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IL DIRITTO ROMANO NELLA CIVILISTICA EUROPEA. CONVEGNO INTERNAZIONALE (MILANO, UNIVERSITÀ CATTOLICA DEL SACRO CUORE, 16 E 17 GENNAIO 2014)

On the 16th and 17th of January 2014 a study workshop was held at Università Cattolica del Sacro Cuore of Milano on the subject "Il diritto romano nella civilistica europea". The participants were, besides the organizer Lauretta Maganzani of the Università Cattolica del Sacro Cuore of Milan, Frits Brandsma, of the Rijksuniversiteit of Groningen, Dmitry Dozhdev of the Moscow School of Social and Economic Sciences, Francesco Giglio of the University of Manchester, Gábor Hamza of Loránd Eötvös University of Budapest and Cosima Möller of the Freie Universität Berlin.

The speakers are members of an international research group called "Groningen Circle" from the city in which the group was formed and both the first meeting and an international conference were organized by the group itself (*Understanding Legal Reasoning – A Role for History and Philosophy in Modern Private Law* – Groningen, 11 and 12 September 2014). The Circle aims to explore the influence which Roman private law has exerted upon the development of the modern civil law, both in the civil law and in the common law countries. This special interest in Roman law is justified by the specific knowledge of the Circle members but of course this does not mean that scholars, in their research, do not take into account the manifold evolution of western law through statutory law, customary practice, legislation, and so on.

The role played by Roman law in the creation and development of modern legal systems in civil law countries is so self-evident that it does not require any lengthy explanation. The phenomenon of the 'Reception of Roman law' in the legal systems of the civilian jurisdictions is an historical fact. However, Roman law has had a profound impact even in those countries where the Reception did not directly take root. A simple search in any legal database will confirm that, in a non-civilian system such as the English common law, the judiciary is well aware of issues relating to Roman law. Thus, in the English case of *Foskett v. McKeown* (2001) (House of Lords), the Law Lords expounded the pertinent Roman law principles and there was even disagreement on some Roman law concepts.

This notwithstanding, it is known that even in those countries where Roman law has traditionally been a strong subject, such as Italy, Germany and the Netherlands, there is a palpable loss of interest, which can be

explained with the discontinuity of the traditional connections between Roman law and civil law. This decline should be opposed, because – independently of the damage caused to Roman law as a scientific subject – it impacts negatively on the legal sources available to law-makers, academics, and practicing lawyers – and ultimately on the quality of their legal analysis.

In European universities, in particular, the dialogue which, for many centuries, brought together Romanists and civil lawyers has progressively dried out. The project of the Circle would contribute to reverse such trend, a consequence of which has been the indisputable fact that the study of Roman law is neglected in many legal systems. Consider, for instance, the case of France, where the number of Roman law scholars is gradually decreasing, but also think of Italy, where proposals are pending to remove Roman law studies from Law Schools curricula. Moreover, if in the past in the UK academics used to occupy a relevant place in the study of this subject – for instance Professor Peter Birks, an eminent Romanist and one of the fathers of the modern English law of unjust enrichment, drew heavily on Roman law for his taxonomy of the law of obligations which has hugely influenced English law – now the number of jurists conscious of the importance of the historical perspective of Roman law has been drastically reduced.

In our opinion the excessive specialization on the part both of the civil lawyers and Roman law scholars has been one of the main causes of the progressive detachment of the two subjects. Nobody can deny that one has to specialize in one's own field, but we must never forget that law is a complex, but unified and coherent system. Therefore, this project aims to counter the excesses of specialization through the reinstatement of concerted action between Romanists and private lawyers. The hope is to raise awareness among law scholars of the idea that, both in academia and in practice, the private lawyer should be conscious of the significance of historical and methodological studies and their impact upon modern legal research, and skilled in the application of the Roman methodology to current legal issues. From the point of view of the formation of new generations of lawyers, it should be stressed that the goal of this project is not simply to raise awareness among law scholars of the opportunity to improve the students' knowledge of Roman law, but rather to enable them to apply the newly acquired methodological skills to private law analysis both in academic research and in an operational, practical context. Our project represents a significant departure from the trend towards specialization, but it is not the participants' intention to substitute specialism with eclectic studies.

To sum up, the aim of this project is to foster the – currently very limited – interaction between private lawyers and Roman lawyers to prepare a fertile terrain for the exchange and development of new ideas.

In this fashion, the civil lawyers will acquire new analytical skills which will be applied to current legal investigations. The ultimate goal is the advancement of legal knowledge in private law – both at academic and at practising level. In particular, the application of the legal reasoning inherited from the Roman jurists will help achieving coherence in the legal reasoning, so that similar cases will be treated alike.

The application of the suggested method does not aim to negate the relevance of the differences which characterize each European system despite the common European roots. On the contrary, these differences can be more easily explained if they are placed into a common context which highlights their shared origins. Beyond the European private law, this method would be valuable at least in two other areas of law: in comparative law, because the method is value-free and offers the ideal tool to analyze the legal systems from a neutral position; and in the investigation of the mechanisms of a domestic legal system, because it enlarges the weaponry of the legal operator by supplying new perspectives and novel tools to analyze legal institutions.

Understanding what we are and how we have reached a given stage of cultural development is a necessary step to understand ourselves, which is the ultimate quest of all science.

Frits Brandsma
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Gábor Hamza
Lauretta Maganzani
Cosima Möller