

EDITORIAL

RE-THEORIZING PUBLIC LAW

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One of the consequences of the economic and financial crisis is to give new impetus to the debate about the distinctiveness of public law, especially within some Member States of the European Union. In Italy, in contrast with the dominant tradition, some strains of public law thought either deny or tend to minimize the special character of the institutions and actions of the State. They exclude, for instance, that grants and subsidies are to be regarded as authoritative measures of public authorities. They contest the system of administrative justice for the increasing weight given to the administrative judge (in terms of competence and powers), if not for its existence, on the assumption that only a monistic system of judicial review is really coherent with the Rule of Law.

Such questions have been the subject of debate, both in continental Europe and in the UK. There are certainly grounds to argue that the traditional divide between public law and private law is eroded by a variety of factors. However, the recent crisis does not seem to support the idea of a demise of public law. Quite the contrary, in several countries there has been a return of the State as investor and owner of important economic activities.

Consider, for example, banking: for several years most commentators held that it could be discharged only by the private sector, but in many countries it has received strong financial support from the State.

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This is an important debate on which the *IJPL* will focus in the New Year, in particular by organizing a symposium on the question whether Italian public law is fit for the twenty-first century. The key question is whether our public law meets certain basic standards of public life (not only legality, fairness, and rationality on the part of decision-makers, but also quality of public utilities) which are met by other countries with which Italy has achieved a closer integration in Europe.

However, this debate should not be regarded only from the point of view of the divide between private law and public law, but also from another, concerning the relationship between law and other social sciences. For this reason, this issue of the *IJPL* includes both broad analyses of administrative law and more specific studies concerning the gradual adjustment of public rules, procedures, and checks in order to ensure the respect, first, if not of the ideal of legal certainty, at least of public trust in market operators and, second, that public accounts are adequately construed and presented to political institutions and to the electorate. One of such studies is written by two economists and others may follow in the next issues, coherently with the ambition of *IJPL* to discuss critically about public law.