

iUS

PUBLICUM NETWORK REVIEW

N.1 SPECIAL

ISSN 2039-2540

EDUARDO GARCÍA DE ENTERRÍA for the *Revista de Administración Pública*

Dear Director of the Centro de Estudios Políticos y Constitucionales,

Dear Colleagues, Directors of the Reviews

“*Diritto Amministrativo*”,

“*Revue Française de Droit Administratif*”,

“*Public Law*” and

“*Die Verwaltung*”

Dear Fellows, Members of the Editorial Board of the Revista Administración Pública,

Friends,

On behalf of those who are part of the RAP I am delighted to express you all our great satisfaction for the signature of the Agreement for the establishment of the IUS PUBLICUM website.

Dear Director, I thank you kindly, for opening the doors of the Centro to celebrate this event, and many thanks to the Directors of the Reviews part of IUS PUBLICUM who wished the Agreement to be signed here, in Madrid in the seat of the Revista de Administración Pública.

We are attending the signature of the Agreement in the same venue where the RAP was born 60 years ago, a venue once known as *Instituto de Estudios Políticos*; and in this day – April 2010 – we celebrate the beginning of the first four-months period and our n. 181 Issue.

I

Without any doubt, the public history of the RAP is so important: I'm referring to what it symbolized in the Spanish legal history and, above all, to the way the establishment and the development of a pure Rule of Law in Spain was influenced by it, also considering it spent its first 25 years under the Dictatorship.

In addition to its public history though the internal history of the Review deserves to be told: how and why it was born, how it maintained itself during its first years of existence when every issue was a miracle. The RAP reached its calm cruising speed eventually, so that the previous finding, producing and thinking up issues turned into the contrary, that was shortlisting papers in profusion.

I will tell you briefly about this internal history of the RAP as I have experienced it personally and I apologize from now on for any autobiographical recalls that are bound to occur.

This history begins in a northern Spain beach, in the town of Llanes, where I lived and studied between 1935 and 1940 and where I used to go sometimes during summertime in order to meet old friends. In August 1948 on the wonderful El Sablón beach María Jesús de Saro, a childhood friend, introduced me her husband, Javier Conde, Political Law Professor in Madrid. He was appointed as Director of the *Instituto de Estudios Políticos* just few months before that day, namely in May. Javier Conde had known I became Letrado at the Consejo de Estado the year before and he asked me to meet him in his office at the *Instituto de Estudios Políticos* the following September. He wanted me to collaborate with him in the Public Administration Section of the *Instituto*, that he thought it was not working well; actually, he thought it was not working at all.

Some weeks later, when we were both in Madrid, I visited him and the idea of the Review was born then, unexpectedly. He decided to involve me in the Public Administration Section of the *Instituto* in order to figure out how to raise the reputation of the *Instituto*, since it was not working well according to him, as I told you before. Having no previous idea in that particular moment I found myself proposing him about the

possibility to create a review. He was surprised by such an audacious idea but he appreciated it, and he wondered if I would have been able to make it happening.

In order to seek prospective partners to discuss the feasibility of the idea I asked him some time and a certain liberty. He agreed, with a skeptical and excited, as well as natural, gesture.

During the following months, I spent my time seeking for and meeting the people who appeared to me to be more suitable for the role. I acted at a dual level, both between my colleagues Letrados at the Consejo de Estado, focusing on the fellows promoted with me and aimed by a university restlessness (José Luis Villar Palasí, Jesús Fueyo, Manuel Alonso Olea and Ricardo Gómez Acebo), and the young scholars gathered around Prof. Segismundo Royo-Villanova holding the chair of Administrative Law, in the recently created School of Political and Economical Sciences (Fernando Garrido Falla, Jesús González Pérez, Juan Gascón Hernández and Enrique Serrano Guirado). These people formed the first Editorial Board of the Review. These two groups played the central role during the first years of the Review.

The two groups I have mentioned conceived and wrote almost the whole part of the first issues: I am talking about the pupils of Royo-Villanova whom I hold as the first researchers in Administrative Law in the Spanish University, and the four young Letrados at the Consejo de Estado, aimed by a similar restlessness. We were the ones who outlined the framework of the RAP, meeting after meeting. As an example of rare generosity, we shared our (limited) resources; from the libraries of the Consejo de Estado, of the Cortes and of our *Instituto* where the old Senate library was available we searched for the bibliographic material to feed our enthusiasm and our purpose to set a starting point for the new Spanish Administrative Law, which was, in my opinion, iterative and not very interesting until that moment. Then, we accomplished the task of writing the first and exclusive issues of the Review personally and with a great deal of passion.

We were not an accredited group capable to pull together people upon to collaborate with us on the basis of an assumed personal authority; we were only a group of

unknown young people, a part of the lowest infantry, who were personally committed to work without hesitation and under an earlier illusion.

One day I suggested to Conde to appoint one of the professors of the Administrative Law Section of the *Instituto* as Director of the Review, but he rejected the proposal decisively. He said he would have been the Director of the Review (since he was the Director of the *Instituto*), as the person in charge of its publication, and I would have been the Secretary in order to deal directly with him, without any mediation.

This agreement was kept with the succeeding Directors of the *Instituto* (it was due to a sort of inertia as well as to the efficiency of the system) so that as a matter of fact I was an executive Secretary who hardly got the Director of the *Instituto* acquainted with the next Issues. Only in January 1987 (with the Issue n. 112) I was officially named Director of the Review, even though I had been playing that role since the first issue together with the whole promoting group, especially with the succeeding additional Secretaries.

That was how we began to move forward. Every issue encouraged more and more our purpose although publishing was a sort of a miracle. The honest truth is that miracles went from strength to strength (I am saying this without any self esteem) and two or three years later the RAP was formed and fully established. All the professorship contests that had been holding since 1951 made the RAP a forced step of the scientific discussions, as well as the collaboration with it became an undeniable proof of the high value of the scientific works.

II

The *Instituto de Estudios Políticos* was not a public body until the Constitutional period, when it was transformed and bound to the *Secretaría General del Movimiento*. With regard to this I have to make the point that, even later, the content of the Review has been never limited or influenced, but always kept absolutely independent and consistent with its objective scientific criteria that are still beaming in its pages, without even the least contamination. I really want to stress that the whole *Instituto de Estudios Políticos* always acted as an intellectual centre, never as means of indoctrination, as it is well known. It

suffices to bear in mind that Professor Manuel García Pelayo contributed to the Review in 1950, the year of its establishment, and that after the civil war a War Council demanded to put him to death as he was Chief of Staff of the Republican Army of the Extremadura.

Only once the *Movimiento* influenced the RAP: in December 27th 1958, an article was published in the Issue n. 27. It was entitled *The fundamental principles of the Movimiento Nacional and the Public Administration* as it was an annotation of the same entitled *Ley Fundamental*, enacted in that year. This article was not signed as it expressed more an institutional point of view than a scientific one (I was unaware of his author, too; the Direction of the Review received it with a publishing order) and it was issued before the opening of the “Studies” Section of the Review, which is strictly the scientific part of the Review. I have also to make a note that once, in 1959, an attempt to introduce political personages in the Editorial Board was made but I blocked it off by warning that, in that event, I would have abandoned immediately both the Board and the responsibility of the RAP, looking for a private editor in order to ensure the continuity of the work.

III

The first issues of the RAP were drawn up virtually by the former team jointly. We shared with each other the topics we were working or we would have be pleased to work on, by talking together, bringing material, lending our books and by suggesting amendments or different meaning interpretations during the editing job. A good example of this usual way of acting can be found in the introductory note of the fairly well known article of José Luís Villar Palasí, *The industrial activity of the State in the Administrative Law*, published in the Issue n. 3. A particular interest for the foreign literature grew up from that joint collaborative work, especially during a historic period when the Spanish borders were virtually closed. We managed to collect foreign reviews and exchange them with the RAP during our personal journeys abroad, which were aimed to search for brand new bibliographic material. The consultation of those foreign reviews prevented us from a dangerous isolation.

A remarkable joint force occurred during the publishing of some monographic issues. Two of these obtained a great and broad acknowledgement: the Issue n. 3, that examined the “Public enterprises”, with the opening of Professor Manuel García Pelayo, and the Issue n. 6, that analysed “The actual issues on the Rule of Law”, a surprising topic for the Spain in 1951.

Other special Issues meant a lot for the history of the Review: those issued to commemorate the first one hundred Issues of the RAP and the one issued to celebrate its fiftieth anniversary. Beside, the Issues that colleagues and friend dedicated to me in 1977 have to be noted as well as those that we have recently dedicated to the Professors Alejandro Nieto and Ramón Parada for their retirements.

IV

The name REVISTA DE ADMINISTRACIÓN PÚBLICA instead of *Derecho Administrativo* points out that, according to its promoters, its aim was to include studies focusing not only on juridical issues of the sciences of the Public Administration: that is what the moderate prologue to the Issue n. 1 proclaimed. This goal was not fulfilled, apart from a few exceptions. Since the beginning we have been publishing studies focused on the processes of administrative reform and on the organization of the Administration ruled by law or drafted by study commissions or boards of enquiry. On the other hand, studies on the Science of the administration or on *management*, according to the American meaning, were immediately ruled out, apart from small exceptions.

At the end the partial fulfillment of the original purpose was not a piece of bad luck but rather it has been a great fortune to me, in fact one needs only to consider the essential heterogeneity existing between the juridical sciences and the not juridical ones like the Science of the administration and *management*. And it is easy to prove that no other well known reviews acted in a different way. The RAP was definitely sharpened as a juridical review, even though neither the RAP nor the other juridical reviews ever abandoned the political and organizational perspectives of the Administration intended as a

real entity. In the end the generic title of the RAP was not totally disapproved as it outlined its own distinctive feature.

Under this title the RAP wrote the history of the Spanish Administrative Law with its 181 Issues published to date. A history that was shared by not only Spanish but also foreign eminent professors, some of whom honor us as members of our Scientific Board. Very little remains to be said except that the RAP has always been a common forum for all the administrative law scholars. No limitations bound it throughout the course of all these years, since the debut under the Dictatorship of General Franco and this is quite evident from its pages.

V

By this time the Review is 60 years old and thanks to the great initiative of Professor Alberto Romano (good old friend, who strongly impressed us as the nephew of Prof. Santi Romano, indisputable and admired master of Public law at the time; old and admired friends as well are Frank Moderne and Pierre Delvolvé, who edit the “Revue française de Droit administratif” and Pierre Bon, who established a centre of French-Spanish cooperation, several years ago), we are honored to share with the leading European public law reviews a common place into an exceptional communication media like the Internet.

Today with the signature of the Agreement we are symbolically raising a common home to which, as RAP, we will give our support and our best efforts in order to keep on with improving the Administrative Law and, as an implicit but expressed goal, to walk towards the setting up of a Common European Public Law.

Eduardo García de Enterría