

從理性到反思 ——行政學與行政法基本理論 於後現代時期之整合與轉型*

廖義銘

國立高雄大學政治法律學系助理教授

公共行政學上之「新公共管理」，強調以顧客導向取代規則導向，而與傳統行政法之至高價值——依法行政——產生嚴重衝突。此一衝突導致行政學與行政法基本理論面臨必要之轉型。本文以三部份來處理此問題。首先，本文說明在現代國家時期，行政學與行政法在理性主義之基礎上，發展出圍繞「依法行政」和「公共利益」等概念之相關內涵；其次，本文分析行政學與行政法於後現代時期各自遭遇之後現代化問題。最後，本文將論證道，在行政學上，學習型理論及反思性公共行政理論之提出，與行政法上之「反思性行政法」理論之問世，使行政法與行政學典範於後現代時期之整合與整型，可一言以蔽之：從理性到反思。

關鍵詞：反思性公共行政、反思性行政法、反思法

From Rational to Reflexive: The Transformation and Convergence of the Theory of Public Administration and Administrative Law

Liao, I-ming

Assistant Professor,
Department of Government and Law,
National University of Kaohsiung

ABSTRACT

This article is concerned with the problems of conflict between the New Public Management, which embraces the “custom-oriented” concept, and the “rule-oriented” basis of traditional administrative Law. It explores the paradigm-shift of public administration (PA) and administrative law (AL) in the post-modern era. First, this article explains in the modern state, the convergence of the paradigms of PA and AL with the ideas of rationalism. Next, this article explores the tendency of post-modernization of PA, and delegalization and dis-integration of AL. Finally, it is argued that the growth of “Learning Theory” and “Reflexive Public Administration” and the emergence of “Reflexive Administrative Law” show that the transformation and convergence of theory of PA and AL could be summarized as a shift from rational to reflexive.

Key Words: Reflexive Public Administration, Reflexive
Administrative Law, Reflexive