

Interviews, Memoirs and other Contributions:

Teaching Roman Law in Iceland

by Francesco Milazzo

In accordance with the best academic tradition, my teaching experience in Iceland begins thanks to the trust of a master. Luigi Capogrossi Colognesi, heir and brilliant interpreter of the Italian Roman Law school of the University “La Sapienza” in Rome, in the academic year 2003-2004, was unable, for personal reasons, to undertake all of the teaching task that Akureyri required from him. Thus he invited me to share it with him. Owing to the persisting prohibitive engagements of Professor Capogrossi Colognesi, this gave me the chance for an experience that in the following years has been exclusively mine.

The “Akureyri model” of the Faculty of Law and Social Sciences was at once a “lesson” to such people as myself, who had gone there ... to give lessons! A three-year curriculum based on law considered as a science^[1] rather than as a normative phenomenon, appeared to me as a clear and (as many would call it on the Continent nowadays) courageous reply to the real problem of many Law Faculties. The University of Akureyri prepares a thorough jurist: a jurist endowed with a firm knowledge enabling him to master the regulations in force, that for their mutability^[2] are weak par excellence; a jurist who is different from “the poor routinist whose knowledge and capability are confined to the two thousands articles of his code and who is a ruined man if some night that code should be abolished;”^[3] a jurist who is

able to understand the systematic, conceptual, dogmatic and spiritual unity of the World's legal systems; a jurist who “meets” the regulations in force only after starting from law as a scientific entity.^[4] In such a clear perspective, the choice of Roman Law, though consequential thanks to the role this subject has always played in the same direction as the one privileged at Akureyri, has been indeed an act of courage. A science having its roots in the Mediterranean culture may find an evident stickiness in a Nordic milieu, particularly amongst beginners not particularly equipped under a humanistic point of view. Nevertheless, cultural (or at least more cultural) is the plan that not only innovates in its content but is also directed towards landing places apparently against the stream. With this point of view in mind, I am certain that the role of Prof. Mikael Karlsson, philosopher *tout court* as well as legal theoretician, imbued with humanistic culture but not alien to the pragmatic transoceanic suggestions, has been of crucial significance against dangerous exaggerations as well as changes of mind.

The responsibility rests of course entirely with the teacher and its sense is best expressed by the question: how does one talk to students firstly about law and secondly about Roman law at more or less 40 kilometres from the Polar Circle?

The very first worry was Latin, the language of Roman law! Of course, the “cultural” rather than linguistic extraneousness of my pupils has forbidden its normal use. Nevertheless the fascination of etymology has often helped to explain juridical concepts thanks to the perpetuation of a more conspicuous dependence on Latin by the English technical-juridical language.

A similar kind of extraneousness has affected the historical and particularly political and institutional background of the phenomenon “Roman law.” For instance, an obvious and necessary allusion to the final success of Rome against the Carthaginians risked to sound to my pupils’ ears as mysterious as the mention of the rebellion of the sect of the “white lotus” in 17th-century China, an event that would find unprepared more or less 90% of an even more mature and cultured audience^[5] than my Akureyri students!^[6]

The content of the lessons has been concrete and historical, rather than highly theoretical, in order to show that law is a “necessary” phenomenon and that the solutions to be found in the experience of Roman Law allow better than others to understand the nature of the historical phenomenon that law basically is. There was neither interest nor benefit, on the contrary, in demonstrating any supposed superiority of Roman law’s solutions: something that would have had only a rhetorical and unjustified sense. The attention of the students has always been very deep as well as their capability to understand and be understood in another language than their mother tongue.

The exams have been under constant experimentation inspired by Mikael Karlsson and shared by me since the Fall of 2003. They now appear quite satisfactory, although always open to improvement. The system recently applied in September 2005 was based on a multiple-choice-questions examination (in order to evaluate the required learning from the textbook) and on a short essay (in order to assess particular knowledge of a topic and the skill in ordering and combining legal concepts). A couple of each of these two examinations were taken respectively at an

intermediate stage and at the final one. Certainly the habit of the Icelandic students to take summer employment (whilst itself potentially praiseworthy) is not conducive to examinations being held quite so close to the season of such employment! Nevertheless, the results have been on the whole satisfactory, for one thing must be stated frankly and clearly: Akureyri students have always worked generously^[7] and faithfully. This is a condition in itself enough to justify a positive judgement about the foundation of a Law Faculty in the quiet fiord of that town.

Dispensing culture might mean only a sad monologue if there is none ready to receive it. Dispensing culture and having an audience is still not enough, however, if between the one who gives and those who get there is not the interaction I have found in Akureyri at even - in their enormous and unforgettable tenderness - “extremist” levels as those reached by the unexpectedly and meritoriously Latin words of a 2003 student on a notebook with thoughts and observations on my course, presented to me at the very end of it: “*Non scholae sed vitae discimus*: you have proven this wrong”. If my students did learn “even” from the school, it is better for them; I learned from them that the “Akureyri model” works and deserves everybody’s engagement, starting from my own, on this fantastic bridge between two islands (Iceland and Sicily), over that Continent to which, as well as to the rest of the world, Rome by its law has left a sounder legacy than bronze.

^[7] From the web site of the Akureyri Faculty of Law and Social Sciences: «Students will study towards a diverse and an academic B.A. degree in Law Science, with emphasis on Comparative Law, where law will be studied in historical, social and philosophical context. After graduation they can continue towards a 2-year professional degree, where they follow classical core courses in Icelandic law. These five years offer the students the right to practice law».

^{i[2]} *Tanta* 18 (533 A. D.): ... *humani vero iuris condicio semper in infinitum decurrit et nihil est in ea, quod stare perpetuo possit (multas etenim formas edere natura novas deproperat)* ... For the translation see A. Watson (ed.), *The Digest of Justinian I* (English translation), 1985: ... but the character of human law is always to hasten onward, and there is nothing in it which can abide forever, since nature is eager to produce new forms ...

^{i[3]} Transl. from A. Exner, *Die praktische Aufgabe der romanistischen Wissenschaft in Staaten mit codifiziertem Privatrecht*, 1869, 19.

^{i[4]} See E. Seckel, *Die Neuordnung des juristischen Ausbildungsganges in Preussen*, in *DJZ*, 1902, 58.

^{i[5]} And myself in it, at least until the moment I found (and learned) this example useful to the ironical purpose of the phrase in which I was going to use it.

^{i[6]} The possible extraneousness to the Roman culture has been sometimes offset by advantageous references to facts of the Icelandic history that can be striking compared to events and institutions of the Roman history. *E. g.*, the position of the old *Althingi* which can be connected to that of the popular assemblies in Rome; the Icelandic Law speaker and the theme of the oral character of the archaic Roman law; the *Landnám* and the Roman agrarian question or, in the Iceland of the end of the first millennium after Christ, the position, which was also a priestly one (*gothars*), of the chieftains comparable to that of the Roman *paterfamilias*.

^{i[7]} The absence I indeed felt of the habit of an individual, methodical and regular study has appeared to me more as a structural than an individual occurrence, that in any case it is desirable to rapidly overcome. This overcoming – I am quite sure about that – will be in step with the rooting of the university institution in Akureyri.

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