Is There a Global Administrative Law?

Comment by Sabino Cassese*

1. An Important Intellectual Exercise
3. What Is Law in the Global Arena?
4. The Global Legal Space
5. The Global Legal Space as a “Marble Cake”: Shared Powers
6. Legitimacy through the Law
7. Is There a Global Administrative Law?

1. An Important Intellectual Exercise

We are currently engaged in a very important intellectual exercise – no less important, indeed, than that undertaken by the 19th century “founding fathers” of public law, such as Laferrière in France, Gerber, Laband and Mayer in Germany, and Orlando and Romano in Italy. Scholars in New York, Rome, Heidelberg and elsewhere are working on a new area of legal theory and practice: that of global law.¹

* This paper offers some reflections on Armin von Bogdandy’s piece entitled “General Principles of International Public Authority: Sketching a Research Field”, in this volume. Thanks are due to Euan MacDonald, Mariangela Benedetti, Lorenzo Casini, Elisabetta Morlino, and Gianluca Sgueo for their comments.

¹ See the Global Administrative Project launched by New York University in 2005 (http://www.iilj.org/GAL/default.asp), the research on Global Administrative Law led by the Institute for Research on Public Administration (IRPA) in Rome (http://www.irpa.eu/index.asp?idA=161), and the Project on The Exercise of Public Authority by International Institutions at the Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht at Heidelberg (http://www.mpil.de).
This scholarly work has three main features. It is, firstly, a truly global effort. Jurists from all over the world are engaged in such research, some providing in-depth analyses of individual global regimes, while others seek to deduce from the many and varied governance experiences a body of common principles and rules.

It is worth noting that a scholarly endeavor of this sort has not been undertaken since the 17th century. Indeed, ever since the attack from legal positivism led to the collapse of natural law approaches to the discipline, law has been conceived of as exclusively the product of nation-states, with international law conceptualized mainly on the basis of “contractual” relations between them. As a consequence, the study of each national system of law has become for the most part limited to national “schools” of lawyers, with occasional raids into foreign legal systems permitted to scholars of a more comparative bent.

Secondly, this endeavor deals with an entirely new subject-matter; one that has developed only relatively recently, chiefly in the last twenty years. It encompasses a vast array of different treaties, rules, standards, institutions, and procedural arrangements established beyond national frontiers either by states themselves, or by other global institutions, in order to deliver services, establish further standards, monitor compliance, or act as “clearing houses” more generally.

This body of law is confusing, at least when viewed through the lens of traditional conceptual criteria. It is law, but in most cases non-binding. It does boast established institutions, but these can most often proceed only tentatively at best, because their authority is not yet widely recognized.

Thirdly, in the study of this field one cannot rely upon the usual paradigms of public law. These have been developed in national contexts as a set of values, principles, and rules necessary to the proper functioning of domestic institutions. For example, regular elections at the national and local levels serve the purpose of democracy; and the due process of law is instrumental to the protection of fundamental rights. But can they be transposed mechanically to an entirely new environment, beyond the state? Can new wine be poured into old bottles?