

REVIEW ARTICLE

LAW AND THE CHALLENGES OF CHANGE IN PAOLO GROSSI'S RESEARCH PATH*

Aldo Sandulli**

Grossi, P., *Trent'anni di pagine introduttive. Quaderni fiorentini 1972-2001*, prefazione di Paolo Cappellini, Per la storia del pensiero giuridico moderno. No. 83, Giuffrè ed., Milano, (2009)

Grossi, P., *Uno storico del diritto alla ricerca di sé stesso*, Istituto Italiano di Scienze Umane, Lezioni di Palazzo Strozzi, Il Mulino ed., Bologna, (2008)

Grossi, P., *Nobiltà del diritto. Profili di giuristi*, Per la storia del pensiero giuridico moderno, No. 80, Giuffrè ed., Milano, (2008)

Paolo Grossi is without doubt the preeminent living historian of Italian Law. As an internationally renowned scholar and academic member of the *Accademia dei Lincei*, he has been both an inspiring professor and an ingenious activist in organizing culture in the legal field. Grossi also founded the Florentine School, which profoundly contributed to a change in the academic approach to legal history in Italy. Many important scholars, such as Mario Sbriccoli, Pietro Costa, Paolo Cappellini, Maurizio Fioravanti, Luca Mannori, and Bernardo Sordi, have followed in Grossi's footsteps

This review will examine three books by Paolo Grossi which describe three different methods of analyzing the intense cultural journey of this Florentine intellectual. First, an autobiography of the early years of his education in scientific research.

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** Professor of Administrative Law, Faculty of Law, University of Naples "Suor Orsola Benincasa".

Next, the thirty-year old history of his most important creature (Review of the “*Quaderni Fiorentini*”), which is a collection of outstanding works by major jurists of the XXth century.¹ “Autumn is the time for harvest,” writes Grossi in the conclusions of his volume published by Il Mulino (Grossi, 2008, p.119). “Harvests, that is to say learning by experience, draw it into a wider scheme, into vast landscapes. This is a privilege of the elderly who have a long work experience.” The Florentine scholar adds, “my research path isn’t finished yet, and my intellectual action goes on.” Tangible evidence of this commitment is in the final book examined, his recent publication “The Europe of Law” (original title: *L’Europa del diritto*, Laterza ed., 2008), a work addressed to an international audience, which contains the *summa* of Grossi’s thought. (see also, the bibliographical review by Sabino Cassese in *Rivista Trimestrale di Diritto Pubblico* No. 3, 2008, at 873 ss.). This is why, in this case, glancing backwards to the past has a specific meaning, which is neither commemorative nor nostalgic: once the awareness of such a long path is acquired, the past is the foundation on which to start anew (in his scientific itinerary, but also in his civic and institutional engagement, which followed his recent appointment as a constitutional judge).

A Legal Historian in Search of Himself (original title: “*Uno storico del diritto alla ricerca di sé stesso*”)² collects three lectures presented by Paolo Grossi at the Italian Institute of Human Sciences in Palazzo Strozzi (Florence).³ The volume closes with an appendix that offers a valuable bibliography by Marco Geri (updated in 2007).

The first part of this book describes the bewilderment of an excellent, newly graduated, University of Florence student without an academic guide, “facing the discouraging prospect of the ‘guild’ of the Italian Law historians...in the mid-fifties.” Thus Grossi aimed at finding his cultural references outside this guild and eventually met Enrico Finzi, Salvatore Romano (and through him, Santi Romano), Pietro Piovani (and through him, Giuseppe Capograssi). The young scholar also managed to select a group of

¹ http://www.centropgm.unifi.it/inglese/quad_intro_eng.htm

² P. Grossi, *Uno storico del diritto alla ricerca di sé stesso*, Istituto Italiano di Scienze Umane, Lezioni di Palazzo Strozzi, Il Mulino, Bologna, 2008, at 172.

³ Istituto Italiano di Scienze Umane www.sumitalia.it

partially independent historians within the guild (Emilio Betti and Francesco Calasso), and in so doing succeeded in establishing his own unique academic path.

Grossi faced the crucial issue of outlining his mission based on two distinct terms - "historian" and "law". According to Grossi (with the influences of Marrou e Bloch), the historian is "neither an antique collector nor an embalmer, but a man of the present time, who looks back in order to appropriate the past." (Grossi, 2008, p. 33). He must keep a "watchful eye on the present, that is the first guarantee to identify differences from the past and its typicality; the first guarantee to achieve such a 'historiography miracle' as the ordering comprehension" (Grossi, 2008, p. 36). Following Betti's example, the Florentine scholar summarizes this idea with the effective representation of "the graphic point and the line, the points and the lines: historical moments are like the graphic points, that is to say self-contained entities, but which cannot be separated by the long line connecting the past with the present and the future, in a complex game of continuity and discontinuity" (Grossi, 2008, p.42). Grossi learned from Calasso the lesson that the historian must grasp "the mysterious and vital relationship between the historical civilizations and the Law,...the Law as a living history, as the dimension of a civilization's life" (p. 45). Grossi's idea of the Law is based on its historicity and representation as an order:

[A] law which is separated from the power, as much as possible; a Law whose function is to organize and, as a necessary consequence, to be steeped in the events and matters to be put in order. This is a redeeming result, since it meets the expectations of the civil society. The humanity (literally 'carnality') of law: values, events, interests must emerge from the legal dimension and mark it with both positive and negative sides concerned, because this is what historicity requires, as it is the faithful mirror reflecting human beings in the complicated context of their social relations. After all, this is a fundamental rescue to the Law, a recovery of humanity' (Grossi, 2008, p. 118).

The definitive choice of a study method was the basis for his top four research streams, which are all different expressions of a single work programme: 1) canonist studies in his youth, 2) the fundamental studies of common private law, 3) studies of real

rights, which involved the relationship between men and things, as well as men and the land, and 4) very innovative studies on the history of modern legal thinking.

The last section of this volume describes Grossi's scientific production and his most significant achievements. A lone scholar, even a scholar of Grossi's stature, could not have carried out such a complex cultural project, one which required teamwork and extended research efforts. In light of this, Grossi devoted himself to the creation of three structural support elements: a place for research work, (the research institute, Centro Studi per la storia del pensiero giuridico moderno), a review by which his work programme might be implemented (*Quaderni fiorentini per la storia del pensiero giuridico moderno*), and a school by which his cultural project might be nourished. He gave birth to a scholarly community whose members, notwithstanding their distinct interests, were remarkable scientists, and who were also very well connected and cooperative even within such a diverse group. He essentially established a cultural laboratory.

The *Florentine Handbooks* ("*Quaderni Fiorentini*") were probably his most difficult and ambitious undertaking, but also the work with the strongest impact on the scientific community. It enabled beneficial interaction between "conscious" jurists of different backgrounds (historians, theorists, and practitioners). The second volume presented here is *Thirty Years of Introductory Pages 1972-2001- The Florentine Handbooks Collection 1972-2001* (*Trent'anni di pagine introduttive. Quaderni fiorentini 1972-2001*).⁴ Based on the author's introductory remarks, this publication reconstructs the three decades of the life of the prestigious review.

The book opens with a fine preface by Paolo Cappellini, who reconstructs, with documentary completeness, the reasons and facts that have led to the foundation of this European-oriented and, at the same time, inherently Florentine, review. The verbatim quotes from two letters by Costa and Sbriccoli are especially full of meaning in this essay.

The *Quaderni* was created with the aim of asserting the idea of historicity and unity of Law by gathering contributions from

⁴ P. Grossi. *Trent'anni di pagine introduttive. Quaderni fiorentini 1972-2001*, No. 83, Giuffrè, Milano, 2009, at 252.

leading intellectual forces. Grossi himself defined it as an opportunity for dialogue in the beautiful introductory pages written for the 1972 edition:

It is time for two different kinds of recovery: on the one hand, legal historians should reintroduce a sense of unity in the "*scientia iuris*"; on the other hand, positive law jurists should retrieve the sense of historicity as an essential dimension of Law. This is an attempt which cannot be postponed anymore, except at a heavy cost. (Grossi, 1972, p. 4).

Moreover, this historical study was not an end in itself, but rather was aimed at revaluing the role of jurists as the main characters of the social mechanism. In so doing, it aimed at reversing the tendency towards marginalization, which occurred during the 19th Century, and encouraged positive law jurists to raise self-awareness of their mission through the history filter.

The Florentine review is actually addressed to the positive law jurist: it ruptures the artificial barrier which, until then, had separated historical studies from positive law and forced jurists to be self-critical of their social responsibility. As Grossi wrote in 1972,

Nowadays, positive law jurists ("worshippers"), usually devitalized by the codification culture, tend to talk to themselves, with no echo, without any perception of the vast social structure; evidently, they cannot and do not want to seize the signs of time and the change it brings in social development; evidently, they forgot that the Law, even before of being a system of legal norms and logic principles, belongs to the everyday life experience (p. 5).

This was a clear and unmistakable indictment, which provided the Review with a robust and ambitious programmatic framework. Not by chance, Cappellini's essay bears the title of "*The signs of time*".

Over the years, concern for the implementation of such a cultural project waned due to awareness of the results achieved (see the fundamental "*Quaderni*" editions on legal socialism, the Italian jurist Emilio Betti, Savigny, the Law Reviews, Geny, and Cammeo). The Review was also enriched with new ambitious goals, the first of which was the dialogue with other social sciences in order to begin a profitable exchange (especially with sociologists and legal anthropologists). The Review never altered its path, and the same course was followed by Pietro Costa, who

became editor in 2001. Today, among the Italian legal reviews, the “*Quaderni Fiorentini*” still contains the most lively and strongest voice of Grossi.

The third volume reviewed here is *The Nobility of law: Jurists’ profile*. (“*Nobiltà del diritto. Profili di giuristi*”)⁵, which is a collection of twenty-nine jurists’ profiles, all published within the last thirty years (starting with the homage to Edoardo Ruffini in 1978 and extending to the essay on Alberto Trabucchi in 2007). These essays are presented in chronological order, according to the date of publication, rather than each jurists’ period of scientific activity. They are all considered noble-minded jurists, hence the title of the book. Their nobility stems from “their contribution to deny the image of jurists as devoted to spinning their fragile ‘cobweb of learning,’ made of abstruse techniques and affected formalism.” They were, indeed,

[M]en of science strengthened by speculative capacity and cultural open-mindedness, all of them (each in a different way) are the protagonists of the modern legal thinking in Europe: historians and philosophers of Law, experts in various branches of positive law, and also remarkable practitioners. All of them embraced the most serious matters of their time, dealing with them as jurists do. All of them contributed to effectively strengthen the ‘society-redeeming’ dimension of Law. (p. XI).

The profiles examine mostly scholars in Private Law or cognate branches (in fact, Grossi is mainly a historian of Private Law) starting from the major protagonists of the European scene (François Geny tRaymond Saleilles and the eclectic Franz Wieacker), to some of the major Italian experts in Civil Law (Vittorio Polacco, Tullio Ascarelli, Filippo Vassalli, Salvatore Pugliatti, Enrico Finzi, and Alberto Trabucchi), with a specific emphasis on scholars in Agrarian Law (Giangastone Bolla and Enrico Bastianelli) and labour law (Gino Giugni). However, there are also portraits of scholars in other branches of Law, from Romanists (besides Wieacker, Giorgio La Pira and Paolo Frezza are mentioned) to philosophers (Giuseppe Capograssi, Enrico Opocher, and Angelo Falzea), historians (Edoardo Ruffini,

⁵ P. Grossi. *Nobiltà del diritto. Profili di giuristi*, Per la storia del pensiero giuridico moderno, No. 80, Giuffrè, Milano, 2008, at 742

Francisco Tomas y Valiente, Adriano Cavanna, Mario Sbriccoli, and Ovidio Capitani), and some remarkable practitioners (Giovanni Zucconi, Guido Cervati, and Cesare Ruperto).

Nevertheless, the volume is also of great interest to Public Law jurists, since it includes essays on the profiles of Santi Romano and Mario Nigro. These profiles are to be counted among the most lucid examinations of the two masters' legal thinking (and this opinion is quite meaningful as we look further into other writings on Santi Romano's work).

Although these studies were carried out over thirty years, the reader will be impressed by the consistency of Grossi's selection of his research topics. In spite of the commemorative or celebrative occasions on which some studies were published, and notwithstanding the fragmented indulgence in the research development, consistency is the thread that weaves through the entire collection. One can perceive the militant and strict selection employed by the author, who denies the idea of the historian as well as the jurist as neutral observers, well-distanced by the competition. Indeed, the common features shared by these "noble" jurists are their anti-absolutistic and pluralist vision of law as well as their dialectic way of thinking about their relationship with the times they live in, as witnessed through their dissatisfaction for the present situation and their concerns for the future. They also share an attitude that promotes listening to and understanding the factors of crisis and a need to look backwards in order to boost the change and renewal of a society. The nobility of law, therefore, does not slump into the idleness of tradition, but goes up the river, brokering the streams, in order to support an original cultural project that is more consistent with the changes of time and social life developments.

Paradoxically, the research path drawn by this collection includes some autobiographic contents. If we link one essay to another, it is possible to reconstruct the main ideas of the Tuscan jurist: historicity, humanity, unity of law, a dialogue for law and above the law itself, emphasis on the line rather than on single graphic points; the legal science as the responsibility to understand (*intelligere*) the present and the past, and the past for the present, and the full immersion of the jurist into the social context.

The three books reviewed here address all of these issues. This is the reason why they might be considered necessary readings for anyone who defines himself as a legal expert. They suggest unusual intellectual vigour, especially if we look at the long route covered by Paolo Grossi. And the frankness of his opinions and the liveliness of his style do not exhibit any alteration due to the signs of time. As recalled at the beginning of this review, Grossi himself states that, "my research path is not finished yet and my intellectual action goes on," this statement will be appreciated by the reader who is eager to turn his eyes to future enlightening landscapes outlined by the Florentine Master.