BOOK REVIEW

MARCELLO CLARICH, MANUALE DI DIRITTO AMMINISTRATIVO, MILANO, IL MULINO, COLL. «STRUMENTI», 1ST ED. 2013, 521 PP.

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Marcello Clarich's book, reviewed here, is both recent and innovative. The very character of administrative law as a legal discipline makes the drafting of a *Textbook of Administrative Law* as intricate as it is complex. Like the administration itself, administrative law, certainly in that it is public law and as the law of public administration, is a product of its time. In these days of growing Europeanisation of the legal order and of the proceduralisation of legal relations, administrative law is going global (S. Cassese, *Il diritto globale. Giustizia e democrazia oltre lo Stato*, Torino, 2009). Marcello Clarich's *Manuale di diritto amministrativo* sizes up the radical changes that extend to the foundations of the discipline of Italian administrative law and presents it anew, meeting the challenge of being as prolific on theory as it is clear in its teaching.

Marcello Clarich is professor of administrative law at Rome's LUISS (*Libera università internazionale degli studi sociali*) Guido Carli. Having studied in Italy but also in the United States of America and Germany, his teaching of administrative law has been enhanced by research into foreign law and by his participation in numerous administrative bodies. He presents his *Manuale* as the outcome of years of teaching and research in Italian and foreign law. Besides, the influence of German law and Anglo-American law is greater on the administrative law he expounds than is French administrative law, as can be seen from the instructive guidance for further reading which, together with the thematic index, ends the book (esp. pp. 503-504). Civil law and civil procedure are no less influential in the highly stimulating work the author presents.

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Marcello Clarich's *Manuale di diritto amministrativo* is characterised by its most convincing formal presentation consisting in a subdivision into four parts, to be expounded later, made up of fourteen chapters, split into several numbered sections and summarised at the start of each chapter, no footnotes but references for further reading set out at the end of the book, salient points punctuating the sections and, to cap it all, a clear and artful style. The presentation makes it possible to set out the subject-matter of Italian administrative law in a way that is relevant and accessible to everyone, whether students, public officials, the legal profession or academics.

From the outset, the author warns that he breaks with the traditional order of exposition in his book (*Premessa*, p. 10: '*L'ordine di esposizione non è quello tradizionale*'). In point of fact, it is not just the subdivisions of the book that are innovative but also the sources and foundations of administrative law that the author highlights. True, Marcello Clarich's *Manuale di diritto amministrativo* is in continuity with Italian administrative law textbooks, but it also marks a change from them, allowing him to take up an innovative presentation of Italian administrative law.

I. Continuity

Marcello Clarich's *Manuale di diritto amministrativo* does not eschew the heritage of traditional works on administrative law.

First, Marcello Clarich recalls the historical anchoring of Italian administrative law and especially the inseverable bonds between the emergence of administrative law and the concomitant emergence of the rule of law (esp. pp. 16-29 with incursions into foreign systems of law). Besides, he underscores the constitutional foundations of administrative law (esp. pp. 36-39), as did Georges Vedel in French law in his time ('Les bases constitutionnelles du droit administratif', *Études et documents du Conseil d'État*, 1954).

Next, the book takes up the traditional definition of administrative law (p. 15: '*branca del diritto publico interno che ha per oggetto l'organizzazione e l'attività della pubblica amministrazione*') and makes no bones about referring on many occasions to what is held to be the founding work on twentieth-century Italian administrative law by M.S. Giannini. Remembering a dialectic specific to that work, Marcello Clarich observes that despite recent

developments (see below), the powers of the administration and the rights of citizens still make up the two extremes between which administrative law is stretched (p. 29). The book also takes up the traditional characters of administrative law: the case-law nature of administrative law and the distinction between general and special administrative law (p. 48-52).

Lastly, the major ideas of administrative law classically punctuate Marcello Clarich's *Manuale di diritto amministrativo*: public administration, legitimate interests, public services, '*provvedimento*', '*procedimento*', etc. But while it is part of a certain continuity with respect to traditional textbooks on administrative law, the work under review here also distances itself from them.

II. Change

Marcello Clarich's *Manuale di diritto amministrativo* emphasises from the first to the last page the recent developments in Italian (and foreign) administrative law that break with classical administrative law. Not only are these changes mentioned in the preface to the book so as to justify the new presentation of administrative law undertaken (see below), but they are constantly recalled in the very crux of the study of administrative law insofar as they are now characteristic of it.

These changes result in part from a renewal of the sources of administrative law. The traditional case-law source is now compounded by a constitutional anchoring of Italian administrative law (see, for example, pp. 308-311) and by its Europeanisation. By way of illustration, the law of the European Union frames the law of public services (see pp. 366-369). More broadly, the regulatory function, that Marcello Clarich sees as cardinal in Italian administrative law (Part 1, chapter 2) results notably from the hybridisation of Italian law and European law.

The changes also derive from the codification of general Italian law. While not formally a code, law no 241 of 7 August 1990 on administrative procedure modernises relations between the public administration and citizens with the result that the legal relations between them are overturned, which is specifically reflected by the idea of '*rapporto giuridico amministrativo*' (Part 2, chapter 3). Such a context of 'administrative democracy' promotes the principles of good administration, impartiality and

transparency. For its part, the code of administrative proceedings (*Codice del processo amministrativo*), drawn up by legislative delegation and approved by the legislative decree of 2 July 2010, unifies the judicial rules in administrative matters, which have developed to provide ample and varied control of administrative action and moved closer to the law of civil procedure (see esp. p. 473).

The changes in Italian administrative law stem in part also from changes affecting the modes of governance of the administration itself. From the development of 'soft law' to the 'comply or explain' model, from the hypotheses on jointly managed regulation ('*regolazione cogestita*') to the movement for '*better regulation*' by way of *audited self-regulation* ('*autoregulazione monitorata*') and AIR ('*analisi di impatto della regolazione*'), public administration manages more than it governs and it negotiates more than it decides (see esp. pp. 86-91). Under these circumstances, there are necessarily repercussions on the law applicable to public administration: it is being thoroughly renewed with precedence given to the said regulatory function.

III. Innovation

Marcello Clarich's *Manuale di diritto amministrativo* does not merely set out Italian administrative law in a didactic and clear way, which is already a fine quality in a textbook. In addition, it provides a new reading of traditional Italian administrative law in the light of the recent developments that have transformed it.

This new interpretation is reflected in the binary approach the book takes, drawing a distinction between the functional and organisational profiles of administrative law (Part 2, *Profili funzionali*, pp. 93-303; Part 3, *Profili organizzativi*, pp. 305-462), if we set aside Part 1 which justifies such a binary approach, especially through analysis of the regulatory function and the renewed sources of administrative law (see above) and Part 4, which completes the presentation of Italian administrative law by a succinct but necessary presentation of administrative justice.

First, the functional profiles of Italian administrative law underscore the administrative legal relation (see above) that is characteristic of legal relations between the public administration and subjects of law. Once such a relation has been identified, it is

possible to study in turn the *provvedimento*, in other words, although an uneasy translation, the authoritative or mandatory act, and the *procedimento*, which describes the procedure for adopting an administrative decision or measure. Finally, the functional profiles cover both the various controls exercised over public administration (given that pure jurisdictional control is in the final part of the *Manuale*) and the liability of the public administration, which may be civil or administrative, but which is also influenced by EU law.

Second, the organisational profiles of Italian administrative law explain the administrative organisation, which is dependent, in Italy as elsewhere, on relations between the various tiers of public administration (central government, autonomous local entities, other administrative entities) but which leave scope too, because of changes in administrative law, for relations that form more of a network than a hierarchy. Moreover, those profiles expound the ways and means the public administration has of assuming the functions described before, at the forefront of which stand public services. The other resources are the staff, material goods, finances and they extend to public-sector contracts, legal instruments studied elsewhere at the same time as administrative acts (for example in French administrative law).

So the *Manuale di diritto ammistrativo* introduces the major innovation of (re)constructing Italian administrative law around the regulatory function, which refers to the normative and non normative sources available to the public administration for regulating the relations it maintains with the subjects of private law or with itself (see p. 95). Subsequently, the administrative legal relation stands apart from the civil-law relation of obligation, insofar as the idea of administrative power works its way into the classical scheme of norm/facts/legal effect, for it is on this idea of administrative power and its margin of appreciation that the legal effect derived from the application of a norm to specific facts depends (see pp. 104-107). The singularity of the administrative legal relation associated with the notions of regulatory function and administrative power more than the ideas of legitimate interest and public service form the other innovation of the *Manuale* under review.

All told, Marcello Clarich's *Manuale di diritto amministrativo* resolves the quarrel of the Ancients and Moderns by reconciling

them because it draws on the traditional idea of Italian administrative law to explain the far-reaching upheavals it is experiencing. Moreover, it extends beyond that quarrel by adopting a resolutely post-modern approach that highlights a new legal relation between the public administration and citizens, but also between Europe, the state, local entities, business entities and other independent authorities. Invariably clear and often alluring, Marcello Clarich's approach marks the entrance of Italian administrative law into the twenty-first century, which will either be global or there will not be a twenty-first century.