

Conference “Using the past: Romanists, totalitarianism and its legacy” organised by research project *Reinventing the foundations of European Legal Culture 1934-1964* at Villa Lante al Gianicolo, Institutum Romanum Finlandiae (Rome), 22-23 October, 2015.

The project “Reinventing the Foundations of European Legal Culture 1934-1964” (foundlaw.org) organized its third international conference in October 2015 in Rome, following previous successful conferences in Helsinki in 2014 and 2015. The themes of the conference revolved around the influence of dictatorial or totalitarian regimes, especially in Italy and Germany, on Roman law scholars at the time as well as later, and the repercussions that the study of Roman Law under the regimes had on the Law in force at the time.

The first keynote lecture was held by Lorena Atzeri (Università Statale, Milano), who spoke about Francis de Zulueta, a famous Roman law scholar in Britain. Mostly known through his editions and translations, de Zulueta played a crucial role in aiding refugee Romanists to escape Nazi Germany. In her presentation, Atzeri pointed out that while de Zulueta had been unequivocally against Nazism, his relationship between other forms of totalitarian rule were more nuanced. As a conservative immigrant from Spain, de Zulueta was a practicing Catholic, a problematic position in British academia. During the Spanish Civil War, de Zulueta would side strongly with Franco’s cause, while much of the academic community supported the Republican side. De Zulueta wrote numerous op-eds in the Times emphasizing the distress of Catholics. While Germany was an ally of Franco, de Zulueta had no problems in opposing the Nazi cause and to aid enthusiastically the people fleeing Germany.

In Session 1, Frederick Whitling (European University Institute) described the history of international scholarly institutions in Rome and Athens and the way that ‘Classical’ pasts were used for identity politics and to refashion national interests. Whitling argued that while national institutes such as the Swedish school in Rome were founded as purely scientific institutes, in practice the way they co-operated reflected political concerns. In his paper, Simon Strauß (Berlin Humboldt University) explored how contemporary politics are visible in the *Staatsrecht* of Theodor Mommsen. Mommsen was also politically active and his works had a contemporary significance and issues like the nature of political leadership, nationalism and democracy were discussed through the past, involving criticism of German policies. Ville Erkkilä (University of Helsinki) explored the historical methods and views of Franz Wieacker. Erkkilä claimed that while Wieacker had been follower of Gadamer, after the war

his began to develop his own idea of *Vorverständnis*. While his idea of European legal history had been one of the advance of rationality, he claimed that justice was equally a feeling of justice. This paper resulted in a heated discussion, as the audience explored the character of Wieacker through personal recollections and reflections of his writings.

The first speaker of Session 2 was Sergio Castagnetti (University of Cassino and the University of Sannio). The presentation, entitled *Allusions to contemporary history in Francesco De Martino's Lo Stato di Augusto (1935 and 1936)*, dealt with the differences between the two editions of *Lo Stato di Augusto*, written by De Martino and appeared in 1935, and republished in 1936, with some modifications. One of the most relevant changes concerns the part of the text in which De Martino enhances the figure of Augustus, present in the 1935 edition, but lacking in the 1936 one. Furthermore, Castagnetti underlines the relevant references to Pietro de Francisci in the 1935 edition.

The second presentation, *Approaching Roman law from an antiformalist perspective. The case of Riccardo Orestano (1909-1988)*, was given by Adolfo Giuliani (University of Perugia), on the approach of Riccardo Orestano to the study of Roman law and the problem of anti-formalism, in particular between 1940-1960. The presentation dealt with three main questions: what a legal tradition is, Roman law as a tradition, and the debatable idea of attacking Roman law as a tradition.

The last speaker of the session was Carla Masi Doria (University Federico II di Napoli), with a paper dedicated to Antonio Guarino (*Antonio Guarino: a young academic through fascism*). Professor Masi Doria depicted the experience of the Roman law professor under Fascism, beginning with a quotation of the book by Zangrandi, *Il lungo viaggio attraverso il Fascismo*, in which Guarino's name appears in the appendix on the "Littoriali". Nonetheless, Masi Doria stressed the significant connections, that the young Guarino, a pupil of Siro Solazzi, had to many opponents of the regime and, in particular, to Vincenzo Arangio-Ruiz.

The second day started with Cosimo Cascione's (Università Federico II, Napoli) keynote lecture, *The Idea of Rome: Political Fascism and Fascist (Roman) Law*. Cascione elaborated the pursuit of the fascist scholars and lawyers to construct a continuation between the ancient ideals and modern goals. The alleged tropes, virtues and moral evaluations of the Roman world were used to justify the fascist and racial acts of the modern state. Thus, in analyzing the legal science of Mussolini's Italy, one needs to contextualize its ontological premises in a

dual way. First, the fascist ideals, which guided the modern legislators and legal scientists, subjected legal theory to pragmatic value. The contemporary legal science has to be scrutinized in comparison with the concrete purposes of the Mussolini's administration. Second, the ancient texts to which fascists often referred, were also originally written to support an ideal of a virtuous citizen. Such ancient ideal of a perfect Roman was as artificial in its own time as was the fascist effort to distinguish an archetype of a (masculine) fascist citizen. The talk evoked discussion about the motives of 20th century legal scholars and the consequent settling of the legacy of fascist society in the 1950s and 60s.

The first paper of Session 3, *With Riccobono against National Socialism and Real Socialism: Two Apologies of the Roman Law in the Totalitarian Era* by Marko Petrak (University of Zagreb), focused on career of Marijan Horvat, most important 20th century Croatian Romanist. It showed how Italian Romanists, including Riccobono, influenced Horvat's work and helped to maintain the presence of Roman law in the universities' curricula during both fascist and communist era.

The second paper of the session was by Tommaso Beggio (University of Helsinki), *Three letters by Paul Koschaker to Salvatore Riccobono: considerations on Roman law at the time of crisis*. The paper focused on Koschaker's effort to solve the crisis of Roman law at the time of Nazi regime, by looking at three of his letters to Riccobono. The letters show not only Koschaker's response to the critique of his famous motto "*Zurück zu Savigny!*" but also help us understand his attitude towards the Nazi regime. Most of all however, the letters show influence Riccobono's thought and works had on Koschaker.

The first presentation of Session 4 was by Stefania Gialdroni (University of Roma Tre and Palermo), *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*. The topic was Gialdroni's project "BookAlive" and the work of Filippo Vassalli. The project aims to reconstruct Vassalli's writings thanks to the documents found in the Italian Senate Library and in Vassalli's personal library ("Fondo Vassalli"). Vassalli was described by his colleagues as an authentic humanist, able to separate law and politics and not enthusiastic about the idea of the new codification. Nonetheless, he was the author or the supervisor of many parts of the new Codice Civile of 1942.

The presentation, *Coming to Terms – The Study of Roman law between Adaptation and Collaboration, 1933-1945* by Thomas Finkenauer and Andreas Hermann (University of

Tübingen) focused on *Zeitschrift der Savigny-Stiftung (Romanistische Abteilung)* during the Nazi regime. The famous journal was strongly “Aryanised” with the new editors appointed after Rabel and Levy’s expulsion. Leopold Wenger substituted Ernst Rabel and Hans Kreller, a fierce supporter of the regime, took Ernst Levy’s place. Paul Koschaker became co-editor with Kreller in 1936. During 1933-1945, no articles nor works written by Jewish authors were published or reviewed in the *Zeitschrift*.

The last speaker of the session was Valerio Rocco (Universidad autónoma de Madrid). The topic of the paper, *Hegel’s conception of Roman law as a political weapon during the Fascist regime*, was the quarrel between Benedetto Croce and Giovanni Gentile on the interpretation of Hegel’s philosophy. According to Rocco, in his 1929 work “*Etica e politica*”, Croce tried to resume Hegel’s conception of Roman law, in order to underline the violence characterizing the Roman world and to criticize Gentile himself and his idea of *romanitas*. Responding to Rocco, Cosimo Cascione stressed the fact that both Croce and Gentile were in strong opposition to Bonfante and Roman law between 1916-1917.

In the 5th and final session, the first presentation was given by Donatello Aramini (University of Cassino and Southern Latium). The topic was the Institute of Roman Studies and the fascist myth of Rome. The main aim of this institute was to create a synergy between the classical histories of Roman law and Catholicism, in the service of the fascist notion of *romanità*. Questions were asked about the role of the church and the relation to several foreign secretaries.

Éva Jakab (University of Szeged) spoke about her own Doktorvater, the Hungarian Romanist Elémer Pólay. Himself a Szeged professor, he experienced not one but two large revolutions during his lifetime, first the Nazi conquest of Hungary, and second the establishment of the Communist regime. Both had had an effect on his scientific work – writing about Nazi theory and Roman law already in 1939, giving Soviet inspired courses, and publishing about the comparisons between Roman law and Marxist ideology after 1949. In the ominous year 1956, he was a vice-rector of the university.

The closing speaker of the conference, Kaius Tuori (University of Helsinki), gave an overview of the content and purposes of the “Reinventing the foundations of European legal culture 1934-1964” project, detailing the differing roles and perspectives of the five professors of Roman law that form the objects of study. The primary goal of the project is to trace the lineage of ideas and notions derived from Roman law, and how these helped shape wartime and post-war legal and political conceptions. A usage of the past, indeed.