

History and Project

On the Importance of Sharing National Law so as to Shape Future Trans-National Legal Solutions

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It is a privilege, as an English common lawyer, to be asked to write the editorial to an English language journal focusing on Italian Law. I write at a moment when the formal campaign period leading to UK's referendum on a possible exit from the European Union has just begun. The stakes for the English common law and our legal system could not be higher. There are few who would question the immense influence of the common law on European legal development, but not only, in turn the common law has been enriched both by direct transplants and a closer working with civilian systems. That is how it should be in the modern world; our legal systems as used by increasingly global entities and indeed global citizens need to be more open, flexible and interconnected. How the common law will fare in the case of a Brexit is difficult to predict, but the worry is that it will become more insular and certainly less influential.

That is why the sharing of our various national law experiences and developments is so important; when you are staring into the face of the possibility of losing that dynamic exchange, then what might be lost is thrown into sharp relief. As one who studied Swiss law before I embarked on my common law legal studies I have always been an advocate of comparative legal education; we have so much to learn from one another and this Journal is an innovative example of that. In preparing to write this introduction it has been a huge pleasure to dip into the previous issues.

I always remember when I began my civilian legal education how astonished I was to make even the basic discovery that there were indeed three Rs not just two; so not just Renaissance and Reformation, but also of course Reception, a concept that is almost entirely absent from most English history teaching! It is this that gives Italian Law its illustrious heritage and huge influence through the work of the university scholars of

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the medieval age. When I think that the ‘father’ of my favourite legal discipline, conflict of laws, Bartolus, was an outstanding Italian legal scholar of that age.¹ This golden period of Italian legal scholarship has given so much to the development of the law we now know and take for granted in our respective national traditions (even in the common law). So there is all the more reason that a wider audience should now become familiar with modern Italian Law. Even more so when as has been well documented elsewhere we see the emergence of a ‘law market’ where English and German law have been openly touted to gain work for national courts and legal services. We may have misgivings about the commercialisation of national justice systems but if the side effect is to give greater visibility to differing legal approaches and solutions there may equally be positive outcomes. So I believe any enterprise that allows us to discover or indeed rediscover Italian Law is to be welcomed.

In this respect I am delighted that the European Law Institute will this September hold its Annual Conference in the historic university city of Ferrara. Our aim, as always to bring together the European legal community in the widest sense; judges, practitioners and academics, meeting to look for better solutions to Europe’s legal problems. The Institute is itself a ‘legal borrowing’, modelled on its elder cousin the American Law Institute which has had huge impact over a period of nearly ninety years in influencing US legal developments. This is the ELI’s aspiration and by all accounts we have not made a bad start, having got the ear of the European institutions on a number of topical issues, particularly but not only in respect of contract law and civil procedure. The fact that we are meeting in Ferrara and hosted by our colleagues in the Law School there means that we are equally assured of a high level of Italian law input.

At the same moment ELI will launch an Italian hub, this development has already occurred in a number of countries and allows ELI colleagues to meet regionally and locally to discuss ELI projects, help bring forward new ones and generally address European legal matters of topical interest. So I would hope that the deepened presence of ELI on the Italian stage during this year will be very much a complimentary activity to the aspirations of this Journal.

¹ See in this regard P. Femia, ‘Criticism. From the Outskirts of a World Without a Centre’ 1 *The Italian Law Journal*, 1, 4-16 (2015).