THREE BOOKS ON "THE LEGAL ORDER" IN THE AFTERMATH OF THE CENTENNIAL CELEBRATIONS OF ITS PUBLICATION: IS SANTI ROMANO'S DOCTRINE STILL USEFUL? [1]

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Book Review

- Marco Mazzamuto (ed.), *Santi Romano. L'ordinamento giuridico (1917-2017). La fortuna della teoria romaniana dell'ordinamento dalla sua pubblicazione ai tempi nostri nelle varie aree disciplinari*, Conference Proceedings, Palermo, November 24-25, 2017, Naples, Editoriale Scientifica, 2020, 353 pp.;
- Roberto Cavallo Perin, Giovanna Colombini, Fabio Merusi, Aristide Police, Alberto Romano (eds.), *Attualità e necessità del pensiero di Santi Romano*, Conference Proceedings, Pisa, June 14-15, 2018, Naples, Editoriale Scientifica, 2019, 300 pp.;
- Renato Federici, *Rivolte e rivoluzioni. Gli ordinamenti giuridici dello Stato e dell'anti-Stato*, Naples, Editoriale Scientifica, 2019, xii-315 pp.

Abstract

This review scrutinizes the three books just mentioned and proceeds as follows. The second paragraph is devoted to Santi Romano's doctrine, as recently read by distinguished scholar Martin Loughlin. The review then provides a description of the two books directly concerned with Romano's legal order doctrine. Since they are both a collection of essays, which investigate the possible applications of the doctrine in different domains and subject matters, the analysis will be limited to some of the essays, essentially to those adopting an administrative law or at least a public law perspective. The fourth paragraph details some of the contents of Federici's book, in which Santi Romano's influence can be inferred not only from the public law arguments but also from those apparently used to pursue other objectives, such as to provide an account of some historical events. Finally, the review seeks to

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[1] All translations from the Italian language are mine, so I am the only one responsible for them.

answer the question of whether Romano's doctrine may have some vitality today.

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1. Introduction

How old should a book review be? Should it come out shortly after the publication of the book it reviews? The problem does not exist for an article – thus, not a book review – aimed at redeeming the main theory or approach of a book, regardless of when the latter was published. This is exactly the case with a recent essay in the Yale Law Journal, wherein professor Pojanowski sets forth a series of observations based on a 2001 book by Julie Dickson[2]. The example is no coincidence, since this essay is concerned with legal theory, a subject matter to which the three books here under review are related. They have in common, indeed, a connection with "The Legal Order" by Santi Romano, which is definitely a public law work but adopts a very broad perspective[3].

However, only two of the three books derive from study conferences specifically aimed at celebrating the 100th anniversary of the publication, in 1917-1918, of the essay just mentioned by Santi

[2] J. Pojanowski, *Reevaluating Legal Theory*, 130 Yale L. J. 1458 (2021). The essay has a sort of subtitle referring to the book, whose contents it intends to reconsider – "*Evaluation and Legal Theory*, by Julie Dickson, Hart Publishing, 2001".

[3] See S. Cassese, *Ipotesi sulla formazione de "l'ordinamento giuridico" di Santi Romano*, in Id., *La formazione dello Stato amministrativo* 24 (1974), arguing that Romano's essay is mainly regarded as a "construction" of general theory of law and, thus, not directly related to the time when it was published.

Romano[4], then professor at the University of Pisa and later President of the Council of State[5]. Those two books are aimed not only at reassessing Romano's legal order doctrine but also and, in actual fact, mainly at ascertaining whether it may have nowadays a scope of application in the different domains of law, including domains that imply a multidisciplinary approach, such as sociology of law[6]. The third book analyzes several issues from different perspectives, non only a legal one. It is included in this book review, because Santi Romano's doctrine may be seen as the leitmotif keeping those issues together. Meant this way, Federici's essay stands as an example of how Romano's book, published more than 100 years ago, keeps a good – or at least sufficient – level of vitality in the scholarly milieu. Therefore, "The Legal Order" and the

[4] As underlined in the presentation of one of the books reviewed and in the opening remarks at the related conference, the essay was first published in 1917 and then re-published in 1918 in its final version, with the subtitle "Studi sul concetto, le fonti e i caratteri del diritto". Either version of the book was published by publishing houses headquartered in Pisa. See *Presentazione del volume* and *Allocuzioni*, in *Attualità e necessità del pensiero di Santi Romano*, respectively 7 and 13.

[5] In this regard, see A. Pajno, *Santi Romano ed il Consiglio di Stato*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 23-29.

[6] See A. La Spina, *Santi Romano e la sociologia del diritto*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 247-286. The author argues – and concludes – that, despite having considered himself as a pure jurist, Romano defined the legal order by following a pluralistic approach, which is still valuable to those who study the connections between sociology and law. According to a 1937 brief article, "[h]uman behavior in society, in so far as it is related to law, is the object of the new science, called 'sociology of law.' Causal investigation is its chief method". N. S. Timasheff, *What Is "Sociology of Law"?*, 43 Am. J. Sociol. 227 (1937). On this subject matter, in general terms, see R. Tomasic, *The sociology of law* (1985); R. Cotterrell, *The sociology of law: An introduction* 2nd edition (1992); M. Deflem, *Sociology of law: Visions of a scholarly tradition* (2008). As for the Italian scholarship, see R. Treves, *Sociologia del diritto* (2002). The aforementioned definition of the scope of this subject matter, namely the term "behavior", must not be confused with a perspective, from which another subject matter may be studied – administrative science. Here, the reference is to administrative behavior as a concept, which was developed by economist Herbert Simon and devised to apply to public administrations, mainly to their organization. See H.A. Simon, *Il comportamento amministrativo*, 2nd edition [1957], Italian translation (2001). For the identification of administrative behavior as one of three different approaches to administrative science, see J. Chevallier, D. Loschak, *Introduzione alla scienza dell'amministrazione*, [1974] Italian translation, 11 (1981). See also V. Mortara, entry *Comportamento Amministrativo*, in 2 *Enc. sc. soc.* 148 (1992), underlining that Simon was probably the scholar who coined the expression "administrative behavior", in the first edition of his book, which was published in 1947.

doctrine it sets forth may still be deemed to contain significant insight for the analysis of current legal systems.

2. An Account of Santi Romano's Legal Order Doctrine: Professor Loughlin's Perspective

Professor Loughlin dealt with Santi Romano's legal order doctrine in a preface to the first English translation of Romano's essay, which was published in 2017[7], and this preface also appears in Italian, with no substantial revision, in one of the books here reviewed[8]. He begins by underlining that, although it contains "the most rigorous account of the institutional theory of law", the essay is almost entirely unknown in the countries of the Anglo-Saxon tradition[9]. Its English translation is deemed very useful especially for the time being, given the emerging renewed interest of the scholarship in institutional theories[10]. Professor Loughlin recalls that, at international level, the institutional theory is usually ascribed to French scholar Maurice Hauriou, who adopted a phenomenological perspective in crafting his idea of the institution while rejecting both legal positivism and the social foundation of law[11]. At the heart of his theory of state and society lie the

[7] S. Romano, *The Legal Order*, [1917–1918] edited by M. Croce (2017). Actually, the book also contains a note preceding the foreword, which underscores not only that Romano's book came out first in 1917 e then in 1918, with a second edition of the final version published in 1946 (later reprinted multiple times), but also that this work has gained over time high recognition in Continental Europe and South America.

[8] M. Loughlin, *Santi Romano e la teoria istituzionalista del diritto*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 289-307. However, the citations that follow are taken from the preface to the English version of Romano's essay.

[9] See M. Loughlin, *Santi Romano and the institutional theory of law*, in S. Romano, *The Legal Order*, supra at 7, xi. This fact is also pointed out in a book review of the English translation at issue, wherein one single scholar is credited for truly sponsoring Romano's institutional theory in an article on cultural heritage in the emerging field of global law. See, F. Fontanelli, *Book Review, Santi Romano. The Legal Order. Ed. Mariano Croce. New York: Routledge*, 31 EJIL 1539 nt. 15 (2020), referring to F. Francioni, *Public and Private in the International Protection of Global Cultural Goods*, 23 EJIL 719 (2012). That book review defines Santi Romano's influence on international and transnational law "minuscule" and finds one of the reasons thereof in the very lack – until 2017 – of an English translation of the book (1540).

[10] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xii.

[11] In the preface to the second edition of his essay "Political Theology: Four Chapters on the Concept of Sovereignty", Carl Schmitt regards the institutional theory, as devised by Hauriou, as one of the types of general legal (or juristic)

institutions, meant as the primary source of law, while rules are a secondary product of law. More precisely, Hauriou defines an institution as "an idea of a work or enterprise that is realized and endures juridically in a social milieu". In order for such an institution to exist, it requires a power to endow it with organs. The State, too, is an institution, wherein the authority is ensured by a balance of the governmental powers. However, the concept of the institution applies not only to corporate bodies but to all types of associations that are "manifestations of communion" among the members of a certain group. Institutions have a life cycle entirely governed by law, from birth to death. Bodies such as States and trade unions imply the existence of an "organized power", which is the expression of the "directing idea" of them. The former and the latter – the organized power and the directing idea – "constitute the core of Hauriou's theory". The directing idea is a theoretical representation of the tasks of the State, meant as a body, but it is something transcending its functions. The organized power of government, which must also comply with the principle of the separation of powers, is aimed at realizing the directing idea. The latter always prevails on the former from a logical point of view[12].

Professor Loughlin argues that Hauriou's institutional theory is an essential starting point to understanding the meaning and nature of the legal order as devised by Santi Romano. In particular, he detects two similarities between the two scholars and their theories: Firstly, they both take into account the evolutions

thought. Therefore, it must be considered in addition to those based – respectively – on a system of norms and on individual decision-making according to specific circumstances. This further type of legal (juristic) thought conceives of the existence of institutions and super-personal structures. It has at least one rather clear advantage over the other two types of thought. The first type, championed by pure normativists, may lead to a degeneration, in which law ends up being merely functional to a State bureaucracy. The other type always implies that the decider may fail and make wrong decisions. The institutional thought, instead, entails pluralism, and pluralism in turn opposes to the idea of sovereignty. See C. Schmitt, *Teologia politica: Quattro capitoli sulla dottrina della sovranità*, *Premessa alla seconda edizione*, [1934] Italian translation, 30 (2020). For a brief comparison between the thought of Santi Romano and that of Schmitt, see G. Corso, *Conclusioni della Tavola rotonda*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 330, 336.

[12] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xvi. For Hauriou's doctrine, expressly called "theory of the institution and the foundation", see M. Hauriou, *La teoria dell'istituzione e della fondazione (Saggio di vitalismo sociale)*, [1925] Italian translation, 29-32 (2019).

gradually occurred in the different areas of public law; secondly, their theories are not based upon a hierarchical normative framework[13].

Romano's doctrine is based on two main arguments. The first one is that a legal order is not just a set of norms, i.e. of rules, because it is a unitary entity, which must be kept apart from its normative components. Rules are secondary products. Professor Loughlin observes that the doctrine has a clear advantage over the normative theories, which usually find it difficult to explain how some administrative measures, such as sanctions, fit in the framework they create. Santi Romano refuses to consider sanctions as norms, just because theoretically they come first. According to Romano, the sanction – Loughlin explains – "exists as a more fundamental element than the norm, again suggesting that, rather than being a normative order law is a type of concrete order".

The second argument is the definition of what the legal order actually is. Law is expressly defined as "an *order* rather than a *system*", as the latter is a more abstract and thus more inaccurate concept. The legal order, instead, is connected with the social context. Other than being a concrete unitary entity, the legal order is primarily an "*organization*"[14]. Romano recognizes some similarities with Haurou's construction of the institution but also some major differences. In particular, unlike the French scholar, Romano does not regard the institution as a source of law and, accordingly, law as a product of the institution. In his view, instead, "the concept of institution and the concept of a legal order, considered as a unity and as a whole, are absolutely identical". Furthermore, while Hauriou attempts to identify the institution as an object, that is a "*res*" (in Latin), the institution Romano devises does not have an object in a strict sense, as it is "an objective legal order"[15].

With each institution equating to a legal order, Romano argues that non only the State but also all social bodies are to be considered legal orders, and the unity characterizing them as institutions remains regardless of changes – respectively – in norms or membership. This notion applies also to the international community and to other institutions not deriving from the State,

[13] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xviii.
[14] Id., xix-xx (italics in original).
[15] S. Romano, *The Legal Order*, supra at 7, 15-16.

such as the Catholic Church[16]. Romano, indeed, considers the State as "nothing other than a species of the genus 'law'"[17]. Furthermore, Laughlin underlines[18] that the issue of whether criminal or immoral organizations could qualify as legal orders is given "short shrift", as Romano believes that the jurist should refrain from facing the underlying issue, i.e. whether positive law is or may be based on ethical considerations[19]. That clarified, Romano provides a classifications of legal orders, from which two main distinctions emerge – a distinction between original and derivative institutions, with other ones lying at an intermediate level; a distinction between institutions with limited purposes and those with unlimited purposes, potentially at least. Finally, Romano focuses on the role of the State, emphasizing that the State as an institution is different from its internal institutions, such as the components of the legislative body, which should be considered legal orders as well, despite having a more limited sphere of action. Romano deems his construction to be able to lead to the application of some existing theories of general character, among which he mentions "the theory of legal relations regulated by public law and the theory of the division of powers"[20].

Professor Laughlin concludes his analysis of Santi Romano's legal order doctrine by seeking to figure out the issue of whether this doctrine may have some application today or whether, at least, there are "contemporary resonances" of it. He finds it a hard task, because even if one might detect some of those resonances, they do not fall within "institutionalism", which does not exist anymore[21].

However, he menages to find at least an example in a 1983

[16] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xx-xxi.

[17] He observes that the pivotal position the State has acquired since the Modern Era results mainly from a philosophical conception of it. However, the current – of that time, of course – positive law contradicts that position, as it may not be interpreted as to identify the State as "the only entity that decides on the legal character of the other social orders". S. Romano, *The Legal Order*, supra at 7, 53.

[18] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xxi-xxii.

[19] Such considerations, however, are not ignored by Romano with regard to legal orders, whose purposes are to meet the citizenry's fundamental needs and to pursue justice. This aspect is underlined by G. Corso, *Conclusioni della Tavola rotonda*, supra at 11, 337.

[20] S. Romano, *The Legal Order*, supra at 7, 109.

[21] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xx-xxv.

essay by Robert Cover, where the author argues that law is not merely a system of rules to abide by, but it includes the world, in which we are living. Rules are only secondary products of a broader concept, that of "*nomos*". This concept implies the existence of a "normative world", where individuals' comprehension of and reaction to rules are also taken into account. This normative world embraces the relations between rules and the material universe, on the one hand, and between rules and ethical considerations, on the other hand. In general terms, Professor Laughlin deems what Cover calls "*nomos*" to be a sort of adjustment of the concept of institution as meant by Hauriou and Romano. Yet he pinpoints at least a major difference between Cover's theory of the "*nomos*" and Romano's doctrine. Even though the idea that each community interpreting rules has its own "*nomos*" appears to Laughlin as a restatement of "Romano's claim about the plurality of legal orders", Cover and Romano follow very different methods to elaborate their theories. Romano "deploys a rigorous empirical method to specify the character of the modern phenomenon of law". By defining the law of the State as simply a species of the genus "law", Santi Romano adopts a sort of neutral approach to the relationship of the law of the State with other legal orders. Cover, by contrast, follows an ideological approach, which leads him to opposing to the State because of its formalistic and bureaucratic character. Laughlin observes that Cover's hostility towards the State and the way its functions are exercised does not clarify how conflicts among institutions may be solved. The risk – he maintains – is that the usage of force may be the only way to solve them. For these reasons, he considers the constructions by Hauriou and Romano much more reasonable[22].

Professor Laughlin, however, argues that the two scholars failed to analyze the specific features of the political power that leads to compliance with rules by most individuals, and – above all – that rules are still mainly law of the State. Indeed, even if one intends to put stress on the myriad of institutions existing at international and transnational levels, "the legal orders of nation-

[22] Id., xxv-xxvii, referring to R.M. Cover, *Foreword: Nomos and Narrative*, 97 Harv. L. Rev. 4-68 (1983). In this regard, see also, recently, G. Hertz, *Narratives of justice: Robert Cover's moral creativity*, 14 Law Humanit. 3-25 (2020).

states still constitute the primary form of institutional world-building in contemporary life"[23].

3. The Two Books Celebrating the 100th Anniversary of Santi Romano's "The Legal Order"

The first of the three books under review mentioned above is relevant for two contributions, concerning – respectively – Santi Romano's legal order doctrine from the perspectives of constitutional law and administrative law. As for the former, a contribution by Mario Dogliani, it is noteworthy especially for the observations expressed beginning from paragraph No. 4. The author recalls that another scholar has pointed out that Romano followed two different approaches[24], a first one in 1909, when he praised the modern State as a wonderful creation of the law, despite noting its crisis[25], and the approach of "The Legal Order", where he saw the State as just one among many legal orders. An explanation may be that Romano constructed the relation between the law of the State and the law of different legal orders, such as those of the Italian municipalities, from two different perspectives over time: In 1909, he focused on the need to ensure the unity of the State; in 1917-1918, by contrast, he was looking at the plurality of institutions and legal orders[26].

As for the latter perspective, it has already been put stress on the broad scope of his concept of the legal order, which is capable of including any association of people gathered for the achievement of a given objective or having in common the compliance with rules or the observance of practices in a given sector. The critical issue is the relation among different legal orders. Romano himself solved the issue, but, as Dogliani points out, only in 1946, by adding a footnote to the second edition of "The Legal Order"[27], a footnote that, therefore, was not present in the original version.

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[23] See M. Loughlin, *Santi Romano and the institutional theory of law*, supra at 9, xxviii-xxix.

[24] See M. Dogliani, *La fortuna della teoria romaniana dell'ordinamento nel Diritto costituzionale*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 40, referring to A. Romano, *Nota bio-bibliografia*, in *L'ultimo Santi Romano* 843 (2013).

[25] S. Romano, *Lo Stato moderno e la sua crisi*, [1909] in Id., 1 *Scritti minori*, reprint, 379 (1990).

[26] See M. Dogliani, *La fortuna della teoria romaniana dell'ordinamento*, supra at 24, 41-42.

[27] See S. Romano, *L'ordinamento giuridico*, 2nd edition, [1946] reprint, 146 n. 95-bis (1967).

Here, Romano explains that, even though, as a matter of principle, a certain legal order is not affected by the rules of another legal order, nothing prohibits the former from assigning legal value to those rules and from recognizing the other legal order, albeit usually just to a certain extent. He refers to the adoption of rules of recognition, which by granting relevance to another legal order imply evaluations of convenience and constitute an expression of sovereignty. More precisely, such rules turn out to be an application of a principle of necessity[28]. In Romano's view, necessity is, at the same time, both the reason for the birth of all legal orders and the source of production of rules not included in the law of the State and perceived indeed as necessary by the members of a social group. According to the explanation inserted in the second edition of "The Legal Order", the State has to adopt a rule of recognition that be valid within the legal order of the State itself, in order for another legal order to bring about effects relevant to the State. The only way to deem the two versions of Romano's book to be consistent on this issue is to define necessity and thus a principle of effectiveness as a limit to the sources of law in the State's legal order. Therefore, necessity and the principle of effectiveness end up binding the exercise of the legislative function, in the sense of requiring the recognition of the rules of another legal system[29]. Overall, Dogliani concludes that Santi Romano's intention to strengthen the autonomies within or outside the State should not be overestimated, as the scholar's primary concern was always to ensure the unity and stability of the State. In other words, Romano's legal order doctrine should be seen in light of the objective to devise instruments preventing the dissolution of the State[30].

Sabino Cassese provides the administrative law perspective on "The Legal Order" in the same collective volume. He begins by recalling both that Santi Romano had trouble having his book

[28] On necessity as a source of law, related to Romano's legal order doctrine, see R. Cavallo Perin, *Ordinamenti giuridici paralleli e necessità come fonte del diritto*, in *Attualità e necessità del pensiero di Santi Romano*, 41-55.

[29] See M. Dogliani, *La fortuna della teoria romaniana dell'ordinamento*, supra at 24, 50-53. The author also underlines (55) that the same holds true in a negative sense, i.e. if the State later intends to deny validity to the rules of another legal order. The line of continuity linking necessity, effectiveness, and the expulsion of those rules from the State's legal order implies a value judgment and thus an a legislative act or anyway the resort to a formal source of law.

[30] Id., 61.

published[31] and that the doctrine went through a lot of criticism[32]. He also underlines that Romano's work represented a sort of breakthrough for its anti-State approach. When Romano wrote "The Legal Order", during the First World War, indeed, the Italian legal scholarship was still much influenced by the German one, and German scholars traditionally defended the pivotal role of the State. In this sense, the book was innovative. Furthermore, most of the contemporary – and even the subsequent – scholars did not grasp the implications of the legal order doctrine for the study of administrative organization[33].

Actually, between the '50s and the '60s, several Italian scholars used Romano's construction to pursue different purposes[34], all of them somehow related to the organization of public administrations. Firstly, this construction was employed to maintain that the internal rules and acts of the public administration, as well as the entities within it, were not rules, acts, and entities of the general legal system – or general legal order, to use Romano's terminology – but of a derivative legal order, which existed within public administrations. In other words, a clear distinction between administrations' internal and external activities was deemed to be grounded in Romano's construction[35].

Secondly, by applying the legal order doctrine, two scholars reached opposite outcomes. Cassese underlines that in one case, the

[31] The very first version of the book, indeed, gained only a local publication, in two parts, in the "Annali delle università toscane" ("Annals of Tuscan Universities"), between 1917 and 1918. Cassese also points out that the book remained unfinished, as the introductory note in the first edition spoke of other parts that would follow but never saw the light. See S. Cassese, *Le alterne fortune de "l'Ordinamento giuridico" di Santi Romano*, in *Santi Romano. L'ordinamento giuridico (1917-2017)*, 65.

[32] Ibid., referring to Massimo Severo Giannini, who reported that the book was stigmatized because of its vagueness, and for containing merely assumptions and tautologies. Giannini, however, argued that those critiques were perfectly understandable for two reasons: Firstly, the book was not complete in all of its parts; secondly, Romano did not manage to go beyond an equation between institutions and social bodies. Giannini added that the French scholars championing an institutional theory, namely Hauriou and Waline, failed as much as Romano to set forth a legally acceptable definition of the institution. See M.S. Giannini, *Prime osservazioni sugli ordinamenti giuridici sportivi*, [1949] in 3 Scritti 85-86 (2003).

[33] See S. Cassese, *Le alterne fortune de "l'Ordinamento giuridico" di Santi Romano*, supra at 31, 69-70.

[34] Id., 71-72.

[35] See E. Silvestri, *L'attività interna della pubblica amministrazione* (1950).

outcome was substantially the same as the one just mentioned – a separation between the general legal system and an internal order of administrations, which was concerned with activities other than traditionally administrative ones, such as those carried out to issue disciplinary measures and sanctions in general, as well as administrative regulations[36]. In the other case, an analysis of the military order was systematically conducted to show, by contrast, that this order was actually a part of the general legal system[37].

Another scholar, who analyzed administrations' internal rules, noted a growing trend towards the inclusion of special administrative orders in the general legal system[38], and thus this study somehow put an end to the attempts to devise such derivative orders. Cassese observes that those attempts would be even more untenable today given the existence in Italy – but the argument may be extended to many other countries – of a general law on the administrative procedure and the lack of any deference by the administrative judges towards internal administrative activities[39]. The distinguished scholar concludes that "The Legal Order" should be read only from a historical perspective to emphasize the importance the essay had at the time of the publication of its first edition, when it significantly contributed to the separation of Italian scholarship from its former (mainly German) influences[40].

As far as the second book under review is concerned, the first paper it contains starts by mentioning the position just analyzed, as it was presented at the Palermo conference on Santi Romano[41]. The author of the paper, Sordi, compares this position to one expressed by another distinguished scholar, who, by contrast, has regarded

[36] See V. Ottaviano, *Sulla nozione di ordinamento amministrativo e di alcune sue applicazioni*, 8 Riv. trim. dir. pubbl. 825-906 (1958).
[37] See V. Bachelet, *Disciplina militare e ordinamento giuridico statale* (1962).
[38] See F. Bassi, *La norma interna* (1963). That consideration led the author to envision a gradual loss of importance of the class of internal rules of administrations (561-562). The topic, however, seems to be still capable of attracting scholarly interest. See, recently, F. Fracchia, M. Occhiena, *Le norme interne: potere, organizzazione e ordinamenti* (2020).
[39] See S. Cassese, *Le alterne fortune de "l'Ordinamento giuridico" di Santi Romano*, supra at 31, 73.
[40] Id., 75-76.
[41] When the second conference was held in Pisa, the proceedings of the previous one had not been published yet, and they eventually were published later than those of the Pisa conference.

Santi Romano's thought as being potentially significant and worthy of a reevaluation today, especially in light of the current crisis of the system of the sources of law[42]. Sordi admits that he has deliberately exacerbated the divergence between those two opinions not to take one side but rather to underscore that the perspective he follows is broader. He believes, indeed, that the debate between the merely historical or current significance of Romano's construction underlies a more general issue – the distinction between a state-centered approach ("statualismo") and one founded on pluralism[43].

Sordi expressly defines "The Legal Order" and a book published in the year of Romano's death (1947)[44] as two general theory of law works, wherein Romano attenuated the state-centered approach he had followed in the previous years of his scientific engagement. Sordi, indeed, points out that such an approach was mainstream among scholars who, between the 19th and the 20th century, dealt with an Italian State that was still consolidating its legal system. The importance of the evolution of Santi Romano's thought, however, should not be underestimated, since neither his master, Vittorio Emanuele Orlando, nor a scholar more or less contemporary with Romano, Oreste Ranelletti, took a similar path of departure from the approach mentioned above[45].

The dichotomy between this approach and the one emerging from "The Legal Order" may be explained, according to Sordi, with the broad range of Romano's interests and perspectives in the comprehensive domain of public law. In this sense, Santi Romano conducted leading studies on a variety of issues – autarchy, i.e. the concept of indirect administration whereby the Italian legal culture implemented the foreign – mainly British – experience of Self-government; subjective public rights; the interpretation of public law statutes; the identification of the general principles of administrative law. When he studied the topics just listed, Romano had the purpose to arrange them systematically in the field of (positive) public law, and, in pursuing this purpose, he followed the state-centered approach.

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[42] See P. Grossi, *Santi Romano: un messaggio da ripensare nell'odierna crisi delle fonti*, [2005] in Id., *Nobiltà del diritto*, 669-688 (2008).

[43] See B. Sordi, *Statualità e pluralità nella teoria dell'ordinamento giuridico*, in *Attualità e necessità del pensiero di Santi Romano*, 15-16.

[44] S. Romano, *Frammenti di un dizionario giuridico*.

[45] See B. Sordi, *Statualità e pluralità*, supra at 43, 17.

By contrast, when he dealt with issues going beyond the State, such as the existence of international organizations, and – above all – when he adopted a general theory of law perspective, Romano regarded the State as just one among numerous institutions and legal orders, thereby championing pluralism. In other words, these two spirits coexisted in Santi Romano, and they revealed themselves depending on the subject matter or issue of his studies[46]. Sordi argues that "The Legal Order", too, shows this coexistence. In this regard, the author relies primarily on the interpretation of Romano's essay provided by important philosopher of law Norberto Bobbio. As a normativist, Bobbio considered "The Legal Order" as the expression of a moderate version of pluralism, which, at the same time, does not deny radically the state-centered approach[47]. From such a perspective, Sordi includes Romano among the scholars – such as Jellinek, Kelsen, and Schmitt – who studied and contributed to outlining a "*Staatslehre*", i.e. a general doctrine of the State. This consideration, together with the mention of a 2009 article by Professor Laughlin as a supporting argument, leads Sordi to conclude that Romano's construction turns out to be useful today[48].

This second book contains a lot of insightful observations, which derive from the attempt to investigate possible applications of Santi Romano's legal order doctrine not only to different subject matters falling within the general domain of public law but also to several issues and topics concerning only administrative law. As for the latter contents, the contributions may further be divided into two categories. The first one encompasses two studies conducted from a broad perspective, which are aimed at assessing whether and to what extent the doctrine may affect today certain types of

[46] Id., 18-21.

[47] Id., 21. In particular, Sordi refers to a passage of Bobbio's article, in which the scholar maintains that Santi Romano "does not accept the extreme or subversive pluralism of those who hope for not the transformation of the state and its adjustment to new social needs but its destruction. He is a moderate pluralist, that is he believes in the beneficial effects that the emergence of such quarrelsome social groups as trade unions may result in a better articulation of the relationships between individuals and the state, but he still considers the state as a final and necessary moment of society. Even better, he is theoretically a pluralist, but ideologically a monist". N. Bobbio, *Teoria e ideologia nella dottrina di Santi Romano*, [1975] in Id., *Dalla struttura alla funzione*, 156 (2007).

[48] See B. Sordi, *Statualità e pluralità*, supra at 43, 23-24, referring to M. Laughlin, *In Defense of* Staatslehre, 48 Der Staat 1-28 (2009).

Italian administrations, namely the autonomies, such as territorial public bodies, and the independent administrative authorities[49]. Other two studies compose the second class of contributions, devoted to specific sectors of administrative law[50]. The remaining part of this paragraph, however, analyzes two contributions, which address the general issue of the applicability of Romano's doctrine to current administrative law.

The contribution by Travi enunciates a strong thesis: Santi Romano's legal order doctrine turns out to be today a necessary reference even for those who espouse normativism and thus theoretically reject that doctrine[51]. After underlining that any manifestation of pluralism and, accordingly, any special legislation or administrative regulation have to be justified in light of the principles of equality – *rectius*, equal treatment – and reasonableness, the author argues that the institutional theory is even more useful today than it was one century ago. Indeed, the two principles just mentioned, which are general principles of the administrative action, apply primarily to the relations among different legal systems (or orders, under Romano's terms), and the relations between the national and the European Union (EU) legal systems constitute a clear example. Despite mentioning in a footnote the 1946 edition and not the original version of "The Legal Order", the author puts stress on the fact that the second part – formally, the second chapter – of Romano's essay, which is also more extended than the first one, is entirely devoted to the issue of

[49] See, respectively, A. Police, *Le autonomie pubbliche come ordinamenti giuridici* and A. Massera, *Le autorità amministrative indipendenti e l'Ordinamento giuridico*, in *Attualità e necessità del pensiero di Santi Romano*, 101-118 and 143-166.

[50] One of these contributions, actually, might have been inserted into the previous class, because it adopt a somewhat broad perspective in its first part. See L. Ferrara, *Ancora sugli ordinamenti di settore e su quello sportivo in particolare*, in *Attualità e necessità del pensiero di Santi Romano*, 215-221. It is included in this class, however, because the second part of the article (221-228) is focused on a potentially autonomous administrative order pertaining to a single sector, the sports order. Whether or not this order is deemed to be compatible with Santi Romano's doctrine, it is governed by a public body, the Italian National Olympic Committee (CONI), which is also a member of the corresponding entity operating at international level (International Olympic Committee). The other contribution is concerned with public procurement, and thus it definitely belongs to this category. See A. Fioritto, *Il mercato dei lavori pubblici come ordinamento giuridico*, id., 229-242.

[51] See A. Travi, *Il diritto amministrativo e l'ordinamento giuridico di Santi Romano*, in *Attualità e necessità del pensiero di Santi Romano*, 199-200.

the relations between legal orders[52]. It is pointless to search in this part the possible solution to specific problems that may present themselves when a legal order gets in touch with another one, since the analysis conducted by Romano is mainly aimed at showing, from a mainly theoretical point of view, the variety of legal orders that exists or may exists. However, Romano's construction implies the variety of relations among different legal orders and this is considered by Travi "a decisive contribution"[53].

Another example he provides is the principle of legality of the administrative action: Since laws quite rarely provide specific instructions on how this principle should be applied, to adopt a purely normativistic approach may not suffice for the solution of concrete problems in the carrying out of administrative activities[54].

The author then shifts the analysis to some specific applications of Romano's doctrine in the field of administrative law. One of them is the carrying out of internal activities by administrations. In this regard, the two main issues are whether there exists a special supremacy relationship between a given administration and its public employees and whether the elements of illegitimacy of an internal administrative act may affect the validity of the final act, i.e. the act producing effects outside the administration. As for the first issue, Santi Romano addresses it towards the end of "The Legal Order", by rejecting – in part, at least – the special supremacy relationship theory and proposing an explanation consistent with his doctrine. He devises two types of situations:

A minor institution may be encompassed by an institution with a broader scope, as is the case with the disciplinary power, and thus the disciplinary order, or a minor institution may lay down rules on its own, as is the case with the chambers of Parliament. The key aspect is that those orders are legal orders, even though they

[52] See S. Romano, *L'ordinamento giuridico*, supra at 27, 104-223.

[53] A. Travi, *Il diritto amministrativo*, supra at 51, 201. The author specifies (201 n. 10) that Romano's construction is also useful for an assumption on which it is founded, i.e. the idea that no legal order is to be considered predominant over the others.

[54] Id., 202. It is not clear whether the situations, to which the author is referring here, are only those that are explained in the subsequent part of the paper. However, since it is underlined that the legal basis for the exercise of administrative powers is not specified in many cases, I speculate that a possible situation consists in a conflict of rules or principles pertaining to different legal systems on how those powers should be exercised.

are internal to administrations. Furthermore, one of the scholars Cassese has already mentioned, Ottaviano, relied on Romano's doctrine to claim the existence of ad administrative order separated from the general one. This theory was subject to criticism. The theory, indeed, is not in conformity with articles 97 and 24 of the Italian Constitution, which – respectively – establish some general principles on administrative organization and ensure to anyone the right to judicial review.

Travi argues that Romano offers a solution by constructing the relationship between the administrative order and the general order in terms not of a separation, which would violate the Constitution, but in terms of a distinction. To speak of a distinction of the internal administrative orders means to recognize their peculiar characters, which, in Travi's view, are undeniable[55]. Regardless of the 20th century's debate upon the so-called sectional orders, such as that of finance, the author deems Romano's doctrine also useful to explain the functions of the independent administrative authorities. The model of administration they embody – Travi observes – shows several analogies with Romano's legal order doctrine: Each authority governs a sector, which may be seen as a social group, and has regulatory powers, other than an oversight function.

The regulatory powers sometimes do not find specific foundations in legislative provisions and may be regarded as implicit powers. Furthermore, there is widespread deference by the administrative judge towards many technical evaluations adopted by those authorities. Travi argues that not only may these issues be explained by resorting to Santi Romano's doctrine, but the peculiar characters of the (possible) legal orders pertaining to the independent administrative authorities seem to be increasing. He points out that such a conclusion is incompatible with the Italian constitution, but it shows at least the current value of Romano's construction. Furthermore, he disagrees with the identification of a contradiction in the different perspectives, from which Romano conducted his studies. There is always a twofold approach to legal issues – a general one, which involves speculations, and a specific one, which consists of a practical investigation[56]. Travi concludes that Santi Romano's doctrine is currently significant and it is so,

[55] Id., 203-207.
[56] Id., 209-211.

above all, because the analysis is conducted from a purely legal perspective. Therefore, he rejects the critique based on the lack of a multidisciplinary approach in "The Legal Order"[57].

The final contribution of the book corresponds to the concluding remarks in the Pisa conference, and therefore its purpose is to summarize and keep together all the previous papers. In consideration of the positions expressed in the conference, the answer to the question whether Santi Romano's legal order doctrine is currently useful is obviously in the affirmative. The author of the contribution, Merusi, identifies the current meaning of the doctrine in the fact that it falls within the subject matter of general theory of law while it is not directly concerned with positive law. As such, it is "an instrument of interpretation of legal phenomena that may manifest themselves anytime and with the most diverse features". In other words, "The Legal Order" should be considered as "an operative instrument to study reality" from a general theory (or legal thought) perspective[58]. Ergo, meant this way, Romano's doctrine ends up being not a current doctrine but more precisely a timeless one. The core of the doctrine is "the institution-legal order symbiosis". The relations of relevance among different institutions-legal orders vary and may assume different degrees of intensity, ranging from irrelevance to overlapping or even to coincidence. This is the meaning of Romano's construction, by which the author suggests reading the contributions contained in the book[59]. Two are the main applications the doctrine may have today according to Merusi[60]. The first one is grounded in the fact that a State today, at least in the Western world, is "open". It means that non only legislative provisions and rules in general pertaining to another legal system may enter a State's legal system, but foreign legal institutions – in this case, not in Romano's sense – and dogmatic constructions, too, sometimes affect that legal system or may at least be taken into account in it. An example thereof is what the Italian legal system calls the excess of power, an expression embracing a series of cases of illegitimacy concerning the exercise of administrative powers. The influence of the EU legal system gradually led to the passage from the identification of the cases of

[57] Id., 214.
[58] See F. Merusi, *Osservazioni conclusive*, in *Attualità e necessità del pensiero di Santi Romano*, 296.
[59] Id., 296-297.
[60] Id., 297-299.

excess of power by the Italian Council of State as symptoms of an incorrect exercise of power, on diverse aspects, by an administration to the judicial review on compliance with general principles of law established by the EU legal system itself. The latter, however, formulates those principles on the basis of the member States' legal traditions[61]. Another example the author provides is the circulation of the principle of fairness or fair procedure, which originated in the common law countries[62] and is now widespread in the administrative law of many national legal systems[63]. The second issue consists in the fragmentation that characterizes contemporary legal systems, and not only those of the national States. This element may be the key to understanding some of the uncertain applications of Santi Romano's doctrine. Sectional orders, for instance, should probably be regarded not as legal orders formally separated from the general legal system but rather just as fragments of the latter. Finally, Merusi argues that Santi Romano's doctrine is also suited for usage in connection with a method of study based on a multidisciplinary approach, such as the so-called economic analysis of law, which constitutes thus a further possible application of the doctrine[64].

4. Federici's Book: A Possible Application of Romano's Construction From a Historical Perspective

Federici's essay is not statedly aimed at applying Santi Romano's legal order doctrine to some legal experiences of the past, but this is the interpretation of the essay adopted here. In other

[61] In this sense, see E. Chiti, *La costruzione del sistema amministrativo europeo*, in M. P. Chiti (ed.), *Diritto amministrativo europeo*, 2nd edition, 74-75 (2018). For an analysis of those general principles, see G. della Cananea, C. Franchini, *I principi dell'amministrazione europea*, III edition, 57-85 (2017).

[62] See D.J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures* (1996).

[63] It has been observed that, when a "clear rule" to apply is missing, the judicial review on compliance with this principle by a given administration may imply recognizing to the court a certain margin of "discretion to determine not what is procedurally fair, but what is unfair". G. della Cananea, *Due process of Law Beyond the State* 186 (2016). It is interesting to point out that this consideration is founded on the view of a distinguished philosopher of law and legal thought scholar, Herbert Hart.

[64] See F. Merusi, *Osservazioni conclusive*, supra at 58, 300. For such an approach to public law, see G. Napolitano, M. Abbrescia, *Analisi economica del diritto pubblico* (2009).

words, the doctrine is seen as the underlying element capable of keeping together the topics analyzed, primarily from a historical perspective, in the various chapters of the book. In this sense, Federici's essay appears to be an application of the doctrine, especially if the latter is meant, as Merusi suggests, as a timeless general theory of law instrument to assess a legal system (or order) and its relations with other legal systems[65]. Federici offers some evidence that the historical perspective formally followed in the book works as a sort of pretext to conduct a general theory analysis, based on Romano's construction. First of all, an element of proof may be found in the subtitle. The title is "Rivolte e rivoluzioni", and it seems to suggest that the book is about history and not law: That of "revolution" is not a legal concept, at least in a strict sense[66].

However, the subtitle is "*Gli ordinamenti giuridici dello Stato e dell'anti-Stato*", and the express mention of the term "legal systems" may not be overlooked. The indirect reference to Romano's doctrine is twofold. Firstly, the concept of revolution, which actually constitutes just one of several forms of antagonism towards a legitimate power (attempts of secession, rebellions, civil wars, the preparation of a coup d'etat), implies the existence of both an official legal system and another legal system, which intends to replace the former. According to the author, these are – respectively – the legal systems of the State and of the Anti-State[67]. Secondly, Federici argues that the plurality of legal systems (or orders) is often a pathologic event, and he analyzes as an example thereof the situation in France right before the Revolution broke out, with the Third Estate aspiring to gaining power[68]. The *Ancien Régime* was so fragmented at the time that it could be seen as a sum of different

[65] See supra, para. 3.

[66] Obviously, if a revolution occurs, it brings about first-level legal effects. As Bobbio underlines, indeed, a revolution, regarded as a normative fact, consists in the break of the preexisting legal system and in the establishment of a new one. The scholar specifies that, since a revolution results not just in the adoption of one or more rules but in the substitution of a legal system for another, it is a "complex" normative fact. See N. Bobbio, *Consuetudine e fatto normativo*, [1962-1967] in Id., *Contributi ad un dizionario giuridico*, 54-55 (1994). However, it has also been maintained that the concept of "normative facts" ("fatti normativi") does not equate to "legal facts" ("fatti giuridici"). See G. Fiaschi, entry *Rivoluzione*, in 41 *Enc. dir.* 84 (1989).

[67] See R. Federici, *Rivolte e rivoluzioni* 10-11 (2019).

[68] Id., 11 and, more broadly, 99-111.

legal systems[69]. Even though Romano's construction is purely legal, it is possible to identify a connection with such a fragmentation of social groups as the one existing then in France, where each of those groups could be regarded as a legal order[70]. It is in this very chapter, indeed, that the author mentions Santi Romano for his leading role in introducing the theory of the plurality of legal systems, even though Romano is not given credit for its invention[71]. Federici does not refer to the corresponding efforts by Hauriou in devising an institutional theory but to two traditional maxims, which Romano quotes in "The Legal Order", even though it is unclear whether they may be ascribed to him. Those maxims are both concerned with the relationship between society and law but in an opposite sense. The first one emphasizes that there is a "purely individual sphere", which, as such, is irrelevant to law (*ubi ius ibi societas*). The second one, by contrast, maintains that law is requisite for the existence of society: "there is no society, in the proper sense of the word, unless the legal phenomenon manifests itself within it (*ubi societas ibi ius*)"[72]. The connection of those maxims to the doctrine at issue is

[69] Alexis de Tocqueville recalls that, when the King summoned the Estates-General, which where held in May 1789 for the first time after 1614, he asked for opinions about participation in the election and limits to the right to vote. By embracing the King's invitation, all local powers, private bodies and social classes in general advanced their own claims. In doing so, they "thought of their particular interests and sought to find in the ruins of the old Estates-General the form that appeared more suited to guarantee them". A. de Tocqueville, *Frammenti e note inedite sulla Rivoluzione*, in 1 *Scritti politici*. *La rivoluzione democratica in Francia*, [1850-1859] 949-950 (2018).

[70] For a critique of Romano's approach, see G. Fiaschi, *Rivoluzione*, supra at 66, 89, arguing that the institutional theory applied from a strictly legal approach turns out to be a mere "inductive abstraction", incapable of grasping the true essence of the social facts it takes into account. According to this opinion, the category of the institution as devised by Santi Romano is just "a bad generalization".

[71] See R. Federici, *Rivolte e rivoluzioni*, supra at 67, 109-110. In general terms, on the plurality of legal systems, see W. Cesarini Sforza, entry *Ordinamenti giuridici (Pluralità degli)*, 12 Noviss. Dig. it. 1-3 (1965). For a position expressly giving Santi Romano credit for "the logical and definitive exposition" of the institutional theory, see G. Balladore Pallieri, *Diritto costituzionale*, 11th edition, 6 (1976).

[72] S. Romano, *The Legal Order*, supra at 7, 12. See also A. Levi, *Teoria generale del diritto*, 2nd edition, reprint, 36-40 (1967), who points out that the relationship between law and society is one of the hardest (general theory of law) issues to solve and expressly refers to Santi Romano in speculating about the two maxims quoted above. In particular, he defines the identification of a legal order in any organized social entity as a "postulate", i.e. an unproved assumption, formulated by Santi Romano. This postulate – he adds – may be better explained if

shown by Romano himself. With a clarification aimed at putting stress on the legal nature of his construction, thus on the prevalence of law over relationships of merely social relevance, he continues by maintaining that "[a]ny legal order is an institution, and vice versa, any institution is a legal order: The equation between the two concepts is necessary and absolute"[73].

There is further evidence that Federici's book may be regarded as an application of Santi Romano's legal order doctrine. In the first chapter, the author begins by making two preliminary points. Firstly, law is a structural element of any society. This consideration may appear somewhat obvious and thus scarcely significant, but it must be read together with the author's conception of law as antithetical to war: They are two instruments of conflict resolution that may not coexist. It means not only that a war may occur only to the extent that law has failed – or has not been employed – to settle a given social or political conflict, but also that war is not governed by law[74]. Secondly and above all, the author clarifies that he intends law in a objective way, that is as a set of laws and rules and, therefore, as a legal system[75]. This simple assumption would lead to him being included among normativists, but the historical cases he investigates throughout the book appear to have been singled out to apply Romano's construction. Two examples in particular show such an underlying purpose. The first one is the experience of the free local governments (or municipalities) in Central and Northern Italy during the Late Middle Ages. He regards them as legal systems, whose features derived from their relations with what should have been the upper or at least more comprehensive legal system, i.e. that of the Empire.

Actually, those legal systems gradually arose as a result of bottom-up processes, which implied the acquisition of several forms of freedom from obligations towards the Empire itself. Consequently, the author deems those legal systems to be both sovereign and democratic[76]. The second example is concerned with two forms of the Communist Party, as devised in the 1848

considered from a philosophical perspective rather than from the merely legal one followed by Romano (37-38).

[73] S. Romano, *The Legal Order*, supra at 7, 13.

[74] See R. Federici, *Rivolte e rivoluzioni*, supra at 67, 1, 5-10. The author explains this theory broadly in Id., *Guerra o diritto?*, 3rd edition (2013).

[75] See R. Federici, *Rivolte e rivoluzioni*, supra at 67, 3-4.

[76] Id., 52-55.

Manifesto and as treated in the Soviet Union: They were legal systems (or, once again, legal orders). It means that, especially in the latter case, the party was not just a prominent political institution of the Soviet State, but it was the true legal system, in the sense that the party's legal system was requisite for the existence of that of the State[77]. The author claims that, in the Soviet experience, the legal system of the party coincided with that of the general legal system on the basis of some elements: Laws and administrative acts were to be ascribed, directly or indirectly, to the party; the State was organized according to a strict hierarchical criterion, which was related to the party; the legal system provided for severe sanctions in case of any violation of rules, but those sanctions were usually inflicted to meet the needs of the party[78]. These elements recall some of the characters an institution, therefore a legal order, should have according to Santi Romano, and, more generally, at least the pivotal role of sanctions is common to many legal theory constructions[79]. In the conclusions, Federici expressly admits that the historical perspective followed for the most part of the essay is instrumental to his legal arguments[80].

5. Conclusion: The Scope That Santi Romano's Doctrine May Have Today

The description of the scholarly positions provided above have shown that Santi Romano's legal order doctrine is still worthy of consideration not only for the study of current legal issues, mainly in the broad domain of public law[81], but also when past legal

[77] Id., 114, 118, 212-213.
[78] Id., 45-46, 212.
[79] See *Hart, Austin, and the Concept of a Legal System: The Primacy of Sanctions*, 84 Yale L. J. 584 (1975). See also supra, para. 2.
[80] See R. Federici, *Rivolte e rivoluzioni*, supra at 67, 227.
[81] From a purely terminological point of view, the usage of the phrase "legal order" is somewhat rare, but it sometimes occurs in international or global law studies. See L.M. Friedman, *Erewhon: The Coming Global Legal Order*, 37 Stan. J. Int'l L. 347 (2001); Y. Blank, *Localism in the New Global Legal Order*, 47 Harv. Int'l L. J. 263 (2006). For a reference of the phrase at issue to a national legal system, namely that of the U.S., see R.P. Burns, *Is Our Legal Order Just Another Bureaucracy?*, 48 Loy. U. Chi. L. J. 413 n. 2 (2016), where the author specifies that he intends to employ that phrase, instead of "legal system", as the latter "already shows hints of bureaucracy". Recently, the phrase "constitutional order" was employed to argue that "norms", meant mostly as a set of practices governing the practical exercise of powers by federal government officials, play a pivotal

experiences are analyzed to discuss about the plurality of legal systems, as is the case with the third book reviewed. However, opinions vary, and, from at least some of them, it may be inferred a veiled or explicit invitation to be cautious in identifying possible applications of the doctrine to current legal systems. One might regard the position expressed in the final contribution of the second book reviewed, which defines the doctrine as a general theory of law instrument for the interpretation of diverse legal issues and institutions, as a sound intermediate solution. It would mean to formally put the doctrine outside administrative law. At the same time, the two most extreme views – the doctrine belongs to the past or, by contrast, it has potentially a broader scope today than it had when it was formulated – have come from the perspective of this very subject matter. They both use solid arguments and refer to positive law, as well as to judicial review of the administrative action. As for the former view, exposed by Cassese, its fundamental position has been explained – by Sordi – as based on the awareness that it has been "[t]oo long, too full with transformations and changes, the century that separates us from [Santi Romano's] works"[82]. As for the latter, advanced by Travi, the reference to internal administrative activities as a possible application of Romano's doctrine is very doubtful in today's legal framework while the argument focusing on the peculiar role of independent administrative authorities has more chances of success. This argument appears to be somewhat persuasive especially if one combines it – as the author indeed does – to the judicial deference usually accorded to the decisions, mostly technical assessments, made by those authorities. Travi also underlines that, traditionally, the main scope of application of the doctrine encompasses "administrative pluralism and the system of autonomies"[83].

As has been pointed out, the coexistence of a general legal system, that of the State, and of particular legal systems (or orders) leads to "a problem of boundaries"[84]. An analysis aimed at defining the boundaries among different legal systems may be conducted from a domestic perspective, that is by focusing on a single legal system, namely a national one, to see how it is affected by other

role in the U.S. legal system. See K. Whittington, *The Role of Norms in Our Constitutional Order*, 44 Harv. J. L. & Pub. Pol'y 17 (2021).

[82] B. Sordi, *Statualità e pluralità*, supra at 43, 16.

[83] A. Travi, *Il diritto amministrativo*, supra at 51, 202.

[84] G. Corso, *Conclusioni della Tavola rotonda*, supra at 11, 338.

legal systems, in addition to ascertaining whether there are some derivative legal systems or fragments of a legal systems within it.

However, the interactions of several systems on a given issue may also be a specific subject matter, as is the case with the dialogue among courts belonging to different legal systems on the judicial enforcement of individual rights provided for at constitutional level[85]. Furthermore, these two perspectives may be kept together, by arguing, for instance, that the EU is neither a State nor an international organization in a strict sense but rather a "composite" legal system[86]. Overall, Santi Romano's legal order doctrine still turns out to provide useful insight on a series of issues concerning a single legal system or the mutual influence among legal systems.

One might object that, according to the positions expressed in the three books reviewed, the only scope the doctrine may have today is restricted to legal theory, i.e. to general theory of law. Actually, this is just one possible application of the doctrine, and yet the outcomes of such an application may be employed in studies conducted from an administrative law perspective. A recent reevaluation of U.S. administrative law by professors Sunstein and Vermeule, for instance, is mostly founded on the thought of distinguished legal theory scholar Lon Fuller[87].

[85] See A. Sandulli, *Dialogo tra le Corti e tutela dei diritti nella crisi del pluralismo costituzionale: la teoria ordinamentale alla prova europea*, in *Attualità e necessità del pensiero di Santi Romano*, 57-88.

[86] See G. della Cananea, *L'Unione europea: un ordinamento composito* (2003).

[87] I am referring to C.R. Sunstein, A. Vermeule, *Law & Leviathan* (2020), a good deal of the theoretical framework of which embraces the construction advanced in L.A. Fuller, *The Morality of Law*, 2nd edition (1969). I take the liberty to mention my review of the essay by Professors Sunstein and Vermeule in 71 Riv. trim. dir. pubbl. 1322-1325 (2021).