemporanee*, Roma-Bari, Laterza, 2003, p. 44, reports that there were 135 agencies in 1998.

are autonomous, but not independent from the government: the agencies' directors enjoy wide autonomy in managing resources and answer to the competent minister, with whom they negotiate the objectives and the service quality standards in the context of framework agreements.<sup>51</sup>

An analogous phenomenon can be seen not only in Italy, where numerous agencies emerged in the 1990s (especially following the 1999 reform of the ministries), but also in France and Spain. In France, the modernization program set forth by the Rocard government in the 1989 circular on *Renouveau du service public*, provided for the establishment of *centres de responsabilité*. These administrative units were created to improve the efficiency and the quality of administrative action at the ministerial and other levels. These centers of responsibility (or centers of cost) can be compared with the Next Steps agencies, though they generally enjoy somewhat less autonomy. The centers' budgeting powers, objectives and the resources are fixed by conventions stipulated every three years with the sectoral minister and the ministers of the public function and the economy. In 1994, there were already 207 centers, of which 109 deal with the ministries' local services (*services déconcentrés*); in the second half of the 1990s, their number stabilized at around 400 units.<sup>52</sup>

A number of agencies have been recently established in Spain as well. The model followed is once again the British one. Directors and ministers negotiate conventions setting forth objectives, standards and resources. The outcomes bear strong analogies to the Italian agencies. The Spanish agencies have a strong tie with the relevant minister and the rules governing their functions are rigidly fixed by specific laws and conventions. The first agency was the State Tax Administration Agency, established in 1991. After this, many other agencies were created, especially in the second half of the 1990s.

Germany does not have executive agencies like the Next Steps agencies. Still, it cannot be said that the administrative competences are concentrated in the federal ministries. First of all, most of the operational tasks, which in other countries would be conferred

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<sup>51</sup> The organizational characteristics of the agencies are set forth in the 1989 White Paper entitled *The Financing and Accountability of Next Steps Agencies*.

<sup>52</sup> E. Gualmini, *L'amministrazione nelle democrazie contemporanee*, cit., p. 51.

upon executive agencies, are instead allocated to the local administrations of the *Länder* in Germany. Moreover, in Germany there are many bodies (agencies, independent authorities, semi-public organizations) charged with coordinating the various levels of government and the public and private sectors: the federal ministries delegate technical tasks and service provision to such bodies as the Agency for Foreign Trade and the Federal Labor Office.

We thus observe that *agencification* processes have been experienced in all of the major European national systems, with the exception of Germany. While other countries have taken the British experience as a model, they have not faithfully reproduced it. The *Next Steps* agencies have greater autonomy (in budgeting, definition of objectives and personnel management) than their French, Spanish or Italian equivalents. In the United Kingdom, agency directors pursue objectives that they themselves have defined, while in continental Europe the functions and programs have to be negotiated with the relevant ministries and are conditioned by a dense body of norms. In the British case, *agencification* has created a situation that tends towards a full separation between politics and administration. In the other cases, a more tenuous organizational separation between policy-making and management has been realized.

We turn now to the second tendency, which regards the intermeshing of politics and administration created by the weakening of the high bureaucracy's autonomy. The model in this case is the United States, where this tendency has historically taken on greater proportions. Here, the spoils system goes back to the Jacksonian era. In virtue of this system, the duty of loyalty prevails over the principle of impartiality, and favors the politicization of the top officials' posts. The faction which wins the election and control of the government has the right to choose the senior directors from outside of the administration.<sup>53</sup> Even career senior civil servants (currently, they are around 8000 and organized in the Senior Executive Service, established by the Civil Service Reform Act of 1978) have short-term contracts and are hired on the basis of criteria that leave wide discretion to the federal executive.

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<sup>53</sup> In 1998, there were 2462 politically-appointed senior directors (E. Gualmini, *L'amministrazione nelle democrazie contemporanee*, cit., p. 85).



Senior civil servants are less politicized in the United Kingdom. In the British tradition, all civil servants are conceived as impartial and apolitical professionals, according to the Whitehall model set forth in the *Northcote-Trevelyan Report* of 1854. The rules governing the high bureaucrats however are increasingly different from those governing the rest of the personnel. The managerial revolution launched by the Thatcher government created a strong politicization: between 1979 and 1985, 43 secretaries-general and 138 vice secretaries were removed and replaced by politically nominated directors.<sup>54</sup> The Major government later reorganized the high bureaucracy by instituting the New Senior Civil Service (to replace the Senior Open Structure) and changed the rules governing top offices to favor flexibility and mobility, and to encourage productivity. Senior officials are currently organized into eight levels and subjected to nomination mechanisms that leave wide discretion to the Prime Minister and relevant sectoral minister.

In France, l'*Ecole Nationale d'Administration* (ENA) controls access to the high bureaucracy. At the end of their study, ENA students are admitted to the *Grand Corps* (Council of State, Court of Accounts, etc.) or assigned to the various ministries. Many, having reached the top of the administrative apparatuses, pursue a career in politics: the osmosis between the administrative directorate and the political leadership explains the criticism of this system as elitist. There are two criteria for career advancement: seniority and political nomination. The latter criterion prevails for senior ministerial directors: every new government has the right to replace them. Testifying to the growing politicization of senior officials in recent years is the growing rate of replacement: the government that took office in 1958 replaced 33.9 percent of the directors in the central administrations; replacement rate rose to 82.5 percent in 1986.<sup>55</sup>

The evolution of the rules governing the Spanish directorate is similar to the American experience. The Cadiz Constitution of 1812 introduced the system of *cesantías* (or spoils), which was later supplanted by meritocratic criteria with the enactment of the Civil Service Statute in 1918 (the Maura Statute). The principle of *confianza política*,

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<sup>54</sup> R.A.W. Rhodes, *Reinventare Whitehall, 1979-1994: sviluppare lo Stato vuoto?*, in B. Dente et al. (eds.), *Riformare la pubblica amministrazione*, Torino, Fondazione Agnelli, 1995, p. 315.

<sup>55</sup> For these and other statistics, L. Rouban, *The French Civil Service*, Paris, La Documentation Française, 1998.

reintroduced during the Franco dictatorship, is to this day the basis for the rules governing the Spanish directorate. However, to limit the abuse of the political appointment, Law n. 30 of 1984 introduced a system of “free nomination” for second-level directors.<sup>56</sup> This system was extended in 1997 to some of the senior directors (*altos cargos*). The Spanish high bureaucracy remains one of the most politicized. According to a recent estimate, some 6000 directorate positions are conferred by the government based on discretionary, political criteria.<sup>57</sup>

In Germany, finally, the rate of politicization of the high bureaucracy is low. Directors are nearly all career civil servants, promoted to the top level on the basis of seniority and an evaluation of merit carried out by hierarchical superiors and the political leadership. Only the two highest administrative positions – Secretaries of State (*Staatssekretär*) and General Directors (*Ministerialdirektoren*) – are considered (together with the ministers’ personal assistants) to be political functionaries (*Politische Beamte*) and, as such, subject to the minister’s power to temporarily remove them from the office. Other personnel are protected by the constitutional principle of career stability. A partial derogation was effected by a 1997 reform, which introduced the possibility of stipulating time-limited contracts for senior administrative offices. This innovation has made German top officials’ positions relatively more precarious, but not like the precariousness produced by the recent Italian reforms.

To sum up, the countries under examination all show a growth in mechanisms for ensuring the political loyalty of the high bureaucracy. American-style spoils systems have not been universally adopted. But still, starting in the 1980s, each of these countries saw an overall decrease in senior officials’ autonomy. The subjection of senior civil servants to the pleasure of the current political leadership compromises their independence, undermining the principle of administrative impartiality. This tendency is countered by the tendency towards *agencification*, which increases the organizational distinction between politics and administration. As a consequence, the sphere of

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<sup>56</sup> This procedure provides for the publication of the job announcement and the presentation of an application by the interested and qualified civil servant. Directors are then chosen by the executive, exercising total discretion. The removal of directors from office is equally discretionary. The system thus leaves considerable power of choice to the political leadership.

<sup>57</sup> S. Fabbrini e S. Vassallo, *Il Governo. Gli esecutivi nelle democrazie contemporanee*, Roma-Bari, Laterza, 2000, p. 207.

governmental administration – the administration directed by the executive – becomes more politicized, but less extensive.

### 6.3. Efficiency

The reforms of the last quarter century have also had a profound impact on efficiency. A recent report on the British public sector defines efficiency as follows: “Efficiency in the public sector involves making best use of the resources available for the provision of public services”; the objective of efficiency is pursued by “those reforms to delivery processes and resource (including workforce) utilisation that achieve: reduced numbers of inputs (e.g. people or assets), whilst maintaining the same level of service provision; or lower prices for the resources needed to provide public services; or additional outputs, such as enhanced quality or quantity of service, for the same level of inputs; or improved ratios of output per unit cost of input; or changing the balance between different outputs aimed at delivering a similar overall objective in a way which achieves a greater overall output for the same inputs (‘allocative efficiency’).”<sup>58</sup>

British reforms inspired by the principle of efficiency have pursued two main objectives: to improve administrations’ internal functioning through downsizing and appropriate management techniques; and to raise the quality of the services by setting standards and adopting a consumer orientation. Already in 1968, the Fulton Report proposed the adoption of private sector techniques (specifically, accountable management, measuring and evaluating outputs) to remedy the inefficiency of the public administration. The paradigm of the three “E”s – efficiency, efficacy and economy – was greatly emphasized by the Thatcher government. An Efficiency Unit was established in the Cabinet Office in 1979 to develop new proposals for improving the output of departmental programs. The 1982 *Financial Management Initiative* (FMI) introduced the “management by objectives” method and management review, which brought a steady stream of managers and private consultants into the public sector. The 1987 White Paper on public spending set parameters for management review, the evaluation of results and productivity awards. Downsizing in the United Kingdom

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<sup>58</sup> P. Gershon, *Releasing Resources to the Front Line: Independent Review of Public Sector Efficiency*, CBE, July 2004, p. 6 s. ([www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)).

assumed unique proportions compared with other European countries: between 1983 and 1988 the number of public employees fell from 730,000 to 590,000.

In more recent years, the main goal of the Major and Blair governments has been to improve the quality of services. The Citizen's Charter, in function since 1991, established standards for public service provision and gave citizens the right to a remedy for departures from these standards. Also in 1991, the Treasury Ministry's *Competing for Quality* report introduced market-testing procedures (competitive tendering and best value) to control the quality of privatized services. In 1996, the Civil Service Code and the Civil Service Management Code took effect: the former established principles of good conduct for civil servants, the latter set forth rules for external appointments. In 1997, the *New Charter Program* and the *Service First* report, the Blair government gave new impetus to the citizen's charters, providing for different ones in relation to different categories of public service users. The Modernising Government report launched an intense information technology program, which brought e-government to a remarkable level of development.<sup>59</sup> Following the recommendations of the 2004 Gershon<sup>60</sup> and Lyons<sup>61</sup> reports, Chancellor Gordon Brown announced a new downsizing of the public sector. Within three years, the current number of 520,000 public sector employees must be reduced to 100,000, and another 20,000 are to be transferred from the capital to the periphery. The expected savings of approximately 20 million pounds (30 million Euro) are to be invested in the improvement of the quality of services.

Like in the United Kingdom, private management techniques have been introduced in the French public administrations in order to increase efficiency and improve the quality of the services. The Chirac and Balladur governments had launched initiatives aimed at the simplification of administrative proceedings and at raising the standards of public services (in 1986 and 1988, respectively). The most important reform program however

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<sup>59</sup> The United Kingdom is the country that offers its citizens the greatest chance to interact with public service providing administrations over the internet. It holds first place in the 2003 ranking of *e-participation*: cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report 2003: E-Government at the Crossroads*, cit., p. 19.

<sup>60</sup> P. Gershon, *Releasing Resources to the Front Line: Independent Review of Public Sector Efficiency*, cit.

<sup>61</sup> M. Lyons, *Well placed to deliver? – Shaping the pattern of Government service*, March 2004.

was set forth in the 1989 Rocard circular, *Le renouveau du service public*. In addition to the establishment of the *centres de responsabilité*, discussed in the previous section, the circular emphasized management by objectives: administrations should draw up *projects de service* to speed up the provision of services and introduce specific mechanisms to review the results. Following the British example, the Cresson government introduced the citizen's charter in 1992. Later, the 1995 Juppé circular on the reform of the State launched an ambitious reform project, based on the redefinition of state tasks and the boundaries of the public sector, as well as the improvement of the quality and transparency of services. A 2000 law on the relationship between citizens and the public administration increased the transparency of administrative activity. An important budget reform was then enacted in 2001 (by the comprehensive law on finance laws, to be fully implemented in 2006). It aimed to increase the efficiency of the management of public resources by defining objectives and performance indicators. In 2003, a constitutional law on the decentralized organization of the Republic provided for the possibility of experimenting with the transfer of certain competences (in the areas of health, education, youth and culture) to local governments, so as to maximize their fulfillment. E-government has also received growing encouragement in recent years with a program launched by the Jospin government in 1998; internet use, however, is not as developed in France as it is in the English-language countries.<sup>62</sup> Finally, the Prime Minister's circular of 2 July 2004 set forth *Stratégies Ministérielles de Reforme* (SMR): the 225 proposals aim to increase the efficiency of the ministerial administrations by means of a more accurate definition of objectives and a more careful evaluation of the results.

Modernization of the administrative machine in Spain began in 1989 with the *Reflexiones para la modernización de la Administración del Estado*, published by the then-minister of the public administrations, Almunia. The reform introduced the strategic planning method into the central administrations and established mechanisms for evaluating the quality of public services. A *Plan de Modernización de la Administración del Estado* was published in 1992 with the twofold purpose of rendering the functioning of state administrations more efficient and improving the quality of

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<sup>62</sup> France occupies the twenty-seventh place in the world web measure index, while it is seventh for e-participation: cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report 2003: E-Government at the Crossroads*, cit., p. 15 ss.

public services. To this end, the plan set forth 204 projects to implement in the ministerial department and introduced goal-oriented management, together with other managerial techniques. Also in 1992, a law on the public administrations and administrative proceedings was enacted (amended in 1999), which reinforced the position of the citizen with respect to the administrations and provided for some administrative simplification. The 1997 law on the organization and function of the general administration of the State incorporated the principle of customer service, along with principles of functional decentralization, efficiency, efficacy and managerial responsibility. The 1999 launching of the *Plan de Calidad para la Administración General del Estado*, was accompanied by the approval of norms (royal decree n. 1259 of 1999) regulating state administrations' citizen's charters. In 2000, the government published a White Paper on the improvement of the quality of services, which preceded a wide-ranging reform proposal containing such innovations as guaranteed public participation, competition with the private sector and e-government. In recent years, the government has continued its efforts to improve the quality of services: a new version of the White Paper was prepared in 2003, citizen's charters have been implemented and information technology is being introduced.

In Germany, the pursuit of efficiency through private sector style management techniques and raising the quality of the services has been less important at the federal level than other objectives, such as simplification and "delegification". The early programs for the simplification of legislation, carried out by an independent federal Commission for the simplification of legislation, go back to 1983. The Commission's activities led to the adoption of measures for the simplification of administrative proceedings and the deregulation of many sectors (the postal service, telecommunications, insurance, transportation, electricity) between 1984 and 1989. In 1987, the Commissioner for administrative efficiency published a report on personnel and the organization of the public administration, which gave a new impetus to the activity of simplification. After some years, in 1997, the consultative Committee on the "streamlining of the State" (established in 1995) published a report which advanced previous simplification efforts. More innovative is the program *Modern State – Modern Administration*, published by the federal government in 1999: it advances proposals for increasing management transparency and introducing productivity incentives. Finally,

in 2001, a plan was launched for the promotion of e-government, to enable some services to be accessed directly over the internet. The reform of the central German administrations has thus been influenced by the managerial paradigm less than similar reforms in the other countries under examination. This cannot however be said for the administrations of the *Länder*, which have provided an important contribution to administrative reform experiments: many interesting initiatives have been carried out at the regional and local level, inspired by the “new public management” (the *Neues Steuerungsmodell*).<sup>63</sup>

#### 6.4. New Public Management

On the basis of the analysis of administrative reform carried out in Italy and other European countries, we can attempt to respond to the recurring question: can the cycles of innovations described above be explained by the dominant paradigm of New Public Management?<sup>64</sup>

The managerial revolution advanced by this paradigm stimulated processes of agencification, marketisation, customer orientation, results orientation, value for money, and outsourcing.<sup>65</sup> Many of the reforms described above did in fact provide for the introduction of these techniques and are therefore related to New Public Management.<sup>66</sup> We can thus ask, what are the causes and effects of the wide diffusion of this paradigm of reform? Among the causes is the continuous activity of the OECD, which conducted important comparative studies and promoted reforms in many countries through the Puma program. The spread of New Public Management as a “global” model is however linked to a structural condition: the rise of a liberal ideology in Western countries, which enabled the rediscovery of the market, business and private law, and gave an important role to the user of public services. It is perhaps no coincidence that New Public Management has been developed precisely in English-language legal systems

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<sup>63</sup> Cfr. C. Reichard, *Local public management reforms in Germany*, in *Public Administration*, 2003, vol. 81, n. 2, p. 345 ss.

<sup>64</sup> In the well-known book of D. Osborne and T. Gaebler, *Reinventing Government*, Addison Wesley, Reading, 1992, 325 ss., it is affirmed that a new model of reform of public apparatuses is spreading at the global level. For a careful discussion of this thesis, C. Hood, *Beyond “Progressivism”: A New “Global Paradigm” in Public Management?*, in *International Journal of Public Administration*, 1996, vol. 19, n. 2, p. 151 ss.

<sup>65</sup> Cfr. United Nations – Department of Economic and Social Affairs, *World Public Sector Report: Globalization and the State*, cit., p. 36 ss.

<sup>66</sup> The originality of the concepts at the basis of new public management and the argument that they represent a paradigm shift have come under discussion: see G. Gruening, *Origini e basi teoriche del New Public Management*, in *Azienda pubblica*, 1998, p. 669 ss.

(where the liberal tradition is stronger) and has been welcomed in the major market economies.

The major effect is the convergence of administrative systems. However, this convergence, promoted by the adoption of a body of common techniques, has only been partial. The implementation of these reforms has given rise to different outcomes. There are at least three reasons for these differences. First of all, the reform model has been interpreted in different ways by different national administrative cultures. *New Public Management* in the United Kingdom, *Renouveau du service public* in France, *Modernización* in Spain, *Neue Steuerungsmodell* in Germany, *Modernizzazione* in Italy are different not so much in their contents, but in the way they combine and emphasize various instruments of reform. Secondly (and most importantly), the institutional contexts in which the reform recipes are tested differ one from the other. The possibility of reforming an administrative system depends upon many variables: a political leadership capable of reform, a relationship between bureaucracy and politics that facilitates dialogue and favors change, the rigid or flexible nature of administrative structures and procedures. Finally, a cultural factor may sometimes be decisive. The Italian reformer, for example, often proceeds on the assumption that passing a law is enough to change the system. Here the emphasis is placed on the legislative phase, and there is an indifference towards the conditions necessary for implementation. This creates a tendency to reform the reforms before they have actually been implemented. This also leads to a failure to evaluate the results, which makes it difficult to understand if and how the reforms have worked and, as a consequence, if and how they ought to be corrected. Implementation takes a long time and requires a capacity to progressively adjust ideas to reality. A reformist culture is sometimes lacking, and this conditions the results of modernization efforts.

#### **6.5. The Advantages of a More Efficient Administration from a Global Perspective**

A more efficient public sector has advantages not only from the domestic perspective (reduced costs of the functioning of the state machinery and public service user satisfaction), but also from a global perspective. We shall set forth three reasons for this. First of all, administrative efficiency might determine private actors' choice of law. The communication between legal systems favors the most efficient administrations. These



are preferred over the others and, therefore, widen their sphere of action beyond their national border, acquiring a prominence similar to businesses with a dominant market position. Administrative efficiency can guarantee that “centrality of influx” which ensures the State’s continuing relevance in the context of global governance.

Secondly, efficiency promotes a rigorous and timely execution of ultra-state law. International institutions’ vigilance over implementation creates a comparison between legal systems at the European and global levels. The most efficient administration serves as a benchmark for the others, which are then pressured to improve their performance. The other administrations are called to reorganize themselves in order to strive towards the standards of the most efficient administration and to remove obstacles (rigid ministerial structures, functionaries’ training, coordination mechanisms, etc.) that impede their interaction and cooperation with other actors in the public arena.

Thirdly, an efficient administration enables a State to exercise a particular influence in the initiative phase of Community and international decision-making processes. Transnational decision-making bodies compare national experiences to determine the best solution. A national administration’s credibility rests upon its efficiency. Such credibility increases the chance that its best practices are taken as a model for ultra-national norms. This means that its model would be transplanted in other Member States; it also means that the model State does not have to sustain the costs of conforming to the European or international norm.

The improvement of efficiency is not the only objective of administrative reform. As the modernization processes described above demonstrate, the emphasis of efficiency often obscures the value of impartiality, which has not yet become the guiding principle in reforming the relationship between politics and administration. This creates a paradox in the administrative model delineated by the most recent reforms: the public administration is a slave to both politics and to users. Subjugation to politics compromises the impartiality of administrative activity, which is an indispensable condition to users’ satisfaction.

## 7. Conclusions

The administrative reforms illustrated above provide important, somewhat paradoxical, lessons. First of all, administrative reforms take root where there is the least need for them: it is precisely in the countries with the most modern and least extensive public sector systems, like the United Kingdom, that there is a greater capacity to change and to respond to global pressures.

Secondly, one of the main objectives of managerialism is to increase the autonomy and responsibility of senior civil servants. The politicization of the high bureaucracy has however obscured the distinction between administrative responsibility and political responsibility. Public managers' autonomy has thus been weakened rather than reinforced.

Thirdly, the pursuit of efficiency can have unintended consequences and can even lead to the opposite of its main objective (the reduction of costs). Many European countries have adopted citizen's charters. But by introducing qualitative standards for the provision of services and granting citizens corresponding rights, this "charterism" can end up fueling litigation between private actors and public administrations, leading to a rise in costs for the public sector, at least in the short run.

Fourthly, the efficiency paradigm requires considering citizens as user-consumers. But this does not transform civil servants into producers, as this would compromise both the public *ethos* that ought to inspire their conduct, and the social needs underlying the provision of public goods and services. As these contradictions make clear, private management, idealized and taken as the universal model of administrative reform, is only partially compatible with the public sector. For this reason, private sector techniques must be adapted in order to be applied to public administrations.

A final paradox. Administrative reforms are often considered or vaunted as a way to contract the public sphere and reduce the role of the State; however, the realization of these very reforms requires a strong State, a command center that can guide implementation. Analogously, the consolidation of a global legal and economic order suggests the possibility of an overcoming of the State; but it is in fact the State and its apparatuses that enable the effectiveness of ultra-state decisions. Economic globalization and administrative reform do not therefore imply the retraction of the State but, rather, an inescapable need to modernize it.

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