Contents

1.		oduction Oomenico Sorace, Leonardo Ferrara, Ippolito Piazza	XIII
Pa:	Plur catio	General Issues rality and Diversity of Integration Models: the Italian Unifion of 1865 and the Ongoing Integration Process in the EU oberto Cavallo Perin, Gabriella M. Racca	
	2.1	The integration process in Italy 150 years ago and in Europe now: parallels	
	2.2	and asymmetry. Administrative integration and plurality of unifications	4
	2.2	Asymmetric effectiveness of administrative integration within different rele-	0
	2.3	vant sectors in the EU.	9
	2.4	Integration among public administrations: organizational capacity and prin-	
		ciple of subsidiarity.	10
	2.5	Administrative protection of fundamental rights in the integration processes.	13
	Refer	ences	15
3.		lution of the Principles and Rules on Administrative Activity Carlo Marzuoli	
	3.1	Introduction	24
	3.2	Private interests, 'public' interest, administrative discretion; the shift in focus from act to procedure	25
	3.3	Introduction (by law) of the general procedure model (1990); cornerstones (time, conclusion method, dedicated office)	26
	3.4	The players involved: administrations and private entities (participation)	28
	3.5	An alternative to the unilateral administrative act: exercising administrative power through agreements	30
	3.6	A second step: introduction (by law) of general rules governing powers and	50
		unilateral acts of the administration, in particular powers of supremacy	31
	3.7	Public intervention and private entity activity: recourse to the replacement of	
		authorisations with powers of successive control	32
	3.8	The need for results: complexity of the administration, administrative dys-	
		function and 'simplifications' (silence, procedural simplifications, conference	22
	3.9	of services) The current face of the invalidity of the administrative act (nullity, invalidat-	32
	3.9	ing illegitimacy)	35
	3.10	Transparency and rights of access	36

VI Contents

	3.11	Principles governing the relationship between administrative acts and powers	
		and private acts of the administration	38
	3.12	Civil liability for unfair damage and a victory for civilisation	39
	3.13	Where we are	40
	Refer	rences	42
4.		y and Fragmentation: the Italian Public Administration ristide Police	
	4.1	Preface	46
	4.2	The organization of the public Administration in the Italian Constitution	48
	4.3	The complexity of the Italian administrative Organization	50
	4.4	Flexibility and Fragmentation: towards a new Model	51
	4.5	Rhetoric, Mythologies and new Model of <i>Governance</i>	53
	4.6	Negotiation vs. Regulation in the new <i>Governance</i>	56
	4.7	Coordination vs. Fragmentation: the task of the Italian Administration	60
	4.8	The path towards a multicentric and transnational system of Governance	63
	4.9	Rule of Law, social Welfare and Performance: reembracing Unity	66
	4.10	The Quest for the Ideal City and its public Administration	69
	Refer	ences	72
5.		New Functions of Public Budgets ntonio Brancasi	
	5.1	Introduction	75
	5.2	Centred budgetary decision-making and balancing	76
	5.3	Overcoming budgetary rigidity and expanding its decision-making space	78
	5.4	Placing quantitative limitations on budgetary movement	81
	5.5	The [failed] attempt to establish an effective decentralisation of public fi-	
		nance ('fiscal federalism')	84
		5.6.1 The constitutional reform of 2012 and the implementation of Fiscal	0.6
		Control: the system as a whole 5.6.2 Continued: quantitative rules on individual budgets	86 88
		5.6.2 Continued: quantitative rules on individual budgets5.6.3 Continued: the content of the state budget	90
		5.6.5 Continued: the content of the state budget	90
6.	Righ	Administrative Jurisdiction: Towards a Full Protection of nts against Public Authority	
	6.1	A long season of ambiguous justice	94
	6.2	A conflicting authority in the perspective of balances within the legal system	95
			,,
	6.3	From the jurisdiction (on the legality) of the authority to a jurisdiction for the	

Contents	VII
301101110	, 11

	6.4	The proceedings: the claim and its conditions	101
	6.5	A review over administrative discretion hardly facing with facts at issue	105
	6.6	Attempts of dialogue between courts in a multilevel system and the alarm of	
		a large-scale litigation of objective nature	110
	6.7	Conclusion: a special jurisdiction serving the full protection of citizens' rights	116
	Refe	rences	118
7.		ministrative Citizenship and Public Services: is the Constitu-	
		al Project still Possible in the Perspective of the Union?	
	By A	Alessandra Pioggia	
	7.1	"Administrative citizenship"	120
	7.2	The "political" dimension of public services	122
	7.3	The "economic" dimension of services in the European perspective	124
	7.4	The service of general economic interest as a paradigm of public service in	
		Europe	126
	7.5	What is lost by neglecting the "political" dimension of the service?	128
	7.6	Public institutions and service organization	129
	7.7	Which European administrative citizenship?	132
	Refe	rences	133
8.	The	Rise of Technological Administration and the Ragged	
0.		ite Towards a Digital Administrative Law	
		Stefano Civitarese	
	8.1	Technology, Politics, and the Law	136
	8.2	Conceptual and Terminological Clarifications	139
	8.3	Digital Agenda and the Principle "Digital First"	142
	8.4	Re-engineering bureaucratic work and automating decision-making	146
	8.5	Conclusive remarks	153
		rences	155
	11010		100
9.	The	Juridification Process and the Influence of EU law	
-•		Luca De Lucia, Barbara Marchetti	
	9.1	Introduction	158
	9.2	Public policies with regard to legification	161
	9.3	Juridification in Italy: examination of some fields	163
		9.3.1 Bioethics	164
		9.3.2 Sport	165
		9.3.3 Food safety	167
		9.3.4 Environment	168
	9.4	Juridification and European integration	169
		1 5	

VIII Contents

		9.4.1	Legification	170
		9.4.2	Jurisdictionalisation	173
	9.5.	Conclu	usive remarks	176
	Refer	ences		176
Par	t II S	Specifi	c Issues	
		-	ng of a National Cultural Identity	
			Chiti, Gianluca Gardini, Aldo Sandulli	
	10.1	The qu	nestions	184
	10.2		ıltural heritage, and the media	185
		10.2.1	The 'cultural policy' of the Fascist regime: the nationalisation of culture	185
		10 2 2	The republican legal order: an open cultural policy and the dialectic	105
		10.2.2	between homologation and diversity	187
		10.2.3	The dialectic between centralism and local autonomy	189
			The present day and ongoing transformations	191
	10.3	Educat		195
		10.3.1	The role of education in building national identity	195
			Revising the established paradigm: the relationship between central-	
			ism and autonomy	197
		10.3.3	The relationship between the public and private sectors	199
		10.3.4	The relationship between national and European legislation	200
	10.4	Langu	nage	201
		10.4.1	A question neglected in legal studies	201
		10.4.2	The regulation of the use of language for the purpose of civil and po-	
			litical integration: three historical phases	202
		10.4.3	A specular phenomenon: the evolution of the protection of linguistic	
			minorities	204
			The language regime of the Italian administrative system	205
			A set of tensions	207
	Refer	ences		208
11.	The	Public	c Intervention in the Economy	
			o Cafagno, Francesco Manganaro	
	11.1	Introdu	action	212
	11.2	Backg	round	213
		11.2.1	The difficult relationship between law and economy	213
		11.2.2	The historical development of public intervention in the economy in Italy	214
	11.3		and reconstructive profiles: Direct intervention: administration as an	
		econor	mic actor	217
		11.3.1	Impartiality, efficiency and the single market	217

Contents	IX
----------	----

	11.4	11.3.2 Contractual procedures 11.3.3 In-house providing, public enterprises, mixed companies 11.3.4 Conclusion Critical and reconstructive profiles: evolution of the "regulatory state" 11.4.1 The changing object of the regulatory state 11.4.2 The lack of legal rules in the global economy 11.4.3 The regulation of the European single market 11.4.4 The sectorialization of the regulatory discipline at the national level 11.4.5 New perspectives	218 223 228 230 230 231 232 233	
	Refer	rences	234	
12.	Regulation of the Banking Sector: from the 1936 Banking Law to the European Banking Union By Marcello Clarich			
	12.1	Introduction	242	
	12.2	The first phase leading up to the banking law of 1936	243	
	12.3	From the 1948 Constitution to the 1980s The Consolidated Parties Act of 1993	246	
	12.4 12.5	The Consolidated Banking Act of 1993 Developments after the 2008 financial crisis	249 253	
	12.5	Concluding notes	259	
		rences	260	
13.	Cohesion, Subsidiarity and Organization: the Experience in EU and Italy By Pier Luigi Portaluri			
	13.1	Introduction	262	
		Territorial cohesion in EU	262	
	13.3	Cohesion in the Italian experience	264	
	1.3.1.	Public-private partnership and cohesion	266	
	13.4	Organization forms and cohesion in Italy. Nods	271	
	13.5	Conclusions	272	
	Refer	rences	273	
14.	Pub	lic Employment: the Controversial Abandonment of the lic Model		
	14.1	A major and highly challenging reform	276	
	14.2	The project: bringing public employment under labour law	277	

X Contents

	14.3	The fluctuating evolution of legal framework	280
	14.4	The integration of law and collective bargaining in the Constitutional Court's	204
	145	case law	284
	14.5	The most recent developments: a balance between administrative and labour law	286
	Refere	ences	288
15.	The	Management of Healthcare	
	By F	abio Saitta	
	15.1	The organizational evolution of the Italian healthcare system, starting with the administrative unification laws	292
	15.2	Public and private healthcare in Italy (and Europe)	298
	15.3	The privatisation of the healthcare system: a difficult comparison of diverse values	301
	15.4	The political and technical management of healthcare: the legislature's hesi-	
		tations, and persistent problems within the system	304
	15.5	State and regional healthcare management	309
	15.6	The right to healthcare during the (economic) crisis: the legislature's deci-	
		sions and the indications provided by constitutional case law	311
	15.7	Current competition in the healthcare sector	314
	15.8	In conclusion: the future of healthcare services in Italy and Europe	316
	Refere	ences	319
16	Civil	Protection: The Fight against Earthquakes	
10.		mberto Allegretti	
	16.1	A definition	326
	16.2	A brief history of State intervention in a fragile territory	327
	16.3	The classification of the territory and the "seismic code" (norme tecniche)	329
	16.4	The "cycle" of civil protection functions	330
	16.5	The central importance of prevention	332
	16.6	Organization: the National Civil Protection Service	333
	16.7	The role of science	336
	16.8	Volunteers	338
	16.9	The participation of the population	339
		The rights of affected persons: a gap in the Code	340
	16.11	Some principles of the activities in view of reconstruction	341
	16.12	Funding, the possibility of corruption, the issue of efficiency	342
	16.13	Conclusions	344
	Refere	ences	345

Contents XI

17.	Territorial Policies and Urban Dimension By Gabriella De Giorgi Cezzi			
	17.1	Introduction. The "state of the territories" and the urban question	348	
	17.2	The state of municipalities at the time of the unification (1865) and at the		
		time of the Republican Constitution of 1948	348	
	17.3	Territory vs. territorial heritage	350	
	17.4 Refer	The role of municipalities according to the EU principle of territorial cohesion ences	352 354	
Par	t III'	Voices from across the EU		
		Years of Administrative Law in Italy and in France: Some		
		parative Insights		
	By J_{ℓ}	ean-Bernard Auby		
	18.1	Introduction	250	
	18.1	The Scope of Administrative Law	358 359	
	10.2	18.2.1 On the understanding of what is specific to the administration and	339	
		justifies the application of special rules, the two systems have experi-		
		enced fluctuations between which there is no true symmetry	359	
	18.3	The Incorporation of Supra-Legal Norms: Constitutionalisation, Europeani-	337	
	10.5	sation	360	
		18.3.1 The constitutionalization of administrative law	360	
		18.3.2 The Europeanization of Administrative Law	361	
	18.4	Emergence and Development of Judicial Review	362	
		18.4.1 The organization of administrative litigation	362	
		18.4.2 The powers and methods of judges	363	
	18.5	Theories on the Administrative Act and Evolution of Administrative Proce-		
		dural Law	363	
		18.5.1 The administrative act theory and its link with administrative procedure	363	
		18.5.2 The construction of procedural administrative law	364	
	Refer	ences	365	
19.	Adn	ninistrative Jurisdiction in the Federal State		
	By L	ian Schefold		
	19.1	Italian unity, German unification, European Union	368	
	19.2	Heterogeneity in systems of administrative jurisdiction and administrative		
		procedures	369	
	19.3	The influence of the Nazi period	370	
	19.4	The jurisdictional model of the Basic Law (GG)	370	
	19.5	The Code of Administrative Court Procedure (Verwaltungsgerichtsordnung		
		- VwGO)	372	

XII Contents

	19.6	Regulations on administrative proceedings	374
	19.7	The influence of the European Union	375
	19.8	Jurisdictional cultures, tolerated differences and dialogue	377
20.	The	Roller Coaster Ride of English Administrative Law	
	By P	eter Leyland	
	20.1	Introduction	380
	20.2	Red Lights, Green Lights and the Rise of the Modern Administrative State	382
	20.3	Judicial oversight: the rising profile of the courts?	384
	20.4	Procedural reforms and Opening Up Access	387
	20.5	Administrative Law and Rights Protection	389
	20.6	Political versus Legal Constitutionalism: Bridging the Gap between theory	202
	20.7	and practice	392
	20.7	Administrative law bottom up: ADR, Ombudsmen and Tribunals	396
	20.8 Refer	Conclusion: Administrative Justice in Retreat?	402 404
	Kelei	ences	404
21.	Year	Spanish Administrative Law Transformation in the last 50 rs and the Challenges for the Future osé-Luis Pinar Manas	
	21.1	The origins of modern Spanish Administrative Law. The "Generation of the <i>Revista de Administración Pública</i> " and the laws of the mid-twentieth century	406
	21.2	The impact of the 1978 Constitution. The Constitutional Bases of Adminis-	
		trative Law	408
	21.3	The territorial organization of the State	413
	21.4	The reform of Public Service	415
	21.5	The reform of the Administrative Procedure. Technological innovation.	
		Cross-border procedures	416
	21.6	Transparency and access to information	419
	21.7	Consolidation of full jurisdictional control of the Public Administration's activity	420
	21.8	Digital society and new rights	420
	21.9	Future challenges for a social Administrative Law	423
	Refer		426
	Keiel	CHECS	420
22	Gree		
		ece. A State with Weak Institutions in continuous Crisis	
		ece: A State with Weak Institutions, in continuous Crisis by by ridon Flogaitis	429