

# THE SHADOW OF ITALIAN LEGAL THOUGHT: FROM THE COMPARATIVE TO THE INTERDISCIPLINARY

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The goal of this special issue is to unveil how the Italian intellectual, legal and cultural tradition has influenced the education, research and ideas of Italian legal scholars working outside of their homeland and how the exchange with Italian thinkers has impacted the work of intellectuals outside of Italy. It is a fascinating edition that explores a range of topics from the more classical to the more experimental. It allows us to ponder the Italian influence in legal thought both in historical and more contemporary terms. It is an invitation to think about the evolution of legal theory and the tools it grants us to interpret current problems or dilemmas. It is also a poetic exercise in nostalgia as Italians think about what it means to be an Italian living and teaching abroad as well as the long-lasting effects that the country, its cultivation of beauty and its sense of a good life, have upon a foreigner. In the following paragraphs I will briefly lay out what I understand are the main contributions and insights.

Italian intellectuals have furnished significant insights to legal theory, casting a shadow across time and space. The Italian style of thinking crucially influenced criminal law, corporations, civil procedure and labor law. From a theoretical perspective this includes the revival and reinterpretation of Roman law during the Middle Ages, the structuring of private law around the topics of clarity, coherence and conceptual rigor. After World War II, Italian intellectuals have been contributing to the exploration of the excesses of formalism and positivism and foregrounding the idea that law is a product of interpretation, language, and historical context. More interdisciplinary perspectives have included the study of law as a linguistic artifact that is shaped by diverse political and philosophical ideologies.

Within these contributions, the Italian School of Comparative Law has provided a useful lens to explore and thickly describe law as an exercise of interpretation that has a specific cultural background. This description is deployed in contrast to a different legal regime to celebrate the Italian way of thinking, shed light over an ideological bias or incorporate a different way of solving an issue. This exercise is beautifully described by Giorgio Fabio Colombo and Andrea Ortolani in their piece:

‘Comparative law is one of those areas of legal research where a mindset open to surprises, counter-intuitive hypotheses and unexpected findings is essential in order to engage in a meaningful analysis’.

Several contributions advance these ideas, including Maurizio Borghi’s piece which celebrates the ‘Italian way’ of interpreting parody, which allows him to explore in broader terms what it means to copy; Isabelle Boucobza who critically studies the goal of establishing French presidentialism in Italy to unveil its ultimate political goals and Katalin Keleman and Filippo Valguarnera’s piece that proposes a dialogue between the continental legal tradition and Nordic legal pragmatism. All these articles ultimately celebrate the value of comparing.

But the comparative school also provides tools to unveil overstated conceptual distances in structures or content and to debunk exotic descriptions of legal systems,

ultimately signaling similarity more than difference. Here we find the contributions of Giorgio Fabio Colombo and Andrea Ortolani who critique Japanese law's difference and foreignness; Guido Comparato, arguing that traditional legal cultures cast their shadow in transnational legal contexts and Carlo Vittorio Giabardo's study on the Peruvian reception of and dialogue with Italian civil procedure or Salvatore Mancuso's revisiting of Italian colonialism in China or Ronaldo Macedo's exploration of the influence of Mauricie Hauriou and Santi Romano in Carl Schmitt's institutionalist turn. Finally, and within this effort to dialogue with other legal regimes, we also find the constant specter of the EU and the US, Silvia de Conca's piece about the horizontal and vertical regulation regarding law and technology is a perfect example.

Another area of law where Italian legal academia has been central is in progressive private law. Progressive private law foregrounds the liberal bias (individual autonomy, freedom of contract and private property) in classical private law doctrine and demonstrates how these principles have been used to justify growing economic inequality, precarity, and social exclusion. This re-thinking of private law also advocates for its re-politicization, insisting that it should reflect collective values and serve democratic, redistributive goals. Jorge Esquirol's article on the political economy of laws that craft credit as a protection for certain products and Ugo Mattei's call for translating constitutional principles of balancing political objectives into private law are examples of this strand. But even in its less transformative vein, progressive private law argues for the flexibilization of contracts or property. Luca Enriques and Casimiro A. Nigro discussion on the transformations in contract law required to incorporate the needs of venture capital; Hao Jiang and James Gordley exploration of *causa concreta* and Teresa Rodriguez de las Heras Ballell's exploration the evolution of contract law, its ideological underpinnings and calling for the need of its flexibilization in the age of artificial intelligence, are all examples of this.

Finally, the articles here included demonstrate how Italian legal theory has also been essential in the sharpening and deployment of critical tools, such as the observation that law is indeterminate, complex and influenced by political economy conditions, culture or societal forces. This powerful insight ultimately requires interdisciplinarity and the issue has some fantastic contributions in line with this idea. Mathias Moschel's exploration of the European system through the lens of intersectionality and post-racial analysis, Fernanda Nicola's feminist inquiry aimed at denouncing the absence of women in traditional accounts of European law; Felicia Caponigri's blending of art history with discussions about a bicultural education; Christopher Heath's analysis of Ascarelli's relationship to literature, through his presentation of Sophokle's Antigone and Shakespeare's Portia as two extremes of justice; Paolo Napoli's incorporation of Foucauldian thinking; Luca Siliquini Cinelli exploring the philosophy and psychoanalysis behind the passer-by ethics set forth by Umberto Galimberti and finally, Gunther Teubner's deployment of sociological jurisprudence.

In sum, this is a remarkable set of texts that foregrounds Italy's place in academia and academia's place in Italy.