ANGELA FERRARI ZUMBINI, LA REGOLAZIONE AMMINISTRATIVA DEL CONTRATTO. ATTI AMMINISTRATIVI CONFORMATIVI DELL'AUTONOMIA NEGOZIALE, GIAPPICHELLI, TORINO, 2016 (390 PP.).

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This is the first volume in a new series of studies on administrative law (called "variations"), directed by five well-known scholars of the subject.

It is the author's debut monograph, though she has to her credit various substantial essays on public goods and has gained experience abroad, including periods of study in Germany and the United States.

This book was not, however, written simply as a means of obtaining a formal academic qualification, and it thus eschews the all too frequent descriptive survey approach that has characterised so many publications over the last half decade. The layout and structure are well defined and the thesis is original, namely that a panoply of administrative acts affecting private individuals have sprung up, giving rise to a new typology of acts (including both rulemaking and adjudications) so that the principal of contractual autonomy is not merely limited, but shaped and moulded by government authority.

This work also has something of the "old" about it, and is reminiscent of methodological choices from the past, perhaps influenced by the author's studies in Germany, or her early private law background. It is no coincidence that she frequently uses the terms "dogmatic" and "systematic", now fallen into disuse. The approach is strictly juridical and, one might almost say, it even applies the old legal method, as the reasoning is elegant and almost mathematical, although it takes the concrete analysis of actual cases as a starting point.

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Unlike many books on the subject of administrative studies where it has become difficult to discern what precisely their subject area really is, Ferrari Zumbini leaves the reader in no doubt whatsoever: this is a study in law. And this is most certainly one of the volume's main qualities, though one may still wonder whether, in a context dominated by legal uncertainty and the increasing blending of different areas of research, administrative law is still characterised by dogmas; and whether systematicity may be, if anything, an aspiration, or a goal to be aspired to, rather than a feasible and concrete reality.

On the other hand, it sheds light on how a set of principles and, indeed, "dogmas" from the past are now to be considered obsolete, such as the prohibition of implicit powers and the principle of the typicality of administrative acts. It describes an evolving framework of relations between public and private law, which are, in fact, very difficult to draw together into a system.

After an introductory chapter, which aims among other things to describe the antecedents of the phenomenon (a classic example from the past was the imposition of fixed prices), the book is divided into three parts.

The first, which aims to describe the phenomenon in general, examines a sector subject to regulation by an independent authority (electronic communications) and one that is subject to regulation by a traditional administrative authority (gaming and betting). With regard to electronic communications, various obligations are analysed, namely transparency, non-discrimination, access and interconnection, universal service, prior approval of a draft contract, the prohibition of the unjustified bundling of services, enforcement of the right of withdrawal, the provision of automatic compensation for users and – especially – price controls. Regarding the public gaming sector, the cases examined relate to the prior issuance of a standard contract model, the prior approval of the contract, changes and additions to contracts that have already been stipulated, the *ex post* limitation of the number of contractors, limits on the economic activities that can be carried out, and the range of lawful contractual subject matter permitted.

The second part is interpretative and examines the phenomenon, first from a private law perspective; that of the limitations to contractual autonomy imposed by administrative

acts of this kind, and then from a public law perspective, in terms of the effectiveness of such acts. Regarding the former, the text shows first of all that administrative acts affect all the elements of the contract, in compliance with art. 1325 of the Italian civil code (agreement, cause, object, form) and, in terms of the second, that these acts become sources of contract law (in the sense that the power whereby the administration imposes its effect of conformity does not originate expressly and precisely with the law) and that these acts have prescriptive and necessarily trilateral effectiveness (involving, therefore, at least two other parties in addition to the public element).

The third part, aiming to build up a systematic profile, identifies the structural and functional elements of the acts in question and examines aspects of judicial protection. As for the first topic, the author stresses the universality and multi-functionality of this type of act, while, in relation to the second, she highlights the most interesting characteristics associated with protection, focusing in particular, in the final part, on the judicial review of the discretion involved in the technical evaluation.

Do acts creating these trilateral contractual relations constitute a new category of administrative act, as the author suggests? Perhaps the answer to this question is not the most significant aspect of the book. More important than the taxonomic aspect seems to be the fact that the volume points to a growing phenomenon, thus adding an important new piece to the mosaic that lies in that middle ground that is the relationship between public and private law, an area that constitutes the most significant legal development of the last few decades. It is not, as Ferrari Zumbini clearly shows, a unidirectional relationship. It is not simply a question of introducing some of the institutions of private law into areas traditionally coming within the province of public law. Rather, it is bidirectional, as principles, rules, and institutions from public law also come to exert their influence on private law. These aspects have long been recognised by legal scholars: one recalls the studies by Salvatore Romano and Lina Bigliazzi Geri and the possibility of legitimate interest in private law, the limitation of private power in relation to the weaker party, the possibility of the functionalisation of agreements, re-examined here by the author, or the possibility of the proceduralisation of a contract. The strength of this book is the

way it illustrates their diffusion through the mapping of two sample areas.

In recent decades, the phenomenon has increased dramatically, as the author most ably illustrates. And the bidirectionality mentioned above dispels the myth of European Union law favouring the private invasion of public law, contributing to the decline of the public sphere. In reality, the volume shows that European law, from a functionalist perspective, also allows the opposite flow, with public law influencing private law when its mechanisms are better suited to achieving the objectives of the European system, and when the needs of public regulation may be necessary to obtain the best results from the balance between private interests in the regulated sector.

This is particularly marked within the various branches of economic law, of which the author argues that the area of electronic communications is certainly part. On the other hand, she places the gaming and betting sectors in the area of public safety and order. This is certainly true, but it is also true that in recent years, this sector has become strategic in keeping the public finances and therefore has a certain importance also in this area. The administrative activities of the ADM (the Italian Agency for Customs and Monopolies, which is competent to regulate the gaming sector) are therefore directed to overseeing the sector in order to achieve a twofold purpose: on the one hand, the ADM must combat illegal betting and organised crime; on the other hand, it must also ensure that the State receives the expected revenues from gaming and betting.

The power of public regulation that the legislator confers on the administrative authority is often an open one, meaning that it overturns every assumption and, indeed, the traditional "dogmas": it overcomes the ban on implicit powers, as the power conferred by law does not list a taxonomy of areas and modes of intervention: it bypasses the principle of typicality as it permits the adoption of acts that are not in fact categorised by the law, and which may thus be considered atypical. It follows, according to the European evolution, that power is no longer directly bound in its purposes by the law, which does nothing more than envisage the control of the sector by the authority, which then adapts it on

the basis of the public use required, but always under the aegis of the general principles of law and administration.

Here, at the end of the journey, we find the fundamental underlying question: to what extent can an administrative act set limits to the contractual autonomy of private individuals? For the author, it is the principles of law (in particular, those developed by European law) that guide the administration and the courts: the principles of reasonableness, proportionality, non-discrimination and legitimate expectations. Of particular interest, in this sense, is the part on judicial review on aspects of technical discretion, since most limitations on contractual autonomy are due to acts issued in the exercise of technical assessment. The author analyses some well-known theories which aim, on the one hand, to underline that courts cannot go so far as to replace the questionable technical assessments upon which some administrative acts are based; and, on the other, to show that indeed courts may very well go so far as to resort to this kind of judicial review. There is also an examination of the most recent guidelines for the administrative courts with a view to allowing judicial review of so-called technical discretion under special conditions and by means of *the two-step doctrine* mechanism, which, in some ways, is a sort of proportionality test to be applied to what might be referred to as the discretion involved in technical evaluation. Most of the cases analysed in the book reinforce the idea of a non-superficial judicial review, being, as mentioned above, characterised by an open power granted by the legislator, so that the authority is essentially *master* of the sector, and judicial review of the technical assessments is often the only counterweight to the exercise of a power, which, otherwise, would not encounter any kind of obstacle.

Ferrari Zumbini's book is also significant for another, more general, reason. It is yet another demonstration of the importance of that branch of administrative law where principles and rules of public and private law interact: areas where public law specialists and their private law counterparts must get used to working closely together, each examining the problems from their own standpoint and laying the traditional disciplinary boundaries aside.