EDITORIAL

LAW, LANGUAGE, AND CULTURE

*Giacinto della Cananea**

The first editorial of the *Italian Journal of Public Law*, in 2009, clarified that the essential aim of the *IJPL* is to serve as a bridge between legal cultures, with a view to becoming part of the new, discursive, transnational network that has emerged since the last decade of the Twentieth century. This explains the choice of English as the working language, and the related intention to ensure that the Italian legal tradition will have a voice in the global legal conversation [1].

In this respect, the *IJPL* takes very seriously not only the EU Charter of Fundamental Rights' commitment to "respect cultural, religious and linguistic diversity", but also the positive obligation (now enshrined into Article 167 TFEU) laid down by the Treaty of Maastricht to "contribute to the flowering of cultures of the Member States, while respecting their national and regional diversity". Interestingly, the last part of this constitutional provision affirms that the European Union should at the same time bring "the common cultural heritage to the fore".

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[1] A manifestation of this involvement has been the interest paid to the *IJPL* by our older cousins of the *German Law Journal*: see della Cananea, G., *On Bridging Legal Cultures: The Italian Journal of Public Law*, 11 Germ. L. J. 1281-1291 (2010).

It is from this point of view, first and foremost, that the recent ruling of an Italian administrative court looks flawed [2]. That ruling endorses the applicants' claim that an Italian university may not choose English as the only working language in its teaching activities. This is an awkward decision. Nobody, I believe, would object to the decision of an Italian university to offer a fully-fledged university course in, say, Physics or Bio-engineering entirely in English. It could be objected, however, that the law is different. Unlike science, it is not a vast field of eternal laws that must be discerned on the basis of empirical analysis. It is, so the argument goes, deeply intertwined with the culture and values that identify a specific society, or so it is argued since the early Nineteenth century, after Hegel and Savigny. However, the law that Savigny regarded as applicable to the German people of his epoch was not only a national artefact. It had been deeply influenced by Roman law, as elaborated by a trans-national community of lawyers and judges. Does this mean that we should repudiate our cultural inheritance and ignore the efforts made in the last centuries to strengthen such inheritance? Clearly not. But such inheritance is not fixed and immutable like the far stars studied by the Prince of Salina. Quite the opposite, it evolves continuously, also through the interaction with other cultures. The task of an educational institution is thus to keep the open the doors to those cultures. Excluding any possibility to teach the law in English in our country is not, therefore, the right option. It is, I am afraid, but another sign of the cultural decline of the last decades [3].

There is another and distinct reason why, in my opinion, the lower administrative court's ruling is fundamentally flawed. It regards the interpretation of the Italian Constitution. The applicants alleged that they were the victims of an unlawful discrimination. According to them, the fact that their university, in Milan, had decided to offer its teaching activities in English infringed both the principle of equality and, what is more interesting for our purposes, and the protection that the Constitution gives to the Italian language. But at least one thing is

[2] TAR Lombardia, decision n. 1348/2013.

[3] See Amato, G. & Graziosi, A., *Grandi illusioni* (2012), p. 240 (arguing that the defence of "cultural identity", in a rapidly changing world, reveals the refusal to consider reality as it is).

clear – the Constituent Assembly that drafted and adopted the Italian Constitution, in 1947, did not lay down a norm according to which Italian is "the" official language of our polity. A systematic interpretation, which takes into account other norms, is of course possible. But the strict constitutional analysis, showing and emphasizing that in our Constitution there is no such thing as an explicit and univocal choice of language, has some merits. It should be considered and weighted by the courts, while the lower administrative court, immediately after acknowledging this fundamental legal reality, added that the paramount importance of Italian language is showed by the fact that Article 6 of the Constitution protects linguistic minorities. I respectfully, but strongly, disagree with the court, in that the protection of linguistic minorities is but another manifestation of the fundamental choice not to make of Italian "the" official language. Finally, using a legal provision of the 1930's, enacted in a very different cultural and political environment, as a tool of systematic interpretation is a further element of weakness of that ruling. Paradoxically, it entails that the Constitution should be interpreted in the light of the rules of the Fascist period, instead of re-interpreting those rules in the light of our post-Fascist Constitution.

Last but not least, there is a further, and I suspect even more controversial, ground of dissent with the court's ruling. The decision taken by the Polytechnic of Milan, which is contested by some of its professors, might be justified in terms of its usefulness for students. If they study the law, say, for the first three years in English, it might be easier for them to spend the next two years in another European university, such as Brussels or Maastricht, or elsewhere. However, I am not claiming that a decision of this kind should be taken because it is in the interest of students. If we think that, while providing other legal courses in our language, a fully-fledged course should be given entirely in English because that is helpful for the improvement of knowledge and the advancement of science, that is an adequate reason for doing so. If the use of English is beneficial to create a common frame of reference for researchers and teachers, also by inviting researchers and scholars from other countries, that is enough [4]. If the law is not only a

[4] See Scruton, R., *Culture Counts* (2007), p. 28 (arguing that true teachers of

national artefact, but a trans-national enterprise, in the perspective of the European legal space [5], then a trans-national teaching should not be discouraged, let alone excluded. Whether a court of law is the appropriate institutional site of authority for making such a decision is another, and controversial, question.

course care for their pupils, "but love knowledge more").

[5] Chiti, M.P., *Mutamenti del diritto pubblico nello spazio giuridico europeo* (2003), p. 321; von Bogdandy, A., *National legal scholarship in the European legal area – A manifesto*, 10 Int'l J. Const. Law 614 (2012).