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AN INTERVIEW WITH PROFESSOR EMANUELE CONTE

Prof. Emanuele Conte, the Chair of Medieval and Modern Legal History at the Roma Tre University and *Directeur d'études* at the *École des Hautes Études en Sciences Sociales* (EHESS, Paris), is also founder and instructor of the Law and the Humanities course at the Roma Tre Law Department since 2008. The course is part of the Studying Law at Roma Tre Program.

Prof. Conte, first of all, could you please explain what do we understand under the expression "Law and the Humanities"?

A relevant difference between the teaching of law in the U.S. and in continental Europe is that in America many important law schools offer an external point of view on law. This is an effect of the success of legal realism: at the very beginning of the 20th Century, a number of American law professors took seriously Jhering's idea that the best way to understand legal institutions was to ask about their economic or social aim. The legal realists considered law as a "craft" more than as a "science". They were sceptic about every attempt of building a set of rational and aseptic legal rules, and considered much more effective a legal education aimed at creating in the future lawyers the necessary abilities to understand the complexity of social, political and economic intercourse.

The same dissatisfaction for the picture of law as a science, and the same need for an analysis of the interconnection of legal institutions with their context was felt also in Europe: however, on this side of the Ocean, even though the need for an "external" view on law produced extraordinary scholars, like Max Weber, it was not strong enough to change the structure of legal teaching. The interest of jurists for philosophy and history resulted in the inclusion of courses of legal philosophy and legal

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history in the curriculum, but both were taught as "internal" subjects. For philosophy, for example, scholars have developed a distinction between the legal philosophy of the jurists and the legal philosophy of the philosophers, meaning that the first was part of the legal science, while the second was meant as an external view of the philosophers on the legal phenomenon.

In the U.S., the interest for this external point of view on legal institutions led to a large development of law school courses labelled as "Law and…". Among them, the most popular courses were by far those on Law and Economics.

The idea of the functionality of every legal system led to the study of the economic efficiency of every legal institution, in private as in public law and regulation. Law and Economics quickly became a kind of master key, good to open every door, provided that the logic of capitalism is accepted as ultimate goal to be pursued through the functioning of legal institutions. This led to a reaction in the main law schools in America. Many scholars, in fact, did not share the faith in capitalistic economy as the main objective of every society. And even though many considered capitalism as desirable for contemporary societies, they were also aware of the serious flaws of western capitalism, feeling the influence of French philosophy and sociology.

The need for an externalist point of view on law did not fail, but it became clear that the adoption of economic efficiency as the only parameter led to a distortion in the evaluation of legal institutions. So, the first reaction to the prevalence of economics was the reevaluation of literature. As everybody knows, it was the book by James Boyd White, *The Legal Imagination* (1973), that started a new movement that was later called "Law and Literature". It offered a new kind of external point of view on law: literature could be connected to law mainly because it offers a very human sensibility, reflecting the feelings of the human being as confronted with the formalisms and the obligations of a legal system. In some sense, the opening of courses on Law and Literature in the U.S. was felt as a counterbalance against the rigidity of the economic analysis of law. It did not deal with the "efficiency" of the legal institutions, but much more with the role they played in the real life of human societies.

It was easy, after that, to go from literature to cinema and theater, to performing arts, to iconography and visual arts, to architecture, and so on. The whole of those external views on law has been called "Law and the Humanities". Soon, a proper

academic field was created, with some law journals based in the major law schools, and an increasing number of scholarly articles and books.

In the Preface of his book "Songs without Music: Aesthetic Dimensions of Law and Justice" (University of California Press, 2000), Desmond Manderson affirms that "Aesthetics is the faculty which reacts to the images and sensory input to which we are constantly exposed and which, by their symbolic associations, significantly influence our values and our society. 'Legal aesthetics' suggests that the discourse of law is fundamentally governed by rhetoric, metaphor, form, images, and symbols". Do you agree with this statement? If so, could you provide us with some examples?

If law is craft, aesthetic is central in it. Legal institutions are artificial creations, which must be well shaped in order to be accepted by the society. At the origins of law there is this aesthetic creation of an artificial environment, in which human disputes can be sublimated in a rational liturgy. Now, liturgy, in the western tradition, has developed by mobilizing the arts and the humanities: literature to proclaim the Word, architecture to build the temples, painting and sculpture to show the sacred, music to praise the Lord, even fashion to dress the clergy. Also the law has its liturgy: public palaces, paintings, frescoes and murals, statues, symbols, public music, literary narratives, and a dress code. None would claim to understand religion by paying no attention to liturgy and worship, but the vast majority of jurists are convinced they can understand law completely neglecting its formal and symbolic environment. Don't you think this is odd?

There are other universities in Italy providing courses and seminars on "Law and Literature" but your course on "Law and the Humanities" is something really peculiar. Could you tell us how did you come to this idea and why is this field important within legal studies?

In 2006 I was invited to give a talk at the Yale Law School. In the beautiful library of the School I found the series of issues of the Yale Journal of Law and the Humanities, funded in 1988/89. I had no idea of the existence of this review, and I wondered why, because the cultural context of the legal phenomenon is central in a

mature approach to legal history. As a legal historian, I think that understanding law is a complex phenomenon, formed by the interactions between legislation, legal traditions and values, interpretative adaptations in court and in books, legal education. If observed in this way, what we call "the law" is a major actor in the historical process. When we try to understand its role, we must pay attention to the conflicting forces of social and economic intercourse, to the game of politics, to religion and common beliefs, to culture. In other words: we can grasp the very existence of the law in history only if we are able to mobilize all our knowledge in the humanities to understand its context.

When I suggested to introduce a course on Law and the Humanities in my Roma Tre Law School, I felt like it was a natural extension of my job as a legal historian. With a major difference: as said, legal history, as legal philosophy, are disciplines now fully internal to the field of law. Law and the Humanities claims for an external point of view. It is a little piece of legal realism introduced in the very traditional system of Italian legal education.

I must add that this was possible because my new teaching was meant to be held in English. If it had been in Italian, I bet I would have found some more oppositions to my proposal.

What kind of didactical method do you use in this course?

As part of the program Studying Law at Roma Tre, Law and the Humanities shares with the other courses a pretty interactive method. But it would not be possible to teach such a discipline in another way, because there are no specific notions to teach and learn, but the whole focus is on being aware of the alternative point of view on law offered by the humanities. So, my courses want to offer to the students an intellectual experience, much more than a set of notions. Since the beginning, I have used a blog to keep in contact with the students, to share readings and collect comments. So written participation is coupled with physical attendance. I think this is a major key to face the transformation of the communication paradigms introduced by the internet. We need an integrated use of both, virtual and real attendance. This is meant to create a learning community, as is the visit to the Italian Supreme Court offered every year to the students, the creative competitions we have proposed, student's presentations, the classes on law and music with guest musicians offering live performances.

In order to offer a really external view, I have had many invited guest lecturers every year. They are foreign professors from four continents (we had North and South Americans, Australians, Chinese, and Europeans from five or six different countries), but also young researchers and PhD students. They are sometimes jurists, but very often they are not. I find this plurality of voices very enriching, provided my constant effort in keeping the course together, underlying connections between the different classes held by the guests.

In 2019 the first Spring School on "Law & Humanities", organized in collaboration with the Australian National University and the University of Lucerne, took place at Roma Tre (15-18 April 2019). Seventeen graduate students and post-doc researchers from different countries (including Russia, Brazil and Greece) and with different academic backgrounds joined the School. Could you describe this experience and the network it established?

As said, dozens of colleagues from many different countries have taught in our Law and the Humanities course; and hundreds of visiting students have attended to the classes over the years. The cooperation with the Australian National University became particularly strong in the last decade, thanks to the engagement of Desmond Manderson, one of the world-leading scholars in the field. In Europe, one of the liveliest centers is the Swiss Department of Lucerne, named "Lucerna Iuris" and focused on Legal History and Legal Theory. Desmond, Steven Howe from Lucerne, and I, are convinced that a Law and Humanities perspective can represent an important opportunity of critical reflection for Master and PhD students at a global level. We had our first International School on Law and the Humanities in Rome, as a first attempt to raise interest on the field. It has been a success in terms of audience, participation and quality of the classes. Our idea is to create a series of schools at a global level, calling for participation of the students in both hemispheres.

The present virus emergency has stopped our second school, that was already organized for June 2020 in Lucerne. We will postpone it, but we are confident that the program will go on and will be a success.