

Gordon Anthony*
Introduction to the Issue

This is the first issue of an important new initiative – the *Europe & Law* e-journal – which is being developed by the Alumni Association of the Academy of European Public Law.¹ The Academy, which held its first session in 1995, is the creation of the European Group of Public Law (EGPL) that is situated in Athens and Legrainia, Greece.² The resulting e-journal can, for that reason, perhaps be regarded as something of a modern manifestation of the publishing endeavours of the EGPL, as are associated most readily with the *Revue Européenne de Droit Public/European Review of Public Law*. That journal has since established itself as one of the leading forums for scholarship in the field of the European Public Law, and its contributors include luminaries such as Jean-Bernard Auby³, Guy Braibant⁴, Sabino Cassese⁵, Jacqueline Dutheil de la Rochère⁶, Spyridon Flogaitis⁷, Agustin Gordillo⁸, Carol Harlow⁹, Sir Stephen Sedley¹⁰, José Manuel

* School of Law, Queen's University, Belfast, UK; Member of the EPLC; Alumni of the Academy of European Public Law (1995-1996); Lecturer at the Academy of European Public Law 2001, 2002, 2003.

¹ For details visit: <http://www.eplc.gr/academy/academy.php>

² See further <http://www.eplc.gr/>

³ 'L'évolution du traitement des risques dans et par le droit public' (2003) 15 *REDP/ERPL* 169.

⁴ 'L'élaboration de la Charte des droits fondamentaux de l'Union Européenne' (2002) 14 *REDP/ERPL* 21.

⁵ 'Legislative Regulation of Adjudicative Procedures' (1993) *REDP/ERPL* 15.

⁶ 'Les droits fondamentaux reconnus par la Charte et leurs applications' (2002) 14 *REDP/ERPL* 227.

⁷ 'Administrative Law of International Organizations: With Special Regard to the United Nations' (2006) 18 *REDP/ERPL* 271.

⁸ 'The Administrative Law of International Organizations: Checks and Balances in Law Making – the Case of Discrimination' (2006) 18 *REDP/ERPL* 289.

⁹ 'The Charter of Fundamental Rights: A Textual Critique' (2002) 14 *REDP/ERPL* 255.

¹⁰ 'Freedom of Expression, the Media and the Courts' (1996) 8 *REDP/ERPL* 677.

Sérvulo Correia¹¹, Martin Shapiro¹², Gerard Timsit¹³, and Christian Tomuschat.¹⁴ By bringing forward the first issue of the *Europe & Law* e-journal, the former students of the Academy have thus moved the publishing profile of the wider EGLP in a new and exciting direction. They have at the same time provided the readers of the journal with a number of challenging articles and commentaries that reveal ongoing and emerging challenges for public lawyers in Europe and beyond.

The purpose of this introduction is to provide some further information by way of background to the journal. It begins with a short word on the original aims and objectives of the Academy that has brought the various contributors to this issue together, and it then offers an overview of what those contributors have said in their articles and commentaries. The final paragraphs make some more general comments on the importance of the journal and the contribution it will make to public law scholarship.

§1. A note about the Academy

The Academy of European Public Law has always had, as its educational mission, the development of a supranational and comparative perspective on national public law in Europe.¹⁵ Of course, when the Academy held its first session in 1995 the ‘Europe’ of then was significantly different from that of today, and the nationality of Academy participants and the topics taught reflected the realities of (in particular) patterns in European Union (EU) membership. However, in the intervening years the EU has changed very significantly, both in terms of its membership and in terms of the relationships that it has with other geo-political units beyond Europe’s borders. That change has, in turn, been reflected in the Academy, where students from European institutions have been joined in various sessions by public law students from, among other countries, Chile, India and Iran. Moreover, to the extent that the challenges facing European public law have changed both as a result of internal processes of enlargement and external processes such as globalisation¹⁶, so too have the topics read by the

¹¹ ‘Monisme(s) ou Dualisme(s): Conclusions Générales’ (2000) 12 *REDP/ERPL* 831.

¹² ‘Equality and Diversity’ (1999) 11 *REDP/ERPL* 371.

¹³ ‘Laudatio: Prof Epaminondas Spiliotopoulos’ (2005) 17 *REDP/ERPL* 771.

¹⁴ ‘Common Values and the Place of the Charter in Europe’ (2002) 14 *REDP/ERPL* 159.

¹⁵ For details visit: <http://www.eplc.gr/academy/academy.php>.

¹⁶ Of course, this begs the question of what globalisation is, or is not. For an excellent starting point see J-B Auby, *La globalisation, Le droit et l’État*, (Montchrestien, Paris, 2003). And for wider perspectives see, e.g., D Held,

students. While the first Academy session thus focused upon, *inter alia*, matters of administrative procedure in different EU Member States, more recent sessions have addressed politically vexed issues such as religious freedom in pluralist societies. The most recent session – September 2007 – has likewise continued with the theme of the “difficult” by focusing on the form, structures, and limitations to any emerging body of global administrative law.

Such topics – both the “old” and the “new” – are inevitably controversial in the sense that they can elicit strongly held opinions. For instance, to the extent that it is sometimes said (albeit, increasingly less so) that national European legal orders are converging within the framework of EU law¹⁷, there are equally strong voices that reject the possibility of convergence because of the differences in legal culture that are manifest in, to maintain the example, administrative procedure.¹⁸ However, it is in precisely the context of such debates that the Academy has performed – and continues to perform – such an important role. Not only has the Academy long brought different European perspectives together, it has increasingly complemented those perspectives with opinions and insights drawn from other legal cultures and traditions. The result is an institution that is perhaps uniquely well-placed to allow established and aspiring scholars from different settings to share and contest ideas about the changing nature of

Democracy and the Global Order: From the Modern State to Cosmopolitan Governance (Polity Press, Cambridge, 1995); J H Mittelman (ed), *Globalization: Critical Reflections* (Lynne Rienner, Boulder, Colorado, 1996); Z Bauman, *Globalisation: The Human Consequences* (Polity Press, Cambridge, 1998); D Held *et al*, *Global Transformations*, Stanford University Press, 1999); H Henderson, *Beyond Globalization: Shaping a Sustainable Global Economy* (Kumarian Press, Conneticut, 1999); J-A Scholte, *Globalization: A Critical Introduction* (Macmillan, London, 2000); and A Giddens, *Runaway World: How Globalization is Reshaping Our Lives* (Profile, London, 2002).

¹⁷ The leading argument to this effect, developed with reference to administrative law, was J. Schwarze: see ‘Tendencies towards a Common Administrative Law in Europe’ (1991) 16 *ELRev* 3; *European Administrative Law* (Sweet and Maxwell, London, 1992); (ed), *Administrative Law under European Influence* (Nomos, Baden-Baden and London, 1996); and ‘The Convergence of the Administrative Laws of the EU Member States’ (1998) 4 *EPL* 191.

¹⁸ See, e.g., the work of Pierre Legrand: ‘Against a European Civil Code’ (1997) 60 *Modern Law Review* 44; ‘The Impossibility of Legal Transplants’ (1997) 4 *Maastricht Journal of European and Comparative Law* 111; and ‘Public Law, Europanisation and Convergence: Can Comparatists Contribute?’ in P. Beaumont, C. Lyons, and N. Walker (eds.), *Convergence and Divergence in European Public Law* (Hart Publishing, Oxford, 2002) p. 225

public law, whether at the national, sub-national, and/or supranational levels.

§2. The current issue

It is against this backdrop that the current issue of *Europe and Law* is to be read. For instance, the potential for gaining insights from different legal cultures becomes apparent simply from a reading of the list of contributors. Hence there are two articles by young academics from Chile (Raúl Letelier Wartenberg and Ania Salinas Cerda); a comment piece by a Dutch student who is studying in Rotterdam and Paris (Elaine Mak); a comment piece by an Italian who has recently had a research fellowship in Germany (Margherita Poto); comment pieces by two students from India and who have developed links with the EGPL within the framework of the Poros programme¹⁹ (Priyamvada Shenoy and Adarsh Varghese); and a further comment piece by an Italian who studies at Trento (Fulvio Cortese).

But just as the list of contributors reveals the truly international and dynamic nature of the Academy, so too do the themes addressed in the corresponding articles and commentaries. Letelier Wartenberg, for instance, offers a masterly analysis of the difficult issue of nullity in administrative law (here in respect of measures of the EU institutions); and Salinas addresses equally difficult constitutional questions associated with transitional justice. Mak's commentary in turn considers the impact that recent ECtHR jurisprudence has had on asylum policy in the Netherlands, while Poto and Cortese examine particular aspects of Italian public law (respectively the legislative powers of the Italian regions and the "spoils system" taking place at the Italian Constitutional Court). Shenoy's piece then analyses aspects of Parliamentary privilege in India, and Varghese offers a stimulating account of the Indian law of corporate criminal liability.

§3. And future issues?

Of course, this is but the first issue of *Europe and Law*, and it is hoped that the journal will become firmly established as a forum for publishing insightful and challenging papers on public law in Europe and elsewhere. The changes within and beyond Europe that have been mirrored in the Academy will inevitably continue, and academics and practitioners from different legal cultures and contexts will have much more to share as the shape of those changes becomes known. For instance, it is noteworthy that the journal is to be launched at the Annual Reunion of the EGPL in

¹⁹ On which see <http://www.eplc.gr/projects/projectsinfo.php?var1=35>

September 2007, where the topic of the corresponding conference is to be European security. That issue, perhaps ahead of any other, has brought into sharp focus the difficulties that contemporary European public law faces, and there are important questions about how to reconcile rights (which import cognate ideas of the human dignity of individuals) with the quest security (which speaks more to notions of community and governmental responsibility).²⁰ While it is unlikely that there will be universally agreed answers to such questions, it is imperative that public lawyers are able to read papers that present coherent and balanced perspectives on such problems (as well as many others). *Europe and Law* therefore provides one further forum for such papers, and it deserves to be read as such.

One final point concerns the work of the journal's editors in bringing this issue to publication. While their ability to do so was inevitably dependent upon the good-will and endeavour of the individual contributors (who are to be complimented for the quality of their papers), the editors in particular are to be congratulated for ensuring that the issue was completed. The resulting publication is clearly of a very high-standard, and it is that reputation that will lead other contributors to publish in the journal in the future. As with the *Revue Européenne de Droit Public/European Review of Public Law* that preceded it, *Europe & Law* should thus become synonymous with excellence in the field of public law scholarship.

²⁰ See generally BJ Goold and L Lazarus (eds.), *Security and Human Rights* (Hart Publishing, Oxford, 2007).