Summaries

Silvio Ferrari, *Constitution and Religion*

An examination of a country's Constitution offers useful pointers for understanding how the state in question conceives and regulates its relationship with religion. In this essay, the author analyses the constitutions of all the countries of the world, considering three groups of enactments: the ones that concern a constitution's inspiring ideals and principles, the ones that deal with the sources of law and, lastly, the ones that regulate the relationships between the state and religions. An examination of this material paints a picture of the position accorded to religion in each country's legal system and above all highlights the differences attributed to the cultural and religious background that inspires them: in particular, the differences between the Western countries with a Christian tradition and the Arabian countries with an Islamic tradition, but also the differences found, within the Islamic world itself, between Arabian and non-Arabian countries. While recognising that any comparison between constitutions needs to be completed by an analysis of other sources of legislation and jurisprudence, this article indicates several directions for future research to develop on this work.

Guido Alpa, *Jurisprudential Law and "Living Law": Convergence or Affinity of Legal Systems?*

One of the many criteria used to classify legal systems in the course of the history of comparative law is that of "legal sources". On the basis of this criterion of classification, systems in which legislative sources prevail are distinguished from spontaneous sources – so the law as enacted by the legislator from the law as consolidated by means of customs, systems in which law is written from those in which the law is the result of practice, systems in which written law is codified from those based on law created by judges. Although they consider these classifications to be abstract, approximate and merely indicative, lawyers end up giving them credit, preferring to simplify paradigms rather than consign tradition to the past. However, there is a widespread belief nowadays that, while legal systems have their roots in different historical, cultural and interpretative experiences, they are tending to grow ever closer and converge, at least in Europe, as a result of European Union law, and in the Western world as a whole, as a result of market requirements and so of the rules dictated by the globalisation of economic relations. The natural tendency of legal systems to cater for requirements of rationalism and pragmatism also favour this process.

As a result of a thorough revision of the categories inherited from tradition, among other things, it is no longer feasible to portray the Western world's systems as in antithesis, but more as in affinity, as they are "mixed" in nature: all of them actually feature both written and unwritten sources and all of them have variable structures, as written sources have prevailed at one time in history and unwritten sources at another time.

Of course there are differences between the ways in which the administration of justice, the structure of the courts, the process of forming and interpreting the law and the application of the criteria of interpretation are organised, but these divergences have ultimately been substantially attenuated in the course of recent decades. Building on the emergence of jurisprudence, in the form of case law, on its configuration as a source of law and on the accreditation of the concept of "living law", as the law that is actually applied by its interpreter, sometimes in creative ways, as well as the affirmation of professional codes of conduct and self-discipline, the Italian system now takes the form of a "mixed" and "elastic" system that, it may be argued, even verges on the "mild".

M. Paola Mittica, *Traditions about Zaleucus. The Political and Social History of a Legendary Code and Its Author*

Zaleucus is known to modern historical-legal and philosophical-political literature as the author of the first written code of laws, dating back to the foundation of Epizephyrian Locri in the seventh century BC. The history of these laws, which were drawn up before those of Draco and more extensive, is found in several stories about the city dating back as far as the fourth century BC in Greece. These records are short, fragmentary, often contradictory and scattered in space and time across a multiplicity of sources that provide no coherent picture of the historical and political situation of the Locri colony at the time of its foundation. Even the question of Zaleucus' very existence is enveloped in mystery. As for the celebrated laws of Epizephyrian Locri, while they are sometimes attributed to Zaleucus, on other occasions they seem to be no more than the fruit of good government.

Aware that it is only possible to identify narratives, but also of their value for the purpose of tracing stories of a legal nature and their social and cultural function, the author's aim is to restrict her analysis to piecing together some of the threads that contribute the weaving of the pattern. Most of the traditions taken into consideration can be ascribed to the period from the fifth to the third centuries BC and concern not only Zaleucus himself, but the context of the culture of and knowledge about Epizephyrian Locri and its laws.

In conclusion, this story's great relevance in modern times is illustrated by examining a reconstruction of Zaleucus' Code made in 1800 by one Bonaventura Portoghese, a royal judge of the Kingdom of the Two Sicilies and an enthusiastic scientist and archaeologist.

Michele Mannoia and Vincenzo Scalia, *Do All Juveniles Belong to Cosa Nostra?*

Palermo and Catania are the two main cities of Sicily. Despite the fact that they share similar problems, such as underdevelopment, unemployment and social deprivation, the Juvenile Courts of the two cities apply different policies when dealing with juvenile deviants. When the same kind of crimes committed by juvenile defendants are considered, the Palermo court is found to be more lenient than its counterpart in Cata-

nia. Seeking an explanation for this discrepancy, the two authors discuss figures and use qualitative material to argue that it must be connected to the different relationship between organised crime and juvenile deviance in the two cities. In Palermo, Cosa Nostra has a more structured and hierarchical organisation, which disciplines criminal activities and thus reduces street crime to a marginal phenomenon. As Palermo judges are aware of this, they are more lenient with juvenile offenders. Catania is different, as the local mafia does not have the same centralised organisation as in Palermo, particularly since the city's most prominent Mafiosi were arrested. As a consequence, the borderline between street crime and organised crime becomes blurred, while youths are often involved in such offences as extortion, rackets and homicide. This situation influences the more repressive tendency manifested by the judges in the juvenile courts of Catania.

Maurizio Cermel, *Rom and Sinti, Citizens with no Homeland?*

The condition of the Rom and Sinti peoples represents very well the contradictions present in European society and the problems that Europe has to tackle if it is to pursue the path of political integration. There are several million people in the Rom and the Sinti population, distributed in small communities all over the continent. Because of their lifestyle and different language and customs, they are in practice denied access to the civil, political and social rights due to other citizens, both in Italy and in the majority of other European countries. This denial of their cultural identity sometimes verges on racial discrimination: as they lie on the margins of civil society, the authorities often treat them in ways that are incompatible with the principles of freedom, equality and solidarity on which today's modern democracies are founded. What the institutions in the various states ought to do, on the other hand, is work together with the Rom and Sinti organisations and with the international organisations to safeguard a cultural identity that enriches Europe as a whole just as much as its "national" identities do, while at the same time contributing at making these people fully entitled European citizens.

Eligio Resta, *God and the Majority Award*

The history of the principle of majority is still a powerful indicator for interpreting contemporary developments in economic democracy and in political democracy. The work by F. Galgano that led to these notes illustrates a line of commentary about the form and the contents of the rule of the majority that is pursued right up to the decline perceived in the present day. Overwhelmed by the crisis afflicting the concept of representation today, the principle of the majority has come back to question us about the space reserved for "deliberative democracy".

Alfonso Catania, *Is Law a Belief System? On Enrico Patttaro's* The Law and The Right

Enrico Pattaro's volume *The Law and the Right* features an appreciable finesse of argumentation and an analysis of unusual historical density. The attention paid to psychology – absolutely significant when studying an area like that of law, which comprises relationships of expectation and of claim – is deserving of recognition as an indispensable, urgent complexification of the conceptual framework of legal positivism and realism, whose reasoning has for some time been manifesting a degree of aridity and, I dare say, poverty. The author identifies the fact that Hart is treated as having espoused the psychologically-inclined realist school as a consequence of the realistic attention to describing *normative attitudes* as somewhat forced reasoning. These normative attitudes that Hart analyses by drawing a distinction between the internal and the external point of view can hardly be reduced to mere internal experiences that are pregnant exclusively in empirical psychological terms.

While the epistemological option in favour of a radical, materialist, psychologist monism expounded in Pattaro's book on the one hand stimulates a valuable investigation into the mental and social dynamic immanent to *reality (which must be)*, no less than the plane of *reality that is*, on the other hand it runs the risk of casting a shadow on the dimension of designing and transforming reality practised by those who generate norms (marginal in volume compared to the prevalence of believers who make them what they are by the very act of believing in them), thus blacking out the dialectic tension between law and facticity, obedience and effectiveness. This is a classical objection to radical realism that is not overcome by the attention paid by Pattaro to the normative dimension "in the relative sense".

Mario A. Cattaneo, *The Penal Question in Simone Weil's* Attente de Dieu.

In some of her writings, Simone Weil dealt with the penal question somewhat rapidly, but with a humanitarian spirit. In her book *Attente de Dieu* (*Waiting for God*), she devoted a chapter to the topic, stating that punishment, in its best interpretation, must work to the good and have a religious character. She was critical of a method of applying criminal law through trials in which the accused is treated with contempt and deprived of human attention. On the basis of these considerations, she developed an original approach to the concept of secularity: it is positive if it eliminates the claim of a "totalitarian church", but negative if it eliminates all religious, Christian values form social and civil life.

Luigi Cominelli, *Family Mediation: A New Profession and the Debate About the Alternatives to Adjudication*

Ivan Pupolizio's book *La mediazione familiare in Italia* (Family Mediation in Italy) is the latest in a series that testifies to the increasing interest at work in Italy

in topics of alternative conflict solving. The theoretical approach adopted to the topic is accompanied by evidence from professional practice and information about the authorities and subjects that work in the field of family mediation. Pupolizio takes an in-depth look at the practice of family mediation in Italy and draws up a summarised chronology of its development. Mediators do not investigate the couple's experience as a means for understanding the causes of the problem, but work together with the parties to identify concrete solutions for the future. Mediators have clearly already started venturing along the path that leads to their professionalisation.

Training whose purpose is to accredit family mediators will in due course flank basic training for lawyers who are not familiar with these procedures. Pupolizio spends some time and energy looking into the legislative aspects of the mediator's professional practice. Today's legislation offers several spaces for mediation, primarily when spouses separate. The book's theoretical section discusses fears that the methods of alternative dispute resolution may lead to a privatisation of justice, dwelling in particular on the criticism expressed by the women's movement, which considers that mediation, as opposed to the legal system, puts women at a disadvantage towards men. Pupolizio believes that alternative methods do not constitute a danger for equity when they are understood correctly to be methods of appropriate dispute resolution.

(English texts revised by Pete Kercher)

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