

FROM THE FRENCH MODEL TO THE EUROPEAN SPACE: REVIEW OF THE FRENCH YEARBOOK OF PUBLIC LAW*

By Francesca Ferraro*

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1. Beyond self-referentiality: the scientific project of the French Yearbook of Public Law 2023. The *French Yearbook of Public Law* (hereinafter FYPL) presents itself as an editorial laboratory that uses English to overcome disciplinary and cultural boundaries. Born within the *Lehrstuhl für französisches öffentliches Recht* of Saarland University and edited by Philippe Cossalter, the project connects two parallel universes: French-speaking public law and the international English-speaking community. Around Cossalter's scientific direction gathers a committee with a markedly comparative profile (Jean-Bernard Auby, Giacinto della Cananea, Dominique Custos), which imprints on the project a vocation for continuous dialogue.

The operation is commendable, but the institutional positioning and the authors' network produce a particular effect: some French paradigms are discussed more extensively than others, generating a gradient of depth among the chapters.

The project starts from the recognition of an uncomfortable fact: due to its dogmatic structure and jurisprudential developments, French public law may appear opaque to an external gaze. The isolation is also linguistic (the low circulation of English as a scientific language) and, above all, cultural: the myth of the «exemplarity» of the French model as a case apart ends up feeding its own self-referentiality.

In this perspective, the FYPL does not limit itself to a mere linguistic translation, but aspires to «translate» categories. However, the explicit misalignment between ambition and instruments is visible in the absence of a shared methodological framework for comparison (selection criteria, scales of analysis, methods of controlling functional equivalences), which could have avoided readings that are at times not in dialogue.

To compare does not mean to paraphrase norms, but to question categories, argumentative paths, institutional practices. For this reason English is chosen as a «contact zone» – sometimes also of friction – between different paradigms. The goal is not to export French law without filters nor to blur its boundaries in the Anglo-Saxon mainstream: both poles are put to the test in a dialectic of reciprocal recognition. In this perspective, the FYPL's location in Saarbrücken functions as a transitional laboratory, where the continental tradition accepts the challenge of global law. The project integrates young researchers (including Enrico Buono and Jasmin Hiry-Lesch) and solicits responses from the scientific community,

* PhD in Constitutional law – University of Naples Federico II.

experimenting with horizontal forms of editorial cooperation.

An added value, which deserves to be made explicit, concerns the «conceptual translation»: the FYPL encourages focusing on the semantic differences between legal lexicons (for example, *État de droit* and *rule of law*), on building a shared glossary and on measuring the transferability of categories between different institutional contexts. The comparative dimension is not an end in itself: it becomes a device to connect levels of government, administrative techniques and social sciences, with concrete repercussions on issues such as climate governance, accountability and democratic participation. In this sense, the FYPL is not only an exchange of knowledge, but organizes research questions, proposing lines of work for established and emerging scholars.

In conclusion, the decisive point is not only international openness, but the assumption of a concrete task: to elaborate conceptual tools capable of raising new questions. The *French Yearbook of Public Law* presents itself as the laboratory of such tools, not a simple bridge between already traced shores, but it redraws the boundaries, inviting public law to rethink languages and methods in the global dimension.

To achieve this goal, in future editions a more stringent «framework of coherence» capable of more effectively holding together the various threads would be useful.

2. Rethinking Public Law in the climate emergency. As mentioned *supra*, in the 2023 issue of the *French Yearbook of Public Law*, the central focus is an extensive dossier dedicated to the link between public law and climate; surrounding it, chapters with historical, methodological and comparative approaches. The working thesis: to assume the climate emergency as a stress test for categories, institutions and practices of public law. The dossier functions as a framework for verification and exploration, in which the interweaving between decision-making venues and contiguous knowledge serves to measure adaptive capacity, coherence between levels of government and procedural resilience, testing categories, institutions and languages.

The approach is convincing, but the climate issue risks becoming an «umbrella theme» that justifies any path: greater clarity would be needed on method and outcome indicators.

The opening is entrusted to Sabino Cassese, «*The Future of the French Model of Public Law in Europe*», which retraces the genealogy of the French administrative model and follows its most recent developments also in interaction with European Union law. The updating of an essay from 2011 is an opportunity for the author to highlight the tension between institutional particularism and the universalistic aspiration of law, while at the same time offering a reading key of the European «*integral model*»: typically French institutions, such as the duality of jurisdiction and the central role of the administrative judge, continue to exist, but in forms recalibrated by dialogue between the courts and by multilevel governance, which redefine their boundaries and functions.

In «*Conceptual and Linguistic Surprises in Comparative Administrative Law*», Jean-Bernard Auby shows how, in administrative comparison, apparently similar terms may conceal different concepts. Beyond defending the comparative method as a critical tool capable of bringing out cultural aporias and translational resistances, the author also suggests an operative path: resorting to linguistic corpora and semantic mappings to strengthen the reliability of legal translation.

The introduction to the Dossier «*Public Law and Climate Change*» clearly states objectives and method: adopting a multilevel perspective, opening up to interdisciplinarity and moving on two distinct planes — the functional one, which observes how the law adapts, and the conceptual one, which investigates which categories hinder adaptation. In this light, the authors propose considering climate risk scenarios as real stress tests for institutions and

procedures: from environmental impact assessment to administrative reasoning standards, up to coordination techniques between institutions.

On the international side, Sandrine Maljean-Dubois in «*Climate Change in International Law. The Paris Agreement. A Renewed Form of States' Commitment*» reconstructs the genesis and structure of the Paris Agreement, clarifying how it overcomes the rigidities of the Kyoto Protocol through a combination of flexibility and binding force, bottom-up and top-down approaches, instruments of hard and soft law.

Five-year cycles of commitments and comparable monitoring generate *accountability* even without traditional sanctions.

Émilie Chevalier in «*European Union law at the times of climate crisis: change through continuity*» highlights the European paradox: in the face of the climate emergency, the architecture of the European Union remains formally unchanged, but instead develops adaptations that increase its flexibility. The reflection starts from the *European Climate Law* and from the *Fit for 55* package: «green» State aid and CBAM show how EU law seeks to reconcile market and climate objectives, raising questions about the adequacy and effectiveness of *governance* instruments.

In the essay «*Transnational Climate Change Law. A case for reimagining legal reasoning?*», Yseult Marique frames «climate law» as transnational law operating in interactions between distinct legal systems, placing at the center the practical dimension of law as a tool to address complex global challenges. This implies considering, alongside formal sources, processes not strictly legal and further sources of normativity — including social practices — together with private standards (ISO, sustainable finance) and duties of diligence: «factual norms» capable of crossing state borders and reshaping public and private responsibilities. The argument intertwines legal, regulatory and ethical profiles and is based on case studies ranging from large transnational infrastructure projects to climate litigation, ultimately proposing to rethink legal reasoning in a transnational key.

Laurent Fonbaustier and Juliette Charriere in «*Analysis of constitutional provisions concerning climate change*» offer a comparative framework of «climate constitutionalism» based on a clear premise: while indispensable, international instruments often suffer from scarce justiciability and limited immediate effects; on the contrary, constitutional law — for its position in the hierarchy of sources and for the judicial protection that supports it — provides (probably) more effective levers of protection. Of notable interest is the shift from programmatic clauses to actionable rights — consider *Neubauer* in Germany or Colombian case law on the Amazon — which impose more sophisticated criteria of justiciability and proportionality. Structural fragilities remain, however, due to often indeterminate texts that make it difficult for constitutional courts to guarantee effective accountability in case of non-compliance.

Shifting attention to litigation, Ivano Alogna «*Increasing Climate Litigation: A Global Inventory*» shows the global growth of *climate litigation* as a response to the insufficiency of public policies and as a lever of pressure. Alongside ordinary remedies, hybrid paths are consolidating: liability actions for breach of directors' fiduciary duties, duties of climate diligence, litigation on *greenwashing*. The plurality of fora and remedies determines an expansion of the range of available procedural instruments, increasing their protective potential.

Climate change fuels lawsuits against governments and companies in numerous jurisdictions and the article offers a global inventory with particular attention to the most significant cases, underlining the intrinsically collective nature of climate governance and the crucial role of the judiciary in facing this challenge.

With «*Climate change litigation: efficiency*», Christian Huglo and Corinne Lepage show how climate change destabilizes consolidated legal categories — due to the global nature of the

phenomenon, its phenomenological «invisibility», limited predictability and the impossibility of fully repairing damages — and how, despite the contribution of the sciences in developing mitigation and adaptation strategies, their implementation encounters political, economic, ethical and legal obstacles. In this framework, a path of procedural effectiveness passes through remedies such as: structural injunctions with measurable objectives, compliance timetables, independent technical monitoring and periodic review clauses, which allow not to trespass into the competences of the legislator.

Marta Torre-Schaub in *«Climate Change Litigation and Legitimacy of Judges Toward a “wicked problem”: Empowerment, Discretion and Prudence»* investigates the legitimization and role of the judge in the face of a transversal and evolving phenomenon: climate change. Mechanical application of norms is not enough: a responsible interpretation is needed, capable of strengthening the duty of climate diligence of the public administration. Against the backdrop of litigation that has grown strongly in the last decade — now transversal to international, administrative and civil law — the contribution highlights possibilities and limits of judicial intervention in the ecological transition, underlining its progress without overstepping the balance between functions and the separation of powers.

In the essay *«Could national judges do more? State deficiencies in climate litigations and actions of judges»* the balance between legislative function and judicial power in the climate emergency is examined.

By urging the legislator to adopt measures adequate to the fight against climate change, the author highlights how courts often assume a para-legislative role without ever replacing Parliament: they do not draft norms, but activate and orient legislative action. What results is a «dialoguing» remedy path: declaratory rulings accompanied by adjustment deadlines, periodic reporting obligations, minimum prescriptive contents and mechanisms of judicial *follow-up*. In this way, decisions enforce the application of law and the respect of constitutional and international commitments — as well as of fundamental principles — without exceeding the limits of separation of powers.

Again on climate *governance*, Delphine Misonne, in *«Global climate governance turning translocal»*, criticizes centralist rhetoric and enhances networks between cities and territories. Infrastructures such as C40, ICLEI and the European «City Deals» function as laboratories of learning and coordination. A sort of urban climate «*common law*» emerges, made of standards, objectives and monitoring, which aim to fill the gaps left by the Paris Agreement and affect (rectius, should affect) national choices through imitation and reputational effect. Looking at the United States, Daniel Esty, in *«America’s Climate Change Policy: Federalism in Action»* reconstructs a «*bottom-up*» climate federalism in which States and cities intervene when the federal level is negligent, through reduction targets, *carbon pricing* initiatives and tax incentives. The federal relaunch with the IRA 2022 intertwines with these subnational policies, but an unequal *governance* persists: interstate misalignments, regulatory competition, risks of political *backlash* produce intermittent results. What emerges is an experimental federalism — capable of innovation and learning — but marked by fragmentation and vulnerability.

By contrast, in the French case the local level encounters structural contradictions. As Camille Mialot observes in *«Local policies on climate change in a centralized state: The Example of France»*, policies against air pollution and soil artificialization have produced unsatisfactory outcomes; regulatory gaps remain and, in fact, a tacit alignment to inaction between center and peripheries.

The key lies in the effective integration of planning instruments (SRADDET, PCAET, ZFE) with adequate administrative capacities: without resources, reliable data and robust implementing powers, the territory becomes the bottleneck of implementation. Hence the

need to rethink law in its territorial dimensions, in a perspective of climate justice, to ensure a fair distribution of burdens between areas and the compatibility of climate policies with urban and social priorities.

On the link between constitutional democracy and climate, Alfredo Fioritto in *«Subjective Rights in Relation to Climate Change»* investigates the compatibility between the protection of subjective rights and the pursuit of social demands to fight climate change.

Starting from a historical reconstruction of the evolution of the category of subjective rights, the author argues that their protection is compatible with collective needs if they are subjected to an evolutionary reinterpretation oriented towards the «common good» and, when necessary, tempered by duties of solidarity. In the Italian key, particularly useful is the category of legitimate interests, which acts as a hinge between individual protection and ecological interest.

Emmanuel Slautsky in *«Overcoming Short-Termism in Democratic Decision-Making in the Face of Climate Change: a Public Law Approach»* starts from the acknowledgment of an uncomfortable fact: democracies, for electoral logics, tend to act in the short term and struggle to govern global and intergenerational problems, such as climate change. The answer is not a shift towards technocratic or authoritarian solutions, but rather in innovations of public law. In this light, the contribution proposes solutions: from the propulsive role of constitutional courts in setting standards and procedural constraints of long duration to the introduction of impact assessments for future generations as a motivational obligation capable of orienting legislation and administration, or again the design of independent climate bodies, defined according to public law criteria (mandate, independence, transparency, accountability).

Finally, Delphine Hedary in *«The Citizens' Climate Convention: A new approach to participatory democracy, and its effectiveness on changing public policy»* examines the Citizens' Climate Convention in France as a model of participatory democracy, comparing it with other instruments and assessing its impact on climate change mitigation policies. To strengthen this experiment of participatory democracy it is necessary that these be accompanied by clear and binding mandates; obligation of motivated response by the government within defined deadlines; mechanisms of public monitoring of *follow-up*.

The conclusions are entrusted to an extensive and programmatic intervention by Auby and Fonbaustier who ask: is public law able to face the challenges of the Anthropocene? The answer is certainly affirmative, but a paradigm shift is needed. There is a climate crisis which, combined with other traumatic aspects of this period – the health crisis, the war in Europe, the economic crisis, etc. – involves law in its entirety, and therefore simple regulatory adjustments are not sufficient but a creative effort is necessary, capable of triggering an organizational, symbolic and even identity metamorphosis. From this derives a demanding agenda for doctrine and institutions: to document failures with clarity, to redesign standards and decision-making criteria, to imagine forms of long-term control and participation, so as to recompose a public lexicon that binds environmental protection, rights and collective decision-making. The decisive test does not lie in updating some technique, but in rethinking the aims, times and responsibilities of public action: only in this way will legality be able to withstand the temporality of climate without losing democratic legitimacy.

3. «Comparative selection»: the compass of the FYPL 2023. There is a section of the *French Yearbook of Public Law* that truly serves as a compass: the comparative one. Here the declared objective is to build a reasoned map of constitutional, legislative and jurisprudential developments in the main European legal systems, connecting positive data and theoretical frameworks. The approach is clear and dialogical: France (Cossalter/Auby), Germany

(Cossalter/Kordeva), Italy (Di Lascio/D'Orlando), Spain (Calvo López/Pareja Sánchez) and the United Kingdom (Marique/Marsons). The result is a dynamic legal geography of the relations between administrations, judges and fundamental freedoms, useful to see how law reflects normative transformations in multilevel constitutionalism, also tested by the pandemic and the ecological emergency. In short, not a simple review but an authentic working tool for those who compare models of administration and administrative justice in a Europe exposed to recurrent vulnerabilities.

Probably the absence of a section dedicated to the Nordic countries reduces the scope of the label «*European*» and, moreover, the criteria for selecting cases and sources are not always stated.

And the added value lies precisely in the method. The editorial choice of bringing the French debate closer to the international one by using English and the institutional setting of the project in Saarbrücken reveal the FYPL's objective: to reduce the informational asymmetry between legal communities, intertwining updating and interpretation.

The volume closes with the section «*Miscellaneous*» containing two contributions by Giacinto della Cananea.

In the first contribution Della Cananea presents Susan Rose-Ackerman's monograph «*Democracy and Executive Power*» as a solid comparative platform for rethinking the *accountability* of executive power in four democracies (France, Germany, United Kingdom, United States). The analysis intertwines institutional and administrative technique differences: from the federal APA in the USA, to the British model without a framework law but supported by consultative practice; from the German focus on rights with more cautious review of regulations, to the French openings to participation (*débat public*). The underlying thesis is that alongside the «performance-based» and «rights-centered» accountability of the administration, there remains a strong margin of administrative discretion, hence the need for a type of accountability capable of making choices and *trade-off* transparent. Where rules on *rulemaking* and guarantees of judicial independence are lacking, gaps of irresponsibility open up. Ultimately, the work offers a repertoire of tools to strengthen administrative legality and, with it, the democratic quality of executive policies.

The second contribution, «*A Comparative Research on the Common Core of Administrative Laws in Europe*», shifts the focus to a comparative investigation. It takes up the methodological intuition born within a group of private law scholars at the *Cornell Law School* – a «factual analysis» based on hypothetical cases – and transposes it to administrative law, with a particular focus on administrative procedure. The investigation parallels norms, guarantees and practices of selected European legal systems, so as to verify, beyond the differences, the existence of shared elements: where the points of convergence lie, where significant fractures open up, what the gray areas are. The result is a reasoned map of the possible European administrative *common core*, useful for establishing a common lexicon and orienting both doctrinal reflection and the design of procedural standards.

4. Public law put to the test of the present: the role of the French Yearbook of Public Law. Today, public law is called upon to confront the fragilities of the modern world. In this framework, the *French Yearbook of Public Law* stands out in the legal landscape as an authentic research laboratory and not as a simple collection of authoritative contributions nor as a mere instrument for the international dissemination of French law.

Its added value lies in offering jurists a space of conceptual experimentation in which comparison is not a point of arrival, but a working method: a tool to test the resilience of normative structures, to verify the plasticity of categories and to measure the capacity of law to govern the instability of the present.

One cannot, however, overlook a fundamental limitation: the extreme heterogeneity of the materials included, which at times makes the reading fragmented. The climate dossier, the comparative section and the final miscellany are not always cohesive around a unitary design, with the risk of resembling more a collection of quality essays than a volume endowed with a true conceptual architecture.

Against the backdrop of crises that transcend the borders of individual legal systems – from the climate emergency to the fracture between institutions and citizens – the FYPL concentrates on itself functions of vigilance and impetus: it records and narrates change, in an attempt to orient it through innovative, transnational and inclusive legal instruments.

However, innovation is discontinuous and, at times, more asserted than demonstrated.

The aim of the FYPL is to restore to public law a propulsive function: less self-referentiality, greater transformative capacity, capable of elaborating new answers to new problems. Consistently along this line, the editorial choice – announced already from the first pages – is to demonstrate how legal reflection can be translated into practical action: defining standards, procedures and control criteria that orient decisions and policies within a comparative, transparent and verifiable framework.

The FYPL imposes itself as a growing «critical device» which, in order to become a full European «platform», will need to tighten its internal coherence, broaden its gaze beyond Western Europe and make its methodological criteria more transparent.

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Abstract. Il punto di partenza del *French Yearbook of Public Law* è un ampio dossier sul cambiamento climatico, utilizzato come banco di prova per interrogare categorie e rimedi del diritto pubblico nell'Antropocene. Attorno a questo nucleo tematico si articola un progetto editoriale - curato da Philippe Cossalter e Jean-Bernard Auby - che assume la comparazione come metodo ordinante e come antidoto all'autarchia della tradizione dogmatica francese. Dunque, un autentico laboratorio che intreccia saperi (giuridici e no) e livelli di governo, mettendo in relazione scienza, amministrazione e decisione politica. Accanto al dossier, una sezione comparata passa in rassegna i cambiamenti normativi nei principali ordinamenti europei, evidenziando convergenze, scarti e ibridazioni tra modelli. Chiudono il volume contributi di impianto teorico su potere esecutivo e procedimento amministrativo, presentati come luoghi di ridefinizione dell'equilibrio istituzionale. Nel complesso, il *French Yearbook of Public Law* è una solida piattaforma di confronto transnazionale, capace di rilanciare la vocazione trasformativa del diritto pubblico e di misurarsi con le urgenze sistemiche del presente. Alcune scelte editoriali, tuttavia, lasciano emergere una varietà di toni, metodi e obiettivi che talvolta fa prevalere l'idea di una raccolta di contributi eccellenti più che quella di un disegno pienamente unitario.

Abstract. The starting point of the *French Yearbook of Public Law* is an extensive dossier on climate change, used as a testing ground to question categories and remedies of public law in the Anthropocene. Around this thematic core develops an editorial project – curated by

Philippe Cossalter and Jean-Bernard Auby – which assumes comparison as an ordering method and as an antidote to the autarchy of the French dogmatic tradition. Thus, an authentic laboratory that intertwines knowledge (legal and otherwise) and levels of government, connecting science, administration and political decision-making. Alongside the dossier, a comparative section reviews regulatory changes in the main European legal systems, highlighting convergences, gaps and hybridizations between models. The volume is closed by theoretical contributions on executive power and administrative procedure, presented as places for the redefinition of institutional balance. On the whole, the *French Yearbook of Public Law* is a solid platform for transnational discussion, capable of relaunching the transformative vocation of public law and of addressing the systemic urgencies of the present. Some editorial choices, however, allow a variety of tones, methods and objectives to emerge, which at times give prevalence to the idea of a collection of excellent contributions rather than that of a fully unitary design.

Parole chiave. Cambiamenti climatici – Antropocene – Costituzionalismo ambientale – Governance – Partecipazione democratica – Diritto amministrativo europeo – Diritto pubblico francese – Diritto comparato – Confronto giuridico – Epistemologia giuridica.

Key words. Climate change – Anthropocene – Environmental constitutionalism – Governance – Democratic participation – European administrative law – French public law – Comparative law – Legal comparison – Legal epistemology.