

The Connections between German Pandectist School and Italian Legal Culture at the End of XIX Century* §

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ABSTRACT

The rejuvenating approach to Roman law taken by the German Pandectist School in the 19th century exerted a great influence far beyond the boundaries of Germany. This phenomenon can really be seen as one of the “centralising forces” of European legal history, especially considering the simultaneous emergence of national codifications, which led to

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§ This paper has been submitted to an external referee.

an increasing gap between the various legislations issued by European countries. Within Europe, the influence of the Pandectist School was particularly strong on Italian legal culture. The development of translations of German legal handbooks was particularly encouraged by Italian Romanistic scholars after the national unification, as an emblematic component of a general project for the diffusion of German legal culture in Italy. The translations were increasingly directed to original works, especially due to the multitude of notes provided by translators, which contributed to the critical revision of German erudition, namely by comparing it to Italian legislation. Especially the version of the *Lehrbuch der Pandekten* by Carl Ludwig Arndts, written by Filippo Serafini, and the one of Bernhard Windscheid's *Lehrbuch des Pandektenrechts*, carried out by Carlo Fadda and Paolo Emilio Bensa, played an important role in the development of the studies of Roman and private law in Italy.

KEYWORDS

CODIFICATION – TRANSLATION – ROMAN LAW – PANDECTIST SCHOOL – WINDSCHEID, BERNHARD

INTRODUCTION

In the 19th century the German Pandectist School, which represented the leading authority of German legal science at that time, took a rejuvenating approach to Roman law, in order to construct a system of contemporary private law suitable for the particular needs of the modern society. This methodology exerted a great influence far beyond the boundaries of Germany. In fact, the success of this approach, and especially its international influence, can be considered as one of the “centralising forces” of European legal history.

This particular connotation becomes even more significant considering the simultaneous emergence of national codifications as the opposing “decentralising force”, which led to an increasing gap between the various legislations issued by European countries. This produced a break in the centuries-old tradition of continuity represented by the Roman-Canon *ius commune*.

As first important consideration, we have to notice that the success of German Pandectist School and the development of national codifications are concurrent phenomena. At first sight the codification of private law could be considered as the end of the direct application of Roman law in legal practice. We refer above all to well-known Art. 7 of the Act Promulgating the *Code Napoléon*, dated 21 March 1804, which abrogated formally the roman sources.

This wasn't the case of Germany: as the well-known *Bürgerliches Gesetzbuch* came into force only in 1900, in the meanwhile the leading source of law was represented by German Pandectists. The great success of their methodology all over Europe can be considered as an important sign: Roman law still represented an

unavoidable source to interpret the new codes, to resolve doctrinal disputes, and to fill gaps in the law too. In other words, Roman law remained «an indispensable tool», and not only a historical introduction to modern private law: therefore, we cannot exclude a «substantial continuity» between the tradition of the *ius commune* and the Civil codes.¹

1 – THE INFLUENCE OF GERMAN PANDECTIST SCHOOL ON ITALIAN LEGAL SCIENCE

Within Europe, the influence of the German Pandectist School was particularly strong on Italian legal science, especially after the promulgation of the first Italian Civil Code in 1865. It is well known that this Code was mostly influenced by the French model of the *Code Napoléon*. However, the methodology offered by German Pandectists became soon very useful to Italian jurists. A dual issue has to be dealt with, namely how to elaborate suitable interpretative tools for the newborn Civil Code, and how to provide cases and materials for legal practice, that were not yet developed directly upon the promulgation.

As second fundamental consideration to our reflection, we have to remember that the founding fathers of Italian private law were at the same time the most influential Romanistic scholars and had been trained in Germany by Pandectists. Therefore, they emphasized the value of Pandect-science as one of the best sources of principles for the Italian interpreter.

The development of Italian translations of German legal handbooks, as an emblematic component of a general project for the diffusion of German legal culture in Italy, was particularly encouraged by Italian Romanistic scholars. These translations were increasingly directed to original works especially due to the multitude of notes provided by translators. These annotated translations meant to help the Italian jurist both on the doctrinal side, by integrating the domestic literature (which seldomly reached remarkable scientific levels at that time), and even more on the practical side, by providing cases and materials to Italian lawyers.

Many authors acknowledge a real «strategic attack» launched by Italian Romanistic scholars to promote the German Pandectist model immediately upon promulgation of the national Civil Code, which could result in «the sad burial of Roman law as the current branch of knowledge and teaching».² Especially Paolo Grossi identifies «an indissoluble link between Italian *Risorgimento* and the revival of Roman law».³ The full weight given to this discipline in study plans of the faculties corresponded not only to «a remarkable scientific production» but also to a public office (Vittorio Stella uses the expression *munus*), in order to defend

1 ZIMMERMANN, *Roman Law, Contemporary Law, European Law. The Civilian Tradition Today*, Oxford University Press, Oxford, 2001, 3.

2 GROSSI, *Scienza giuridica italiana. Un profilo storico 1860–1950*, Giuffrè, Milano, 2000, 40.

3 *Ibidem*.

the civil unity against the unavoidable disturbances after the first Italian political crisis, which followed the fall of the right-wing government in 1876.⁴ Therefore, we can assert that in the second half of 19th century, by teaching Roman law, Italian jurists «meant to educate professional men in general and to elevate the legal culture of the Nation».⁵

2 – THE STRATEGY OF FILIPPO SERAFINI

In this “struggle” for the survival of Roman law, as a branch of research and teaching, in a time in which private law was mostly regulated by the Civil Code, we have to remember especially one Italian Romanistic scholar. The revival of Romanistic scholarship was greatly strengthened by the «revitalizing strategy» of Filippo Serafini (1831-1897).⁶

He was born in Preore, a village near Trento, then a part of the Austro-Hungarian Empire, and taught at the universities of Pavia, Bologna, Rome and, in the end and for the longest period of time, Pisa. Thanks to his knowledge of German language, he could keep in touch with the most influent German-speaking European legal science. In 1881 he took part in the commission convened in Bern for the compilation of the Swiss Federal Code of Duties, the year after in the commission of coordination for the Italian Code of Commerce, then in the one convened in 1889 for the compilation of the Swiss Federal Law of Enforcement and Bankruptcy, which came into force in 1892.

In 1869 Serafini had taken over the management of the law journal *Archivio giuridico* from Pietro Ellero, who had founded it only one year before in Bologna. From the first year of publication, Serafini had already begun with editing the comparative column *Rivista mensile del movimento giuridico in Germania* in the journal. It was dedicated to the review of the most important German publications regarding civil and criminal law, as well as legal history. For a long time it had been one of the steadiest sources of information in Italy about German legal science, in particular concerning the Romanist branch of the Historical School.

In 1869, in the fourth volume of the journal *Archivio giuridico*, Serafini significantly urged Italian students to compensate for the poorness of Romanistic teaching, especially by studying «the best handbook of Roman law», namely that of the famous professor Windscheid (1817-1892), who had become the most influential

4 STELLA, *Giuristi, pensatori politici, sociologi, economisti*, in Balduino (cur.), *Storia letteraria d'Italia*, new edn, *L'Ottocento*, 3rd Volume, Piccin-F. Vallardi, Padova-Milano, 1997, 1655.

5 LANDUCCI, *Filippo Serafini (10 aprile 1831-10 aprile 1931)*, (1931) XXI (CV of the complete collection) 4th Series, *Archivio giuridico “Filippo Serafini”*, Società tipografica modenese, Modena, 123.

6 GROSSI, *Scienza giuridica italiana*, cited above, 41.

exponent of German Pandectist School.⁷ Together with the study of Roman law, Serafini strongly recommended that students pay attention to legal history, being aware of the lack of thorough scientific examinations with regard to this subject.

As many Italian students decided to study abroad at that time, not being satisfied with the purely professional purpose of their undergraduate studies, Serafini had also promoted a legal history seminar at the University of Pisa. This legal history seminar had to be different from academic courses, though similar and connected with them. It was aimed at the training of «real scientists, suitable for teaching and to increase their national legal literature with original works».⁸ Further, it soon won praise abroad, persuading professors at the legal faculty of the University of Zagreb to inaugurate a similar one in 1880. In fact, this can be considered as another important proof of the circulation of methodologies in European legal science during the whole XIX century, together with the diffusion of translations of foreign legal works.

According to Serafini, whose thinking was to be further developed by his followers Biagio Brugi (1855-1934), Francesco Ferrara (1810-1900) and Alfredo Rocco (1875-1935), the translation into Italian of the works written by foreign legal scholars could be divided into two successive periods. The first had developed before the unification of Italy and was characterized by a simple outward knowledge of foreign doctrines, without remarkable effects on the local legal science. On the other hand, we could talk about the second in terms of complete reception, which meant real scientific maturity and, finally, the beginnings of an independent doctrinal production.

As well as an increasing interest in German works, the main turning point was therefore the meaning given to translations, noticed by Serafini himself. However, the French influence, which had prevailed in Italy since the promulgation of the *Code Napoléon*, was still far from extinction. The parallel development of the two trends can be nicely illustrated in two ways. Firstly, by comparing the titles of the works translated from French and from German in the period between 1830 and 1865 (when the majority of Italian translations was written). Secondly, by considering - as decisive proof - the Italian Civil Code of 1942, which is a compromise between these two different foreign models.

The Italian translation of the *Lehrbuch des Pandektenrechts* by Bernhard Windscheid was written by Carlo Fadda (1853-1931) and Paolo Emilio Bensa (1858-1928) and published in instalments between 1886 and 1902. Therefore, it places itself in the second period of complete reception of foreign literature mentioned by Serafini, during the “turning-point of the eighties”, which determined the de-

7 SERAFINI, *Rassegna d'opere giuridiche tedesche*, (1869) IV *Archivio giuridico*, Tipi Fava e Garagnani, Bologna, 342.

8 BUONAMICI, SCOLARI, SERAFINI, *Programma, Statuto e Discorso inaugurale del Seminario storico-giuridico di Pisa*, (1877) XVIII *Archivio giuridico*, Tipi Fava e Garagnani, Bologna, 561.

cisive transition from the «exegetic» methodology and teaching imported from France to the systematic and scientific one of German origin.

Though this period can definitely be considered as the apogee of Italian translations of the masterworks written by German legal science, and therefore should be rendered a fair tribute to masters like Serafini, Fadda and Vittorio Scialoja (1856-1933), we should not forget that this period of intense reception was preceded by a slow cultural preparation. Its seeds can really be found in the excellent tradition of studying German legal literature, which started around thirty years before Italian political unification.

In any case, a decisive contribution to the expansion of the Pandectist trend all over Italy was surely made by Filippo Serafini, who had hoped for a better and deeper knowledge of German juridical culture in Italy. He had studied it since his time at the universities of Vienna, Innsbruck, Berlin and Heidelberg, where he had attended the courses of Karl Joseph Anton Mittermaier (1787-1867), as well as the ones of the most famous Pandectists, like Karl Ludwig Arndts (1803-1878), Karl Adolf von Vangerow (1808-1870), Adolf Friedrich Rudorff (1803-1873), Friedrich Ludwig Keller (1799-1860).

Furthermore, Filippo Serafini used to correspond regularly with Rudolf von Jhering (1818- 1892). While German legal science was still mostly under the dominating influence of the “Savigny cult”, the author of the famous book *Der Kampf ums Recht* was trying to adapt the old methodologies to the new exigencies of contemporary society, by building up a system of “natural jurisprudence”. Maybe it is no exaggeration to say that, in the second half of the 19th century, the reputation of Jhering was as high as that of Savigny (1779-1861) in the first half. Their methods were almost diametrically opposed: Savigny and his school represented the conservative, historical tendency, while Jhering believed in a philosophical conception of jurisprudence, as a science to be utilized for the further advancement of the moral and social interests of mankind. He had also a vision of a universal comparative legal science, that is the most important element to our considerations.

In a letter addressed to Serafini in 1872, Jhering was delighted about the first Italian Legal Congress because it not only consolidated the unity of Italy, but it also offered the opportunity to realize the important task which history now had entrusted to the European peoples, more than ever: «the great conquest of a law in common».⁹ Jhering was glad to notice the leading position assumed in international relations by the German and Italian nations, sharing similar political events and cultural interests. Above all, they acted as go-betweens by settling the «antagonism between the Latin and Germanic races», and therefore they were first in the way to the «universality of law, against the triumph of national selfishness».¹⁰

9 JEHRING, *Lettera n. 19, Rudolf von Jhering a Filippo Serafini, Vienna, settembre 1872*, in Behrends (ed.), *Rudolf von Jhering, Beiträge und Zeugnisse aus Anlaß der einhundertsten Wiederkehr seines Todestages am 17.9.1992*, 2., erweiterte Auflage mit Zeugnissen aus Italien, Wallstein, Göttingen 1992, 136.

10 *Ibidem*.

Jehring gave a really high regard to Filippo Serafini. He noticed himself that the Italian scholar had been seen for many years as a kind of «intermediary between Italian and foreign jurisprudence», «one of the most powerful and tireless representatives of foreign legal science in Italy».¹¹ In fact, Serafini gave an important contribution to the cancellation of a kind of «ideological mortgage» prevailing in Italy toward German-speaking countries at that time, which had linked German literature with the Austrian enemy until the *Risorgimento*.¹²

Filippo Serafini can really be considered as the «connecting link» between German and Italian literature.¹³ Especially thanks to him, the knowledge of the systematic and scientific methodology and of the masterpieces of the Historical School began to spread copiously in Italy, spurring the revival of Romanistic studies by following the example of the improvement which had occurred in Germany. By translating German Pandectist literature, Serafini's "school" therefore pleaded the Romanistic cause, spreading «the example of a vigorous and vital Roman law, transformed and distorted by the new demands but still developed from the same legal, technical and cultural platform presented by the remote Pandects of Justinian».¹⁴

3 –THE OPINION OF CONTEMPORARY ITALIAN HISTORIOGRAPHY ON THE ISSUE

Some influential contemporary Italian historiography has noted how, after the promulgation of the Italian Civil Code in 1865, under the emphasis of their opening lectures, the great Italian Romanists tried to hide their worries about a possible loss of topicality for Roman law.

Above all, Paolo Grossi has highlighted the special meaning given to opening lectures at Italian universities around the Eighteen Eighties. Gullio Cianferotti considers especially the lectures *Del diritto positivo e dell'equità*, read by Vittorio Scialoja in Camerino in 1880, and *I criteri tecnici per la ricostruzione giuridica del diritto pubblico*, given by Vittorio Emanuele Orlando in Palermo in 1889, as the main moments in which Italian academic science became aware of its «predominance plan» over practice as a legal source.¹⁵ This plan was to be carried out «by

11 *Ibidem*.

12 BENEDEUCE, Il «giusto» metodo di Emanuele Gianturco. Manuali e generi letterari alle origini della «scienza italiana», in Mazzacane (ed.), *L'esperienza giuridica di Emanuele Gianturco*, Liguori, Napoli, 1987, 301.

13 LANDUCCI, *Filippo Serafini (10 aprile 1831-10 aprile 1931)*, cited above, 4.

14 GROSSI, *Scienza giuridica italiana*, cited above, 41.

15 CIANFEROTTI, *La prolusione di Orlando. Il paradigma pandettistico, i nuovi giuristi universitari e lo stato liberale*, (1989) 4 *Rivista trimestrale di diritto pubblico*, 998.

adopting the Pandectist paradigm», which was realized in fact at least until the promulgation of the Italian Civil Code of 1942.¹⁶

Franca De Marini Avonzo, on the one hand, acknowledged Bensa's credit for translating and annotating the *Lehrbuch des Pandektenrechts* by Windscheid into Italian, and more generally the Pandectists' one for creating modern Law. On the other hand, she criticized the confusion they made between historical and creative work, as they passed off the real renewal of law as a simple re-exposition of already existing law. In other words, although Pandectists played a leading role in the updating of positive law hoped for by legislators on the doctrinal side, their attempt to justify the introduction of new ideas by disguising them as the habitual revitalizing use of Roman sources would be open to criticism. But above all, De Marini considered the traditional reference to Roman law as an excuse for legal policy choices.

We have to notice that the same argument has been put forward to justify Savigny's opposition to codification: according to most of the historiography, the founder of the Historical School was forced by the oppression of codification to promote a great cultural operation whose aim was «to confirm the necessity of a renewal of legal studies by a re-evaluation of Roman Law».¹⁷

In Italian jurists' case, the usual reference to Roman law could be especially a way to avoid the "Social Question" emerging between the 19th and 20th centuries, which hoped for a revision of liberal codes in favour of the poorer classes. Consequently, the Pandectists tried to use the power of tradition to argue against the need for renewal.

According to Antonio Mantello, the functionality of these behaviours to legal policy choices becomes even more verifiable nowadays, thanks to a critical assessment of modern codifications. By analysing the doctrinal contribution given by Pandectists to positive law, it would be possible to reconstruct their reaction to the "Social Question" at that time. In confirmation of the fact that the revival of Roman law hid a plan much more complex than a simple defence by Romanists of their own subject against codification, Mantello emphasizes the contribution also made by Italian experts in private law to «the battle for Roman law».¹⁸

4 – FILIPPO SERAFINI AND THE *LEHRBUCH DER PANDEKTEN* BY KARL LUDWIG ARNDTS

The translations of the handbooks by German Pandectists, written by the most influential scholars of Roman law and private law in Italy, can surely be considered as an important part of their operation of legal culture.

¹⁶ *Ibidem*. See also p. 1020.

¹⁷ TROMBETTA, *Savigny e il Sistema. Alla ricerca dell'ordine giuridico*, Cacucci, Bari, 2008, 23.

¹⁸ MANTELLO, «Il più perfetto codice civile moderno», a proposito di BGB, *diritto romano e questione sociale in Italia*, (1996) XCIV(1) *Rivista del diritto commerciale e del diritto generale delle obbligazioni*, 1105.

The first one to remember is the *Lehrbuch der Pandekten* by Karl Ludwig Arndts, which was translated into Italian by Filippo Serafini himself. The first edition of Arndts' masterpiece had been published in Munich in 1852, soon followed by several new ones and was reviewed in Italy by Vittorio Scialoja.

Karl Ludwig Arndts was born in Arnsberg, a town of Westphalia, in 1803 and died in Vienna in 1878. After three years of legal studies at the universities of Bonn and Heidelberg, he attended Savigny's lessons in Berlin, which struck him strongly. He started his academic career in Bonn and in 1838 refused a position as full professor in Breslau to teach in Munich, where he reached the top of his literary production by composing the famous *Pandekten*. He took also the chance to take part in the Bavarian legislative commission between 1844 and 1847, and in the Parliament of Frankfurt between 1848 and 1849. In 1855 he moved to Vienna, where he taught until 1874, as he had been chosen for the divulgation in Austria of methodology and works by the Romanist branch of the Historical School.

Surely were the *Pandekten* by Arndts widely renowned, but why did Serafini choose to translate them among all the masterworks written by German Pandectists?

First, because he believed they were the most suitable to the Italian legal situation. They could serve especially as a guidebook for those, among Italian scholars, who wanted to rise from sheer practice to the «magnificent theory», as Italian legal literature was still backward at that time. On the one hand, Serafini acknowledged the praiseworthy results of Italian legal practice, as a fruit of that special kind of judgement which had also enabled the promulgation of the Civil Code of 1865. On the other hand, he blamed the shortage of «systematic and colossal» doctrinal works, able to embrace all private law like the huge masterworks written by German Pandectists.¹⁹

Secondly, the fact that Serafini had already become acquainted with Arndts was surely an important factor in his choice to translate *Lehrbuch der Pandekten*. In 1857 Serafini had been appointed professor in Pavia by a commission in which Arndts himself took part, together with Vangerow, Keller, Rudorff, and Mittermaier. Arndts had allowed Serafini to translate his masterwork without asking for any remuneration and he also worked together with him on the revision of the translation.

This fact gives us the opportunity to focus on another important element to our consideration: the collaboration offered by German authors to Italian jurists on the translations of their own works. Previously, Savigny had co-operated with the Italian translators of his masterpieces too, in order to assure the accuracy of their work. We remember especially the Italian version of *Das Recht des Besitzes* by Pietro Conticini (1805-1871), which was completed in Berlin under Savigny's guidance and published in 1839, and the translation of *Geschichte des römischen Rechts im Mittelalter* realized by the Turinese Emanuele Bollati (1822-) between 1854

19 SERAFINI, *Trattato delle Pandette del Cav. Lodovico Arndts, Professore di diritto romano dell'università di Vienna, Prima versione italiana sulla settima edizione tedesca arricchita di copiose note, appendici e confronti, Volume I*, Tipi Fava e Garagnani, Bologna, 1872, *Prefazione del traduttore*, V-VI.

and 1857. Savigny's interest in translations of his works is well-known: Laura Moscati has pointed out how he usually was in correspondence with those who showed an interest in his teaching.²⁰

It is interesting to note that Antonio Salvotti (1789-1866), the well-known judge of the Austrian government, who is sadly famous for the political trials taking place in Lombardo-Veneto between 1820 and 1821 and involving Silvio Pellico too, and who had been in his youth Savigny's follower in Landshut, took a special interest in the accuracy of both translations. Besides taking part in the transcription of the manuscript of *Institutiones* by Gaius, Salvotti strove for the diffusion of Savigny's thinking and works in the Austrian-ruled Lombardo-Veneto and in Austria. In 1838 he revised part of the Italian translation of *Das Recht des Besitzes* by Conticini, and took interest in the diffusion of *Geschichte des römischen Rechts im Mittelalter* too, being involved by Savigny in the events of the translation made by Bollati.

This special co-operation between authors and translators exemplifies the cosmopolitan feature of 19th century European legal science, despite the challenges that national codifications could mean for legal doctrine. Serafini himself attached even more importance to the intellectual exchanges between the different European peoples in the period of national codifications than in the age of the *ius commune*, in which these intellectual exchanges were customary. To testify the importance of translations to European legal culture as a considerable opportunity for exchange, we think it convenient to remember a translation into modern Greek of *Lehrbuch der Pandekten* by Arndts, published in 1889. What is surely remarkable is the fact that the Greek translator Kiriakos, although he was a great expert of the German language and literature, declared he had taken «great advantage» of the Italian translation.²¹

In almost a decade, different and subsequent editions of the Italian translation of Arndts's *Lehrbuch der Pandekten* were published. It is interesting to notice that they grew very different one from each other. In the «Preface to the fourth edition» of his translation, published in 1882, Serafini clarified that he especially had expanded and elaborated the notes, in order to turn the translation into an original work. Therefore, it was no longer a work by Arndts, but a new one, due to all the legal literature which had been incorporated: both ancient and modern, Italian and foreign.

No less important is the fact that Serafini changed the reference to the users of his work, too. Instead of talking about a «book meant for scholars», as he had done in the «Preface to the first edition», ten years later he noticed how his

20 MOSCATI, *Da Savigny al Piemonte. Cultura storico-giuridica subalpina tra la Restaurazione e l'Unità*, Carucci, Roma, 1984, 150.

21 *Bollettino bibliografico*, 2. Arndtss. *Ρώμαικον δίκαιον ἐκ τῆς δεκάτης τρίτης γερμανίκης ἐκδοσέως τῆς γενομένης ἐπιμελεῖα* L. Pfaff καὶ F. Hofmann *μετάθρασεν καὶ πολλὰς σημειώσεις ἀύχτην ὑπο* I. Th. Kiriakos. – *Ἐν Ἀθῆναις, Κάρολος Βίλμπεργ* 1889, (1890) XLIV *Archivio giuridico*, Tipi Fava e Garagnani, Bologna, 596.

translation could not only be used by scholars but also by legal practitioners, which he initially might not have expected.²² To make his work more suitable for legal practice, Serafini enriched the notes by citing decisions of Italian courts and compared them to legal doctrine. In fact, one of the reasons why he chose to translate the work by Arndts, among all the masterworks written by German Pandectists, was the evident merit to expose the current law, instead of its historical development: Serafini intended to give a practical style to his translation.

Similarly, he wanted to ensure for his law journal *Archivio giuridico* the widest co-operation especially by lawyers and judges, in order to get not only ideal contributions but also a steady financial support. Windscheid showed his perplexity about the «typically Italian» purpose to deal with different subjects in the same law journal, although he viewed the joining of theory and practice for «the cultural and scientific unification of the Italian nation» positively.²³

The increase of the work and the amplification of the prospects made it impossible for Serafini to edit new editions by himself. For the first edition he could already avail himself, not only of Arndts's suggestions, but also those of his young follower Vito Perugia as well as his legal and philological competence. In any case, the fourth edition grew different from the first, being practically considered a team-work: many famous jurists took part in it, like Vittorio Scialoja, Carlo Fadda, Pietro Cogliolo (1859-1940), Biagio Brugi, and many others. It was clearly the beginning of a kind of «ample intellectual project», to which Paolo Grossi refers in order to explain how Serafini especially encouraged the cultural influence of the German model around about the 1880s, also by training an increasing number of young followers to seriously study German legal science.²⁴ So Serafini urged everyone who was writing monographs or other kinds of publications about the law of contracts and the law of torts to take part in producing the new editions, by asking them heartily not to hesitate to share useful improvements to the Italian version of *Lehrbuch der Pandekten*.

All in all, it is especially important to note that Serafini's plan represented not simply a passion for German things, but that it was a way to restore the study of Roman law in Italy. According to the senator Francesco Buonamici (1832-1921), who commemorated Serafini's death, this was exactly the leading thinking of his entire life. It is admitted that the revival of the study of Roman law was closely linked to the renewal of a civil society, which distinguished this period in the history of Italy.

22 SERAFINI, *Trattato delle Pandette del Cav. Lodovico Arndts*, cited above, *Prefazione del traduttore*, VII.

23 *Testimonianze-Zeugnisse*, [84], in Behrends (ed.), *Rudolf von Jhering*, cited above, 128.

24 GROSSI, *Scienza giuridica italiana*, cited above, 41-42.

There are significant analogies between Serafini's translation and the Italian version of Windschied's *Lehrbuch des Pandektenrechts* created ten years later by Fadda and Bensa: they both have a lot of notes, which aroused even more interest and success than the translation itself. In fact, especially thanks to the notes written by these two great Italian scholars to give a commentary on the German original text, their translation became surely the one which contributed the most, not only to the diffusion of German erudition in Italy, but also to its critical revision, namely by comparing it to Italian legislation. As the notes range over various legal subjects, such as private law and public law, and general theory of law and legal practice, we can gather from this that Fadda and Bensa had great erudition and capacity to excel in all these different disciplines.

Carlo Fadda was born in Cagliari in 1853 and died in Rome in 1931. He became one of the most eminent Romanistic scholars in Italy halfway between the 19th and 20th centuries, by teaching Roman law at several universities and finally in Naples. Being a connoisseur of the trends of German legal science, he joined the Pandectist methodology and encouraged its reception in Italy. At the same time he distinguished himself at the Bar and in several public positions, being appointed senator of the Kingdom of Italy in 1912 and member of the committee for the revision of Italian codes in 1924.

According to Vincenzo Arangio-Ruiz (1884-1964), one of the main followers of his, Fadda had conceived the idea of a work suitable not only for the teaching of Roman law, but also for the creation of a sound starting point for the study of private and commercial law in Italy.²⁵ It had to be based on the huge scientific production by German Pandectist School, which Fadda had already thorough examined.

Just when Fadda started to conceive this project at the University of Genoa, Bensa was teaching there too. This was a lucky coincidence, as Bensa had attended Windscheid's lessons at the University of Leipzig during the summer semester in 1877, being therefore particularly qualified for the translation of *Lehrbuch des Pandektenrechts*. In 1878 he had also published a review of Windscheid's research *Wille und Willenserklärung*.

The young scholar was born in Genoa in 1858, and died there in 1928. Besides being a well-educated man in philosophical, historical and literary subjects, he taught private law at the University of Genoa for forty-four years and practised the legal profession for his entire life. Like Fadda, he was appointed senator of the Kingdom of Italy in 1908 and member of the committee for the revision of Italian codes in 1924. After he had fought as a volunteer during the First World

²⁵ ARANGIO-RUIZ, *In memoria di Carlo Fadda*, in *Congresso giuridico nazionale in memoria di Carlo Fadda* (Cagliari-Sassari 23-26 maggio 1955), Giuffrè, Milano, 1968, 3-21.

War, he took part in the committee of enquiry on the causes and responsibilities of Caporetto in 1918.

The importance of the work by Fadda and Bensa rests on the original notes they added to their translation. In fact, they opened the scientific debate especially on matters of which, unlike German Pandectists, most Italian scholars were still unaware. Therefore, these notes show their intent to develop from the sheer reception of foreign legal science to its adaptation to the legislation in force in Italy, which was a typical trend of that time. To tell the truth, providing notes in the margin of the translation was not a peculiarity of these two Italian jurists. This kind of notes can also be found in the Italian translations of French works written right after the Restoration, when the influence of French models was at its height. These notes had a decidedly comparative purpose, in order to search for similarities and differences between the various legal systems. For example, in that period new translations of the masterpieces by Domat and Pothier into Italian were realized, complete with notes comparing French legislation with Italian law, in order to emphasize their «common Roman background».²⁶ Therefore, we can assert that the real aim of these translations consisted not in a mere respect for foreign models, but in a reunion with the native tradition of Roman law, by means of legal comparison. Later, the drafters of the first Italian Civil Code of 1865 were still trying to justify the choice of *Code Napoléon* as a model for Italian codification by referring to the *topos* of the substantial continuity between the latter and Roman law.

The real peculiarity of the notes by Fadda and Bensa consisted in their having been written at a turning point in the development of Italian legal studies. Thanks to the contribution made respectively by the Roman law scholar Fadda, and by the private law expert Bensa, at the same time the notes represent the completion of the previous period of expansion of Romanistic studies as well as the sound starting point of the new scientific study of Italian private law.

Although the great interest and success aroused by the Italian notes can be considered as a similarity shared by the Italian translations of Arndts's and Windscheid's masterworks, the working procedure chosen respectively by Serafini and by Fadda and Bensa is really much different. In their translation, Fadda and Bensa chose to keep as close as possible to Windscheid's thinking, while they used their notes to develop a kind of "active reaction" to the translation, an explanatory commentary to the original version, feeling themselves free from all ties of accuracy which distinguishes their translation instead. By presenting their notes at the end of every book, clearly separated from the translation of the original text, they made it easy for the reader to distinguish their personal opinions from Windscheid's thinking.

This working procedure is actually very different from the one chosen by Serafini to translate *Lehrbuch der Pandekten* by Arndts. First, even in the translation

²⁶ NAPOLI, *La cultura giuridica europea in Italia, Repertorio delle opere tradotte nel sec. XIX, I. Tendenze e centri dell'attività scientifica*, Jovene, Napoli, 1987, 41.

of the original text by Arndts, Serafini felt himself freer than Fadda and Bensa, who always tried to find the Italian word expressing the same meaning of the original in the most literal way. Beyond the greater or lesser accuracy of the translation, the main difference between their *modus operandi* consists in Serafini's choice to juxtapose his own contribution to the translation of the original notes written by Arndts. In this way, he made it really difficult for the reader to distinguish between his notes and Arndts's thinking. In the fourth edition of the Italian version of *Lehrbuch der Pandekten* even more than in the first, it is very difficult to compare the original notes added to the text by Arndts himself to the translation provided by Serafini. Without always distinguishing his own additions from the original content, Serafini also changed the order of the notes written by Arndts, enlarged them by providing new citations of foreign and Italian doctrine and his own observations, and even added many new notes.

In the «Preface» of the second edition of the second volume, which was published in 1875 (only three years after the first edition), Serafini himself informed the reader about the alterations he had made in the translation, by adding references to the more up-to-date monographs, new comparisons with Pandects, provisions of the Italian Civil Code and the judicial decisions of Italian law courts. In this way he emphasized once again the possibility to make the theoretical teaching suitable for legal practice too. Sometimes Serafini took the opportunity of these juxtapositions to pay attention to the Italian context, which was not examined at all by Arndts. For example, regarding the concept of law of the Pandects, whose value is confirmed by Arndts in spite of codification, Serafini cites the Italian Civil Code of 1865 too, emphasizing its decidedly Romanistic background. Instead, on the matter of codification, Arndts had mentioned only Austrian and German Codes (such as the Prussian *Allgemeines Landrecht des Königlich-Preussischen Staaten* of 1794) besides the *Code Napoléon*.

While they managed to complete the translation of the original text of the Pandects and Windscheid's notes, Fadda and Bensa didn't finish their work of annotation and commentary. This operation was carried on by another two able Romanist scholars, Pietro Bonfante (1864-1932) and Fulvio Maroi (1891-1954): anyway, their notes seem to stop at the third book of *Lehrbuch des Pandektenrechts*, on the subjects of property and possession.

Nonetheless, we can assert that the main purpose of the hard work undertaken by Fadda and Bensa had already been done. In fact, they had succeeded in realizing the essential basis for the development of an Italian science of private law, by elaborating a wide-ranging "General Part" of Italian private law, which inspired all later scientific production. Therefore, it is admitted that Fadda and Bensa elaborated the general theory of Italian law, taking inspiration from the methodology of the German Pandectist School, but mitigating the excesses of dogmatic abstraction, thanks to the references to the legislation in force in Italy.

CONCLUSION

This short reflection upon the most important Italian translation of German Pandectist literature illustrates what probably were the main functions of the reception of German legal science in Italy.

First, it is admitted that this phenomenon coincided with a main turning point for Italian legal history. In the second half of the 19th century, the work of assimilation and comparison with foreign cultures, mainly represented by German and French models, contributed to make the “newborn” Italian people aware of their national characteristics. This can be seen, for example, in the multiple references to the Italian legal context in the notes written by Fadda and Bensa in their translation of the *Lehrbuch* of Windscheid.

The comparative method which gained ground thanks to the translation, and especially thanks to the annotation of foreign legal literature, accustomed Italian jurists to comparing the laws of the various European nations, in order to search for similarities and differences, and above all to develop a passion for scientific research. It is admitted that German legal science played an important role by spreading methods of research, and in developing the habit and passion for it. Consequently, this influenced how the mission of the Italian jurist was conceived: it was hoped that he could play an active role in Italian society as “jurist-scientist”, personally devoted to show politicians the way to a new legislation. The application of the German scientific method therefore guaranteed a significant presence of jurists in Italian society, and the value of this method was promoted in comparison with the French method of «Exégèse». In short, by coming into contact with the German Pandectist School, Italian jurists were encouraged to deepen the scientific approach to legal matters.

Therefore, the Pandectist methodology can surely be considered an important stage -though later overcome- in the development of legal culture in Italy, as well as in Germany and in the other countries which went through it.

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