



UNIVERSITÀ  
DEGLI STUDI DI MILANO-BICOCCA

## SYLLABUS DEL CORSO

### Storia del Processo Penale

1819-4-A5810136

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#### Learning objectives

The course provides an overview of the historical evolution of the criminal procedures from the Middle Ages to the Contemporary Era in order to better understand the present and its future developments. Students attending the classes will specifically have the opportunity to read and analyse historical sources and documents. In this way the course should help students to gain a critical awareness towards law and criminal procedure in particular and its connection with politics, the legislative choices of those in power and the fundamental rights of each subject involved in criminal trials.

#### Contents

The course provides an overview of the historical evolution of the criminal procedures, focusing on some particularly significant topics, such as the political character of criminal procedure (between social protection and rights of individuals, necessity to punish the guilty and to guarantee everyone); the principles ruling the kind of trial in force (secret or publicity, writing or orality, presumption of guilt or presumption of innocence.); the rights of the accused (first of all the right to defence); the proof system; the powers of the judge; the role of legislation, law scholars and jurisprudence in the creation of criminal procedure. These topics are studied in some relevant moments connoting the changes of societies during times: the different ways criminal justice was administered in the early Middle Ages (ordeals, duels, oath); the accusatorial system of the medieval Italian communes; the roots of the inquisitorial trial in canon law and in the statutes of the Italian communes; the inquisitorial system of the towns of Lombardy from the 16th to the 18th century; the first European collections of rules about criminal procedure (especially in France and in Germany); the Enlightenment philosophers' strong criticism against the inquisitorial procedure (and its main features, i.e. the legal proof system, secret, torture, the discretionary power of judges, the strong limits imposed to the defending counsel); the preservation and the improvement of the traditional inquisitorial procedures in the Hapsburg Austria between the end of the 18th century and the beginning of the 19th century; French changes during the Revolution (the accusatorial trial and the first steps of the jury in continental Europe); France after Thermidor and the so called "mixed procedure" of the

Napoleonic Code d'instruction criminelle; the first Code of criminal procedure in Italy after the Unification; the return to the past of the fascist legislation.

## Detailed program

For students attending the classes:

Different kinds of justice in the early Middle Ages. Criminal procedure in the medieval communes. Criminal procedure in the 16th century Lombardy. The European criminal procedure in the Modern Era. The Enlightenment in the 18th century and criminal procedure. The development of Austrian criminal procedure from mid-18th to 19th century. Judicature in France from the Revolution to Napoleon. The first Italian Code of criminal procedure after the unification (1865). The fascist legislation (1930).

For students attending the classes:

The topics dealt with in the textbooks to be studied for the exam.

## Prerequisites

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## Teaching methods

Lectures; showing of video and slides; reading of historical sources and documents; interaction by means of an e-learning website.

## Assessment methods

Oral exam.

Specific conditions of examination may be reserved for students attending the classes.

## Textbooks and Reading Materials

For students attending the classes

Lessons notes, lectures notes and materials published on the e-learning website.

For students not attending the classes

1. M. SBRICCOLI, «Tormentum idest torquere mentem». Processo inquisitorio e interrogatorio per tortura nell'Italia comunale, in Id., Storia del diritto penale e della giustizia, Tomo I, Milano, Giuffrè, 2009, pp. 111-128;
2. E. DEZZA, "Pour pouvoir au bien de notre justice". Legislazioni statali, processo penale e modulo inquisitorio nell'Europa del XVI secolo, in Diritto penale XXI secolo, I (2002), pp. 159-202 (available also online: <http://www.dirittoestoria.it/3/Memorie/Organizzare-ordinamento/Dezza-Processo-penale-modulo-inquisitorio.htm>);
3. G. P. MASSETTO, Aspetti dell'amministrazione della giustizia in Italia nell'età del Don Chisciotte, in El derecho en la época del Quijote, Cizur Menor (Navarra), Aranzadi, 2006, pp. 119-160;
4. A. CAVANNA, Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico, II, Milano, Giuffrè, 2005, pp. 190-222 (Cesare Beccaria); 292-358 (Area austriaca: la codificazione del diritto penale); 415-430 (La legislazione

rivoluzionaria nel campo della giustizia); 474-514 (La codificazione penale rivoluzionaria); 597-606 (La codificazione napoleonica: il codice di procedura penale del 1808);

5. M. N. MILETTI, Ombre d'inquisizione. L'intervento della difesa nell'istruttoria penale italiana (1865-1913), in Quaderni fiorentini, XXXVI (2007), II, pp. 901-955 (available also online: <http://www.centropgm.unifi.it/quaderni/36/index.htm>);

6. G. CHIODI, «Tornare all'antico»: il codice di procedura penale Rocco tra storia e attualità, in L'inconscio inquisitorio. L'eredità del codice Rocco nella cultura processualpenalistica italiana, a cura di L. GARLATI, Milano, Giuffrè, 2010, pp. 305-322.

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