

Roberto de Ruggiero, Salvatore Riccobono & Filippo Vassalli
*Lezioni 1930 – 1932. Scuola di Diritto Romano e Diritti Orientali
 raccolte da Károly Visky*

(A cura di Gábor Hamza; introduzione di Oliviero Diliberto; trascrizione e note al testo di Livia Migliardi Zingale; Pubblicazioni del Dipartimento di Scienze Giuridiche, Università degli Studi di Roma “La Sapienza”, vol 101, Jovene Editore, Napoli, 2015, 161pp)

1 This book was recently published, in Italian, by the Faculty of Law of the University La Sapienza of Rome. It was edited by Professor Gábor Hamza (Professor at the Eötvös Loránd University, Budapest) and presented (in 2015) at the prestigious Casa Editrice Jovene di Napoli. It is based on lectures presented during the early 1930s by outstanding Italian Romanists (Vassalli, De Ruggiero and Riccobono) in the frame of the *Scuola di diritto romano e diritti orientali* – the *Scuola* can be regarded as an institution at the highest level of postgraduate studies of Roman law. The book, containing the materials of these lectures (courses), is based on the manuscript of Károly Visky, whose scientific *œuvre* made him one of the internationally most esteemed Hungarian Romanists.

The introduction of the book is written by Oliviero Diliberto, Professor of the University “La Sapienza” and Director of the *Scuola*. The scientific achievements of Visky are reviewed by Professor Hamza.¹ The volume also contains the master’s degree work of Károly Visky.

1 Gábor Hamza has several times reviewed the *œuvre* of Károly Visky. See G Hamza *In memoriam Károly Visky, Index* 12 (1983-1984) 307-316; *idem, Károly Visky* (1908-1984) *RIDA* 31 (1984), 17-26; *idem, Visky Károly* (1908-1984) *Jogtudományi Közlöny* 39 (1984), 287ff; *idem, In memoriam Károly Visky, Annales Budapest* 27 (1985) 307-316; *idem, Visky Károly* (1908-1984) in *idem* (ed) *Magyar Jogtudósok, II, (Hungarian Jurists, II)* Budapest (2001) 169-176.

2 This book can, for various reasons, be regarded as a real “treasure-house”. On the one hand, the lectures of the *Scuola di diritto romano e diritti orientali* (even in a summarised form) now – for the very first time – became available for the international community of Roman law specialists. On the other hand, the reader can become acquainted with the materials of these courses through the notes of Károly Visky, who completed the *Scuola* between 1930 and 1932,² and who is one of the most qualified and productive Hungarian Romanists of the twentieth century.³ Despite his international academic reputation, Visky could unfortunately (due to political reasons) not participate in the academic life after 1949 and had to practice as a lawyer.⁴ In 1973, he became the President of a panel of the (Hungarian) Supreme Court. In 1978 Gábor Hamza succeeded in obtaining permission for Károly Visky to present courses at the Faculty of Law of the Eötvös Loránd University. Two years later, in 1980, he received the title of Honorary Professor from the same University.⁵

3 In the Introduction of the book Professor Oliviero Diliberto, beside the appraisal of the scientific *œuvre* of Károly Visky, presents a brief history of the *Scuola di diritto romano e diritti orientali* and its role in Roman law advanced studies (1-7). As Diliberto points out, the *Scuola* commenced its work in the academic year of 1919-1920. The course later became known as *Scuola* (then *Corso*) di *Perfezionamento in Diritto Romano e Diritti dell’Oriente Mediterraneo*. Since 2002 it has been called *Corso di Alta Formazione in Diritto Romano*.⁶ During the time when Visky followed the course, it was divided into three scientific and structural parts: 1) *Diritto romano*; 2) *Diritti orientali*; and 3) *Diritto romano e diritti orientali*. In addition to passing several exams in order to get the degree, students had to write and defend a thesis “*fondata su ricerche originali*”. The course also required the knowledge of one of the following languages: Arabic, Syrian, or Hebrew (beside the self-evident knowledge of Latin and classical Greek). The list of subjects and their

2 Károly Visky was a scholar of the *Scuola* for two years. We would like to refer here to Róbert Brósz, the legendary professor of the Faculty of Law in Budapest, and who completed during the academic year of 1940-1941 the course which was then known as *Scuola di Perfezionamento in Diritto Romano* (see A Földi, *Brósz Róbert*, in G Hamza (ed), *Magyar Jogtudósok 1 (Hungarian Jurists 1)*, Budapest (1999) 170). He could, however, only spend one year in Rome since he had to do military service. He returned to Hungary “as a perfect Romanist” (see A Földi (ed) *Flosculi professori Roberto Brósz obliti*, Budapest (1990) at 59). As to the present-day Hungarian Romanists, Orsolya Péter (in 1989, for four months) and Béla Szabó (in 1994, also for four months) participated in the advanced studies course of the University “La Sapienza”.

3 From his – also internationally well-known – scientific *œuvre*, we only refer now to his two excellent German language monographies, namely K Visky *Geistige Arbeit und die “artes liberales” in den Quellen des römischen Rechts*, Budapest (1977); *idem*, *Spuren der Wirtschaftskrise der Kaiserzeit in den römischen Rechtsquellen*, Budapest-Bonn (1983).

4 See A Földi & G Hamza *A római jog története és intézményei (History and Institutes of Roman Law)*, Budapest (2015²⁰) 147.

5 See A Földi, I Sándor & I Siklósi (eds) *Ad geographiam historico-iuridicam ope iuris Romani colendam. Studia in Honorem Gábor Hamza*, Budapest (2015) at 11.

6 We use mainly the denomination of “*Scuola*” henceforth.

leading professors is impressive: besides the general Roman law subjects, students also had to study the *ius commune*, legal epigraphy, legal papyrology, Muslim law and comparative legal studies. Students could obtain this knowledge from famous professors (beside the “authors” of this book) such as Vittorio Scialoja, Pietro De Francisci, Pietro Bonfante and Emilio Albertario (who later also taught Róbert Brószell⁷); they are without exception of the greatest Italian Romanists of all time.

4 Following the introductory thoughts of Diliberto (which also could be regarded as a proper study), Gábor Hamza presents, analyses, and interprets the multiple scientific *œuvre* of Károly Visky (9-15). As has been mentioned, Visky completed the *Scuola* during four semesters between 1930 and 1932 and obtained his degree in 1932. His works cannot now be discussed in detail, but he may be regarded as a “*perfectus consultus iuris Romani*” (Hamza).

5 In the central part, the reader can browse through the lectures of the three above-mentioned Italian Romanists: Filippo Vassalli, Roberto De Ruggiero and Salvatore Riccobono as contained in the manuscript notes of Károly Visky and edited with great diligence by Gábor Hamza and Livia Migliardi Zingale. The transliteration and (when it was possible) the indication of relevant sources is largely the work of Livia Migliardi Zingale.

The course called *Diritto Greco-Romano (Bizantino)* was presented by Professor Vassalli in the academic year of 1930-1931. The relevant part of the book (pp 17-36) gives an excellent example of the educational methods and approaches of the *Scuola*: the general overview of sources was assured by the first part of the course (“external historical approach”), which was followed by the special part (“*parte speciale*”) of the course, citing and analysing principally the texts of Justinian’s *Novels* (“internal historical approach”).

De Ruggiero presented the course entitled “*Papirologia giuridica*” in the academic year of 1931-1932 (pp 37-73). At this time, legal papyrological research played an important role in postgraduate Roman law. As a scientific starting-point, De Ruggiero refers to Ludwig Mitteis and his classification of *Reichsrecht* and *Volksrecht*. Thereafter, he examines certain kinds of contracts, emphasising as a proposition that the ancient Egyptians and Greeks had not known such a definition of “contract” as had been developed by the Romans, Byzantines, and later the modern jurists. According to De Ruggiero, the Greeks had classified legal transactions from a “formal point of view”, that is from an external and not a substantial aspect.

Among the jurists appearing in this book, Riccobono – one of the greatest Italian Romanists of all time – is probably the best-known among modern scholars, since the results of his scientific research are still of great importance for modern-day Romanists. In the academic year of 1931-1932 Riccobono presented the course dealing with the exegesis of Roman law sources, which is of basic importance for

7 Professor Brósz learned the interpolation-critical method from Albertario, and used it later with great efficiency: see Földi *Brósz Róbert (cit)* 170.

all Romanists. Visky's notes based on the lectures of Riccobono constitute the most voluminous part of the book (pp 75-134). The essence of Riccobono's commentaries can briefly be summarised: The short methodological overview is followed by a survey of the different periods of Roman law. Riccobono divided the history of Roman law into three periods: 1) "*ab urbe condita*" until the Punic Wars ("*diritto nazionale*"); 2) from the Punic Wars until Diocletian ("*jus gentium*"); and 3) from Constantine to Justinian, which can be regarded, according to Riccobono, as a period of decadence and codification ("*decadenza, codificazioni*"), and he names this period "Christian Roman law" ("*Diritto romano-cristiano*"). Riccobono provides exegeses of a number of sources of Roman private law, examining the texts from an interpolation-critical and text-critical point of view, which scientific method fundamentally determined Roman law research in his time. He accurately analyses some important problems of the *lex Aquilia* and its application. Nowadays, we have to interpret the sources of classical Roman law in their original context, applying the so-called "presumption of interpolation-freeness" (an expressive phrase of András Földi⁸) and, therefore, in modern Roman law research the „textual criticism" ("*Textkritik*") can only be used as an "*ultima ratio*".⁹ Nevertheless, the construction of Riccobono's lectures, as well as his method of source-analysis (always keeping in mind the *status quaestionis*) can be regarded as a good example for Roman law education even today.

6 In the appendix of the book, Károly Visky's dissertation – written under the supervision of Professor Vassalli – can be read. In his imposing thesis entitled "*Il Cristianesimo e il regolamento del divorzio nel diritto delle Novelle*" Visky investigates the relation of Christianity and the Justinian regulation concerning the dissolution of marriage by *divortium*. The dissertation consists of – following the overview of the history of *divortium* and of the examination of the Christian approach of it – the detailed analysis of the relevant *Novels* (22, 117 and 124). As a result, he emphasises that the *Novels* of Justinian did not substantially change the content, that is the classical approach of marriage. The marriage had always been, according to Visky, a state of facts ("*stato di fatto*"),¹⁰ based on the *affectio maritalis*;

8 A Földi *Kereskedelmi jogintézmények a római jogban (Commercial Legal Institutions in Roman Law)* Budapest (1997) 28.

9 "Textkritik ist heute nicht das erste, sondern das letzte Mittel bei der Textauslegung": cf W Kunkel & MJ Schermaier *Römische Rechtsgeschichte*, Köln-Weimar-Wien (2001¹⁴) 309. This is the paradigm of modern text-critical researches. See, in addition, M Kaser *Zur Methodologie der römischen Rechtsquellenforschung*, Wien (1972); R Knütel „Nicht leichter, aber um so reizvoller. Zum methodologischen Vermächtnis Max Kasers" in *Zeitschrift der Savigny-Stiftung* (Rom Abt) 115 (1998) 33ff.

10 It is well-known that (according to the theory developed in the relevant Italian literature) the Roman approach to marriage had not been a legal relationship, but rather a social state, that is a state of facts (cf the expressions *stato di fatto* and *soziale Tatsache*). Regarding this proper nature of marriage, Savigny did not use the word "*Rechtsinstitut*" but "*Rechtsinstitution*" to describe the essence of marriage; see G Hamza, *Jogösszehasonlítás és az antik jogrendszerek (Comparative Law and Legal Systems of the Antiquity)* Budapest (1998) 189. It also deserves mention that the

however, the new restrictions on *divortium*, established by Justinian, prepared the way for Christian ideas which triumphed later in canon law.

7 Although the book is primarily of interest to Romanists, it is also of relevance, *inter alia*, for legal papyrologists. The book presents, for the very first time, the essence of the materials of the eminent postgraduate Roman law course, *Scuola di diritto romano e diritti orientali* as it was taught in the 1930s. It is of particular significance for Hungarian Romanists since it was Karoly Visky's lecture notes that made it possible.

Although the commentaries in this book describe the scientific environment of the 1930s, and, therefore, the authors' explications are, first and foremost, relevant from the point of view of the history of science, they can also be useful nowadays. The lecture materials of Riccobono are especially worth considering regarding several important questions even today. In addition, the method of the education in the frame of the *Scuola* can also serve as a great example for those experts who teach Roman law in the twenty first century.

We are grateful for the compilation and publication of this book, for the contributions of Gábor Hamza, Oliviero Diliberto and Livia Migliardi Zingale, and especially, for Károly Visky, whose notes made it possible to gain insight and knowledge of the high standard of post-graduate Roman law education of the 1930s in Rome which remains one of the centres and citadels of Roman law research.

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great German romanist, Ludwig Mitteis, in his famous book entitled *Römisches Privatrecht bis auf die Zeit Diokletians I. Grundbegriffe und Lehre von den juristischen Personen* Leipzig (1908) at 131), described marriage as a "verwirklichte Lebensgemeinschaft". Furthermore, see eg. A Bürge *Römisches Privatrecht. Rechtsdenken und gesellschaftliche Verankerung* Darmstadt (1999) 161.