

Law as Social Art: a New Path for Research and Teaching

Arianna Alpini^{*a[0000-0003-2710-9500]} and Francesca Ferretti^{**a[0000-0003-0124-2581]}

^aDepartment of Law, University of Macerata, Piaggia dell'Università 2, 62100 Macerata, Italy

Keywords: interpretation, creativity, didactics, education

EXTENDED ABSTRACT

1. INTRODUCTION

Legal system is a process in continuous becoming, including cultural material that is both result and factor of human evolution. Consequently the object of law is not only the interpretation of principles and rules, but also the varied world of human facts. This surplus of culture can be called 'new legal anthropology'. Through studying of humanities, the jurist acquires the living representation of human evolution, that is, the human view of the world that can be observed according to a plurality of mutually fertilising criteria: historical, philosophical, economic, religious, linguistic and, of course, legal, in the twofold diachronic and synchronic dimension. In this framework, art plays a specific and decisive role, since its relationship with the legal sphere touches the soul of law, that is, the art of interpretation. Art takes as its reference the organic-spiritual articulation of human being and represents human nature through intuitions and ideas. It celebrates human creative act that goes beyond the description of the 'given' and provides the keys for unlocking the horizon of the imagination and of the interpreter's moral fantasy. The jurist is an artist when he manages to grasp the unrepeatability of an original solution based not on a partial assessment of reality nor on a one-sided perspective, but on the ability to consider the unity of complexity provided by the unity of human nature. Alongside the organic element, human beings present the spiritual element that drives them to be free. Therefore there is an evolution in the very concept of law corresponding to the evolution of human being that the jurist must consider. Contemporary law cannot ignore or nullify human dignity, i.e. human vocation to pursuit freedom. This is the perspective that we intend to adopt in the study of law: that is, to consider law as a social art, since the special purpose that law sets itself is to ensure the material and spiritual well-being and progress of human being and peaceful coexistence. The aim of this project is to develop a transdisciplinary research method that realises a dialogue between law and the humanities, as described above. This method, constituting an example of innovative didactics, will be applied to teaching in addition to research activities.

2. METODOLOGY

The methodology consists of developing a new legal anthropology, which follows a different path from previous studies (such as, for example, that of Rodolfo Sacco). This methodology uses the following techniques: the opposition-identity dualism; the creative process shared by the artist and the interpreter. Regarding the use of the first tool, we can observe that human nature, knowledge and art are closely linked. Man is led to question himself out of a desire to know the world and himself. It is precisely the opposition to the world, to 'something else', that generates the *separation* expressing the tension towards knowledge. From this opposition derives the concept of *identity*: at this moment human being is a creator; experience is followed by knowledge, in the opposition the polarities of unity are discerned. Human being finds the explanation in contraposition, never losing the feeling of belonging to the world. This feeling produces the aspiration to overcome contraposition and to rediscover the connection with what is outside human nature. Regarding the instrument of creativity, whenever the individual makes use of it, he becomes an artist, since he is able to follow the process that, without breaking natural constraints, leads him to find moral laws, that is, human laws created by man for himself alone. The mission of law is to ensure the feasibility of this artistic path for all; hence we consider law as social art. Since the focus is on human creativity, the jurist must take this process into account and adapt his or her actions to legal thinking. Therefore, we can say that law through interpretative art can make man free. The research methodology presented here is based on an artistic process of reconceptualisation: separation and reunification of concepts/keywords through a mutual fertilisation between the humanities and law. The aim is to provide a methodology that, by activating cultural and social change, can make the creation of a human legal system feasible. It is a methodology that is not based on the personal ethics of the jurist

* arianna.alpini@unimc.it

** f.ferretti11@unimc.it

or on the ruling political group conception, but human sciences-based, in the sense that it considers humanities as an integral part of the meaning and sense of legal categories. Humanities are not part of the meta-legal world, but the reasons of the legal system. Disciplines are not autonomous but interact among themselves through border relationships and connections, that represent the common objects of study. The focus on context and the plurality of dimensions inherent in each concept determines a new approach to the object of work for the University professor, in the capacity of both researcher and teacher. In relation to the second profile, the use of the described method for preparing lectures influences students' learning processes, as will be demonstrated by examples of lectures on 'will' and 'learning'. In addition to these examples, the article also includes a report of a transdisciplinary integrated didactics lesson conducted at the University of Macerata: it represents a concrete classroom experience of the described method. For this reason, the choice in favour of transdisciplinarity is functional to increasing problem-solving skills and orientation in the complexity of reality.

3. RESULTS AND CONCLUSIONS

The process of reconceptualization enriches and expands the semantic area and opens up new fields of legal application. Using this method generates a dual cognitive and communicative feedback, referred to here as a 'feedback loop': it concerns both the relationship between research and teaching (first cycle) and the relationship between teaching and learning (second cycle). 'New legal anthropology' approach leads to an openness towards different cultural experiences, inclusion of diversity and enhancement of the peculiarities, with consequent reduction of negative phenomena such as of discrimination, exclusion, inequality. The jurist assumes function of promoter and facilitator of cultural change through the acquisition of a juridical methodology including the essential questions and needs of humankind, such as, for example: free and dignified existence, motivation in work, the development of human creativity, the revaluation of exchange in the perspective of solidarity, the valorisation of use through talent and vocations, the re-functioning of money in the price circuit. This methodological path can also be taken into consideration by the humanities, which can draw new connections from the dialogue among themselves and the connections with law. Any student, who is trained in a method that values the person as such, according to a plurality of strongly interconnected cultural aspects, is capable of approaching reality in a more critical, comprehensive and inclusive manner.

REFERENCES

1. Perlingieri P.: Il diritto civile nella legalità costituzionale secondo il sistema italo-europeo delle fonti, 4^a ed., II, Fonti e interpretazione, p. 277 ss., spec. p 343. Edizioni Scientifiche Italiane, Naples (2020).
2. López Lerma, M., Etxabe, J.: Law's Justice: A Law and Humanities Perspective. No Foundations. An Interdisciplinary Journal of Law and Justice 9, 2–7 (2012).
3. Alpini, A.: From the Sense of Justice to Juridical Feeling. Italian Law Journal 8(1), 375–390 (2022).
4. Alpini, A. (ed.): Law Art Humanities. Creative Connections Methodology. Edizioni Scientifiche Italiane, Naples (2024).
5. Sacco, R.: Antropologia giuridica. Zanichelli, Bologna (2007).
6. Cardozo, B.: Law and Literature. Yale Review 6(9), p. 1931. Johns Hopkins University Press, Boston (1925).
7. Faralli, C.: Law and Literature: Historical Overview. In: Sellers, M., Kirste, S. (eds.) Encyclopedia of the Philosophy of Law and Social Philosophy. Springer, Cham (2023).
8. Balkin, J.M., Levinson, S.: Law and the Humanities: An Uneasy Relationship. Yale Journal of Law & the Humanities 18, 155–187 (2006).
9. Wittgenstein, L.: Ricerche filosofiche, p. 146. Giappichelli, Torino (1953).
10. Resta, G.: Is Law Like Social Sciences? On 'New Law Theory' and the Call for Disciplinary Pluralism. German Law Journal 23(4), 826–837 (2022).
11. Capograssi, G.: Studi sull'esperienza giuridica (1932). In: Opere, vol. II. Giuffrè, Milan (1959).
12. Carnelutti, F.: Arte del diritto (1949). In: Cananzi, D. (ed.) Giappichelli, Torino, p. 18 (2017).
13. Di Donato, F.: The Analysis of Legal Cases: A Narrative Approach. Taylor & Francis, London (2020); Ead.: La realtà delle storie. Tracce di una cultura. Guida Editori, Naples (2012).
14. Perlingieri, P., Femia, P.: Nozioni introduttive e principi fondamentali del diritto civile, 2^a ed., p. 29. Edizioni scientifiche italiane, Naples (2004).
15. Malpas, J.: Human Dignity and Human Being. In: Malpas, J., Lickiss, N. (eds.) Perspectives on Human Dignity. A Conversation, pp. 19–20. Springer, Dordrecht (2010).
16. Carless, D.: Feedback loops and the longer-term: towards feedback spirals. Assessment & Evaluation in Higher Education 44(5), 705–714 (2018).