



When Public is No Longer Enough: Third and Fourth Sector and Public Law

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A key question

Who is in charge of common general welfare?

As for the workers' associations in the 19th century: see Ninfa Contigiani

Original idea:

- mutual help (cooperatives, società di mutuo soccorso), and thus private
 - let's think it in a Charles Dickens' way

Later, and for a long time: the sovereign States

- for sure, historically, directly via *social services*
- eventually, by promoting the action of private parties
 - via tax reliefs and so on

Currently the most used scheme.



Third Sector!

As for Italy: ONLUS

Comprehensive reform of the Third Sector in 2017

Recognition of social value and function

associations

volunteering

enterprises

the huge problem of the purpose of the enterprise (see below)...

Also in cooperation with central State, Regions and Autonomous Provinces

Social, solidaristic and social utility purposes



Fourth Sector?

Why fourth?

A mixture of Second and Third...

...but does it exist?

And is it useful?

At large debatable: what's the added value?

And, more in general: what is, exactly, a social enterprise?

very country-specific definition: this prevents a general theory of Fourth Sector organizations



What role for the First Sector?

To provide public services

Not enough public assets

Difficulties in combining public-law rules with specific needs of society

Sometimes competition between public and private organisations in providing public services

See, for instance, several EUCJ cases dealing with this specific profiles:

- C.70/95 (17.6.1997) *Sodemare*: public healthcare services
 - C-386/04 (14.9.2006) *Centro di musicologia Walter Stauffer*: foundations and tax reliefs
 - C-78/08, C-80/08 (8.9.2011) *Paint Graphos*: Cooperative law and State aids
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Are we sure that Second Sector is irrelevant to this extent?

Not at all!

Distinguish general and special rules

Special rules: *Benefit corporations*

specific aim at public benefit...

...but they are corporations!

General rules: different cases

Cooperatives, of course!

But also companies and corporations could be involved?



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Are we sure that Second Sector is irrelevant to this extent?

The problem is to understand what are companies for!

Selfish, selfless and hybrid purposes

Is the more, besides making money?

The answer is: perhaps...

...but the creation of *benefit corporations* could be a boomerang

If you want to create public benefit, you must adopt such business form!

It depends very much on

- The hard law
 - The actual business attitude
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What really matters: vision and policies

Public policies regarding companies and corporations

And policies regarding the interaction between public and private organisations

Not necessarily limited to tax reliefs, but also some specific incentives

The idea is that the public power should decide clearly what and how to promote

- Not just because this is needed...
 - ...but also because this is a way to create a more conscious private participation to the public benefit
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What really matters: vision and policies

But also a vision by the private organisation

- For marketing purposes? (greenwashing risk)
- For real commitment?
 - Whose commitment?
 - Shareholders?
 - Directors?

There are no free meals... but not necessarily the pursuit of a public benefit should be seen as an economic damage for the company...



What role for Hard Law?

Enabling vs. obliging

Have a long-term identification of what is *really need*

- e.g.: let's take environmental sustainability seriously
- And let's define the proper policies for other sustainability areas (social, governance, whatever it means)

How?

- Think about new tools: in particular, what role for limited liability?
 - The cost for limited liability is today really low: could it be linked to the pursuit of limited liability?
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Thank you for your attention!

Questions?

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