

“LEGALITY AND JUSTICE” CONFERENCE

23-24 January 2020

Department of jurisprudence of the University Roma Tre

Call for abstracts

In a document produced during the occupation of the Faculty of Law of the University of Bologna (March-May 1968), the authors emphasized the “ideological and instrumental” nature of the law, throwing themselves especially against “legal positivism”. Beyond the naivety of the young scholars who were the authors of that document, an attitude of suspicion towards the law and its application at the time was very understandable. Not only a large part of the norms, but also a large part of the personnel who were supposed to apply and enforce those norms, found their roots in the pre-war Fascist regime. It is in fact one of the many merits of 1968 – a season that later the right-wing propaganda will try to reduce to the tragic experience of terrorism – to have begun to question the overall picture of the Italian legal framework, a questioning where the role of the new 1946 Constitution would have been essential.

It is useful to remember this story today, at a time when Antigone is being often evoked. Antigone has become the symbol of Justice versus Legality. And pour cause: we see today, not only in Italy, an emphasis on legality in order to legitimize the forced evacuation of squatters, the persecution and criminalization of poverty, the refusal to save refugees and migrants in the Mediterranean. However, we also see the production of legal norms of uncertain, to say the least, constitutional legitimacy.

In Italy, this is actually an old story. The 1970s and 1980s “emergency legislation” against terrorism and organized crime, plus, during the 1990s, the fight against political corruption, have been characterized by the overbearing role of prosecutorial magistrates, all of which in turn has produced a common sense where the logic, language and imaginary of criminal justice have become central. Criminal law appears to substitute for politics and to become the panacea for all problems. Thus, when legality is evoked and emphasized, it is actually criminal law that is meant: penal populism has become the fundamental ingredient of Italian populism. Two issues come to the fore: on the one hand, the way legality is variously interpreted and used, in support of different and even opposed, political options; on the other hand, which material processes, interests and conflicts underline such political options.

There is another type of legality, of course: constitutional legality, according not only to the Italian Constitution but also to the numerous charters of rights, in Europe and internationally. Is this the “justice” we may oppose to legality?

We see, both in Italy and elsewhere, many collective grassroots initiatives and even actions by some political institutions (mayors, regional presidents), as well as explicit calls to civil disobedience against a “legality” thought to be contrary to justice. Are we confronting a new “revolt against formalism”, similar to that of 1968?

On the opposite front, we see a rejection of constitutional legality, both on the part of politicians and of a public opinion full of resentment towards Parliament and in general the political class.

The tension between legality and political legitimation is also resurfacing. Are political acts always legitimate, even when unconstitutional, as some scholars appear to say? Or all political power is subjected to constitutional limits? An Italian constitutional norm approved in 1989 states that political acts performed in defence of a “national interest” are legitimate: does not this norm open the way to a “state of exception” extremely dangerous for democracy? Who are the main actors in today’s relationship and conflict between politics and justice? What is the relationship between civil disobedience and conscientious objection? Or between civil disobedience, “innovative” deviance (in Merton’s sense of the word), and the founding of new law (in the Jheringian sense)? What do we mean by justice? What are the definitions of legality in relation to the different sources that produce them? How are these definitions perceived by the general public?

Theoretical and empirical contributions may concern, just as an example:

- Migration policies and citizenship
- Prison and penalty
- Gender violence
- Rights of asylum seekers, reception and integration policies, the criminalization of solidarity
- Measures against corruption and white collar crime
- Environmental crimes
- Conflicts between property rights and the right to housing
- Freedom of expression and constitutional legality
- Legality and justice in the jurisprudence of Superior Courts
- The administration of justice

Abstract guidelines and registration

Contributions may be theoretical or empirical and concern different within the theoretical framework proposed. Proposals should be titled and should not exceed 300 words. Abstracts may be written in Italian, English, Spanish, French. Please include the proposer’s name and contact details (email) along with her/his university affiliation. Proposals of panels should also be titled and should include the name of the organizer(s). They may include four or five abstracts. Panel of less than four abstracts will not be accepted.

Please submit abstracts via email to: ssqc.rivista@gmail.com

A selection of the papers presented will be eventually published in a special issue of *Studi sulla questione criminale* containing the workshop proceedings.

Those who want to register to the conference will be asked to pay an attendance fee: 20 euros fee for research fellows and researchers and 50 euros for professors and others. Students and Phd candidate will not be asked to pay any attendance fees.

Key Dates

Call for abstracts opens: **March 25th, 2019**

Deadline for abstract submission: **September 30th, 2019**

Decision on the acceptance of the abstracts: **October 15th, 2019**

Registration and payment: **October 30th 2019**