EDITORIAL

THE AGE OF REFORMS? THE QUESTION OF STANDARDS

Over the last ten years, the Member States of the European Union have been reviewing several constitutional issues, including the possibility of adopting a constitution. Although the *Treaty establishing a Constitution for Europe* (or "Constitutional Treaty") was not ratified in the end, the Treaty of Lisbon introduced several important modifications to the institutional framework. If used judiciously, these innovations may prevent unified Europe from becoming ineffectual in the global arena and thus avoid repeating experiences like that at the recent Copenhaghen conference on protection of the environment.

During the same period, the Labour Government in the United Kingdom realized, or at least, began a radical programme of constitutional reform which included devolved government for Scotland and Wales, incorporation of the European *Convention for the Protection of Human Rights and Fundamental Freedoms*, reform of the House of Lords (a proposal to replace it with a new chamber is being discussed), adoption of a Freedom of Information Act and, last but not least, a wide-ranging reform of the judiciary. Important institutional reforms were also carried out in other major European countries. Germany expanded the powers of its high chamber, the Bundesrat, and began a complex reform of its public finance system. France, too, adjusted its administrative system so as to strengthen the financial autonomy of its regional governments. It also amended the presidential mandate, with a view to making divided government (*cohabitation*) less likely.

In contrast, the constitutional rules governing the main political institutions in Italy (notably Parliament and the executive) changed very little during the same period. This is all the more surprising given that the constitutional articles governing the relationship between central government and the regional and local authorities were modified in 2001. Although one might reasonably assume that changes at a regional and local level would necessitate some adjustments at a central level (enhancing efficiency and accountability), no serious attempt has been made in this area. Indeed, not one of the projects developed by three Parliamentary commissions (set up in 1981, 1992 and

1998) succeeded in reforming the Italian institutional framework. Whilst a constitutional bill was passed in 2005, it failed to achieve the two-thirds majority required by the Constitution to avoid a referendum. Subsequently, the popular vote against the bill prevented it entering into force and no serious effort was made to alter the constitutional framework during the next legislature. Paradoxically, although constitutional reform has been widely discussed, no real progress has been made (and constitutional litigation has constantly grown).

More generally, there have in fact been some legislative reforms but their results have been far from satisfactory. In 2005, some controversial changes were introduced to the 1990 legislation that had established the principles governing administrative procedures. The amendments included an attenuation of the consequences of procedural irregularities. In 2007, an important experiment (the "spending review") was attempted. The intention was to permit the State to function more effectively and efficiently while costing the taxpayer less, but the experiment was dismissed by the new political leadership after the elections in 2008. Similarly and with the notable exception of the services liberalised by the EU, such as electronic communications, demands to require public services (especially those provided by local government) to respect the principle of a market economy have never led to legislation.

More recently, in 2009, Parliament approved three ambitious reforms. Eight years after the relationship between central and decentralised government was reformed, an Act of Parliament regarding fiscal federalism reshaped the coordination of all levels of government with the aim of promoting greater transparency, increased efficiency at lower cost and, most importantly, an acceptable degree of accountability for those governing regions and local authorities. A whole seventeen years after a distinction was legally drawn (in 1992) between policy-making on the one hand and operational implementation on the other, existing legislation was modified to enhance the efficiency of public administrations. Administrative accountability was then further reinforced a few months ago by the Act of Parliament which allows the courts to grant new remedies when dealing with the unlawful conduct of administrative bodies.

While all the abovementioned reforms are clearly of paramount importance, their scope and likely impact are difficult to assess. First of all, Parliament left unprecedented room for

delegated legislation, which fact raises delicate questions about the balance of powers and the accountability of our main political institutions. Secondly, while some observers regard these developments as fundamental steps towards the modernization of Italian institutions, others view them with scepticism, if not open hostility. This raises the question of the standards by which reforms are assessed. This editorial argues that there is an urgent need to clarify which standards are being applied, to discuss them publicly and, if necessary, to use persuasion to try to adjust existing standards, where they are manifestly inappropriate at present. Before measuring the performance of reforms against given benchmarks, a critical analysis of the very benchmarks' underlying rationales and implications is therefore necessary.

It is in this perspective that this issue of IJPL focuses mainly, though not exclusively, on areas affected by recent reforms. It is certainly not the intention of this editorial to give nutshell accounts of the articles published. Indeed, the articles speak for themselves and it should not be assumed that an editorial can add anything. The intention is, rather, to highlight some of the general issues that they raise. A first general issue is the importance of historical and comparative analysis. Consider, for example, our administrative justice system. There is certainly no lack of literature on the subject. All too often, however, Italian administrative justice is evaluated only in very abstract terms, as if the factors determining its origins and evolution were of marginal importance, if any, when compared with some vague ideas of justice, which are sometimes no more than an extension of certain elements of the civil justice model. The article on administrative justice written by a specialist such as Franco Gaetano Scoca may therefore be of interest to a wider audience (in line with the IJPL's mission). Another issue of general importance is the contrast between different perspectives and the debate it may generate. Two opposing conceptions of administrative law are considered in the essay written by one of the IJPL's editors, where it is argued that the traditional paradigm according to which administrative law is a sort of province of the State simply does not correspond to the real world nowadays. Rita Perez then argues that the recent bill aiming at introducing a sounder fiscal federalism is futile, if not detrimental to shared constitutional values of solidarity. This contrasts vigorously with the opinion expressed by Luca Antonini and Andrea Pin in the first issue of IJPL. Such fact offers us the opportunity to observe that, unlike those national legal journals

that (quite legitimately) choose to follow a specific line, the aim of the IJPL is to express different points of view. Another area in which different approaches may emerge is that of human rights. On this subject, we offer both Silvia Mirate's comparative analysis of French and Italian administrative case-law and the official report prepared by a group of scholars from the University of Milan. The same applies to risk regulation, which is dealt with by Antonio Romano Tassone. Last but by no means least, the review article written by Aldo Sandulli seeks to assess the recent contributions made by one of the most renowned of legal historians, Paolo Grossi.

G.d.C.