

Sabino Cassese

**The vocation of our time for the study of the public
law**

It is for me a great privilege to be among the “laudati” by the European Public Law Organization, an institution that, although established only relatively recently, is already influential and respected thanks to the work of its members.

This Organization is one of the seeds from which a European community of scholars has developed; a community similar to that which was destroyed by the

nationalisms of the 19th and 20th centuries. We are renewing the bonds that were broken, and that have today once again become necessary due to the continuous interaction between the various national legal orders under the auspices of the European Union. While a web of relations between governments, institutions and national societies is being woven in Brussels and elsewhere in Europe, the European Public Law Organization brings together in discussion and research the “wandering clerics” [*clerici vagantes*] of our time; reconstituting, in so doing, the lost common cultural fabric of Europe.

To join the ranks of the “*laudati*” is a particular pleasure for me for another reason, as here are active

many scholars with whom I have had, at different points in my life, the opportunity to collaborate.

I would like to extend my warm thanks to Professors Auby, Della Cananea, Ortega, Schmidt-Assmann for the many generous views they have expressed about me and about my scholarly activities; few things are as pleasant to the ear as praise!

I want to take this opportunity to say a few words on our work and on the vocation of our time for the study of public law. This ceremony – so important for me - may be more meaningful for you if I try to make a very short reflection on this two subjects.

What have we done in the last few years and what should we do in the next future?

The European scholarship has given two major contributions to the study of public law: it has gone beyond positivism and has reconceived public law “*ex parte civis*”.

For legal positivists, law was just the law in books: the statutes were the product of the will of the State and lawyers were just interpreters. The European legal scholarship has successfully integrated the study of the law in books with the study of the law in action, and the study of statutes with the study of cases. It has widened lawyers horizons to legal practices and all kind of other soft law. It has become less system – oriented and more problem – oriented.

The traditional approach to public law was based on the State as the central actor. The European public law scholarship has replaced the State with the citizen.

Where do we go from here? What will be our major tasks in the decades to come? Which is the vocation of our time for the study of public law (I do not mean, of course, by using the word “vocation”, to compare this short reflection to Savigny’s “Beruf”)?

The first main task is to decouple the study of public law from its traditional nationalistic bases. According to this tradition, public law is of necessity national in character, and the “final frontier” of the lawyer is comparison meant as a pure scholarly exercise. Comparison, not comparative law, as there is

not a branch of law that can be called comparative law.

I want to stress the point that, on the contrary, public law is now grounded worldwide on some basic and common principles, such as proportionality, the duty to hear and provide reasons, due process, and reasonableness. These principles have different uses in different contexts, but they share common roots. We can therefore study them by procedures of “wertende Rechtsvergleichung”.

The second task is to take into account the bent of each national law toward regional law (such as EU law) and global law. If the leading figures of the past laboured (to a very high degree in Germany and Italy,

less so in France and the UK) to establish the primacy of national constitutional law (“*Verwaltungsrecht als konkretisiertes Verfassungsrecht*”), today the more pressing task is to ensure that the increasingly important role of supra-national legal orders is widely acknowledged. If once public law was State-centered, it should now be conceived as a de-centered and complex network of public bodies (infranational, national and supranational).

The third task is to rebuild an integrated view of public law. Within legal scholarship, constitutional law, administrative law and the other branches of public law have progressively lost their unity: constitutional law, for instance, is increasingly

dominated by the institutions and practice of judicial review; and most administrative lawyers have been overwhelmed by the fragmentation of legal orders, which has led them to abandon all efforts at a theoretically comprehensive approach. The time has come to seek to re-establish some form of unitary and systematic perspective on public law in general.