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INSTITUTIONAL TEACHING TODAY.
ON THE 50TH EDITION OF “ISTITUZIONI DI DIRITTO
CIVILE” BY ALBERTO TRABUCCHI
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1. *Opening remarks*

On 18 November 2022 the Seminar «*Institutional teaching today. On the 50th edition of Istituzioni di diritto civile by Alberto Trabucchi*» took place at Roma Tre’s Law Department, where renowned academics discussed about the meaning of institutional teaching of civil law today from different perspectives. Each speaker received a keyword to focus on.

The event began by the introductory remarks by the University Rector Massimiliano Fiorucci and the Dean of the Law Department Antonio Carratta, who both briefly underlined the importance of thinking about teaching today, especially after two years of pandemic. Considering that University was not ready for such a situation, it had to face the emergency, changing the way of proposing the classes. It is therefore appropriate to reflect on the enduring and temporary elements of the didactic. In conclusion, the conference was not only a celebration of the 50th edition of a law handbook, but also a seminar about the perspective on how to teach and not only about what to teach.

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2. *The tradition of a Master*

The morning session was chaired and coordinated by Professor Nicola Lipari, who immediately handed over the word to Professor Giuseppe Trabucchi, who had the task of introducing to the audience the eminent figure of his father, Professor Alberto Trabucchi and outline the relationship between the Author's thought and the handbook now in its 50th edition.

Professor Giuseppe Trabucchi firstly reminded the renowned figure of Professor Giorgio Cian, the 'first apprentice' of Professor Alberto Trabucchi.

To introduce the handbook, it was regarded as appropriate to describe the figure of Professor Alberto Trabucchi, since his personality was identified in this volume. In the opinion of the panelist, indeed, such a textbook is still current thanks to the forward thinking of his father. Since the first editions, the textbook was conceived as a series of principles and rules exposed systematically and established around the Civil code perspective. Nevertheless, the speaker explained that such principles came not only from the systematic analysis of the existing rules but also through the interpretation of the contemporary society, hence principles beyond the rules, such as the human rights.

According to Professor Alberto Trabucchi's view, indeed, rules are not only a formal construction, but they should be linked with social reality. The legal setting should be constantly modernized through legal interpretation, which should revive rules and their effectiveness towards the subjects. He strongly believed in the effectiveness of law which should try to be compliant with substantial justice.

Besides that, during the drafting of this textbook, the Author always maintained a deep focus on the existing ethical and moral values of the community; this element has also certainly contributed to its persisting relevance, allowing to associate his work with the improvements of the society. Even though the consideration of the relationships between rules and living ethical and moral values may lead to an evaluation of the law as correct or incorrect, Professor Alberto Trabucchi, however, has never fallen into this kind of judgment, by distinguishing his ethical-moral opinion from the enforceability of law.

In the Author's view, the inflexibility of the Civil code could be overcome through the application of general clauses, which should be essential to avoid the risk

of discretionary interpretation of the judges and the consequent creation of substantial differences between them. The application and interpretation of the general clauses should allow uniformity in the interpretation of the Civil code's rules.

The panelist added, in conclusion, that his father's strength was deeply connected also to his lectures. The handbook shows the spirit he put inside his lectures for his law students. His educational method was the dialogue: he used to propose a case to the students once a week for stimulating them to the interpretation of law. He aimed to demonstrate that also young students – if conducted properly – could research the sense of rules since that he strongly believed in the democracy of law. This method could be enduring if properly adjusted and, above all, new forms of teaching must be built starting from the method.

3. *Introduction to morning session*

Professor Nicola Lipari had the duty to properly chair and coordinate the morning session.

He briefly reminded how the lectures of Professor Alberto Trabucchi deeply stimulated his mind, during his first years of university attendance.

Professor Lipari stressed how that Law School is living today a schizophrenic situation, since there are two different and not overlapping lines: on the one hand, there are positions in which a new dimension of law is identified, and on the other, lectures that constantly repeat patterns of the past. Considering this, law is recognized today as a practical science, focused not only to the analysis of the standard placed but also to the performance of the common practice. Hence, the main question should be whether it could be possible to insert these new phenomena, through integration or injections, into the structure of such a handbook that have been constructed from a different perspective and, for this reason, it appears as radically outdated in comparison with the current events.

Professor Lipari then recalled the concept of 'post law', hence in this context it is necessary to clear what means new sources of law and categories, which both now tend to be placed not from above but from below, by the practice, through an act of

recognition. Hence, the past law hierarchy, lost its strict sense.

In conclusion, Professor Lipari underlined that the current regulation must be researched, therefore the new student's task is to acquire an active role in this search of a new system since they should not be mere spectators or passive receivers of information.

4. *Institutions*

The following panelist to whom Professor Lipari turned the stage over, after his brief introduction, was Professor Paolo Spada, whose speech was centered on the topic of the concept of Institutions. He firstly underlined that, even though the handbook still maintains its name, «Istituzioni», from the 48th edition it has been divided in two different volumes, one dedicated to Civil law and one to Company law.

The word institution comes from ancient Latin, specifically from the term *Institutio* that means disposition or arrangement, but also instruction and education. Therefore, the choice of this title for the Professor Trabucchi's work is meaningful about his scope: on the one hand, it binds the book development according to the first concept of the term institution, on the other hand, it aims to emphasize the educational scope to develop a professional competence still related to the first of the two senses. Hence, the word institution is used for fully describing the teaching approach chosen by the Author and the scope of such a handbook.

Considering this, the main task of the institution consists in persuading and inspiring the readers by moving their mind and not only their memory. It should be an uninterrupted stimulus for students, which induces them to an active mind training and not only to a passive reception of information.

Professor Spada added that progression chosen in the current institutions is imposed by the need to give the subject matter of the two 'volumes' new nourishment. Although divided, the two volumes are still connected, especially due to the Authors' choice of subject division and mutual references. They do not follow therefore the systematic order of the Civil code, but they seek to provide an organic view of both subjects.

5. *Culture*

The following speaker was Professor Claudio Consolo whose speech was focused on cultural background of Professor Trabucchi's handbook.

He felt that to understand the foundations of the institutions, it was appropriate to step back and focus on Professor Trabucchi's training. After graduating with Professor Francesco Carnelutti, Trabucchi was entrusted to Professor Adolfo Ravà, who introduced him to a new legal method and new philosophical liberal ideals. Since then, Professor Ravà's teaching later became the solid basis of the successful approach of the Trabucchi's handbook, that it has been capable of overcoming several tensions during the years. Such a solidity came from Professor Ravà's view, which used to consider law not as subservient to the State, since the latter is not an end but a means, which is neither the only nor the most important. Hence, the study of Ravà's handbook was essential for the young Professor Trabucchi who was surely influenced by such a reading when writing his own institutions that are therefore indebted to Ravà's teaching.

In the fulfillment of this work, Professor Trabucchi was assisted by his collaborator Anteo Genovese, who was used to transcribe all his university lectures and by Professor Carnelutti himself, who reviewed edition after edition.

Considering this, the Professor Consolo underlined that the idea of Professor Trabucchi was to structure a useful handbook for students and not just for his colleagues. It was regarded as appropriate, indeed, the description of the law figures without forgetting the construction, which should be disciplined, regulated and not too modernist.

In conclusion, Professor Trabucchi's success raised from his ability to effectively address students. The textbook has become increasingly smoother from edition to edition and institutions gained strength without being heavier. That's why this textbook continues to affirm an essential core that, no matter how many forays it receives by both National and European legislator, it maintains its strength and its philosophical approach that has granted and keep alive such long-lasting foundations and thoughtful.

6. *Market*

The following panelist, to whom Professor Lipari gave the word, was Professor Marisaria Maugeri, whose keyword was market. She firstly highlighted how it was appropriate in Professor Trabucchi's idea to keep separate the subject of classroom teaching from that of textbooks. The lecture, indeed, is an ever-living element while the book is enduring. This is still the case today – especially regarding the subject of market regulation – while the textbook stands for to a theoretical guidelines, it is the Professor's main task to provide connections with practical cases, making the scholars at the center of the issues.

With respect to this, according to the panelist opinion, what may need a review today, above all in the textbook, should be the relationship with the regulation of the European Union. Whereas in the past it was considered enough mentioning the belonging to the European community, this is no longer the case today.

While explaining market and consumers specific regulations, for example, it should be necessary to mention the E.U. law concerning such subjects and, of course, the ECJ's most recent decisions on the matter. In both cases, indeed, there are a multi-level system of legal sources, and the relationship between them should be better underlined in the textbook.

According to the speaker, the main issue, however, is not the textbook but the doctrine itself since this transition has not yet matured. This is precisely the reason why handbooks are still structured between general and sectoral part in a traditional way, since there is still a prevalence to recognize the informative function of the textbook, as well as the idea of a unique paradigm. Hence, the classical liberal model behind the textbook is challenged by the E.U., however, it must be noted that subverting the pre-established order would not be helpful for students. That is way it is necessary to handle this moment of confusion and absence of a systematic approach.

Trabucchi's handbook, for its part, shows an alert to students in the general part, since it explains that there are some areas in which there are specific regulations that one must learn about. In conclusion, the method of addition, used such a textbook, could be a good compromise in the opinion of Professor Maugeri.

7. *Language*

The last speaker of the morning was Professor Stefano Delle Monache whose speech was focused on the relationship between language and legal phenomena, since law is a spoken phenomenon, hence a fact of language.

Firstly, Professor Delle Monache spoke about the relationship between language and education, emphasizing that the handbook wishes to maintain the tone of the lecture in the writing as well, since it is the only way to be more effective with students. In such a model, the idea that wishes to be stressed is that the language of didactics is only partially the language of law, since it should not be assumed that the language of teaching is the same as that of science.

It is a teaching method that wants to consider a ‘right told’ rather than explained. That is why is not an aseptic language, purely theoretical and subservient to technique, but a language imbued with realism aimed at comparison between legal subject matter and life experience.

The prose of the institutions is different, richer, and less concerned with conforming to a rigorous criterion of precision and coherence in the definition of concepts. On the contrary, the prose on the page of the institutions is at times tumultuous, in contrast to the sober eloquence of the general doctrines. The law of institutions is a ‘narrated law’, because the content of the book refers to a description of legal reality as a phenomenon in perpetual motion.

Despite Professor Trabucchi’s classical legal approach, the dynamism of law in the changing society represents a main element in the plot of his institution’s pages. This is expressed by language: a language that becomes a tale, since the institutions, while being bound to their own ordering function, know how to connect this with the flow of time and human experience.

Thus, language and content cannot but influence each other: language changes as content changes. Considering this, the speaker wondered whether today we should continue to use the technical language of law or the airier language of principles. In this perspective, Professor Delle Monache held to be true, in conclusion, that once the institutional language is untethered from a strict reference to law, there is a risk of offering students a representation that could somehow mislead them. Principles and

values are tools to be handled instead with great caution. Professor Trabucchi's institutions are also along this line.

8. *Afternoon session conclusion*

The afternoon session was chaired and conducted by Professor Giuseppe Zaccaria, who primarily recognized the huge memory of the Master and his immeasurable teaching function for generations of law students. According to the opinion of Professor Zaccaria, the main ability of Professor Trabucchi was to propose a comprehensive, coherent, systematic vision of civil law.

With great skill he fused together notions coming from both German and French traditions. The idea of Romanistic derivation that conceived a legal system open to reality is also very closed to the method chosen by Professor Trabucchi for his textbook. Thus, there is everything in it: Roman law, Christianity, Civil code, BGB, Constitution.

Clearly, many figures, such as the family, have radically changed to modern times; however, the structure remains firmly systematic and organic. The text is a compact and comprehensive layout which wish to guide the reader to new research. Over the course of time, the textbook has expanded with the handling of cases drawn from life and thus intended to stimulate the student's preparation. The text never showed an abstract and dogmatic law but a concrete one, greatly contributing to change the face of law in Italy, spreading the idea that law relates to real experience and living social practice, it is something that is renewed daily.

According to the opinion of Professor Zaccaria, the distinguishing feature of the text and the element of major prestige consists in its absolute clarity that is both light and incisive in style. In a context where the word is abused, this manual still values concision. Information must be given to the extent that it is education. There can be no effective specialization without a stable background knowledge.

9. *Boundaries*

The first afternoon panelist, to whom Professor Zaccaria handed over the floor, was Professor Mario Stella Richter, whose keyword was boundaries. Boundaries are closely linked to law. Not only because law needs ‘the where’, since today there is also law without borders, but because the border distinguishes what is right from what is wrong. Therefore, boundaries also deal with limits.

In the same way that law implies a boundary, teaching also imposes a limit. Boundaries are what mark each subject, which always have internal and external boundaries. On the one hand, what must be included in the treated subject and what must be left out (external boundaries), on the other hand, boundaries between one content and another, and their relationship that must be weighed (internal boundaries). Then there are the boundaries in time and space: historical boundaries and geographical boundaries of a certain institutional subject and besides that, boundaries between what must be updated and what must be maintained as the original, as a common character and value.

With reference to external boundaries, the conventional relationship is between civil and commercial within private law. The Professor Trabucchi’s institutions are currently divided into two volumes: one covering civil law and one commercial law and in the choice of the current Authors, some concurrent topics have been drawn into civil law and others into commercial law. Still regarding external boundaries, the institutional treatment raises the issue of the inclusion of those subjects that are becoming increasingly specialist (e.g., banking, insurance, etc.). The issue must be asked to what extent it makes sense to include sectorial disciplines in an institutional treatment, and this question leads directly from the sphere of external boundaries to that of internal ones.

Thus, the issue of the internal boundaries of the textbook was introduced: the proportionality problem between the scope of treatment of the institutes and their relevance. This is precisely another key issue: if the overall boundaries of the work are provided, the space of each institute cannot be increased without limits. Linked to that is the matter of boundaries in time: how far a specific manual may be preserved to bear witness to the reality that existed when the manual was written and to try to ensure continuity. Besides that, how much space should be provided today for international

or supranational comparison or standardization.

Considering this, in the author's opinion, today one should show more courage to remove than to put in, to seek a systematic view. There is a duty to exclude from the treatment all those institutions that are not relevant in society or at any rate not relevant in a systematic vision. If the complexities struggle to be brought back to an ordering vision, this does not diminish the fact that it is appropriate to try to bring them back within a scheme. In conclusion, there is an urgently necessity to draw boundaries and impose limits.

10. *Current events*

The last speaker of the afternoon session was Professor Tommaso Dalla Massara, whose speech was focused on the topic of what should be considered as current and what as outdated in education today.

While questioning the meaning of the term current, if it tends to be associated with something that refers to the present, the Professor Dalla Massara was also interested in the other meaning of the term, which is connected to the Latin word *agere*.

Actum - agere, that which is actual insofar as it is manifested in act, in something that is tangible, that is exteriorized. This aspect of acting also characterizes the figure of Professor Trabucchi himself: a strong-willed, decisive figure, very attached to *agere* who loved dynamism.

Sticking with the theme of *agere*: it is necessary to be able to speak to the present, to move students into action, to set them on their way also with an almost Christian connotation, that looks at the social purpose of what it does.

There is an inherently political value of doing education. In this regard, Professor Trabucchi held that education 'is a democratic act'. Certainly, it is a political act, which has an impact on the polis, on the collectivity. To quote Justinian, institutions arise from a command, from an imperial choice having influence on the *polis*.

In this regard, Professor Dalla Massara wondered what the main questions are regarding current events and out of date today. The first question concerned whether it was possible today to create an introductory course and, furthermore, to figure out what

the minimum structural unity of such knowledge would be. In this regard, Justinian – quoting Gaius – claimed that the basic structure was *Personae, Res, Actiones*, conforming all legal knowledge to these three main legal figures. Today it is extremely more complex to provide an adequate answer on this point, since it is not clear where the boundary lies, and which is the actual delimitation of civil law nowadays. In a dimension that is boundless, no limits can be identified.

The second question raised concerned the ‘book form’ as an educational tool and whether this instrument could still be considered as current, since institutions might well be oral. It is not guaranteed that it is always the ‘book form’ that is best suited to imparting knowledge, nor even the written page. There might be, in fact, a return to orality and video communication in future.

The third question, instead, regarded how to conceive the relationship between private and public law. In this relation, Ulpianus described private and public as *positiones*, so they are points of view, ways of looking at the legal world. However, the question of how to draw boundaries between them remains open.

Referring to the specific choices made in Professor Trabucchi’s volume, the speaker then wondered how it would be possible to hold together *nova et vetera* in this specific context, i.e., how to reduce new things to a system, since there is a systematic tension between tradition and innovation.

The current situation seems to impose a requirement for simultaneous cognition of numerous sources and issues, which are complex to be put together into a unity.

In this regard, Professor Trabucchi used an adverb, namely organically, which reveals the Author’s specific idea, since legal discourse must also be addressed in an organic manner. This is, in conclusion, the main challenge of current and outdated. The shaping of broad categories with respect to how the world goes.

11. Round Table

At the conclusion of the reports of the several speakers, the round table was opened, during which the first to introduce the discussion was the well-known Philosophy Professor Massimo Cacciari.

He commenced his own reflection by referring to the term handbook, namely something that you keep at hand, but is not at all at hand, because it is complex, difficult, and unreachable. What characteristic should this book possess? This book must demand a dialogue with the reader, it must require the reader to listen to it and discuss with it. The book is required because it provokes a dialogue, a questioning, hence it distinguishes itself because it wants to open new paths of research and, above all, to build a system.

System does not mean the ability to solve issues but, on the contrary, it means being able to put problems or various aspects of them together, even where there is no answer. A system knows how to make them consistent. Therefore, the true handbook is that book which coherently sets out the issues, which relates the problems according to a logic in the original meaning of the term *logos*. *Leghein*: the act of gathering what is similar and of connecting them. The true handbook simply accomplishes this, Professor Trabucchi's handbook fulfils this - it is an open handbook, an open system, which opens inner questions, encouraging research. According to the philosopher's view, the word system must be preserved: one thing is to recognize the difficulty of the current situation, quite another to think that no system could be built in future. It is not appropriate to give up on a system, since it will be maybe more complicated to construct, but not impossible.

The reader of this handbook is the one who talks to the book, it requires an aware reader, since it conveys and demands a reader to communicate with the text. Communication has been overtaken by information. Information and communication are two quite different concepts: the handbook is a communicative book, which implies a communicative community and without this situation, such handbooks are destined to disappear very soon. Considering this, in the philosopher's opinion, science cannot yield to this situation. If this is the threat, then these textbooks must be acclaimed, because they are schools of resistance. Thus, the call to *agere* becomes more and more central in this topic.

After Professor Massimo Cacciari, it was the turn of Professor Antonio Carratta. His discussion, following the philosopher's, is shaped by the concept of category and system.

Categories are reference points that are useful for capturing new elements and

in some way decoding them. The circumstance of being living in an age that witnesses the overcoming of legal positivism and the emergence of a law that instead develops from below, does not necessarily conflict with the use of categories and the construction of a system.

While it is certainly much more challenging to teach law today than in the past, this should not mean that it is impossible to try to convey the emergence of new facts within the categories at disposal. This has always occurred when law has been developing.

It is necessary to capture the innovations presented by society and determine whether it is possible to interpret them or otherwise qualify and lead them back to existing categories with the tools at disposal. This, according to the Professor, should be the main task of institutional education. Law cannot be taught by dealing only with practical cases, since this is not how institutional teaching should be intended; instead, it must provide tools by which to interpret the environment. Practice is an exercise in addition but not a real substitute.

Assuming that, the situation is not the one that currently exists at the time the manual was conceived, the effort that should be made is to renew the handbook. About the possible methodology, since addition does not create a system or an order, the renewing operation to be performed should consist in incorporating the new elements within the existing categories. An incorporation within a structure that may be ancient in terms of its content but not in terms of its structure. Although there is no longer the structure given by the legislator, it is still necessary to create a system, otherwise law runs the risk of becoming merely technical. The mentality of young students, indeed, should be prepared for interpretation and not only for the use of practical tools.

At the conclusion of Professor Carratta's speech, Professor Marco Cian took the chair, who first wished to commemorate his father, Giorgio Cian, Professor Trabucchi's beloved pupil. His speech then focused on the topic of information and method.

Legal studies are characterized by a strongly notional approach, in which efforts are made to inform, i.e., to provide a knowledge of the subject matter that is distinguished by its completeness of information. Nevertheless, this runs the risk that there will be a strong fragmentation of content, and therefore it is essential that a method of knowledge, and not just information, is known and transmitted to the audience.

Professor Cian added that he strongly believed that it is essential that the main goal of textbook's reading, consists in a kind of study that should not just notional, not just informative, but formative instead, thankful the use of a strong and effective method. Hence, efforts ought to be made to provide the student with an understanding of the institutes and notions given. A choice is required, since completeness of information is not possible, it is necessary to select information that allows for an organic understanding of the institutes. This selection must be systematic in nature.

In conclusion, there must be a sense and a rationality: it must show a connection between the goals set and the reality to be analyzed. An institutional, handbook-like treatment of our subjects must go through the exposition of the method, promoting the reader's understanding. There is no point in pursuing comprehensive information – selection must be made since it is the main task of those who provide institutional information to supply the general co-ordinates –. One should not chase an encyclopedic vocation.

The last discussant was Professor Andrea Zoppini, whose speech was focused on the relationship between training and information in education. Then the Professor posed three different issues.

The first one is 'The end of Lawyers' by meaning with this title the phenomenon that all legal activities are progressively decreasing. Activities entrusted to lawyers are progressively shrinking as they are taken over by non-lawyers. First and foremost, this is an interesting fact.

Secondly, there was the issue of what the perspective of legal science is today and should be taught. How to propose a dialogue between theory and practice. There is a problem that concerns the contraction of specialistic knowledge in the face of the increasing prominence of inter-disciplinarity since a legal awareness that is not solely national is crucial.

The third theme is then highlighted – the language of practice and theory have strongly disconnected –. The language of theory fails to interact with the language of practice because the latter have taken two different paths.

Considering such issues, Professor Zoppini then made a concluding remark, according to which, it is more demanding and challenging in education to focus on the theoretical aspects of law than on the practical ones. In the relationship between

information and education, the formation of ideas must be looked at, as this aspect is essential, crucial and requires more time. It is necessary to look at the current chaos, looking for innovative solutions, through the formation of new ideas since this is what really enhances the jurist.

At the conclusion of the round table discussion, Professor Massimo Cacciari again took the word, who emphasized how it is necessary today to break out of a ‘weak’ thinking complex. Everything appears to be deformed: the old orders have crumbled, this random atmosphere dominates, the world is all about chance, even though – he pointed out – there is a law of chance.

At this end, the Philosopher urged the motion to return to the ordering of chance and new cases. There is no such thing as a period of transition that lasts forever, and therefore one must return to action, since a change of state can occur in a governed manner if there is an effort to order cases, whereas it can occur in a catastrophic manner if there is no order at all. This is the difference between a controlled atomic reaction and an atomic bomb. Science must not abdicate its ordering role.