

History and Project

The Italian Law Journal: Challenges and Opportunities

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An Italian Law Journal, published biannually online in English, with an advisory board comprising not only of the most distinguished of European Scholars, but also of significant ones from Brazil, China, Japan, and the United States, and focusing on private law! One can only imagine what – formalist, totally 19th Century Code centered, but still very great – Italian scholars of not so long ago, would be saying about the enterprise! And yet, it is precisely because of the importance of that Italian tradition – and its need to influence, and be influenced by, more modern and frequently functional scholarship – that this Journal is so interesting and presents so many intriguing challenges and opportunities.

As its sponsor, SISDIC, well recognizes, and has reflected in its recent Congresses, private law inevitably affects the structure of a society (its ‘system building’, public side¹) as well as the private relations of people living in that society. Torts Law, for example, not only determines how many accidents there will be and what economic activities will be encouraged and discouraged, but also how individual members of a society relate to each other. Too often even distinguished modern scholars accept only one aspect of this field.² What is needed is scholarship that understand the importance of both and their interconnectedness.

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¹ For a now classical critical view of this role of private law, see I. Englund, ‘The System Builders: A Critical Appraisal of Modern American Tort Theory’ 9 *Journal of Legal Studies*, 27 (1980).

² Compare J.C.P. Goldberg and B.C. Zipursky, ‘Torts as Wrongs’ 88 *Texas Law Review*, 917-918 (2010), with R.A. Posner, ‘Instrumental and Noninstrumental Theories of Tort Law’ 88 *Indiana Law Journal*, 469 (2013).

To describe and study that interconnectedness, then, is the first challenge and opportunity for the Journal. The second is to make available to the many legal scholars who do not read Italian the particular insights found in Italian Legal Scholarship. This is why the plan to have each issue contain a classical work of Italian legal culture is so exciting to me. Just as the Italian Constitutional Court was one of the first to come up with the concept of ‘Laws heading toward Constitutional invalidity’ – a notion now widely accepted as of great utility and significance in public law – so the insights and legal ‘inventions’ of classical Italian private law scholars should influence and help shape private law scholarship across the world. But this will only happen if those classics are presented in ways that can be understood in distant lands with different legal traditions.

That creates a challenge as well as an opportunity. It is not enough to translate Italian classics into a language accessible to foreign scholars. The context in which a particular ‘classic’ was written must also be made clear if its insights are to have full effect. Comments to the translated work by current scholars, explaining both its private (relational) and public (structural) significance may well be needed. And, of course, the writing of such comments will present a great opportunity for their authors and, in due course, for their readers. But even more is needed, which is why the other planned Sections of the Journal are so promising and intriguing. I look forward to all of them, but perhaps especially to *Malebolge: Thoughts and Polemics*. For in that Section, one can truly hope that current Italian legal culture will make its mark.

All this is what the Journal aspires to. I rejoice in being part of the enterprise and wish the Italian Journal the greatest success and fondest welcome worldwide!