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ABSTRACT

Tesi di dottorato:

"**La riconfigurazione del sistema delle banche popolari ed i poteri della Banca d'Italia**"

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ABSTRACT

In this thesis it is possible to identify at least two levels of comprehension, the first expressive of a flat analysis of the problems treated, since they are connected by the common derivation from the d.l. 3/2015, the second instead of logical-reconstructive order, which starting from the observation that the reform is a compendium of many major issues debated at the doctrinal and jurisprudential level in recent decades, in commercial and administrative law, enucleate a trait that accumulates or rather a minimum common denominator: the presumption of neutrality.

With regard to the first reading plan, we discussed of the main problems posed by the reform and tried to demonstrate that the ultimate inspirational reason for this is likely to be found in the need to guarantee a sound and prudent management of the institutions, this has determined, only as an indirect consequence, the sacrifice of the mutualistic purpose and the triumph of the lucrative one. It has been attempted to demonstrate that the legislator, through a logical inversion of the problems, has marginalized credit cooperation precisely to guarantee the sound and prudent management of the institutions, in light of the difficulties encountered by Italian supervision in ensuring compliance with this criterion management especially for larger, popular banks. Hence the centrality of the role that the Bank of Italy has played not only in the implementation of the reform but also with respect to the same inspirational reasons for the change in paradigm.

As for the second reading plan, we started from the particular (normative detail) to then abstract the general problem and finally always on the basis of a careful analysis of the norm, extract the reasoning underlying the logic of neutralization to try to unveil the unfounded prejudice.

This does not mean that in this study does not refer to other knowledge other than law, the law is in fact "instrument tools" is what confines, delimits the other tools (science, economy, religion ...) hopefully are therefore forgiven , in light of this statement, the incursions that in this thesis are found with respect to other fields starting from the economic and philosophical, according to the teaching of many great masters of the '900. The law, in fact, is the detail of principles, values and trends, as well as the resolution of problems formed in other heads of human knowledge and more generally of human social experience. To be fully understood, the right must therefore be linked to its presuppositions, as the jurist is not allowed to "turn in on himself", through an analysis limited to the simple normative precipitate.

The attempt of the thesis (perhaps the result of a sin of ὕβρις) was to try to demonstrate, starting from the analysis of the reform of the popular banks and the role of the Bank of Italy and based on the empirical evidence from the same obtainable, which the myth of neutrality, in the dual declination of the legal institution of the company contract (which will be discussed in the first chapter) and of the powers of the independent authorities (which will be discussed in the third chapter) is more a prejudice than a positive evidence, both in commercial law and in administrative law.

In the first chapter, dedicated to a deepening of the historical evolution of the phenomenon of the popular banks, we tried to prove the groundlessness of the thesis of the neutrality of the company contract, also in virtue of the thesis that the form is substance.

In the second chapter, dedicated to the analysis of the c.d. popular reform of 2015, we tried to understand the real reasons underlying the same, in order to demonstrate the groundlessness of the thesis that sees this regulatory intervention as the result of purely

technical-legal needs. It was therefore proved that the choice to suppress (rectius strongly resize) the cooperative banking activity of the people is purely political and not neutral or technical, not only because our constitutional system imposes the political dimension of the legislative choice, but above all because the recalled technical needs appear to be more presumed than real (think of the lack of mutualistic substance of the same, founded on the basis of an outdated but deeply rooted thesis of Ferri and referred to in the government report to the reform as a central motif). In this context, we also proceeded with the analysis of the main constitutional compatibility problems posed by the reform and we have drawn a line of continuity between the issue of limiting the reimbursement of shares and the thesis of the conformational powers typical of the sectional orders, then more properly addressed in conclusion of the third chapter.

Finally, in the third chapter, the problem of the neutrality of the technique in administrative law has been tackled, even in this sector, discipline neutrality is often more a proclaimed fact than an intrinsic quality, as is evident from the analysis of discretionality and more in gender of the non-neutral supervisory functions of the Bank of Italy. All this was also useful in order to understand that the thesis of Massimo Severo Giannini on the sectional ordering of credit (in the revised sense) is no longer capable of describing the functioning of the banking system today and this despite the recognition of non-neutral powers and the emergence of a prudential and conformative regulation.