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Remembering Aldo Cenderelli

Studia Warmińskie 50, 315-318

2013

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej bazhum.muzhp.pl, gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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Remembering Aldo Cenderelli

On December 12, 2011 an event to remember the late Professor Aldo Cenderelli (1937–2009) was held at the University of Milan-Bicocca. The presentation of his so called “scritti minori”¹ served as an occasion for friends, colleagues and loved ones to remember the Maestro’s work and life not only scientifically, but also emotionally and above all, joyfully, as he himself would have wished.

During the first part of the session, presided by Professor Alberto Maffi, Professor Bruno Bosco, Dean of the faculty, reminded the audience of the vital role Prof. Cenderelli had in the organization of the second course of studies in law and in the successive creation of the center of studies of the University Bicocca. Prof. Bosco mentioned in particular the passion and enthusiasm and, at the same time, the mature guide and wisdom with which Prof. Cenderelli coordinated the regulation and structure of the departments of the University, a passion which accompanied Prof. Cenderelli’s activities even after the center was founded, when he took over the function of department coordinator for many years to follow. Prof. Bosco also remembered the respectful and nevertheless affectionate relationship the Professor had with his students, of which we as his scholars continue to have various testimonies and spontaneous memories.

Then Prof. Carlo Augusto Cannata, who was tied to Prof. Cenderelli by a long and profound friendship, rose to speak, sharing some of the defining moments of Prof. Cenderelli’s academic career with the audience, beginning with his time of study at the University of Milan. The two Maestros encountered each other for the first time during the lectures on exegesis of the sources of Roman law held by Prof. Giovanni Pugliese. In this course, characterized by its seminar-like structure, the young Cenderelli, who was a regular attendant, acquired the taste for exegesis which would characterize all of his career from then on. Of Prof. Cenderelli’s career as a student, his colleague would remember the capacity to give exams “like a machine”, almost always conquering the maximum vote as well as his diploma thesis under the guide of Prof. Gaetano Scherillo, who, in the years to follow, was to become his Maestro. And of course Prof. Cannata honored the passionate interest Prof. Cenderelli held not only for the law, but also for philology, becoming ever more evident in many of his works.

¹ A. Cenderelli, *Scritti romanistici*, edited by C. Buzzacchi, Milano 2011.

Next, Prof. Giovanni Negri, who also accounted some moments of the academic journey he shared with Prof. Cenderelli, focused on a topic of particular importance to Prof. Cenderelli which accompanied almost all of his scientific career, the *praedigesta*. Prof. Cenderelli, author of “Digesto e predigesti: riflessioni e ipotesi di ricerca”², already published in 1983, returned to this topic especially in his later years³. We, his scholars, remember the long discussions about some passages of the *c. Deo auctore* and of the *c. Tanta*, in particular regarding the meaning of the expression “*iam paene confusa et dissoluta*” in the first paragraph, the formation, elaboration and refining of parts of the text which were not considered sufficiently before and from which important elements supporting the theory of the existence of a selection of fragments by jurists of the classical period could be derived, traceable back to a collection of *iura* planned by Theodosius II and which later would have been used by justinianean compilers.

The second half of the day was then dedicated to the actual presentation of the collection of the so called “scritti minori” by Prof. Cenderelli. Prof. Chiara Buzzacchi offered a selection of some of the contributions inserted into the collection edited by herself with the collaboration and support of other colleagues and scholars of Prof. Cenderelli. She also recounted some of the most significant milestones of Prof. Cenderelli’s “minor” scientific works, from his first studies on “Il carattere non patrimoniale dell’*actio iniuriarum* e D. 47.10.1.6-7”⁴ to “Le garanzie personali delle obbligazioni per debiti e crediti della eredità giacente (contributi esegnetici)”⁵, as well as his fundamental contribution to the research on the jurists *Hermogenianus*⁶ and *Sextus Pedius*⁷, and the encyclopedic entries “*Corpus Iuris Civilis*”⁸ and “Fonti del diritto in diritto romano”⁹. She then turned

² A. Cenderelli, *Digesto e predigesti: riflessioni e ipotesi di ricerca*, Milano 1983.

³ A. Cenderelli, *In tema di Predigesto*, BIDR XXXV-XXXVI (1993-1994) [1997], 533-541 (= *Scritti romanistici*, 421-432); A. Cenderelli, *La compilazione del Digesto: una svista di Triboniano come prova dell’esistenza di un predigesto*, *Iura* LV (2008), 61-91 (= *Scritti romanistici*, 715-747). This topic is also analyzed in A. Cenderelli, B. Biscotti, *Produzione e scienza del diritto: storia di un metodo*, Torino 2005, 131 ff.

⁴ A. Cenderelli, *Il carattere non patrimoniale dell’actio iniuriarum e D. 47.10.1.6-7*, *Iura* XV (1964), 159-167. (= *Scritti romanistici*, 1-10).

⁵ A. Cenderelli, *Le garanzie personali delle obbligazioni per debiti e crediti della eredità giacente (contributi esegnetici)*, SDHI XXX (1964), 114-178 (= *Scritti romanistici*, 11-78).

⁶ A. Cenderelli, *Intorno all’epoca di compilazione dei “libri iuris epitomarum” di Ermogeniano*, *Labeo* XIV (1968), 187-201 (= *Scritti romanistici*, 129-146); A. Cenderelli, “*Factum personae operaeve substantia*” (D. 41.1.61), SDHI XXXV (1969), 411-417 (= *Scritti romanistici*, 147-154).

⁷ A. Cenderelli, *Ricerche su Sesto Pedio*, SDHI XLIV (1978), 371-428 (= *Scritti romanistici*, 179-239); A. Cenderelli, *Una “elegantia” di Sesto Pedio: D. 3.5.5.11-13*, in: *Atti del II Seminario Romanistico Gardesano, 12-14 giugno 1978*, Milano 1980, 145-152 (= *Scritti romanistici*, 241-247).

⁸ A. Cenderelli, *Corpus Iuris Civilis*, in: *Digesto*⁴, Torino 1989, 3-25 (= *Scritti romanistici*, 333-357).

⁹ A. Cenderelli, *Fonti del diritto in diritto romano*, in: *Digesto*⁴, Torino 1993, 3-45 (= *Scritti romanistici*, 359-405).

to the Maestro's most recent writings, from his many contributions to the research on the *negotiorum gestio* to his articles on *servitutes* and *locatio*, works that emerged first during his lectures on Roman Law and then on Romanistic Fundamentals of European Law. I was lucky enough to participate in many of these lectures, conforming to a principle beloved by the Professor, according to which the apprehension of any art can be successfully accomplished only if practiced constantly under the guide of a master. I remember the birth of many of the articles written in his last years during the work on his lectures. "Leggi della fisica e buon senso dei giuristi romani"¹⁰ comes to mind or the one on the "C. 3.34.14.1: Giustiniano e l'essiccazione dei frutti"¹¹, and another one dedicated to the topic of "Durata del contratto e necessità del locatore (sulle origini della legislazione vincolistica in tema di locazione abitativa)"¹², as well as "Il valore normativo dei contratti collettivi di lavoro: un precedente secolare nella giurisprudenza"¹³. At the beginning of his lectures, the Professor would distribute copies of the respective titles of the Digest (rigorously without translation) and then proceed to a closer examination of each passage, based on their position within the title in question. His immense ability in conducting exegesis brought him immediately to the focal problem of the single fragment, from which a lively discussion with the students would then arise. From such analysis, Prof. Cenderelli would always develop original interpretational ideas, some of which would lead to further elaboration and then, in some cases, to publications like those mentioned above.

It is, on the other hand, impossible in this context not to remember the occasions in which Prof. Cenderelli exposed to and discussed with us his theory regarding the relationship between the *Res cottidianae* and the *Institutiones* of Gaius, which was then published in his article "Il trattato e il manuale: divagazioni in tema di *Res cottidianae*"¹⁴. Cenderelli arrived at his hypothesis, as the title suggests, and as he clarifies in the introduction, from observing the passage at Italian Universities from the use of textbooks which presented themselves "as true and proper treatises of the topics" to so-called manuals of considerably

¹⁰ A. Cenderelli, *Leggi della fisica e buon senso dei giuristi romani*, in: *Studi in onore di Remo Martini*, I, Milano 2008, 563–577 (= *Scritti romanistici*, 749–763).

¹¹ A. Cenderelli, *Giustiniano e l'essiccazione dei frutti*, in: *Scritti in onore del Professore Generoso Melillo*, I, Napoli 2009, 197–202 (= *Scritti romanistici*, 777–782).

¹² A. Cenderelli, *Durata del contratto e necessità del locatore: sulle origini della legislazione vincolistica in tema di locazione abitativa*, in: *Studi per Giovanni Nicosia*, II, Milano 2007, 337–366 (= *Scritti romanistici*, 681–705).

¹³ A. Cenderelli, *Il valore normativo dei contratti collettivi di lavoro: un precedente secolare nella giurisprudenza*, in: *Fides Humanitas Ius. Studi in onore di Luigi Labruna*, II, Napoli 2007, 947–953 (= *Scritti romanistici*, 707–713).

¹⁴ A. Cenderelli, *Il trattato e il manuale: divagazioni in tema di "Res cottidianae"*, BIDR CI–CII (1998–99) [2005], 61–132 (= *Scritti romanistici*, 591–680).

reduced volume. Considering that, Cenderelli then went on to ask himself “if in the historical context of Roman jurisprudence, something similar might have happened the moment in which legal scholarship started to transcend the *hortus conclusus* of culturally directed teaching, leaving previously restricted didactic schemes of a passionate few, desiring to apprehend dates and logic mechanisms of Roman legal tradition, to become true and proper schools meaning not anymore places of study and scientific thinking (e.g. the dualism of Sabinians and Proculians), but effective didactic structures with the precisely defined goal of accumulating a set of abilities which would serve as an entrance ticket to a future career as a lawyer, or to be inserted into the hierarchies of the public service and therefore to acquire a qualification somehow comparable to modern University degrees”¹⁵.

Under this assumption, Prof. Cenderelli then proceeds to examine the parts of the *Res cottidianae* found in the Digest, comparing them with the respective text in the Institutions of Gaius. Revealing that “often ... the discourse in the *Institutiones* is leaner and more efficient than that of the *Res cottidianae*, even where they are enriched by examples, details and a more thorough discussion”¹⁶, he comes to the conclusion “that the *Res cottidianae* were written by Gaius in a time before the *Institutiones*”¹⁷, while for the latter he was using his former works and in particular, given that much of it was structured along the lines of the *ius civile*, the treatise dedicated to it the most, i.e. the *Res cottidianae*.

I would like to conclude this homage to Prof. Cenderelli remembering those days on which the Maestro, sitting at his desk at the University, his pipe in his hands, right under a printing of Magritte’s “Ceci n’est pas une pipe” taught us, with untiring passion, and always with a certain note of irony, the most valuable lessons, scientific as well as for life.

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¹⁵ “[...] se, nell’ambito storico dello sviluppo della giurisprudenza romana, possa essere accaduto qualcosa del genere, nel momento in cui l’insegnamento del diritto si trovò ad uscire dall’*hortus conclusus* della predicazione culturale indirizzata, al di fuori di precisi schemi didattici, a pochi appassionati desiderosi di apprendere i dati ed i meccanismi logici della tradizione giuridica romana, per trasferirsi in vere e proprie scuole, intese non più come centri di studio e di meditazione scientifica (penso al dualismo di origine fra Sabiniani e Proculiani), bensì come vere e proprie strutture didattiche, finalizzate all’acquisizione di un cumulo di conoscenze che potesse fungere da biglietto di ingresso per una futura carriera nell’ambito della professione di giurista o dell’inserimento nelle gerarchie dello Stato, e cioè all’acquisizione di una qualifica in qualche modo assimilabile al moderno titolo di studio” (A. Cenderelli, *Il trattato e il manuale*, 63 (= *Scritti romanistici*, 593 f)).

¹⁶ “[...] più volte [...] il discorso delle *Institutiones* è più snello e più efficace di quello delle *Res cottidianae*, anche ove queste risultano più ricche di esempi, di particolari e di approfondimenti” (A. Cenderelli, *Il trattato e il manuale*, 125 (= *Scritti romanistici*, 671)).

¹⁷ “[...] che le *Res cottidianae* siano state scritte da Gaio in epoca antecedente le *Institutiones*” (A. Cenderelli, *Il trattato e il manuale*, 125 (= *Scritti romanistici*, 672)).