



***European Constitution and
Administrative Reform:
The Italian Case***

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1. Juridical matters

The drafting of a European constitution is currently at the centre of much attention, and will have an impact on administrative reform in each single country. It is now widely acknowledged that Western societies have entered the second phase of modernity.

During the first phase, Western countries faced six different challenges that brought about the creation of the modern State: legitimisation, industrialisation, urbanisation, resource distribution, participation, and secularisation¹. These challenges therefore refer to general, supranational issues that go beyond political and legislative issues, and it is their general nature that has led to the intervention of the State in these matters.

Each Western country met these challenges differently, and it is upon these differences that comparative politics base themselves.

The current phase of modernity is heavily influenced by the on-going globalisation process which has weakened the boundaries between the State and civil society (to quote Carl Schmitt “the era of the State is ending”)² and has given the issue a global dimension while maintaining well defined ethnic characteristics. The influence of globalisation on the legal system is extensive and impacts a wide array of issues, from labour to rules on competition to the growing role of the internet. The predominance of facts over laws now seems to be well established, although the ways in which facts determine laws have not yet been identified.

The question at hand is whether democracies are ready to manage the transition from the first to the second phase of modernity: the main struggle is no longer the one between political and economic powers, but between the different types of political organisation, and of juridical organisation as well.

In order to understand the context in which the European Constitution was created one must first understand the origins of the European Community.

The true historical and political reason why the European Community – a true work of legal engineering - came into being was the need for peace among the member states, which had all recently been ravaged by war³.

The first step towards the creation of a European Community was the creation of the ESCC, which tried to achieve broader political and social goals through an economic agreement (the regulation of competition between France and Germany, the main producers of steel and carbon).

The construction of a European community grew progressively more concrete and complex, and went beyond measures to achieve economic integration – such as the realisation of a Common Market including resources ranging from steel to agricultural goods and the creation of a system of monetary interdependency which ultimately led to the adoption of the Euro as the common currency for eleven countries – to include the creation of a European legal system and a bill of basic rights.

¹ D. Fisichella, Chairman, Conference on “*La Costituzione Europea tra Stati nazionali e globalizzazione - Il valore del diritto nella civiltà europea*”, Roma 20 June 2003.

² In his presentation Fisichella also refers to the concept of globalism as a simplifying thesis that would render political power useless compared to economic power.

³ G. Tesauro, “*I valori dell’Europa che c’è*” presentation at the Conference “*La Costituzione Europea tra Stati nazionali e globalizzazione - Il valore del diritto nella civiltà europea*”, Roma 20 June 2003. The author quotes Jean Monnet and stresses the innovative nature of his thoughts: “There will be no peace in Europe as long as national sovereignty prevails. We must set up a federal organisation”.

The body of legislation, regulations, and directives produced by the European Commission has created the need for a specific legal discipline, that of European Community law.

The EU legal system is fundamentally a system of interdiction, based upon the principle that national laws apply where EU laws do not, without the possibility for overlap.

The nature of the system means that the Justice Court plays a key role. Its legislative activity has given a significant contribution to the creation of the EU legal system, because the Community's activity is expressed to its respect for the rule of law.

Although the process that brought about the creation of the European Communities began by addressing economic issues, the fact that its implicit final objective and main achievement is peace means that the individual, rather than individual States or communities, are at the centre of the system.

The evolution of the EU legal system has been marked by the actions of individuals who referred to the Justice Court rather than to the Constitutional Court⁴ and there is a rich variety of legislation dealing with basic rights.

The European legal system was based on the safeguarding of individual rights, and has evolved with this basic principle in mind. The fact that individuals can defend their rights against their own State is a sign of great progress that shows that the European legal system can protect individual rights without having to go through the national legal framework.

This confirms the fact that the European Community, since its birth, has focused on the individual and has based itself on the principles of peace, equal opportunities and the centrality of the individual.

The Constitution follows these guidelines and does not introduce major changes. The warm reception that the EU Bill of basic rights approved in Nice on December 7th 2000 is a positive development, but this does not lead to any additional value. The integration process itself seems like a mere enlargement of the Union, in that there will be more member States but fewer "communities", and that the role of the state will once again be underlined, through an *inter-governmental* system of relations.

Another relevant aspect of this debate is the recognition and affirmation of a European constitutive power.⁵

The genesis of the Convention, which started after the approval of the EU Bill of basic rights in Nice, opened the way for the rise of a constitutive power in the Community. In fact, the transition from the Treaty to a Constitution seems to be implicit in the Treaty itself, since it guarantees the progressive legitimisation of a constitutive power by abandoning the prevalent legal system based on public international law, and by recognising the concept of European citizenship (a process through which the plurality comes together as a Union) and through the protection of basic rights.

One could also reflect on modern history, on German and American experiences with federalism, or on the unification of Italy, with regards to which the European

⁴ A. Tizzano, "Il ruolo del giudice comunitario nel recesso di integrazione europea" presentation at the conference "La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa", Roma 20 June 2003. The author points out that the first application of the prejudicial principle in Italy took place in 1976 for the Constitutional Court and in 1991 for the Council of State.

⁵ D. Schefold "Un potere costituente europeo?" presentation at the Conference "La Costituzione Europea tra Stati nazionali e globalizzazione - Il valore del diritto nella civiltà europea", Roma 20 June 2003.

experience is a special case, one of many possible models of federalism. History also teaches us that Constitutional Conventions have always failed, since constitutive power is legitimised by cultural factors and not by the action of pre-established, albeit democratic, institutions.

The new European Constitution is a corporate element of European parliaments: the main difference between the Convention on basic rights and the Convention on the Constitution is that the latter was borne out of a true negotiation process, according to public international law rules resulting in the establishment of a constitutive power. The Convention's role was that of putting together norms. This does not seem to foreshadow a real constitutive power, so we will probably have to wait some time still before such a power is fully established.

The contrast between national legal systems and the European Constitution lies in the analysis of the set-up of the new Constitution, which is felt to be too "loosely knit"⁶ with regards to the key principles of our legal system such as the autonomy of the judicial branch and the right to due process, as well as respect for the protection of basic rights. The Constitution's titles regarding basic rights and justice are very general and open to ambiguity: it should be said that the true impact of the Constitution will have to be measured in the long term and will depend on how European Community institutions will apply its norms and respect the principles discussed above.

These initial reflections can pave the way for a debate on the role of the community judge. This figure already played a role in the integration process and will now have to strengthen itself, now that the Union has entered a second phase marked by the Constitution.

More than any other European institution, the Justice Court has, over the years, determined the nature of community law and its components, and it has given birth to a true legal community. The prejudicial capacity of the Court, which protects individual rights within the Community even against national legislation, has guaranteed the uniformity and the unity of community law, by conferring on national judges the role of "de-centralised" judge⁷.

Therefore, the Community's normative activities and legal procedures have played a key role in shaping national law in a process that we can call "judicial osmosis" which has made it possible for common law to be considered more than just a residual, integrative instrument.

With regards to basic rights, we have tried to evaluate what the Constitution calls for on the basis of the following characteristics⁸:

1) Innovative nature of the norms

Basic rights undoubtedly have a strong evocative value, and it is therefore not surprising that they have been referred to in the Bill of basic rights approved in Nice on December 7th 2000, albeit with some new elements such as references to the rights of the elderly, children and disabled persons as well as the to the principles that must be protected with regards to cloning. It should be stressed that there is a growing emphasis on an individualistic concept of protection: the

⁶ L. Lanfranchi "Opening speech at the Conference *"La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa"*, Roma 20 June 2003.

⁷ A. Tizzano, *"Il ruolo del giudice comunitario nel recesso di integrazione europea"* presentation at the Conference *"La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa"*, Roma 20 June 2003.

⁸ A. Cassese *"Il ruolo dei diritti fondamentali nella nuova Costituzione europea"* presentation at the Conference *"La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa"*, Roma 20 June 2003.

Constitution lists basic rights but does not refer to mechanisms or institutions charged with protecting these rights.

2) “Punctuality” and operativeness of principles

The norms of the European Constitution are undoubtedly programmatic since the outline plans for action; they recognise the existence of inalienable rights, but these rights remain to be identified.

3) Crystallisation/Development of the previous system

The system outlined by the Constitution must be interpreted as a commitment to continue building an unfinished work. There are probably premises for the development of generic concepts within the Constitution.

4) Integration between normative systems

The integration between normative systems is ensured by the constitutional traditions of member countries and by referring continuously to the principle of the European bill of rights. However, the current set-up of the Constitution puts national judges in charge of safeguarding basic rights. There is therefore a latent risk of shattering the system through the compression of certain basic rights.

This problem is linked with the issue of guarantees. The problem with this issue is that there exists a “two speed system” with regards to the protection of individual rights in the national and community legal systems.

Similar concerns regard the issue of due process in the penal system⁹.

The Constitution’s outlooks on guarantees is subjective: it refers to the rights of the accused but not to the functionality of trials. This means that there is an implicit reduction in guarantees that are safeguarded not only through the affirmation of principles, but also and more importantly through the organisation and administration of justice.

One cannot hope to place the burden of guarantees on single individuals: one need only think of the principle of reasonable duration of trials; its is the law that should be responsible for setting reasonable criteria, not the individual. Guarantees should be understood in the objective sense as basic characteristics of a trial, and not as rights that can be waived.

The implications of such a set-up should not be overlooked, as they would lead to different interpretations of trials and of due process at the national and community levels.

With regards to due process and the trans-national dimension of civil justice, one can see how trans-national controversies are affected by the ongoing globalisation and “Europeanisation” processes.¹⁰

Therefore, problems relating to this aspect must be tackled in different ways whether they are intra-European or extra-European controversies.

In the first case the main problems that arise regard judicial co-operation, while in the second case a set of common principles and rules must first be drafted.

Another question that must be answered is whether obtaining common guarantees shared by all member countries and coherent with the principles contained in each legal system should be achieved through a harmonisation of national legislation. This does not seem to be a key step since there is already common core of

⁹ V. Grevi “Principi e garanzie del giusto processo penale nel quadro europeo” presentation at the Conference “*La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa*”, Roma 20 June 2003.

¹⁰ M. Taruffo “*Garanzie processuali e dimensione transnazionale della giustizia civile*” presentation at the Conference “*La Costituzione Europea tra Stati nazionali e globalizzazione - La garanzia dei diritti in Europa*”, Roma 20 June 2003.

principles protecting basic rights shared by all legal systems, so the diversity of such systems should not lead to the violation of rights.

In summary, the new Constitution raises many doubts, both in terms of its overall set-up and regarding approval and revision mechanisms.

Due to its general nature, the Constitution does not seem to be a fully operational tool, but rather a project whose foundations have been set¹¹.

The Justice Court therefore plays a key role: the Court that has “created rights out of daily activities and the empirical nature of rights”, and that created organic, systematic, and uniform tools to launch and develop the integration process.

2. Administrative convergence

Administrative laws, as a subset of public laws, have traditionally been considered purely national laws that often highlighted the differences between states or marked the superiority of one state over the other. At the beginning of the 20th century many important jurists such as Santi Romano and Otto Meier still felt that administrative laws were national laws, and therefore were not comparable on the international stage.

At the end of the century, scholars such as Sabino Cassese and Alfonso Quaranta began to present a new thesis according to which administrative laws “converge”¹²: there is a reduction in national peculiarities, and there is an emergence of reciprocal influence relationships between juridical traditions that had historically been understood to be in contradiction with each other, such as the British common law system and the continental civil law system.

On the other hand the differences between civil law, the continental *Jus commune europaeum* and the British common law seem to be based upon political rather than juridical motivation. Moccia argues that the two currents are actually two components of the same cultural context, which is separate from both nationalism and juridical positivism¹³. Indeed, continental common law was based not only on the Justinian *Corpus Juris* but also on consuetudinary and case law, and these were integral parts of the European legal doctrine. Legal science was truly European, in that jurists shared a common education which had developed in universities that existed long before the advent of nation states, and where the circulation of ideas crossed all geo-political boundaries. Coing is therefore right when he argues that “European jurists came before European law”¹⁴.

Administrative laws has been, since its origins, an autonomous branch of European common law, based on its own specific rules and strictly national judicial documents. Administrative law arises along with the rise of nation-states, and its is closely linked to the development of national laws and cultures. This is where administrative law’s lack of adaptation to supra-national contexts comes from: in this sense one can look at administrative law in a European context only

¹¹ A. Pizzorusso “*Costituzionalismo ed Unione Europea*” presentation at the Conference on “*La Costituzione Europea tra Stati nazionali e globalizzazione - Dalle Costituzioni Statali alla Costituzione Europea*”, Roma 19 June 2003. Pizzorusso also stressed that one should not talk about a Constitution but rather about “a Treaty that modifies other Treaties”.

¹² Cfr. G. della Cananea, *Money and Public Administration in European and EU Laws*, presentation at the Conference on “The Convergence of Administrative Law in Europe”, Roma, 25 June 2003.

¹³ Cfr. L. Moccia, *Prospetto storico delle origini e degli atteggiamenti del moderno diritto comparato. Per una teoria dell'ordinamento "aperto"*, in: “*Rivista trimestrale di diritto e procedura civile*” n. 1, 1966.

¹⁴ Cit. in M.P. Chiti, *Diritto amministrativo europeo*, Giuffrè, Milano 1999, p. 115

as: “an ensemble of similarities that, deduced from national laws, represent the collective patrimony of European states”¹⁵.

On the other hand, the diffusion of knowledge on national administrative systems has allowed states to adopt normative and juridical solutions that were already in use in other national systems in order to handle similar problems. The current globalisation process has given rise to a number of trans-national problems, and this has encouraged the implementation of unitary system in both the socio-economic and institutional fields. National administrative laws must therefore be amended to reflect these changes.

We are therefore seeing the progressive affirmation of an open approach in the juridical sector, based on comparative methods which have proven to be a precious help in implementing administrative reforms, since they have allowed reformers to analyse and evaluate similar processes undertaken in other countries. The abandonment of a state-centric approach in legal matters has therefore been an important innovation, since it has led to the understanding of different national administrative law solutions to similar problems.

One of the first consequences of the application of the comparative methods has been the ‘transplant’ of juridical institutions from one set of rules to the next. This phenomenon remains linked to a dualistic logic. The transplant assumes a shift from one set of rules to another, and these sets of rules are still seen as separate entities. This is nevertheless a first step towards the unification, or better yet the convergence, of European administrative legal systems. Chiti defines convergence as “the overall phenomenon through which the main characteristics that differentiate the various administrative systems are attenuated or in some cases eliminated, while national models are all addressed in a centripetal way towards similar juridical solutions and models”¹⁶.

In this context, the European integration process has had a key impact on national administrative laws, whose normative impact has been reduced and whose basic set-up has been questioned¹⁷.

In fact, community law interacts with the national laws of each country, and leads to the reciprocal influence of administrative laws and the convergence phenomenon described above, characterised by the reduction of national peculiarities as a consequence of the gradual decline of the centralised administrative model based on coercive power.

We therefore see a gradual process in which “European law” will no longer refer strictly to laws applicable within the EU, but to a set of laws that all member states will have in common. We will reach a point where we no longer “see the co-existence of national administrative law and European administrative law as separate judicial bodies, as is the case today due to the still incomplete integration process, but as two juridical levels of the same unitary system”¹⁸.

The unifying action of the European Union is the main cause behind the convergence of national administrative laws: community actions mark the beginning of reform processes that have direct and indirect consequences on the national laws of member states. When community directives on administrative

¹⁵ This is what Rivero argues when he states that: “the administrative laws of member states are direct reflections of national sovereignty and historical backgrounds, and they are even less well suited than other juridical disciplines to being based on uniformity” Cit. in: M. Chiti, op. cit., p. 117.

¹⁶ M. Chiti, op. cit., p. 121.

¹⁷ *Ib.*, p. XIII.

¹⁸ G. Recchia, *Consonanze e dissonanze nel diritto pubblico comparato*, Cedam, Padova 2000, p. X.

reform in member states will call pursue uniform goals¹⁹, it is clear that each state will respond with the homogenisation of legislation.

It must nevertheless be stressed that while the issues tackled by European public administrations are becoming homogenised, this is not necessarily the case for administrative law.

Convergence does not imply a levelling of differences. It is a way to open up to comparative methods of study, based on the study of the similarities and differences of the legislative systems of EU member states.

We are in fact dealing with a method of “comparing through contrasting” in which differences will not necessarily be erased. The comparative method also allows us to identify the particular characteristics of each legislative system, and to realise that the analysis of shared similarities allows different normative systems to communicate with each other²⁰.

In other words, the comparative method allows us to identify similarities that permit communication between different normative systems as well as the individual characteristics of each juridical system, and to protect their individuality. This method is therefore the necessary answer to the composite reality in which European states evolve. Studies of comparative administrative law are therefore a valid tool to help us understand the changes that individual countries and the international community as a whole are going through.

3. The case of Italy

By its nature, administrative law is tied to the State and its sovereignty²¹. The state's coercive power and the unilateral action of the public administration are at its core. The principle of speciality differentiates it from private law. Centralised administrative models disciplined by laws or regulations have lost ground when faced with the need for a public administration that is more respondent to collective needs and more in tune with the historical, political, and economic evolution of society.

In Europe and in Italy in particular, the 1990's saw a reform process for public administrations whose starting point was constitutional norms²²: “Local agency regulations” e “New norms in administrative law and in the right to access administrative governments”. The first norm led to a normative transformation which directly impacted local communities, since they are considered a key component of the country's civil make-up, a symbol of public participation and of interaction between public powers and the citizenry, and a testing ground for political dynamics and the main public services.

The legislation on local autonomy led to the affirmation of the subsidiary and majority principles. These themes are relevant not only to the majority political system, but also to the overall decision-making process. The affirmation of the majority principle led to the growing obsolescence of previous administrative systems by proposing once again the principles of hierarchy and of the safeguarding of interests. This law only partially launched the decentralisation process and also introduced the conference of services as a

¹⁹ The main shared goal is the improvement of relations between the state and the citizenry, and between the state and the firm. This is generally pursued through decentralisation, the simplification of procedures, the adoption of efficient and effective principles for administrative action, ect.

²⁰ *Ib.*

²¹ S.Cassese, *Il diritto amministrativo europeo presenta caratteri originali?*, in Riv.Trim. di Diritto Pubblico, Milano 2003.

²² The constitutional laws in question are l.n.142/1990 and l.n.241/1990.

tool to encourage collaboration among single administrations. Its effect has been the erasing of administrative boundaries and limits between single administrations.

The d.lgs.n.29 of 1993 and its additional changes and updates led to a gradual evolution of the organisational and management system based on four key points:

- Technical management - preliminary policy work
- Adoption of the policy on the part of political decision-makers
- Decision-making on the part of the technical management team through directives
- adoption of the guidelines

The law “Proxy to the Government for the conferment of powers and functions to regions and local institutions in order to achieve public administration reform and administrative simplification”²³ led to a wider application of the administrative decentralisation principles, as did the subsequent law on the simplification of decision and control procedures²⁴ (the so-called Bassanini laws) whose subsequent changes and updates impacted the following delicate issues: administrative autonomy, control over activities and the description of the attributed functions.

The influence that the private productive sector holds over the public sector is the main reason behind these initiatives. The premise is based on organisational and decision-making autonomy. The horizontal organisational structure of private firms influences the actions and the core business of the state by intervening in privatisation and self-management processes. Public administrations have drawn inspiration from the holding and public company models used by the private sector and have begun to abandon vertical, hierarchical models. In this case, the organisational process must take into account the different options arising out of vertical or horizontal models.

The outcome of the laws discussed above and of subsequent laws (especially the law on the “Organisation of the Republic, relationship between the central state and Regions, Federalism, Provinces, and Municipalities”²⁵) was the creation of a public interest which is reflects not only the Public Administration but also the needs of the overall citizenry, and which is defined in relation to the characteristics of the population and the territory.

The reform and innovation process for public administrations was perfected in 2001²⁶ with a clearer definition of the powers, functions, and responsibilities of managers in pursuing transparency, effectiveness, and efficiency. In this case managers have the role of interlocutors with the relevant Minister. The regional governments of Tuscany and Romagna have created committees charged with offering their opinion on these matters. However, law l.n.145/2002 seems to be a step backwards since it proposed an essentially politicised management

The search for the right degree of separation between pondering and decision-making belongs more to the interests represented in the reform rather than to its objectives. It leads to the consideration that the decision-making autonomy of managers should be not just pursued, but indeed cultivated as a daily, pondered exercise on how to proceed.

The model of “southern-style” bureaucracy at the root of the delayed P.A. innovation process.

It has been argued that the delayed innovation of the Italian P.A. is due in large part to the fact that much of its managerial class comes from southern regions. Indeed, during the first phase of the history of the Italian republic the economy was entrusted to northerners,

²³ Law 15 March 1997, n.59.

²⁴ Law 15 May 1997, n.127.

²⁵ Law n.131 from 2003.

²⁶ Con il d.lgs.165/2001 “Funzioni dei dirigenti di uffici dirigenziali generali”.

while public administration was mostly run by southerners²⁷. This “southern-style” bureaucracy²⁸ was francophile only in name, and was strongly influenced by Arab and Byzantine cultural elements. In the absence of a model such as the French one, our productive system is nevertheless in fifth place among industrialised countries. Instead of a formally francophile and state-controlled administrative culture, Italy perhaps needs an administrative culture based on rights parity, that accompanies administrative processes rather than overlapping with them²⁹. S. Cassese states that representative bureaucracy is an exception in our country, since the P.A. has represented only one part of Italian society, the southern one which itself became an expression of a complex process which has bled to the so-called “southern-style” bureaucracy. It has been argued on other occasions that representative bureaucracy manifested itself through its ability to slowly metabolise innovative processes, and that it thus played a role in stabilising institutions within Italian society.³⁰

It has also been argued that one of the causes of the lack of development of the Italian economy is the inadequacy of public sector personnel. In the past, institutions³¹ such as the Bank of Italy, the Council of State and in part the university system played a key role for democracy since they were the institutions that trained public sector personnel.

The administrative system cannot therefore be considered an autonomous entity capable of playing an autonomous role with regards to the evolution of southern society. The students that have come out of the bureaucratic system have always considered administrative behaviour to be a mere subset of political behaviour.

Dorso departs from this view and identifies the key importance of the human factor as a determining factor in historical processes. This student of southern society from Avellino did not however study how this factor influenced the public administration. In general, students of southern society wrote very little on the role of the administrative system³². Vittori de Capraris, a contemporary of Dorso’s, argued in slight contrast with Dorso that the problem of bureaucracy should be tackled by re-thinking the bureaucratising function of a modern state and by implementing legislative changes in order to regulate rights and responsibilities, thus diminishing inefficiency and corruption

Organisational processes

Predictive models, by analysing the present, allow us to identify the principles that define and regulate subsequent decision-making processes; the various options arising from the predictive models generate so-called alternative models. Finally, there are decision-making approaches that are based on conflict resolution models. The first process leads to a knowledge of phenomenon-based reality that interprets facts using statistical terminology; it allows us to get past cultural entropy, as if the P.A. had no memory of itself and its history and was focused exclusively on the analysis of the present.

In order to interpret the administration, and the society from which it arises, one needs to have information on the following matters:

- natural and artificial space
- the historical memory of innovations and its re-modulation
- codes to interpret differences

²⁷ S.Cassese, in *Corriere della Sera*, pag.1, 2 August 2003.

²⁸ S.Cassese, in *Mezzogiorno ondivago*, G. Pennella, Salerno 1999.

²⁹ G.Pennella, *Mezzogiorno ondivago*, op.cit.

³⁰ G.Pennella, *L'amministrazione liberale: appunti di lavoro*. Formez, 2003.

³¹ S.Cassese, talks about “democracy schools” that can now be considered empty. In fact, state personnel (from congressmen to mayors) no longer have a horizontal career path. This has two consequences: fewer national politicians who already have experience in local government, and local politicians who have public opinion rather than their own electorate as their main focus.

³² G.Pennella, *ibidem*.

Any administrative organism reflects the diversities and contradictions of the society it represents, and therefore cannot be descended from itself. It is made up of humans and therefore reflects the faults and qualities of its staff. If administrations are not aware of this, they can suffer from a sort of self-congratulatory organisational narcissism that prevent them from objectively evaluating the work they perform and from making sure that the results they obtain match those that were planned.

Knowledge management systems

OECD countries have felt a strong need for the introduction of an organisational system linked to the production, accumulation, and diffusion of know-how and the sharing of information both within administrations and outside them.

Administrations work according to specific plans, using all the instruments at their disposal. However, this is not always sufficient, and at times administrations must plan activities that are not confined to a specific time frame, but that evolve over time. In order to do this they need Knowledge Management³³ (KM) systems able to link all the administrations activities with each other.

The use of KM systems includes:

- The sharing of knowledge through training at the internal level, and meetings at the external level
- The introduction of new procedures to encourage e-government³⁴
- The creation of quality-control groups and central management units for KM systems
- Collaboration in creating effective co-ordination policies for the management of joint projects with external organisations and other administrations.

Multi-level administrative law

The changes in the central administrations of OECD countries help us understand the configuration of administrative law in each country. We are faced with a multi-level administrative process: on one hand EU legislation sets rules regarding the relationship between citizens and public powers and the legal protection they are afforded, and on the other EU decisions are assisted by national administrations and are under the limited control of national judges.

The organisational modules used by different countries seem similar. The concept of a regulatory state³⁵ is useful in order to account for the differences among countries and to by-pass them. New regulatory models that are spreading throughout the OECD countries are far removed from the old, state-controlled concepts, and are proving to be more efficient in managing differences since they are more flexible. The development of co-operative forms of regulation or self-regulation, negotiation, and the diffusion of information that assigns rather than prescribes objectives are all being widely implemented and they are replacing top-down, unilateral norms.

Three administrative models, based on different organisational structure, can be identified in Europe: the first, liberal model is typical of Northern European countries; the second is characterised by a highly centralised structure and is most typical of France; and the egalitarian model, which recognises the autonomy of peripheral structures, is most closely matched by the Spanish model.

There is a general tendency for OECD countries to converge on a single model, all the while retaining certain peculiarities. The reason behind the success of new management and development policies lies in the convergence of the instruments used by EU countries.

³³ Definition used by the OECD GOV directorate for its study on knowledge management.

³⁴ This term is used in order to talk about the computerisation of services offered to citizen users, and the computerisation of offices that allows the flow of information and data both within the P.A. and outside it.

³⁵ R.Pastore-G.Pennella, *Management Europeo confronto e comparazioni*.

Indeed, the Commission and Council stress the importance of the sharing of information and experiences between countries, and the participation of all the sectors of society in the growth of democracy.

Collaboration and the sharing of experiences reflects the need of an increasing co-ordination and complementarity between the actions of single countries and those of the EU and other international partners.

Comparative law is currently going through a so-called convergence phase, and the differences between the British legislative model and the continental one are narrowing. Administrative law can be a valid instrument to encourage European integration³⁶, and can go beyond the idea of public law as a specifically “national” law. The reduction of national peculiarities³⁷ is a direct effect of the convergence of administrative laws. The goal is to re-formulate a system in harmony with the new European context, inspired by the principle of the supremacy of EU legislation while maintaining the national sovereignty of each country.

The current judicial system is based on the principles of peace, equal opportunity and the centrality of the individual. Indeed, the individual and the protection of individual rights are at the core of the system. The European Constitution follows this vision as evidenced by its key principles³⁸:

- Fundamental rights have an evocative value and include some new elements with regards to principles that must be protected regarding cloning and the rights of children, the elderly, and the disabled norms should be programmatic
- the system described by the constitution must be interpreted as a commitment to keep building an unfinished structure
- an agreement between normative systems is necessary

The EU’s bill of basic rights approved in Nice on December 7, 2000 re-affirms the role of the state in a system of relations that can be defined as “inter-governmental”.

The Convention that was launched after the approval of the EU’s bill of rights opened the way for the assertion of a constituent power within the EU. The difference between the Convention on basic rights and the Constitution lies in the fact that the latter is the result of a negotiation process that according to public international law would come into conflict with the creation of a constituent power³⁹, so that the creation of such a power will still have to wait.

³⁶ As stated by Monasteri e Pasquini (SSPP) in the Seminar “*The Convergence of Administrative Law in Europe*”, Roma, 25 June 2003.

³⁷ S.Cassese and Quaranta hold this opinion, and argue that reciprocal influence relationships guarantee more rights.

³⁸ S.Cassese, in *Programmi e tendenze della riforma costituzionale e amministrativa in Europa e in Italia*, 2003.

³⁹ Tizzano, in *Convegno di Studi, “la Costituzione Europea tra sistema nazionale e globalizzazione”*, Roma, 20 June 2003.