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Book Review

Giovanni Gallone: *Riserva di umanità e funzioni amministrative. Indagine sui limiti dell'automazione decisionale tra procedimento e processo,* Cedam, Milan, 2023.

1. The book by Giovanni Gallone (published by Wolters Kluwer - Cedam, Milan, 2023) offers to the attention of Italian administrative practitioners a principle, called the humanity reserve, which expresses a legal limit to the automation of the administration's decision-making processes.

The author's reflections go back a long way and have deep cultural roots.

The basic consideration is that, with the emergence of artificial intelligence, "there is no longer a sphere of exclusive human prerogative, since the intellectual sphere has also become contestable by the machine. The latter has invaded the field of intellect, competing with man on a terrain that is not that of mere physical labour. And there is a clear risk that, in perspective, the space of the person will be totally engulfed by it' (p. 16).

However, Gallone is certain that 'the protection and promotion of the human person must be the measure and end of technological development. This excludes at root that the machine can assume a significance other than that of mere instrumentum at the service of man [...]" (p. 35).

In support of this position, the author does not merely invoke the scientific authority of others. He argues how it is unacceptable that an entity devoid of conscience and incapable of making moral judgements, such as even the most refined algorithm, should prevail over man who, conversely, is the only entity endowed with conscience, 'understood as awareness of one's own and others' existence and of the consequences of one's actions' (p. 35).

Moreover, the machine has "a purely utilitarian approach to the fulfilment of collective choices", while the modern conception of justice as fairness points to "the intrinsic erroneousness of ethic hinging on the calculation of supra-individual utility as irreconcilable with the separateness of persons, i.e. with the irreducible uniqueness of the individual human beings involved in the choice".

Hence - and other outline considerations - the 'need to enucleate, in the various fields, a sphere of action that is inexorably removed from automation and reserved for humans' (p. 38). In the field of administration, artificial intelligence brings considerable advantages in terms of good performance, cost-effectiveness, overall effectiveness and efficiency and is therefore destined to find increasing use (p. 26). However, artificial intelligence also has a 'dark face' (lack of transparency, risks to the protection of personal data, software errors and cognitive biases) that can undermine the activity of the administration in relations with private individuals. This makes it imperative to reflect on the limits to its dissemination (p. 26 ff.).

2. Gallone is well aware that no provision currently in force expresses the principle of the reservation of humanity. This is why he dedicates probably the most original pages of his work to the search for the foundation of the principle, which he finds in the web of constitutional and supranational principles and in some characteristic institutions of the theoretical-dogmatic tradition of continental administrative law.

The constitutional dictate exhibits 'an absolute centrality of the human person' (p. 42), which can be seen both in the part relating to general principles and in the provisions dealing specifically with public administration. In particular, it is significant that the latter is identified not only in public offices, but above all in civil servants, to whom Art. 97(3) refers "the spheres of competence, attributions and responsibilities", and in "public employees", whom Art. 98 wants "at the exclusive service of the Nation".

The author then assigns particular importance to Article 54(2), which requires 'discipline and honour' from the 'citizens' entrusted with public functions and therefore excludes the 'possibility of entrusting the performance of administrative functions to centres of imputation that do not have a personal substratum' (p. 46); and to Article 28, considered to be 'the true cornerstone of the constitutional model of administration', which, by providing for the direct liability of officers for acts performed in violation of rights, and the liability of the administration as an extension of that of the officers, excludes the 'direct liability of officers for acts performed in violation of rights'. 28, judged to be the 'true architrave of the constitutional model of administration', which, by providing for the direct re-

sponsibility of officers for acts performed in violation of rights, and the responsibility of the administration as an extension of that of the officer, implies the logic 'of an administration that, also in terms of responsibility, is, first and foremost, made up of persons' (p. 48). The conclusion is that on the basis of the constitutional model, 'while the person is the true focus of the administration, automation is nothing more than a mere instrument' (p. 49).

Gallone believes, however, that 'the true constitutional cornerstone of the reserve of humanity' is to be found 'much deeper' (p. 52), in an intangible value that cannot be subjected to constitutional revision. In this regard, on the strength of the investigation into the cultural premises carried out in the first part of the book, the author can affirm that the reserve of humanity represents 'one of the various corollaries of the personalist principle that innervates our legal system and is enshrined in Article 2 of the Constitution' and that is linked to that of the dignity of the person. The dignity of men – observes the author – 'is measured in the relationship in which he/she is placed not only with respect to other persons (according to the guideline of equality as 'social dignity'), but also [...] with respect to what is not men and, therefore, to the machine'. Subjecting the person to fully automated decision-making is detrimental to human dignity because it subjects the person to the power of the machine. Hence, 'the protection of the dignity of the person makes [...] constitutionally necessary the intervention of men in the fulfilment of the administrative choice so as to restore the axiological hierarchy between person and machine traced by the Charter' (p. 57).

A basis for the reservation of humanity would also be found in the European Convention on Human Rights. As it is well known, Strasbourg caselaw holds that the principles laid down in Article 6 of the European Convention on Human Rights concerning the "Right to a fair trial" also apply to a portion of administrative activity, in particular its punitive activity. This, according to the A., implies that the administration "retains a human face" since "the 'court' referred to in Article 6 of the Convention (and, therefore, by virtue of the equivalence made by the Court's caselaw, also the Public Administration) is conceived, in parallel with the guarantees of a fair trial pursuant to Article 111 of the Constitution, as a 'body composed of natural persons'" (p. 63).

In conclusion, the human reserve is a principle 'immanent to the legal system' (p. 65) that 'translates, at least in its minimum meaning, into the prohibition to provide for totally automated modes of exercising authoritative capacity' (p. 66). It is a rule 'of super-primary rank' that is imposed on the legislature and the administration. And, viewed positively, it constitutes "the foundation of a specific prerogative of the citizen with respect to public power" (p. 67): the reserve of humanity as "the pillar of the nascent Italian and European digital citizenship" (p. 67).

3. We thus come to the 'theoretical-dogmatic foundation of the reserve of humanity', an aspect on which, in the opinion of the author, 'administrative scholarship has never adequately dwelt' (p. 71). Gallone observes that, according to the 'consolidated and long-standing teaching', 'the public body, like the private one, acts by means of physical persons linked to it by a specific relationship (precisely the so-called organic relationship)' and that 'from its origins the figure of the body has [...] presented a clear and well-defined anatomy according to which its ownership can only be held by a physical person' (p. 75 f.). This implies that administrative activity has always been seen as a 'human activity', insofar as it is 'referable to the public body through the officer who is a natural person and holds the quality of an organ' (p. 77); and that the main product of this activity, i.e. the administrative act, has also always been considered as a 'human' factor (p. 78): not insofar as it is an expression of the brute will of the officer, but because the imputation of the act to the body 'inevitably passes through the organ and, therefore, through the natural person who is its owner' (p. 79).

The advent of digitisation led scholarship to elaborate conceptual schemes that could do without the human basis. There was talk of the computer as a new figure of public official or of the automated administrative act as a mere fact of organisation. For Gallone, however, there have not been 'enough convincing ideas to abandon, in the legal framework of automated administrative activity, a model as dogmatically and normatively rooted and consolidated as that of organic identification' (p. 83). A model to which, according to the author, reference must necessarily be made in order "not to break the circuit of responsibility that represents one of the main factors of legitimisation of public powers" (p. 84). Article 28 of the Constitution, in fact, configures the responsibility of the body as an "extension" of the public responsibility of the official: and "conceiving a fully automated administrative activity to be imputed impersonally to the Administration as an apparatus [...] would have the effect of inhibiting this circuit of responsibil-

ity in its first segment" (p. 85).

It is not only the enduring relevance of the anthropocentric model of organic imputation that constitutes the dogmatic foundation of the administration reserve. Added to this, in the thought of the author, is the reasoned refusal to conceive of the algorithm as an administrative act. Considered in and of itself, the algorithm is, in a static sense, "the object of the preliminary administrative volition with which automation is opted for" (p. 93); and, in a dynamic sense, "an instrument of administrative action, a means in the hands of the administration that is employed between the preliminary and decisional phases". In the automation of administrative functions, therefore, at least 'two distinct moments of volition are essential': "the first, of a preliminary nature in which, upstream of the preliminary investigation, the Administration chooses (by means of an administrative or regulatory act) to use the algorithm (which, as such, forms the subject of the endoprocedural act adopted); the second, downstream of the preliminary investigation (which sees the use of the algorithm as a tool), in which the Administration makes the product of the algorithmic operation (output) its own, transposing it as the content of the conclusive procedure" (p. 98).

4. National law does not contain an organic discipline of the automation of administrative functions. However, according to Gallone, the reserve of humanity finds "a point of emergence [...] in the general law on administrative procedure, all marked, in reflection of the constitution, by the personalist principle" (p. 108). He gives the example of the person in charge of the procedure, a figure that expresses the human face of the official in the interlocution with the private individual (p. 108 f.). The sectoral disciplines confirm this approach.

Faced with a regulatory framework that is in any case laconic, case law has traced the general statute of automated administrative functions around three fundamental pillars: knowability, algorithmic non-discrimination and "non-exclusivity of the algorithmic decision". With regard to the latter, the Council of State has stated that "there must in any case exist in the decision-making process a human contribution capable of controlling, validating or refuting the automated decision" (Cons. Stato, sez. VI, 13 December 2019, no. 8474).

In this pronouncement Gallone sees the emergence of the reservation of humanity, even if the expression 'algorithmic non-exclusivity' does not give an account of the 'positive scope of the principle and how it conditions the substance of administrative action' (p. 119). The pronouncement, in any case, is considered by the A. as the starting point for further desirable insights from caselaw.

The latter should first of all take note of the constitutional and supranational basis of the principle. According to the author, in fact, it is improper to identify it, as the prevailing caselaw and scholarship do, in the right of the individual, acknowledged by Art. 22 GDPR, not to be subjected to automated decisions without human involvement and which, at the same time, produce legal effects or affect the individual in a similar way. This right - the A observes - is conferred by the provision on the natural person to whom the personal data subject to processing relates: thus, 'where the performance of automated administrative tasks does not involve the processing of personal data, the provision in question and the GDPR in general would not apply' (p. 122). And moreover, Article 22 seems to acknowledge 'a right rather than, in the negative, a prohibition and a general limit on the prerogatives of the Administration as an authority'.

Caselaw will also have to investigate the scope of the principle of the reservation of humanity, so as to arrive at the 'identification of the minimum humanity that must be guaranteed in the performance of the administrative function' (p. 118).

5. Having concluded his discourse on the foundation of the principle, Gallone opens the chapter on the 'points of emergence of the reservation of humanity in the performance of automated administrative functions' (p. 141 ff.). The premise here is that the reserve of humanity is a preceptive principle, not a merely programmatic one. In concrete terms, it translates, 'in its most elementary meaning, into an absolute (and non-derogable) prohibition of carrying out the procedure in a totally automated form' (p. 146). At a more sophisticated level it is a question of defining what the minimum of humanity in the performance of the administrative function consists of that cannot be conculcated by the administration (p. 146).

In order to proceed in this sense, Gallone considers it useful to distinguish two points of emergence of the reserve of humanity, identified in the light of what has been stated above regarding the role of the algorithm as an instrument of administrative activity.

The first point of emergence 'coincides with the moment in which the preliminary volition is expressed through which one opts for automa-

tion, defining its modalities (also through the identification of the algorithm to be employed)' (p. 148). The choice in question must necessarily fall to men because, although not decisive with respect to the content of the final decision, it has 'repercussions on the level of the modalities of the performance of the administrative function and, therefore, also on the guarantees of the interested parties' (p. 149). The preliminary volition in question may be expressed in a general and abstract form through a legislative or regulatory act, or in an administrative form by the person in charge of the procedure pursuant to Article 6(1)(b) of Law No. 241/1990, which assigns precisely to the person in charge the task of defining the modalities of the procedure. In this case it may be a specific or general administrative act, such as a call for tenders (p. 152). The author expresses a preference for the latter solution: "reasons of technical expediency push towards the standardisation of the content of administrative acts of prior volition with which automation is opted for" (p. 152). Where automation is opted for by means of an administrative act, it may be challenged cumulatively to the final measure adopted on the basis of the computational result. Where the choice to automate finds a place in a regulatory act, it will also be possible to proceed to its direct disapplication with the consequent repercussions on the fate of the final administrative decision downstream (p. 156).

The second point of emergence of the reservation of humanity coincides with the adoption of the final measure. This is the 'most delicate juncture of the entire automated administrative procedure'. Indeed, 'it is certainly possible that, once the choice has been made upstream to carry out the procedure in an automated form, the final measure is issued by the computer without any further input from a natural person. This, however, would mean subjecting the person to the authority and decision of the machine, exactly what the reservation of humanity prevents. Moreover, 'to admit that the final procedure can be packaged and issued directly by the computer [...] seems [...] incompatible with the dogmatic premises from which we started with regard to the imputation of the automated act and the nature of the algorithm', understood as a mere instrument of administrative action (p. 157). Human intervention in the adoption of the procedure is necessary, according to Gallone, even when the administrative activity is binding: even in this case 'the subjection of the person to the decision of the machine cannot be tolerated, insofar as it is detrimental to human dignity' (p. 160).

The product of the automated algorithmic operation integrates the "results of the investigation" within the meaning of Article 6(1)(e) of Law No. 241/1990. The officers endowed with decision-making power may make them their own, in which case 'the computational result is transformed into the content of the final decision', or depart from them. In both cases the officer makes 'a choice in the proper sense because it is made in the face of the practicability of an alternative in law. It is, therefore, beyond doubt that this manifestation of will, as a fully human act, retains an authentically decisional nature, with all the repercussions in terms of legal regime and protection for the addressee' (p. 166).

The risk that the officer's differing choice would nullify the advantages that can be derived from automation in terms of speed and efficiency of the administrative action is in any case contained, given that Article 6, paragraph 1, letter e) of Law No. 241/1990, which imposes an aggravated motivation for the choice to depart from the results of the preliminary investigation, places a general "duty of consistency between the outcome of the preliminary investigation and the final decision". In this regard, Gallone goes so far as to affirm that "the exceptional nature of the hypothesis suggests a taxative approach with respect to the cases that allow one to depart from the computational result, as it is not possible to admit generic motivations that are only apparent. In this sense, it would seem that they should be reduced to the extreme hypothesis of the error of calculation stricto sensu intended, to the material error committed at the time of input as well as those pertaining to the correctness of the upstream choice, at the time of the preliminary volition with which one opted for automation, of the algorithm to be employed. Another extreme hypothesis in which it is certainly permissible to depart from the computational result is that of manifest injustice, illogicality or erroneousness of the result. The latter must, however, stand out ictu oculi and impose itself with objective evidence" (p. 171).

6. The administrative decision adopted in a totally automated form for Gallone is an administrative measure that differs from its normative paradigm, and is therefore invalid. And the general schemes of the theory of invalidity must be applied. Gallone specifies that the reservation of humanity is not prescribed by a rule attributing power, understood as the rule whose sole content is to confer on the administration the 'abstract

capacity to implement an act of preceptive and authoritative content' (p. 184), but by a rule on the exercise of the power itself. It is therefore to be ruled out that the reservation of humanity constitutes a condition for the existence of power (p. 185) and that its violation causes the nullity of the measure for absolute defect of attribution pursuant to Article 21-septies, law no. 241/1990 (p. 188). More articulated is the reasoning that leads to the exclusion of nullity for lack of an essential element, in particular for lack of intention. The author considers that "in the case of the administrative measure adopted in a totally automated form, the will is not so much missing as incomplete. This is the case at least when one has opted for automation "by means of an ad hoc administrative act", since it is precisely the making of such a choice that is sufficient to acknowledge the existence "of some, albeit feeble, voluntaristic afflatus" that indirectly affects the measure. On the other hand, "a partially different discourse must, in all probability, be made with regard to the hypothesis in which automation is opted for not by means of an ad hoc administrative act, but in a general and abstract manner and in regulatory form by virtue of a provision of law or regulation that refers to a genus of procedures. In this case, in fact, there would be a complete lack of administrative volition (even if preliminary) in support of the conclusive determination adopted in a totally automated form [...] which leaves essentially open, at least with regard to this case, the problem of the subsumability of the violation of the reservation of humanity under the figure of structural nullity for lack of the essential requisite of the will" (p. 194).

Outside this hypothesis, the violation of the reservation of humanity integrates the violation of the law, cause of annulment of the measure pursuant to Article 21-octies, Law No. 241/1990. The measure is therefore liable to become unenforceable, is voidable ex officio and subject to validation pursuant to Art. 21-nonies, law no. 241/1990. The violation cannot be derubricated to "formal or procedural", possibly irrelevant for the purposes of annulment pursuant to Art. 21-octies, paragraph 2, since "human intervention in the adoption of the measure must be acknowledged as having not only procedural but also substantial and essentially organisational importance, in a manner not dissimilar to what happens for the guarantee of motivation" (p. 197).

7. Gallone in the final chapter wonders whether the principle of the reservation of humanity, as constructed by him in its assumptions and above all in its implications, is not reduced 'to little more than a dull simulacrum' (p. 201). In particular, he worries that, given the exceptional nature of the hypotheses in which the deciding body may deviate from the results of the computational investigation, human intervention may in most cases be limited to 'only an apparent supervision of the machine's work'.

But the principle of the humanity reserve also has solid constitutional foundations in the process, where it is even more pregnant as it ensures not only the humanity of the decision but also the humanity of the decision-maker (p. 218). Since the procedure and the administrative process are "contiguous and communicating planes" (p. 205) and there is a "tendency towards hybridisation of the two legal sequences" (p. 206), it can be considered that "a strong automation of the procedural phase, especially by means of artificial intelligence, is admissible and compliant with the reservation of humanity only when compensated by the guarantee of a subsequent human judicial control that is in line with the criteria of full jurisdiction" (p. 222).

That is to say, at the conclusion of the study, a parallelism is proposed between the compromise of the reservation of humanity in the proceedings and the violation of procedural guarantees in sanctioning proceedings: just as the latter can be remedied, according to the case law of the United Nations Commission on Human Rights, in the courts through the so-called review of full jurisdiction, so, according to the author, the full review by a judge 'in the flesh' allows one to consider the reservation of humanity complied with even when human intervention in the proceedings has been almost non-existent.

8. Giovanni Gallone's volume is embellished by a preface by Prof. J.B. Auby, who expresses a convinced appreciation of the research and endorsement of its results, so much so that he believes 'it is likely that, under one name or another, the principle of the "reserve of humanity" will soon be unanimously recognised as a fundamental principle of digital public law'.

Reading against this light perhaps also reveals some dissent, on aspects that are not fundamental but nevertheless important.

Auby considers the right enshrined in Article 22 of the GDPR to be 'the most important' of the rules and principles requiring the presence of the human element in public decision-making: whereas, as we have seen, Gallone expresses a strongly sceptical and minority position on this point.

Secondly, Auby considers that one can 'certainly admit that the importance attributed to the implementation of the principle [of the humanity reserve] changes according to the greater or lesser importance of the administrative decisions taken: the requirement of humanity seems particularly important when the measures have a sanctioning character, when they concern the granting of social advantages, etc.'. Presumably, a criterion of proportionality could be invoked: the requirement of humanity could be invoked in proportion to the importance of the rights and interests that the decision may involve'. Gallone's position is less elastic: the linking of the principle of the humanity reserve to the superprime value of human dignity excludes an application according to proportionality of the principle itself, and induces the Author to attribute to it the same value and scope in binding administrative activity as in discretionary activity.

9. There are two possible approaches of the jurist to the digitisation of the administration. The first consists in illustrating the phenomenon, identifying its fields of application to administrative activity, and finally considering the problems that this application poses: in a perspective that, on the whole, is to overcome them given the advantages of the advent of information technology. The second approach consists instead in starting from the legal rules on administrative activity and on the protection of the individual against power and, considering them non-negotiable, verifying to what extent and with what limits they admit the intervention of the machine.

Giovanni Gallone's approach is definitely the latter. Before him, other authors have identified the prescriptions of international, European and domestic law that place curbs on the use of machines and artificial intelligence in administrative action to protect the values of the individual. However, the interpretation of the constitutional framework proposed by Gallone is distinguished by its elegance and the stringent nature of the arguments used. Moreover, the research is nourished by an uncommon ethical tension: not concealed, indeed claimed between the lines, but always controlled, and founded on undoubtedly meditated convictions; above all, always translated into precise interpretations of regulatory provisions, especially constitutional ones, and never assumed as a direct source of rules without the need for legal intermediation.

Some perplexity may be raised with respect to some issues, but only in order to fuel the argument with the author; first of all on what remains one of the most interesting and innovative aspects of the monograph - Auby also observes this in the preface - namely the possibility of identifying the dogmatic foundation of the reserve of humanity in the theory of the organ since this, simplifying to the extreme, evokes the idea of an administration that acts through flesh and blood persons, whose acts are imputed to the organisation.

The organ theory undoubtedly has an anthropocentric basis. It starts from the assumption that legal persons are not in themselves capable of legal action, since the production of law depends on the human will. Through the organ, the legal person receives the capacity of the natural person, to the extent that he/she becomes the owner of the legal person itself, or at least acquires the capacity to impute the acts of the natural person to themselves.

However, one could object to Gallone that it is precisely the anthropocentric basis of the theory that makes its recourse questionable when the actual problem is to impute the decision of the algorithm to the entity and not to the will of a natural person. In other words, the organic theory is the instrument ordinarily (and not without exception) resorted to in order to impute the will of a natural person to the entity: once the problem of imputing the algorithm's decision to the entity, and not to the will of men, arises as a result of automation, different imputation criteria may, at least in theory, come into play. After all, what articles 28, 103 and 113 of the Constitution require (in the sense that they presuppose) is that the decision (whether men's, machine's, chance's, etc.) be imputed to the administration, so that the latter is placed in a position to answer for it, but not that the imputation take place through organic theory. But if algorithmic decision-making requires alternative imputation techniques, does it make sense to identify the organ theory as a limit to the use of automation?

Another critical point of Gallone's argument might be the follwing. If, as the A. maintains, the software does not make a choice, i.e. it does not carry out a comparison and balancing of interests, then, when the power is discretionary, the officer should be given much more leeway than G. is inclined to admit. For the A. the officer may either adhere to the results of the preliminary investigation or depart from them in the event of a computational error or manifest injustice, whereas it seems to me that, if the case is discretionary and such discretion is deemed not to have been expended by the algorithm, then the official should be able to carry out all those op-

erations of balancing and comparing interests that are properly discretionary. Which, moreover, would be an effective guarantee of the reservation of humanity in the proceedings and would remove the spectre of a merely formal human verification.

Again. If what makes the automated decision an administrative measure is the intervention of the human will, would it not be consistent to say that if such intervention is lacking and the decision is adopted in a totally automated form, then it does not constitute an administrative measure? That is, we would be in front of a non-existent measure (the non-existence of a measure), not an illegitimate measure, as the author maintains, therefore productive of legal effects and susceptible of validation.

In both these respects, the author's arguments end up weakening, perhaps excessively, the preceptive content of the principle he himself elaborated. Gallone is well aware of this and for this reason argues in the last chapter that the total absence of humanity in the proceedings can be remedied at trial, provided that the automation does not also propagate to the trial and therefore the judge remains 'human'.

That the reserve of humanity applies in the process, as much and perhaps more than in administrative activity, is certainly convincing. More doubtful is the possibility of recovering through the trial the humanity missing in the proceedings. It does not seem to me that in this regard one can apply the reasoning developed by the Court of Justice with regard to Article 6 of the European Convention on Humanity, first of all because it refers to the violation of a procedural rule, while the reservation of humanity represents a substantive guarantee, as the author of this article maintains in order to avoid the application of Article 21-octies, paragraph 2, law no. 241/1990 in the event of its violation. Moreover, the approach of the ECHR concerns, and this too the A. does not fail to point out, a well-identified portion of administrative proceedings, especially those for the imposition of administrative fines. On the contrary, if we were to consider that the violation of the reservation of humanity could be remedied by the review of the decision by a 'human' judge, we would have to assume, given that digitalisation is a pervasive and transversal phenomenon, that this possibility of remediation is also of a general nature, which in turn would really mean debasing the procedure as the place where the decision is formed, to the point of rendering it useless.

10. The doubts I have expressed on some profiles of the author's discourse do not distract from the essential point, which is that the monograph is persuasive in demonstrating that the Constitution (understood in a broad sense) prohibits a complete digitisation of administrative activity, a digitisation that would make the human face of the administration disappear.

It seems important to emphasise this research result: it is not just a prudent case law or some sporadic article of law that imposes the persistence of men as a limit to the full digitisation of administrative action, but this is a constitutional necessity, expressed by the systematic interpretation of the formal Constitution and the other above-legislative sources.

This acquisition calls into question the constitutional principle of legality, which is a constraint on the legislator, before the administration. Gallone, by denying that it is an administrative act and derubricating it as a mere instrument of administrative action, excludes that the use of the algorithm requires precise authorisation in law. On this one can probably agree. However, if the reservation of humanity is a constitutional principle, then the question that naturally arises is whether the same can and should be applied directly in the courts (or regulations), or whether rather the constitutional principle of legality of the administration, understood in a substantive sense according to the caselaw of the Constitutional Court, does not call for legislative intermediation.

Of course, that of administrative law is a history of direct application of constitutional, or institutional, principles by the special judge. It is therefore natural, and to be welcomed, that the administrative judge does not perceive the absence of an organic legislation on the reservation of administration (such cannot be considered the one contained in art. 30, par. 3, legislative decree no. 33/2023, which in any case adopts the caselaw's elaboration on algorithmic non-exclusivity) as a brake on the work of constructing a statute of digital administrative activity, which he has meritoriously begun. But this does not detract from the fact that the legislature would be fulfilling the role assigned to it by the substantive value of the principle of constitutional legality if it were to dictate such a regulation, and that only the law could ensure the organic nature of intervention that the matter requires.

Gallone's elaboration on the specific points of the emergence of the reserve of humanity in administrative action, hence on the rules that give substance to the principle (what the A. indicates

as the 'scope' of the principle) and on the consequences of their violation by the administration, is in some respects debatable, as is any original construction that aspires to preceptiveness but takes place in a normative vacuum; but it is undoubtedly reasonable (perhaps a little too rigid, but only where it refuses to calibrate the content of the reservation of humanity according to the more or less discretionary tenor of the act, an issue, moreover, pointed out by Auby in the preface), dogmatically founded, coherent and respectful of the essential and more consolidated features of the regime of the administrative act; therefore it may constitute a valuable guide for caselaw, today; and, hopefully, for the legislator, tomorrow. [Reviewed by MICHELE TRIMARCHI].

Eva Menéndez Sebastián, *From Bureaucracy to Artificial Intelligence. The Tension Between Effectiveness and Guarantees,* Cedam, Milan, 2023.

In "From bureaucracy to artificial intelligence. The tension between effectiveness and guarantees", Eva Menéndez Sebastián guides readers through a deep exploration of the evolving role of Artificial Intelligence in the dynamic framework of public governance. She provides an insightful analysis for evaluating when the use of AI can enhance public action while ensuring strict compliance with all necessary guarantees.

The book is divided into three primary chapters. In the opening chapter, the Author establishes a comprehensive framework for the analysis, discussing the transition from the traditional Weberian bureaucratic model to the evolving landscape of new public governance. This transformation is marked by the consolidation of a renewed relationship between public authorities and citizens, mainly guided by the principles of transparency, accountability, and effectiveness. The Author discusses the innovative role of good administration as a potential bridge between administrative citizenship and artificial intelligence. Algorithmic systems have the potential to enhance a more efficient allocation of resources and lower costs, thereby contributing to a better achievement of the general interest.

The second chapter is the focal contribution of the volume, aiming to provide a general analysis of the deployment of AI systems by public administrations, with a primary focus on disentangling the tension between effectiveness and guarantees. This duality is recurrent throughout the chapter, with the objective of finding a balance between risks and benefits, as well as between the compliance with due process rights and the goal of fostering innovation in implementing AI technologies. The Author begins with the following premise: the use of AI does not always necessarily lead to greater efficiency, "at least not if it is not done in the most appropriate way". This premise serves as the cornerstone guiding the entire body of the work. Public administrations need to carefully evaluate when the use of AI is functional to improve public action, and how to ensure compliance with all necessary guarantees. This volume represents a significant step forward in this direction and, by quickly discussing some critical passages of the central chapter, in the following lines I focus on explaining why.

In the first part of the second chapter, the Author delves into the deployment of AI systems in both the material and formal activities of public administration, highlighting the potential benefits of using AI to enhance decision-making processes. AI can boost three primary dimensions: the internal efficiency of the public administration, its decision-making, and the interaction between citizens and administrations. The Author stresses the imperative of aligning the functionalities of AI systems with both material and formal activities, emphasizing the salience of integrating AI with the core principles of good administration, including efficiency, transparency, accountability, and the protection of due process rights.

The Author then outlines several benefits arising from the deployment of AI technologies in public-administration activities. However, the spread of these technologies in the public sector is still facing barriers, including: (i) the lack of adequate resources; (ii) risks associated with the use of AI, such as algorithmic discrimination; (iii) insufficient access to large volumes of high-quality data; (iv) increased global competition and scattered regulation; (v) lack of trust or insufficiently understood impacts, to name just a few. On the other hand, the Author warns against the risks associated with the deployment of AI, such as the lack of adequate transparency, the difficulty to explain and motivate automatic decisions, the possibility of discrimination, or the risk of over-reliance on automation. Even beyond legal concerns, there are considerations of acceptability among citizens and public employees, as well as technical risks – although the volume does not delve into these latter aspects.

Finally, the concluding section of the second chapter underscores the importance of integrating AI systems with the core principles of good

administration while maintaining a critical perspective on the potential risks and implications of AI deployment in the public sector. The author emphasizes the need for a careful analysis and strategic planning of AI implementation, especially considering the extensive range of consequences that should be weighed before the deployment, as well as assessing its long-term implications. The author enriches the analysis with extensive reference to the legislation and the caselaw of the main European countries, as well as the European legal framework.

The volume concludes with a compelling third chapter that delves into the practical deployment of AI systems in public action. In transitioning "from theory to practice", the Author highlights three pivotal domaines where AI may be implemented successfully in the area of subvention procedures: helping the recipients or citizens, facilitating internal management, and contributing to control procedures. The provision of information to user via chatbots, the application of AI for verifying compliance with the requirements to be beneficiaries of a directly awarded subvention, and the use of blockchain technology in justification procedures, are just some examples. The final pages are dedicated to presenting a set of principles crucial for the implementation of AI in the public sector. The Author presents a comprehensive list of essential principles, such as human primacy, performance, equality, equity and non-discrimination, transparency, autonomy, environmental sustainability, proportionality, precaution, and acceptability, among others. These principles serve as a roadmap to guide the adoption, design, and implementation of AI in public action.

Two concluding observations about this volume deserve a mention. First, the Author emphasizes how important it is to raise the level of awareness of citizens and civil servants about the challenge of using AI to perform public functions. The active engagement of society and public employees, facilitated by co-creation and co-development procedures, is a pivotal factor for a successful implementation of AI in the public sector. This continued focus enriches the value and scope of the entire volume. Second, by ranging from a more general analysis to practical examples, the Author outlines a roadmap for guiding public administrations in designing, developing, and validating AI systems. By furnishing theoretical and practical foundations, the Author outlines a meta-process that every public administration should undertake to evaluate appropriateness and enhance the use of AI in the public sector. "So let's get started". [Reviewed by GIULIA G. CUSENZA].