

SYLLABUS DEL CORSO

Storia del Diritto delle Obligazioni e dei Contratti

2223-4-A5810135

Learning objectives

To achieve skill and mastery of the subject

Contents

1. From the Italian-French Project of Obligations and Contracts (1927) to the reform of French contract law (2016).
In 19th century Civil Law Codification, Law of Obligations and Contracts is based on the freedom of contract. The late 18th revolutions do not undermine the fundamentals of the Law of Contracts: contract will is not affected by the effects of the legislative reforms. Instead, the Civil Law dogmas, the freedom to contract and the intangibility of the agreements are undermined by the late 19th century social economical changes and the First World War. At the end of the XIX century they begin to underline defects and lacks both in the Italian Civil Code and the Commercial Code. Moreover, after the World War I, legislation out of the Code grows significantly and some new special laws deal with trade and contract relations. The codes are charged with granting too much freedom to the parties to a contract: contracts have a social function and the parties can not negotiate freely, as judges and political authorities can question the contractual clauses. In 1918 they suggest to frame an Italian-French Obligations and Contract Code, in order to attempt to harmonize the European Civil Law. The draft of this code absorbs some reforming demands but it is severely criticized too and does not come into effect. In the following 1930's Italian jurists try to achieve a balance between contract autonomy and state control and to draft a new Civil Code.
2. Filippo Vassalli lawyer and legislator.

Detailed program

Mod. 1 In 19th century Civil Law Codification, Law of Obligations and Contracts is based on the freedom of contract. The late 18th revolutions do not undermine the fundamentals of the Law of Contracts: contract will is not affected by the effects of the legislative reforms. Instead, the Civil Law dogmas, the freedom to contract and the intangibility of the agreements

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Mod. 2 The course aims mainly to analyse the (mostly unpublished) papers of Filippo Vassalli (1885-1955) from a legal-historical perspective, in order to (but not only to) reconstruct the making of the Italian Civil Code of 1942.

The survey wants to take advantage of the acquisition of Filippo Vassalli's archival collection by the Polo di Archivio Storico (PAST) of the University of Milano-Bicocca, which makes available to scholars a patrimony of sources of high legal-historical value. The full availability of these records (letters, annotated drafts of bills, notes, legal opinions, allegements, as it will be clarified below), which are now accessible for the first time in their entirety, allows to reconstruct more comprehensively the Italian events in which Vassalli played a role as a protagonist. It is hardly necessary to underline that the interpretation of a paper can change in relation to the all documentation to which it belongs, as a tile of a larger mosaic. All the more so because the archival material do not consist only of papers about Vassalli's activity as a legislator and as the author of the Italian Civil Code of 1942, which is the main focus of the course: they actually also show him as an "intellectual jurist", as it has recently been said to define the role of jurists in the period from the liberal age to the fascist regime. Vassalli also had a lively activity as a lawyer, a university professor and a man of institutions: three aspects of a single personality, intertwined with each other. Therefore, the legal-historical analysis, which the project aims to show, can be a valuable critical tool of knowledge and a key to understand the dynamics that, at different levels, are linked with the making of the Civil Code and define its paths, roots and potential developments.

Vassalli's legislative activity began in the committees for the revision of war legislation (1917-1920) and for the legislative unification of the new provinces (1922). He then participated in the Royal Committee for the reform of the codes, which was appointed according to the 1923 enabling act (in whose genesis he took part) and was still pivotal even after the 1925 enabling act. His contribution to civil codification was so extensive that it cannot be defined in a specific issue. Therefore, one of the target of the research will be an in-depth study of the entire documentation in order to better identify his personal contribution to the drafting of the Code (including his Report). In the first stage of the preliminary works, Vassalli was the author of some parts of the Code, such as the Title on marriage in Book I and the title on legitimate successions in Book II. Yet, Vassalli also influenced the drafting of article 3 of the Concordat and the implementing law of 27 May 1929. He also contributed to the drafting of the Italian-French Code of civil and, later on, commercial obligations. His expertise was even more requested after the appointment of Dino Grandi as Minister of Justice (1939). He was the chair of the subcommittee for the Books Della proprietà (Property Law) (Book III, whose he was the main author) and Della tutela dei diritti (Protection of Rights) (Book VI). However, he also worked on revising the drafts of the other Books. After the decision to unify the law of civil and commercial obligations (1940) – his thought was decisive for this purpose – he cooperated to outline the complex frame of Books IV, Delle obbligazioni (Obligations), and V, Del lavoro (Labour Law), came out of his pen during the frantic 1941, after several drafts, polishing activities, reassessments, last minute directives. Alongside this effort of conception, aimed at settling the legacy of the abrogated Code of Commerce, it is worth mentioning the drafting of Book VI, Della tutela dei diritti (Protection of Rights), of which he supported the expediency and to which he gave an original imprint, also referring to his previous contributions on registration law.

In concurrence with the drafting of the Civil Code, Vassalli's activity as a lawyer is witnessed by the files containing

his legal opinions and allegements. In particular: 1) legal opinions on succession (155, typed, 1924-1955); 2) legal opinions on various subjects (typed); 3) claims, counterclaims, briefs, statements of defence, and allowed notes presented before the Corte di Cassazione, also together with other lawyers (about 1000, typed, 1911-1954); 4) his notes and records about the trials on the forfeiture of the Italian Senators. These papers can be studied from different perspectives: on the one hand, concepts were developed that would have then converged in the making of the Civil Code; on the other one, they attest Vassalli's professional relationships, his authoritative presence in law courts, and the interpretation of the Code after it had come into force..

Prerequisites

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Teaching methods

Lessons

Assessment methods

Attending students:

Oral examination. Written papers made during the course will be evaluated.

Not attending students:

Oral examination.

Textbooks and Reading Materials

Attending students:

1. Lectures notes will be available at the e-learning website of the course 2223.
Please for further information always look at the page of the course on the platform of the School of Law.

Not attending students:

1. G. CHIODI, Clausole generali e abuso della libertà contrattuale. Esperienze del primo Novecento, in *D/Q*, 2028/2, pp. 87-104 (available on line in the website of the review *Diritto e questioni pubbliche*)
2. G. CHIODI, Interpretazione dei contratti e poteri del giudice: riletture del codice civile in Francia e in Italia tra Otto e Novecento, in *L'interpretazione tra legge e contratto. Dialogando con Aurelio Gentili*, Bari 2019, pp. 51-86.
3. G. CHIODI, Un esperimento di diritto privato sociale. Il progetto italo-francese e la sua parabola dall'età liberale al fascismo, in *Bürgerliches Recht im nachbürgerlichen Zeitalter*, Frankfurt am Main 2020 (forthcoming publication, pp. 3-44 (available online in the website E-learning di *Storia del diritto delle obbligazioni e dei contratti* 2021).
4. Costruire una nuova legalità: il diritto delle obbligazioni nel dibattito degli anni Trenta, in Birocchi I., Chiodi, G., Grondona, M. (eds.), *La costruzione della "legalità" fascista negli anni Trenta*, Roma, RomaTrePress,

2020 [La cultura giuridica. Testi di scienza, teoria e storia del diritto], pp. 201-260

The articles are also available in the website E-learning Storia del diritto delle obbligazioni e dei contratti 2223..

Sustainable Development Goals

QUALITY EDUCATION
