Developments

On Bridging Legal Cultures: *The Italian Journal of Public Law*

By Giacinto della Cananea[*]

Abstract

The example of the German Law Journal has been very important for the creation of a new legal journal, the Italian Journal of Public Law. First, that example was very persuasive due to the importance of the traditional ties between the German and Italian legal cultures. Second, following that example, unlike most e-journals in the legal field in Italy, the Italian Journal of Public Law devotes considerable attention to theoretical issues. Its goal is essentially to serve as a bridge between legal cultures and this explains the choice of English as the working language. This does not imply, however, a demise of the national tradition, in particular as far as the distinctiveness of public law is concerned. Openness towards other legal cultures implies, rather, an even stronger awareness of the existence of a variety of approaches or methods, in contrast with the faith in "the" legal method, conceived in a unitary way, which characterized part of the last century.

A. A New Law Journal in Italy

Among the several, and positive, consequences of the *German Law Journal*'s first ten years of activity there is a side-effect, likely relatively unknown to its readers, but quite relevant, concerning the birth of a younger "cousin," the *Italian Journal of Public Law* (IJPL).[1] From the earliest discussions about a new Italian journal, among the several arguments that were considered, the example of the *GLJ* always had considerable weight. This did not depend only on the success of the *GLJ, nor* did it depend so much on an argument that may intuitively be supposed to be of some importance, that is to say that "others are doing it." That alone never would have carried the day, especially considering the significant relationship between Italian and French legal culture. Italy has a long tradition of jurisprudential exchange with its northern neighbour just to the west and over the Alps.[2]

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[1] The IJPL is available at the website http://www.ijpl.eu. It is published twice a year.

[2] Although the concept of legal culture is controversial, it is quite useful, as argued by Lawrence Friedmann *The Concept of Legal Culture: A Reply*, *in* COMPARING LEGAL CULTURES 34, 37, (David Nelken, ed., 1997). See also John H. Merryman, *The Italian Style I: Doctrine*, 18 STANFORD LAW REVUE. 18 (1965), (for the thesis that, in spite of the jurisprudential exchanges with other cultures, Italian law kept some elements that made it best express the civil law tradition).

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The influence of the French civil code has been tremendous. With regard to public law, it is worth noting the debate that took place at the beginning of the twentieth century between the great advocates of institutionalism, the French public lawyers Maurice Hauriou and Léon Duguit, on one hand, and Santi Romano, the most important Italian public lawyer of that century, on the other. Neither has the French-Italian jurisprudential relationship been a one-way street, as influence of Italian legal thinking on French legal culture has been renewed by a recent translation of Romano's major work, *L'ordinamento giuridico*.[3]

The example of the *GLJ* was so persuasive for two other good reasons. The first reason regards the German legal tradition that is at the heart of the *GLJ* project which has had its own distinctive appeal and influence in Italy. The second reason is contextual, because it concerns the current situation of e-journals in Italy.

B. The Traditional ties Between the German and Italian Legal Cultures

The appeal and influence of the German legal culture in Italy has also been significant. In the first half of the nineteenth century, Italian lawyers looked mainly to France, while in the second half of the century, they increasingly drew inspiration from Germany.[4] Such changes in legal mindset occur, of course, more rarely and more slowly than do political changes. Nonetheless, they do occur. A notable example of such a change is the end of the French influence in the field of public law in Italy, and its replacement with German legal theories during the last two decades of the nineteenth century.

Since this story has been told elsewhere, and with a much more elaborate account than would be possible here,[5] it is sufficient to say that the cultural shift mentioned above was

[3] See Santi Romano, L'ORDINAMENTO GIURIDICO (1918; 1946, 2nd ed.), translated into French by Lucien François & Pierre Gothot, L'ORDRE JURIDIQUE (1998). The importance of Romano's pluralist approach has been recently considered by Mireille Delmas-Marty, LES FORCES IMAGINANTES DU DROIT I, LE RELATIF ET L'UNIVERSEL 11 (2004). For an excellent account of Romano's works, see Aldo Sandulli, *Santi Romano and the Perception of Public Law Complexity*, 1 ITALIAN JOURNAL OF PUBLIC LAW (IT. J. PUBLIC L.). 165 (2009). It ought to be mentioned that in the later part of his life Romano had planned another general work, which should have been translated into German; however, the war put an end to that project.

[4] Interestingly, this was in regard to German public law thought, rather than the legal institutions and more broadly the environment in which such thoughts were elaborated. The continued influence of French legal institutions was still evident in 1890, when an administrative court was set up, by creating a new structure (the fourth chamber) within the *Consiglio di Stato*: the underlying reasons are explained by Aldo Piras, *Administrative Justice in Italy*, in ADMINISTRATIVE LAW. THE PROBLEM OF JUSTICE, VOL. III, GERMANY AND ITALY, 341 (Aldo Piras ed., 1997).

[5] See Sabino Cassese, CULTURA E POLITICA DEL DIRITTO AMMINISTRATIVO (1973), translated into French by Michel Morabito, CULTURE ET POLITIQUE DU DROIT ADMINISTRATIF (2008).

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made possible by two main factors. First, in the last two decades of the nineteenth century, Italy strengthened its ties with Germany, not only in the political and military fields, but also in the cultural field. The influence of Hegel's philosophy, in particular, was immense. Second, and more relevant for our purposes, German public law theory lies at the core of the "new public law" that Vittorio Emanuele Orlando elaborated in 1881 and successfully imposed in the following decades.[6] Such thoughts implied: a) the supremacy of the State over citizens and territorial bodies; b) the ideology of the self-limitation of State powers enshrined into the doctrines of *Rechtsstaat* (legal state) and *subjektive öffentliches Rechte (individual public rights)*; and c) the full adhesion to post-pandect theories of public law. What precisely these theories were is still a matter of debate. It is easiest to state how they were regarded critically by the following generations of public lawyers, that is to say, as implying a rather abstract way to look at legal institutions, through categories that are always valid everywhere.[7]

The more recent German shift to an interest in Italian public law may be explained as a reaction to the persisting attempts to construct a formal science of law founded on those premises. After 1945, and especially since the early 1970s, a growing influence of Anglo-American theories has emerged in most fields of public law.[8] Although several factors convened to produce this shift, one of them is of distinct importance. This is the gradual recognition of judge-made law. An interesting example is the principle of proportionality, which is judge-made, and derived from German legal culture.[9] It is here that an apparent paradox emerges. If proportionality was elaborated by German scholars, one may wonder why its study in Italy only flourished during the last fifteen years. To understand why, in my opinion, the growing awareness of the judicial construction of Europe should be taken into account. In other words, the importance of proportionality would not have been fully appreciated without a legal culture more aware of the weight of judge-made law in modern social systems. Incidentally, it is worth noticing that both of the first two monographs concerning proportionality published in Italy at the end of the twentieth

[6] For further remarks on Orlando's new paradigm, see Maurizio Fioravanti, *Vittorio Emanuele Orlando: Scholar and Statesman*, in ITALIAN STUDIES IN LAW, 29 (Alessandro Pizzorusso ed., 1992),

[7] For an analysis of the different methods used by European scholars to build theories of the State, see Peter Badura, DIE METHODEN DER NEUEREN ALLGEMEINEN STAATSLEHRE (1959).

[8] See Sabino Cassese, *Science of Administrative Law in Italy from 1971 to 1985*, in *JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART* 123 (1985).

[9] For this thesis, see *Alec Stone Sweet* & Jud Mathews, Proportionality Balancing *and Global Constitutionalism*, 47 COLUMBIA JOURNAL OF TRANSNATIONAL LAW 73 (2008).

century, paid great attention to the German theories of proportionality.[10] This demonstrates, once again, the attention paid by Italian scholars to German legal culture.[11]

C. A Glance at Italian E-journals in the Legal Field

Thus far, my explanation of why the experience of the *GLJ* was so important to Italian observers has focused on its presentation of German legal culture, which has been of increasing importance to Italians. The other part of the explanation regards a specific feature of the *GLJ*, namely its status as an e-journal with a strong interest in a variety of legal issues, including those of a more theoretical nature. To illustrate this point, I will briefly consider law journals in Italy.

This essay is hardly the first to observe the growing divergence between a "lower" and a "higher" level of legal culture.[12] While the latter is still based essentially on traditional, printed journals (for which, unfortunately, there still are no searchable data-bases in Italy equivalent to *HeinOnline, Westlaw,* or *Lexis-Nexis*), the former makes intensive use of the Internet. There is a growing number of Italian e-journals in the legal field, which at first glance, appear strikingly different in terms of their objectives, scope, and methods. Nevertheless, it can be argued, provided we plunge below the surface of these differences, that certain important similarities between them exist. One such similarity is the prevailing, if not exclusive, preoccupation showed by most e-journals with providing their readers with timely commentary on new developments. Particularly with regard to public procurements and public utilities, it appears as though the only mission of these e-journals is to keep their readers, who are both practicing lawyers and academics, abreast of newly enacted legislation and judicial decisions. More theoretical analysis is rare, if not completely absent. There are, however, some important exceptions. An excellent example of an e-journal that devotes adequate space to this kind of analysis is *Aedon*, which provides documents and analysis to the community of experts in the field of cultural heritage[13] Another one is *Costituzionalismo*, which deals with a variety of issues concerning

[10] See Aldo Sandulli, *La proporzionalità dell'azione amministrativa* (1998) and Diana-Urania Galetta, Principio di proporzionalità *e sindacato giurisdizionale nel diritto amministrativo* (1998).

[11] Since 1971, regular meetings have been held every two years between German and Italian professors of public law. The proceedings are published in law journals of both countries. The most recent are published in the 2010 edition of the Heidelberg Journal of International Law.

[12] See Sabino Cassese, *Lo stato presente del diritto amministrativo italiano*, 60 RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO 389, 398 (2010).

[13] *Aedon. Rivista di arti e diritto on line* published since 1998. See www.aedon.mulino.it (all articles and notes have an abstract in English). I ought to clarify that the term "cultural heritage" is used here in order to emphasize the importance of all intangible and non-material elements, as opposed to those that characterize "cultural property".

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constitutional law.[14] Several other e-journals deal with issues of administrative law and policy.[15] Even these brief remarks demonstrate that e-journals tend, even more than traditional law journals, to consider legal issues on the basis of a sector-based approach. In this sense, and within these limits, it can be said that the *Italian Journal of Public Law*, with both its unitary approach to public law and its strong interest in legal history, the leading scholars of the past,[16] and theoretical issues, fills a gap that exists among Italian e-journals in the legal field.

D. The *Italian Journal of Public Law* and the Choice of English as a Bridge Towards Other Cultures

There is another, and clearly more evident, respect in which the *Italian Journal of Public Law* makes an attempt to enrich the Italian legal environment. It does so by establishing a wider set of relations with other legal cultures. [17] To borrow the metaphor used in the *Journal's* inaugural editorial, the mission of the *Italian Journal of Public Law* is to serve as a bridge between legal cultures. This explains the choice of English as the working language. Although there is no need to say much to the readers of the *GLJ* in this respect, at least two aspects are worth considering.

First, while most of individuals whom I consulted (scholars, administrative judges, and lawyers) agreed that the time was ripe for making an attempt to create a new law journal entirely in English, some expressed doubts on several grounds. Italians are not the only ones with the latter concerns. Perhaps nobody looked more askance at the use of English, with its risk that it could, in the long run, lead to a sort of demise of the language of Dante Alighieri, than a very distinguished German scholar, whose affection for German culture rivals his legal talent. Of course, it would be easy to reply, tactfully or tactically, that such a worry largely exceeds the possible implications of a new e-journal, while there are so many established law journals that are published in Italian and will hopefully continue to do so for a very long time. A variant of this reply, however, is closer to the ambitions of founders

[14] *Costituzionalismo*, published since 2003. See www.costituzionalismo.it (interestingly, the website clarifies that this journal publishes "only the contributions solicited by the editors": my translation).

[15] See, in particular, "*Giustizia amministrativa. Rivista di diritto pubblico*" (www.giustamm.it), published since 2000, and "*Federalismi. Rivista di diritto pubblico italiano, comunitario e comparato*", (www.federalismi.it), published since 2003.

[16] See Claudio Martinelli, *Gaetano Mosca's Political Theories: a Key to Interpret the Dynamics of the Power*, 1 IT. J. PUBLIC L. 67 (2009) (presenting Mosca as a constitutional lawyer as well as the founder of political science in Italy, against the separation between the two fields advocated by Orlando and practiced by many of his successors).

[17] Mention must be made of an important attempt in this direction made almost twenty years ago, with the *Italian Studies in Law*, edited by Alessandro Pizzorusso (1992).

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of the Italian Journal of Public Law. In the past, other European public lawyers have repeatedly shown their interest for our most distinguished scholars' (such as Romano, Giannini and Costantino Mortati)[18] contribution to public law discourses at the European level. However, those scholars interacted with their contemporaries mainly using languages other than English, notably French and German. This is no longer the case, and the increasingly widespread use of English takes place in an epoch, in which the new technologies allow legal debates to take place world-wide, with a rapidity that was simply unthinkable only some decades ago. Precisely because a new, discursive, trans-national network is emerging, a serious attempt must be made to allow the Italian legal culture (especially younger researchers) to have a voice in the global legal conversation, and at the same time to make available the Italian legal experience to a much wider audience.

That said, I am aware that it is not possible to be naive with regard the choice of English. The ideas expressed and the positions adopted within a given legal system by advocates, judges, and scholars are not rooted only in certain categories of thought (*la doctrine*), or ideologies. Those ideas and positions are rooted, first and foremost, in a specific language, in all its meanings and subtleties, in the concepts that it creates.[19] It is trite wisdom that, quite often, it is very hard or even impossible to translate aptly such concepts to a foreign language. The different meanings and subtleties of each language, moreover, play a very important role in shaping and adjusting the values expressed by every culture. What I have in mind is not the set of values that may be more or less manifest in particular legal writings, but those of the wider political and social environment in which lawyers operate, though often this is not made explicit. Consider, for example, the term "accountability," for which Italian lacks an equivalent word.[20] Of course, the real issue is not so much the absence of an equivalent word, but whether there is an equivalent concept. I would answer this question in the negative, given that "*responsabilità*" (like its French equivalent *responsabilité*) corresponds, rather, to liability. It is perfectly possible to infer from this example that different legal cultures are not shaped only by languages, but also by some basic "styles" of though about the law, and that translations are too imperfect to provide an adequate basis for the trans-national legal discourses that were mentioned earlier.

Whatever the intellectual appeal of a way of reasoning about the law that comes very close to Emile Cioran's famous aphorism, according to which we do not live a country but a

[18] On the latter, see Giacinto della Cananea, *Mortati and the science of public law: a comment on La Torre*, in DARKER LEGACIES OF LAW IN EUROPE 321,-334 (Christian Joerges & Navraj Singh Ghaleigh eds. 2003). (emphasizing the differences between Mortati's conception of the legal order and that of Carl Schmitt).

[19] On this issue, see, in particular, Vivien G. Curren, *Comparative Law and Language* in THE OXFORD HANDBOOK OF COMPARATIVE LAW 675 (Mathias Reimann & Reinhard Zimmermann eds. 2005).

[20] See Carol Harlow, ACCOUNTABILITY IN THE EUROPEAN UNION 7 (2006) (observing that this word has "no obvious equivalent in other European languages").

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language, [21] I believe that this is not necessarily the only viable option. Indeed, styles and languages are not fixed, but fluid, open to change and contamination. The contamination of languages and styles is becoming increasingly evident in our non-legal literature. When considering the recent works of younger Italian writers, it is evident that they do not regard only their Italian predecessors (such as Italo Svevo, Alberto Moravia and Giorgio Bassani) as their masters, , but also their American or English predecessors. A reviewer observed recently, in our most important literary supplement, that this explains a gradual shift in style that is clearer and more concise, and thus facilitates translations.[22]

E. Why the Emphasis on *Public* Law?

Why the *Italian Journal of Public Law* focuses on public law is another issue that may not be avoided. I do not refer here to choice of a unitary perspective of public law, which is justified by both our tradition and by the need to reconsider the basic concepts of public law such as sovereignty and law, power and rights, as they were elaborated in the past,. Only by adopting a unitary perspective, in my view, may such a complex task be accomplished. Precisely because of this choice, however, the question of whether an even broader perspective ought to be adopted arises, specifically, a perspective that does not focus on public law particularly, but on law as such.

Such a perspective would be consistent with those strains of Italian public law theory that either deny, or tend to minimize the special character of the institutions of the State. Such strains of public law theory have criticized our system of administrative justice for the increasing weight given to the administrative judge, even if this doesn't exist. [23] More recently, at least two important legislative reforms have called into question the distinctiveness of public law, with regard to the civil service and to liberalized public utilities.[24] Similar questions have recently been the subject of debate, both in continental Europe, and in the United Kingdom (UK).[25] Many observers have argued that the divide

[21] Emile M. Cioran, ENTRETIENS (1995), translated into Italian by Tea Turolla, UN APOLIDE METAFISICO. CONVERSAZIONI 187 (2004).

[22] Serena Danna, *Scrittori senza Padrino*, *Il Sole 24 ore - Domenica*, n. 229, 25 August 2010.

[23] For a vigorous critique of these theories, see Marco Mazzamuto, IL RIPARTO DI GIURISDIZIONE. APOLOGIA DEL DIRITTO AMMINISTRATIVO E DEL SUO GIUDICE (2010).

[24] See Giacinto della Cananea, *The Regulation of Public Services in Italy*, 68 INTERNATIONAL REVIEW OF ADMINISTRATIVE SCIENCES 79 (2002) and Stefano Battini, *Administration et politique en Italie: des logiques contradictories*, 86 REVUE FRANÇAISE D'ADMINISTRATION PUBLIQUE 205 2008, respectively.

[25] See, in particular, Carol Harlow and Richard Rawlings, LAW AND ADMINISTRATION (2010, 3rd).

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between public law and private law has been eroded by a variety of factors.[26] Not only are several public functions contracted out to private bodies, but even legal principles such as "good faith" are considered as general principles of law that must be enforced within the public sector.

This is an interesting and important debate, from which there is much that can be learned from the experience of other countries, including those like the UK where the distinctiveness of public law has long been denied. However, in order to adjust and refine Italian theories about public law, there is a need to confront Italy's specific (in many ways "peculiar") experience of public law, with the insights derived from such debates. Whether the distinctiveness of public law is attenuated by recent developments is another question, largely of empirical nature. It must be analyzed empirically, with regard to the real world, and not ideologically.[27] Comparative legal analysis, too, can be very helpful. Recent studies show, for example, that at least some distinctive features of public law are increasingly recognized in the UK, in spite of Albert Venn Dicey's that since the English Constitution was the product of the ordinary law of the land, public authorities would be governed by general principles of private law, and there was consequently no room available for administrative law (to which Dicey referred to by using the French expression *droit administratif*, in a further effort to accentuate the peculiarities of English public law).[28]Also, European integration, which was evoked earlier, does not support the idea of a demise of public law. [29] EU law does not support a given model, but, rather, forces all existing systems to meet certain basic standards of public law. [30] The question of standards is thus becoming increasingly important. Italian public law, as it now stands, must be examined, interpreted and, if necessary, criticized for its various failures at ensuring respect for the standards of public life that are met by the countries with which Italy has achieved a closer integration in Europe.

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[26] *Id.*, 22. (observing that the public/private law distinction is simply a fact).

[27] See Franco G. Scoca, *Administrative Justice in Italy: Origins and Developments*, 1 IT. J. OF PUBLIC L. 121 (2009) (arguing that in the last ten years not only has the scope of activity of administrative judges has been enlarged, but that their role has been strengthened after the legislator entrusted them with the power to grant financial compensation to private parties).

[28] For further remarks of this theoretical framework, see Ian Harden & Norman Lewis, THE NOBLE LIE. THE BRITISH CONSTITUTION AND THE RULE OF LAW (1986) and Sabino Cassese, LA CONSTRUCTION DU DROIT ADMINISTRATIF: FRANCE ET ROYAUME UNI 20, (2000).

[29] This was clear almost twenty years ago: see Martin Loughlin, PUBLIC LAW AND POLITICAL THEORY 1 (1992) (arguing that "much of Community law … is based on the distinction between public and private law").

[30] See Paul Craig, ADMINISTRATIVE LAW (2003, 5th)(holding that EU law has been a "spur for doctrinal development in our regime of public law") and Yves Gaudemet, DROIT ADMINISTRATIF 31 (2010, 19th) (noting that EU does not directly change the French *régime administratif*, (administrative regime) but operates indirectly).

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F. Beyond the Faith in "The" Legal Method

In addition to requiring a much wider use of empirical and comparative legal analysis than was thought to be necessary in the past, at the core of the *Italian Journal of Public Law's* ambitions is a critical view about a very important issue of method. I mentioned earlier that the public lawyers who followed Orlando and Romano became increasingly aware of the intrinsic limits of post-pandect doctrines of public law. However, they have been more willing to recognize the inadequacy of the dominant tradition in public law theory once the broader political and social environment has been transformed, than to discuss critically the methodological premises of that tradition.

Orlando's quest for a new public law and his open preference for German public law theory relied heavily on his firm belief that a scientific method had to be adopted, one that would avoid both the interferences of philosophy and sociology and, at the same time, offer an objective view of the world. The fact that, in his view, this quest for "purity" and objectivity was not required only by scientific ideals but also by the need to increase the faith of the public in the new political and legal institutions, is too well-known to require more than a comment here. The strengths of this methodological choice are equally well-known, including the quest for methodological legitimacy and the vision of the law as an apolitical and internally coherent system that was accentuated during the Fascist period.

However, this approach to public law also had its weaknesses. Because of the critical studies carried out since 1970, we are now in a position to appreciate one such weakness, the fundamental epistemological premise that there is "a" method.[31] For a very long time this epistemological premise has been conceived as an article of faith that could not to be discussed. As a result, until recently, the fallacies and inconsistencies of legal doctrines have been individuated and criticized only within the established methodological pattern inherited from the past. The drawbacks produced by this objective view, which has been strengthened by the acceptance of legal positivism as the orthodox way to think about the law, are neither few nor of little importance. In particular, it has delayed the understanding that most of the time our political and administrative institutions are not required to maximize a single public interest, but to strike a proper balance between a variety of

[31] At least one anecdote may be briefly mentioned. In 1995, when a new, and influential legal journal, *Diritto pubblico*, was published, Andrea Orsi Battaglini the founding editor, made it clear that its fundamental pillars included the concept of *Rechtsstaat* (which conveys some of the key elements of the "Rule of law", particularly the need to respect legislation, although both concepts have a specific ideological background and have led to very different doctrines of public law: see Martin Shapiro & Alec Stone Sweet, ON LAW, POLITICS AND JUDICIALISATION, 166 (1993)) and the defence of "the" legal method. His approach was criticized by Sabino Cassese (himself editor of the *Rivista trimestrale di diritto pubblico*). An unusually vivid debate for Italian standards then took place between the two: see Sabino Cassese, Alla ricerca del Sacro Graal. *A proposito della Rivista Diritto Pubblico*, 43 RIVISTA TRIMESTRALE DI DIRITTO PUBBLICO, 247 1995 and Andrea Orsi Battaglini, *Il puro folle e il perfetto citrullo (discutendo con Sabino Cassese)*, 1 DIRITTO PUBBLICO 639 (1995).

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interests. It also has discouraged, if not impeded, inter-disciplinary studies, particularly of public administration.[32] Last but not least, it explains in part, the decline of book reviews, because of the difficulty in accepting that a different vision of our legal institutions is not necessarily wrong, though it may be determined by different value judgments or methodological premises.

Today, there is an increasing awareness of these drawbacks. Even some of those who are firmly convinced of the superiority of the traditional method do not refuse to consider the outcomes of different approaches, for example, those of law and economics (whose appeal and helpfulness ought neither to hide its equally absolutist view of the world, nor to preclude a better legal consciousness). When I suggested earlier that a theoretical approach adequate for our epoch must be interpretative, I meant precisely that our analysis of public law must be empirically founded, and at the same time open to different interpretations of the functions that legal institutions are expected to perform, and of their purposes. It is for this reason, that the *Italian Journal of Public Law* has solicited a variety of analyses of the recent attempts to reshape fiscal federalism made by political institutions. Such analyses differ with regard not only to the adequacy of the new system of fiscal federalism for Italy, but also to the timeliness of its implementation and consciousness of the economic and social outcomes that it is likely to produce. This raises the question of the standards by which reforms are assessed. A critical analysis of their benchmarks is, thus, necessary and confirms the claim that Italians need to benefit from legal conversations that take place at the European and global level, at least as a means to reflect on the adequacy of existing constitutional structures and processes.

G. Conclusion

It may be paradoxical that the dominant tradition in Italian public law has been influenced by nineteenth century theories of the Nation-State, yet was not nationalist, in the sense that it was heavily influenced by French legal institutions and German doctrines of public law throughout that century. This is undeniable on grounds of historical fact. The dominant tradition was also concerned with doctrinal development at the European level, at least as far as its most representative members, such as Santi Romano and Massimo Severo Giannini, were concerned. Similar considerations apply to the most recent period, which has been characterized not only by the rapidly extending influence of the European Union on the structures and processes of Italian government, but also by the attempts to reflect critically on the instruments and effects of such influence. When confronting these fundamental issues, European legal cultures inevitably interact, since their respective *jura*

[32] For an attempt to consider several aspects of public administrations, including their social role, see Giorgio Pastori, *Recent trends in Italian public administration*, 1 IT. J. OF PUBLIC L. 2-20 (2009).

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propria share the principles of the new *jus commune*. [33] I am aware that the difficulties which exist in such interaction are neither few, nor irrelevant. However, like language, the interaction between different cultures entails the risks of misunderstanding and reaction, as well as the opportunity of communication and mutual learning.[34] It is in this light that the contribution of the new legal journals will have to be evaluated.

[33] For this line of reasoning, see Roberto Caranta, *Judicial Protection Against Member States: A New Jus Commune takes shape*, 32 COMMON MARKET. LAW. REVUE. 703 (1995). For an excellent historical analysis of the common roots of European legal cultures, see Antonio M. Hespanha, *PANORAMA HISTÒRICO DA CULTURA JURIDICA EUROPEIA* (1999).

[34] This metaphor is borrowed from Vivien G. Curren, *supra*, note 19, 675.

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