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A Laboratory of Cultural Synthesis: the Institute of Roman Studies and the Fascist Myth of Rome

The lecture aims to illustrate some of the initiatives promoted by the Institute of Roman Studies during the fascism. Founded in 1925, its goal was to highlight the universal civilizing role of Rome over the centuries. During the 1920s, and especially in the 1930s, the Institute of Roman Studies involved the most prominent Italian scholars in its activities and gradually became one of the most prestigious Italian cultural institutions, fully incorporated in the fascist political culture and distinguishing itself as a fundamental place of encounter between catholic, nationalist and fascist cultures.

The lecture, result of an ample research carried out in the historical archive of the Institute of Roman Studies, aims to particularly examine the key role of the myth of Rome during the fascism. It will analyze some fundamental initiatives (for example the celebration of the 2000th anniversary of Virgil, Horatio, Augustus and Livy's birth, the International Congress of Roman Law, the five National Congresses of Roman Studies and the series of 30 books History of Rome, and furthermore the initiatives concerning with the glorification of Christian Rome), highlighting how the Institute of Roman Studies aimed at supporting the fascist politics, showing a continuous parallel between Mussolini's action in domestic, foreign, institutional and cultural politics and the Ancient Imperial Rome. But, at the same time, the Institute aimed at orienting the political culture of the regime trying to direct it towards a conciliatory synthesis among different political cultures (such as the catholic, the nationalist and the fascist ones). In this way, it provided an original idea of European New Order that started with the ancient Rome but, above all with the rapprochement to Nazi Germany, was actually oriented towards an increasingly clear cultural and political action to catholicize the fascism and the nation.

Based on these considerations, analyzing the initiatives of the Institute of Roman Studies provides very interesting perspectives to look not only at the historiographical problem of the relationship between fascism and the intellectuals, between the regime and the Romanists and, moreover, between fascism and Catholic world, but also to observe the encounter, the clash, the fusion and the deep mutual influences between two typically modern phenomena produced by mass politics: the sacralization of politics and the politicization and ideologization of religion.

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Three letters by Paul Koschaker to Salvatore Riccobono: considerations on Roman law at the time of crisis

Paul Koschaker (1879-1951) spent a considerable part of his academic life trying to restore dignity to Roman law and its teaching, in particular at the time of the Nazi regime, and in his works he constantly stressed the role of Roman law as a foundation of a common European legal culture.

The aim of this paper consists in analysing Koschaker's suggestions to solve the crisis of Roman law, not only as they emerge from the two well-known works *Die Krise des Römischen Rechts und die romanistische Rechtswissenschaft* (1938) and *Europa und das römische Recht* (1947¹), but also from some archival documents. Thanks to the archival research I had the opportunity to carry out at the University of Palermo (and thanks to Professor Mario Varvaro), I've found three letters, which Paul Koschaker wrote to the colleague and friend Salvatore Riccobono. The three letters, written in different years (1939, 1940 and 1949), offer us a better perception of Koschaker's ideas about the crisis of Roman law and the solution he suggested to solve it. Furthermore, the first two letters seem to be a sort of reply to the strict critiques he received (in particular, from some Italian scholars) for the well-known formula of the *Aktualisierung* of the teaching of Roman law, summed up in the motto "*Zurück zu Savigny!*", and proposed for the first time in *Die Krise des Römischen Rechts und die romanistische Rechtswissenschaft*. At the same time, these archival documents give us the opportunity to try to reconstruct a more accurate overview on Koschaker's position toward the Nazi regime.

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Allusions to contemporary history in Francesco De Martino's, *Lo stato di Augusto* (1935 and 1936)

It's interesting to compare two editions of the essay by Francesco De Martino, *Lo stato di Augusto* (Napoli: both by G. Barca publisher) which appeared with different subtitles (*I. La costituzione*, in 1935 and then *Introduzione*, in 1936) with several differences (in contents, bibliography, notes) visible from the first pages (one can find the same arguments transformed again, about 30 years later, in *Storia della costituzione romana*, vol. IV.1, Napoli: Jovene 1962). Some quotations (in particular of De Francisci and Arangio-Ruiz, who are praised in some cases: ed. 1935, p. 11; ed. 1936, p. 8), and especially references to classical political thought (the republic of Plato for example, ed. 1935, p. 8: cf. ed. 1936, p. 4) and also interpretations of the powers of Augustus compared to Roman tradition and contemporary history (ed. 1935, p. 21) are different in 1935 and 1936. They could be influenced by Italian (or European) political situation of the 30's or could contain allusions to it, as one can try to demonstrate with other writings of this scholar. Many of those undertones disappear in *Storia della costituzione romana* but it can be useful to go back to their motivations. It's possible in this way to reconstruct part of De Martino's position towards fascism and to some famous Roman Law scholars who were (in some cases) bound to fascism. In the years of war in Ethiopia and of Augustus' bi-millenary celebrated during fascism (also by some academics; while a few years later Syme, without considering constitutional aspects, proposed a critical interpretation of Augustus' politics) De Martino doesn't make fawning (although it was the period of greatest consent to Mussolini) and tries a scientific analysis of historical facts, limiting to the minimum ideological or political undertones and references (in particular after 1935).

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Wirkungsgeschichte. The long World War and legal historical hermeneutics

This presentation analyzes the interaction and correspondence between Franz Wieacker and H. G. Gadamer. Hans-Georg Gadamer was the leading philosopher of hermeneutics in 20th century. His thoughts on the basis and applying of the interpretative act had a decisive influence on scholars across the fields in human sciences, also on legal historians. One of the most eager proponents of the gadamerian philosophy was Franz Wieacker, who in turn has been considered as a major figure in shaping the theory of post-war legal history in continental Europe. Gadamer's influence is eminent especially in the 2nd edition of Wieacker's masterpiece "Privatrechtsgeschichte der Neuzeit" published in 1967.

Although Wieacker accepted and used many of Gadamer's thesis on understanding and reading the past texts, he nevertheless was eclectic with respect to the latter's view on the preconditions and purpose of the work of a historian. The methodological disagreement between these two scholars appears explicitly on the matter how Wieacker used Gadamer's concept of "Wirkungsgeschichte", which can be defined as the temporal relation of a scholar to his/her subject matter. In practice, as Gadamer emphasized the reflective process between a historian and the past phenomenon he/she studies, rejecting the possibility that historiography could reveal any unchangeable "truths" about the world, Wieacker maintained that a properly enacted method enabled the historian to extract timeless (übergeschichtliche) "justice" from the past. (Avenarius 2011)

In this essay I analyze the correspondence between Wieacker and Gadamer as well as the scientific texts they wrote on legal historical hermeneutics. Yet my intention is to go beyond the obvious influence they had on each other, and rather ask; Why Wieacker, while enthusiastically agreeing with and adapting large parts of Gadamer's thoughts, passionately opposed the idea of a relative academic historiography, which however is the core idea of Gadamer's hermeneutics? (cf. Gadamer 1959)

In order to explain this contradiction, I present three possible prerequisites (and following Gadamer philosophy of interpretation, name them as prejudices, Urteil) based on Wieacker's letters, life history and previous scientific work. Finally I argue, that whatever of these reasons one prefers, the major explaining factor is Wieacker's explanation for the turmoil of the

previous decades. By this turmoil I don't only mean the 2nd World War or the National-socialistic attack on established legislation, but rather Wieacker's experience of the dissolution of national social order. This phenomenon, although became visible and concentrated on the events of 1933 or 1945, extended beyond the political sphere of the Nazi-regime in time and depth, thus I call it The Long World War.

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Coming to Terms – Romanist publication under National Socialist rule, 1933-1945

The proposed paper consists primarily in a systematic analysis of Germany's foremost periodical on Roman law, the Romanist section of the *Zeitschrift für Rechtsgeschichte* ("Savigny-Zeitschrift"). It assesses shifts in publishing behaviour and scientific discourse among Romanists occurring between the advent of the Third Reich and its demise.

One such change pertains to the group of people contributing to Romanist publications, as a series of the discipline's most prominent exponents were forced to withdraw from the public academic scene and ultimately emigrate on account of their Jewish ancestry. Another shift was brought about by those who took their place and those who had retained their previous positions. As it was the proclaimed aim of the NSDAP to purge the German legal system of its "materialistic" Roman heritage, they were under pressure to find ways of adapting to adverse ideological circumstances.

The projected paper examines the means, modes and extent of adaptation. It seeks to give an account of Romanist literature under National Socialist rule as exemplified by the *Zeitschrift für Rechtsgeschichte*. To that end, it adopts two main perspectives: One is concerned with the published text, the other with the personal fate of those involved in its production. Accordingly, the paper provides a text analysis, tracing changes in the choice and framing of topics, in the use of vocabulary and in citation practices. At the same time, it draws on biographical data about the journal's editors and contributors. In order to put the resulting findings into context, the study is supplemented by comparisons with other contemporary publications within the field.

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The legal culture of the Romanist who wrote the Italian Civil Code under Fascism: An analysis based on the “Fondo Vassalli” of the Italian Senate Library

Every Italian law student knows that the 1942 Civil Code can be considered as the masterpiece of the “exceptional mind” of Filippo Vassalli, coordinator of the entire project and author/supervisor of several parts of the code (e.g. marriage, succession, property, obligations). Quite well known is also that, before being a civil lawyer, Vassalli was a Romanist, a scholar of Moriani first and of Scialoja afterwards. Rather unknown, otherwise, is that his private library has been donated to the Italian Senate Library by his son, Giuliano Vassalli, a hero of the Italian Partisan War and a lawyer himself: 364 works of Roman and Canon Law dated 16th-19th century (“Fondo Vassalli”).

Vassalli’s legal-historical background explains his distinction between civil law and code, explicated in the famous 1930 speech “Arte e vita nel diritto civile”. According to Vassalli, civil law is the result of the work of generations of lawyers, an “artwork” that shapes our lives while the code is only an abstract (but useful) representation of reality. The straightforward support of the autonomy of private law from public law as the result of a millennial development has been interpreted as the technical mean by which Vassalli’s criticism against dictatorship revealed itself. The racial laws introduced in Italy in 1938, for example, limiting the liberty of the spouses for reasons related to race, overcame – according to Vassalli - the boundary between private law and public law. After the end of the war, he did not avoid a self-examination in his “Esame di coscienza di un giurista europeo” (1951).

The aim of this paper is to retrace Vassalli’s interpretation of private law as autonomous from public law and, as a consequence, his relationship with the fascist dictatorship starting from the analysis of his legal-historical private library.

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Approaching Roman law from an antiformalist perspective. The case of Riccardo Orestano (1909-1988)

The work of Riccardo Orestano belongs to the antiformalist turn of the 1930-50s. It contributed — and for Italian Romanists, was the chief point of reference — for opening a path for Roman law which was alternative to Pandektism and its epigones, whose failure could not be separated in those years from the horrors of the war and the destruction of the rule of law. Orestano stressed that no meaningful legal science can be conceived without history, and he enshrined this idea in his most well-known work, the *Introduction to the historical study of Roman law* (1953), which had a deep impact in legal science, also beyond the boundaries of his discipline.

Three ideas were particularly important in this work:

- i) the object of legal study is experience, not legal rules;
- ii) the separation of the text of Roman law from the plural Romanist traditions stemming from it;
- iii) the contribution of a historical approach to the understanding of today's legal world.

The purpose of this paper is to test the vitality of those ideas, firstly placing them in the context of other strands of antiformalism of that time, looking for the dialogue with contemporary authors (e.g. Hermann Kantorowicz, David Daube, and Fritz Schulz); and, secondly, in reference to today's need for rethinking the main themes and methods of the historical understanding of law, going beyond the erosion of the old formalism and the frailty of post-modern scepticism.

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Refuge Roman Law? Life and Work of a Hungarian Scholar, Elemér Pólay

In the 19th century, the German Pandektistik developed probably the most sophisticated civil law system using patterns of ancient Roman law. The structures and main principles of the Roman jurists became the symbol of a legal system based on the idea of personal independence in a liberal economic environment.

In Hungary, until 1959 there was no civil law code—university curricula announced lectures in Roman law as basic education in private law at all. Since 1949, the communist party ruled the country; the political system can be characterized—without any doubt—as a dictatorship. Teaching and studying Roman law became an unpopular business. However, it remained throughout the whole communistic period a mandatory course in our legal education. How was it possible? Which considerations and compromises could lead to this effect? How could manage esteemed scholars like Pólay to comply with the requirements of the political power?

In my contribution, I try to shape the uneasy life of a highly talented Hungarian Romanist, Elemér Pólay. He tried to save traditional European values, learned in Berlin with Paul Koschaker before World war II—and how he tried to transmit his knowledge to his pupils. However, there are chapters in his oeuvre, which seem to be influenced by his social and political environment. For a better understanding of a contradictory period it is necessary to explore his work in its context.

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Antonio Guarino: a young academic through fascism

The paper aims to describe the early academic vocation of Antonio Guarino (1914-2014), prominent Italian romanist of XX century. The relationship with fascism is remarkable because Guarino grew up attending Italian fascist school and University and began his career as judge and then as professor of Roman law in the late Mussolinian era. The historiographical perspective is peculiar and especially attractive because Guarino narrates in several places of his work the times of his education and academic beginnings not hiding the political constraints, his contact with the National Fascist Party (PNF) and his activities within the university organizations of the regime (GUF) in Naples. In the telling does not lack the description of the bond with his anti-fascist teachers of Roman law (Siro Solazzi and Vincenzo Arangio-Ruiz) and the gradual withdraw from the totalitarian ideas, especially in connection with the adoption of racial laws in 1938. It seems to me that the experience of Guarino, who also spent a study period in Nazi Germany, might usefully be observed through the historiographical category of “long journey through fascism”, coined by Ruggero Zangrandi in a famous book (*Il lungo viaggio attraverso il fascismo. Contributo alla storia di una generazione*, Milano, Feltrinelli, 1962). Since the narrative is jagged and spread in numerous writings, not strictly biographical and often dedicated to topics of Roman law, for the purpose it is necessary a deep knowledge of Guarino’s work (a profile of the scholar written by me is going to be published as obituary in the *Savigny-Zeitschrift* 2015) and is particularly useful the bibliography of his full scientific *opus*, published in *Index. International Survey of Roman Law* 42 (2014) p. 25-71 (by R. Mazzola).

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With Riccobono against National Socialism and Real Socialism: Two Apologies of the Roman Law in the Totalitarian Era

Paul Koschaker considered Salvatore Riccobono (1864-1958), prominent Italian legal scholar, as an important predecessor of his programme of renovation of the European legal culture after WWII on Roman foundations. Not only did Koschaker dedicate his *Europa und das Römische Recht* to Riccobono, but he also praised him as “the world’s most representative Romanist”.

As is well known, National Socialism treated Roman legal tradition as „racially corrupt“, i.e. impregnated by „Jewish-Oriental“ elements. This ideological disqualification partially arose from a misuse of the results of the interpolationist approach of Roman Law scholars, who distinguished „pure“ classical law from „oriental“ postclassical interpolations.

Riccobono strongly opposed this approach as „nichilismo critico-storico“. He insisted that Justinian’s *Corpus Iuris* was Roman in spirit, rather than Hellenistic or Oriental, representing the greatest universal legal tradition which developed organically through its internal evolution and not external revolutions, and considered that *ius Romanum* was not only a historical discipline, but an ideal „sistema del buono e del giusto“.

During WWII, national socialist ideology was highly influential in Croatia, arising to an urgent need to defend the Roman Law from political attacks. The first apology, published in 1942 by professor Marijan Horvat (“Roman Law in the Today’s World”), defied the Nazi opinion about „racial corruption“ using Riccobono's anti-interpolationist approach and his concept of internal evolution of the Roman Law.

After WWII, another totalitarian system was imposed in Croatia: communism. There was a political plan to reduce the Roman Law to a small chapter of the so-called „General legal history“ and thus make it irrelevant for the new legal order. In 1951, Horvat wrote his second apology („Roman Law in Our Legal Studies“), again using Riccobono, i.e. his thesis that Roman law is not only a historical discipline, but systematic legal subject *par excellence*.

Based on the aforementioned facts, the aim of this paper is to examine how Riccobono's interpretation of the Roman Law was applied in order to defend this discipline from two different totalitarian ideologies: National Socialism and Real Socialism.

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Hegel's conception of Roman law as a political weapon during the Fascist regime

One of the most interesting intellectual debates during the Fascist regime in Italy was about the political meaning (and potential applications) of G. W. F. Hegel's philosophical system. Important thinkers and politicians as Benedetto Croce or Giovanni Gentile played a crucial role not only in spreading the Hegelian philosophy in the educational system and general culture during the regime, but also in creating an intellectual debate about a liberal, revolutionary or conservative interpretation of works as the *Principles of Philosophy of Right* or the *Phenomenology of Spirit*. Hegel's vision of the Roman world was a very important issue of this debate, given the explicit neo-Roman symbolism of the Fascist ideology. In particular, Hegel's conception of Roman law (as found in the *Preface* of the *Philosophy of Right* or the section "Rechtszustand" in chapter 6 of *Phenomenology of Spirit*) were crucial for this debate, because Hegel's strong criticism against central aspects of the Roman law (considered as an abstract, purely private and violent one) was very problematic for philosophers as Gentile, who tried -both in his philosophy and in his political action- to make Hegelianism and fascism compatible. On the other hand, it was a political weapon for a political and intellectual opposition to the Regime for Croce and other anti-fascist Hegelian philosophers. Therefore, the task of understanding the conceptual role played by the Roman law in the Hegelian works, and more precisely in the *Phenomenology of Spirit* and the *Principles of Philosophy of Right*, is necessary not only in order to understand Hegel's reception of the classical culture and his reaction to certain events of his time, such as the French Revolution, and also not only in order to explain his political evolution from republican and Francophile positions to his mature thinking; from the standpoint of "history of reception", his criticism against certain conceptual aspects of the Roman law is crucial in order to understand the aforementioned debate about the political interpretation of his philosophy between (particularly but not only) Croce and Gentile during the Fascist period.

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Contemporary politics in Mommsen's Staatsrecht

Theodor Mommsen's „Staatsrecht“, published between 1871-1888, is commonly regarded as a timeless masterpiece, free from contemporary political allusions and shortsighted propaganda. Its prosaic style and juridical notation seems to exclude any historical context. However, some courageous attempts have looked to re-interpret Mommsen's work as being „filled to the bursting point with politics“ (Egon Flaig). Whilst on a methodological level references to contemporary theories of private law have already been emphasized, the broader political context of Mommsen's work remains undiscovered. Inspired by the methodological framework of „transformation theory“, my paper aims to analyse the different aspects of Mommsen's political theory. Far from being a purely scientific analysis of his subject, Mommsen actually uses Rome as a model for his own time. Whereas, on the one hand, Republican Rome represents an example of original European statehood, on the other it fails to fulfil the promise of nation building and, therefore, does not equate with the political ideology of the passionate 48er. Rome's lack of a representative voting system, along with the absence of a „middle class“ are further demerits in Mommsen's view. At the same time, however, Mommsen uses Rome's socio-structural elements to communicate suggestive messages to his bourgeois readers. Above all, it is the close relationship between political commitment and social prestige which corresponds with Mommsen's own „Lebenswelt“. As a self-proclaimed animal politicum, he adapts one of the main peculiarities of the Roman constitution - the „political integration of society“ (Aloys Winterling). On a different level, though, Mommsen's analysis of the Roman dialectic between the sovereignty of the people and the strong imperium of the magistrate, resp. princeps can also be put in context with contemporary debates on sovereign rule and „great men“. Indeed, his idealization of Caesar and Augustus as „democratic monarchs“ reflects Mommsen's critical assessment of Bismarckian rulership. Overall, therefore, my paper looks to uncover those hidden aspects in Mommsen's historical work which were set up to influence and unsettle the political debates of his own time.

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Refugees and Collaborators: Romanists Adapting to Turbulent Times 1934-1964

The purpose of this paper is to study the curious emergence of Roman law as the foundation of European legal unity during the afterwar period. Central characters in this transformation are scholars like Franz Wieacker and Paul Koschaker, who would, based on very different positions, be instrumental in the coming resurgence of both Roman law tradition and the idea of a shared European heritage in law. However, this process would not have been possible without the influx of ideas from a group of emigré scholars like Fritz Schulz, who would be instrumental in delineating the universal value of Roman law as the foundation of European legal scholarship through ideas like the independence of law from politics. This unlikely combination of ideas helped Roman law to present itself as a foundational discipline, one that contained in a nutshell the values and ideals of liberal European law.

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Vertical Flights: National and International Uses of ‘Classical’ Pasts in Rome and Athens

This contribution discusses notions of heritage and history in national and international uses of antiquity, 1870–1950. Using a phrase from illustrious Italian filmmaker Federico Fellini, who contemplated the horizontality of Rome, and the city as “the ideal platform for fantastic vertical flights” the project confronts national and international politics in science and scholarship carried out at the foreign schools in Rome, and, for example, at the Fascist Istituto di Studi Romani.

This contribution builds on my work on the history of the ‘foreign schools’ in Rome and Athens, national scholarly institutions dealing with archaeology, art history and history, and, by extension, with the shaping of formation and with hands-on education regarding the ‘classical’ in its manifold guises. These foreign schools were established as figureheads and instruments of national scholarship. In Rome, the foreign schools were linked with the Franco-Prussian war that coincided with the Roma Capitale project and with the German takeover of the Institute for Archaeological Correspondence, first established in 1829. Classical formation has for nearly two centuries been channeled through the foreign schools of archaeology and art history in the two cities, with different narratives and trajectories regarding “roots” and the uses of the past as a result, not least during the totalitarian trauma of the 1930s and 1940s.

The project also deals with notions of scholarly prestige and of international collaborative ideals in a way that has not been done previously. One way of addressing the potential of collaborative undertakings is by discussing their funding. The national roots of classical scholarship, this project argues, merit further attention, not least for a richer understanding of the study of the ancient past itself than has hitherto been the case, as well as enabling international advances in mobilising uses of the past.