Diritto veneziano e *ius commune*: galassie in collisione?
Venetian law and *ius commune*: galaxies in collision?

State of the art

Since *Medioevo dal diritto* by Francesco Calasso in the mid-XX century, the Venetian law system has been often classified as just another *ius proprium*, disregarding the difference of nature in its constitution in comparison with the medieval autonomous institutions. The series of studies opened after *Storia del diritto moderno in Europa. Le fonti e il pensiero giuridico* by Adriano Cavanna in the early 1980s has revealed a much more diversified landscape of law systems, interactions with *ius commune*, effects of legislative choices on jurisdiction and administration, and the different declinations of legal theory in various areas of Europe. This richness of research however has in the main been confined within a wider idea of *ius commune* and its technicians, as necessary partners in every local situation. The use by the Venetians of terms taken from the constitutional discourse of local autonomies, its contemporaries, as well as of the later modern States, has brought many scholars to the conclusion that those terms had the same referent in the Venetian system as in its neighbours'. The input given by such researchers as Gherardo Ortalli in the historical area of study and Giorgio Zordan in the area of the technical history of law systems, to name just two, does not seem to have been enough to bring attention to the diversity in the constitutional structure between the Republic of Venice and the mainland Comuni first, the European modern States later, and to its consequences on the formation and development of the legal system. Indeed, some recent works even abduct the contemporary concepts of ETIC and EMIC, born in the separate domain of anthropology, refusing the former as a method and applying the latter. In fact, the results contradict the assumption: the language of the political discourse, developed in Europe in the modern age (and still in part at the root of the contemporary theory of the State), openly acknowledged that the Republic of Venice had a different nature, being independent and not autonomous and not being governed by a monarch by divine right, but by participated decision-making. What seems to be lacking in such recent studies is a diachronical comparative approach, which should look beyond the old-fashioned fixed boundaries (the uses of *ius commune* in Europe on one hand, the complexity of the Venetian law system on the other) and compare dialectically the different choices which each State made along the centuries, also considering the outcome of those choices on matters like the sources of binding rules of law and the performance of judicial systems.

Research program

The research program aims at gathering European medieval and modern documents, published and unpublished, on the matter of the constitution of bodies endowed with *iurisdictio*, that is powers of government, and analysing them as to the concepts and the language in use at the time of their production. Such materials will be compared with the concepts and language most widely accepted today by the scientific legal community in the field of constitutional, international and private law. The results will be applied to the field of private law and of jurisdiction, comparing the performance offered by the Venetian and the other States its contemporaries.
The method proposed has its roots in the consideration that the tools offered by the law are shaped by the situations which it is necessary to regulate in order to maintain sufficient social peace; in the consideration that the same or similar social problems may be regulated in different ways through time; and in the consideration that a basic step toward understanding a legal system is discovering the functions it performs within a certain society. This does not lead to reducing the past to the present, but to revealing how much of the past is still relevant today, as well as to acknowledging the impact that chance sometimes has on the choices that a government takes at a certain time, and on their consequences. Following this method, the technical elements of law are set within the context of the development of societies and cultures and of their interactions.
The original independence of Venice as the result of the turbulent self-organisation of a handful of refugee camps abandoned on unproductive land, of the casual reception in the *pax Nikephori* of a centuries old, run-of-the-mill act of terms setting by the Byzantines, and of the cogent, long-term need to keep good relationships with their neighbours as well as their trading partners in the Mediterranean, are a few instances of the interest offered by a reflection of the "whys" of history, led by analysis of documents.