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(Hi)stories of Roman Law. Cesare Maccari's frescoes in the *Aula Massima* of the Italian Supreme Court

1 *Exempla Iustitiae*: The Italian Way



1

1. C. Maccari, *La pubblicazione della legge delle Dodici Tavole*.

Rome, 451-450 BC: *The Law of the Twelve Tables is published*.

2

The legislation of Rome is written down for the first time, inscribed on bronze (or ivory) and, most importantly, it is affixed in the Forum, for everyone to read. It represents an important victory for the plebeians over the patrician pontiffs-jurists who, until that moment, held a monopoly on the interpretation of the law.



2. C. Maccari, *La liberta Ispala Fecenia denuncia l'associazione dei Bacchanali*.

4

Rome, 186 BC: *The freedwoman Ispala Fecenia denounces Bacchanals*.

Also thanks to the accounts of the freedwoman Ispala Fecenia, the Senate declared legislation to control the size and organization of bacchanalian rituals; the decree was known as *Senatus consultum de Bacchanalibus*. This declaration marked a hitherto unprecedented display of the Senate's moral and legal authority.



5

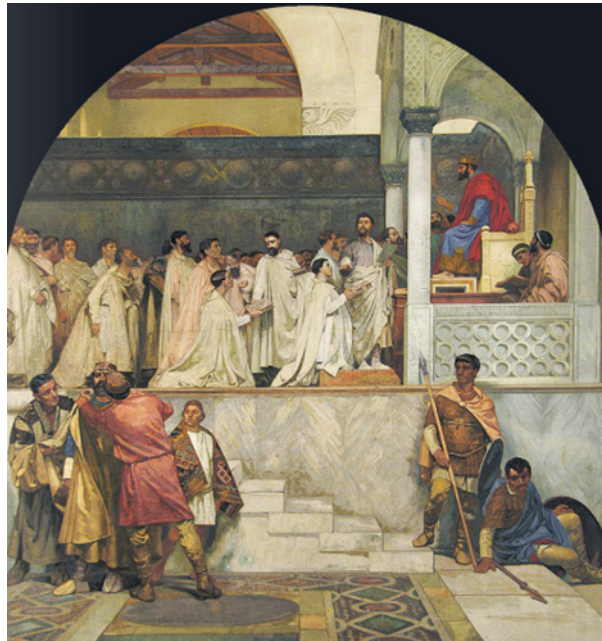
3. C. Maccari, *L'imperatore Adriano incarica Salvio Giuliano della compilazione dell'Editto perpetuo*.

6

Rome, between 130 and 134 AD: *Emperor Hadrian entrusts Salvius Iulianus with the compilation of the Edictum perpetuum*.

Hadrian's aim is to unify and stabilize the *praetors' edicta tralatiticia* and the edict of the *aediles curules*. He decides to submit the text to the approval of the Senate. It establishes that, in case of gaps,

only the Emperor can intervene on the text (*auctoritas*), by means of principles and criteria taken from the edict itself.



7

4. C. Maccari, *Ottone III consegna ai giudici i libri giustiniani*.

8

Rome, between 996 and 1002 AD: Emperor Otto III provides the judges with the *Corpus Iuris Civilis*. Otto III tries to restore Roman law, using it as a tool for the *Renovatio Imperii Romanorum*. In order to more firmly establish his own presidential power, he set about building a new imperial palace on the Palatine hill, rather than follow the blueprint of his Carolingian predecessors who built near the site of St. Peter's Basilica. He hoped the architecture would establish an urban connection between his empire and the ancient one.



9

5. C. Maccari and P. Pascucci, *Giustiniano riceve le Pandette da Triboniano*.

10

Constantinople, 533 AD: *Emperor Justinian receives the Digest from Tribonian*.

The Digest is a collection of principles of Roman law taken from the works of the most important jurists of the 1st, 2nd and 3rd century AD. Tribonian, a learned and expert jurist, at that time *quaestor sacri palatii* (Minister of Justice) directs the compilation of the Digest (the masterpiece of the *Corpus Iuris Civilis*).

2 (Hi)stories of Roman Law

These are the “(hi)stories” of Roman law represented in the *Aula Massima* of the Italian Palace of Justice (now seat of the Court of Cassation¹), inaugurated in 1911 as part of a project that has been defined as the “politicization of the landscape of Roma Capitale”². 11

Stories have often been used to manage a crisis³, as what cannot be explained has to be narrated⁴. 12
In this case, the stories or tales of Roman law decorating the Great Hall of the Palace of Justice in Rome were used to manage the crisis of a Kingdom still looking for an identity.

Giuseppe Zanardelli, one of the leaders of the “Historical Left” (*Sinistra storica*) - Prime Minister and several times Minister of Justice⁵ and of Public Works, promoter of the first Criminal Code of unified Italy (1889) -, devoted part of his life to support the idea of the so-called “Third Rome”, using architecture and iconography. The Palace of Justice is unanimously seen as his brainchild. 13
There is no doubt, in fact, that Zanardelli controlled the planning and realization of the Palace of Justice from its first mention in 1879⁶ until the appointment of Cesare Maccari as painter for the frescoes in 1901⁷. His influence ended only with his death, in 1903.

¹ At the time of the inauguration, the building had to be the seat of the Court of Cassation as well as of all Roman district courts. Despite its dimensions though, the building proved to be too small for this purpose and it hosts only the Supreme Court of Cassation today, the *Tribunale Superiore delle Acque Pubbliche* (“Superior Tribunal of Public Waters”), the Counsel of the Lawyers’ Association (*Consiglio dell’Ordine degli Avvocati*), and the Central Law Library. The pictures of all the statues and the frescoes analysed in this article are available on the website of the Italian Court of Cassation: http://www.cortedicassazione.it/corte-di-cassazione/it/patrimonio_storico.page;jsessionid=B7278542669E1A1A36B3B9D80C1729C5.jvm1. Accessed on August 8th 2017.

² Rossi Kirk, Terry, *The Politicization of the Landscape of Roma Capitale and the Symbolic Role of the Palazzo di Giustizia*, in « Mélanges de l’Ecole française de Rome. Italie et Méditerranée », 109 (1), 1997, pp. 89-114.

³ In the framework of legal-historical studies, the idea to counter the traditional concept of a History of Roman law with the concept of a *plurality of histories* of Roman law was launched by Marie Theres Fögen about fifteen years ago. Her 2002 book (*Römische Rechtsgeschichten. Über Ursprung und Evolution eines sozialen Systems*, Göttingen: Vandenhoeck & Ruprecht, 2nd ed. 2003) set out to dignify ancient stories often almost ridiculed as myths, in order to provide a social history of Roman law that would recognize the importance of “miracles” or “surprises” rather than “roots” (*Wunder statt Wurzeln*). Fögen, drawing on authors such as Livy, sets out to highlight the extraordinary and revolutionary development of the law in ancient Rome analyzing famous stories such as the rape and suicide of Lucretia or the murder of Virginia. See also: Tobia, Bruno, *Una patria per gli italiani. Spazi, itinerari, monumenti nell’Italia unita (1870-1900)*, Roma-Bari: Laterza, 1998, p. V: (referring to R. Girardet) “all’origine del mito politico c’è sempre una crisi (o un’insufficienza) di legittimità in quanto riconoscimento spontaneo dell’ordine stabilito, un trauma sociale che diviene trauma “psichico””.

⁴ Fögen, *Römische Rechtsgeschichten*, cit., p. 18.

⁵ From 1881 to 1883, from 1887 to 1891 and from 1897 to 1898.

⁶ Draft law presented by Prime Minister Agostino Depretis on May 12th 1879: *Concorso dello Stato per le opere edilizie della capitale del Regno*, in “Atti Parlamentari, Camera dei Deputati, sessione del 1878-1879, Documenti, progetti di legge e relazioni”, n. 220. Quoted in: Rossi Kirk, *The Politicization of the Landscape of Roma Capitale*, cit. p. 94. See also: Pizzo, Marco, *Zanardelli e la politica delle arti*, in “Giuseppe Zanardelli. 1826-1903. Il coraggio della coerenza”, Milano: Skira, 2003, pp. 103-107, p. 103.

The direct appointment of Maccari, without a public competition, is surprising. From the very beginning, in fact, the government chose all the projects (for the building and for the sculptures) by competitive examinations of the sketches. Furthermore, when the Advisory Commission (*Commissione consultiva per i lavori per il Palazzo di Giustizia*) tried to designate an artist to execute some of the sculptures decorating the palace without a competition, other artists protested strenuously. It was the case, for example, of the attempt to appoint a sculptor for the lions holding the tables of the law to put on the top of the lateral façades of the building, which were never realized. Protests even led to a parliamentary question⁸. The fact that the direct appointment of Maccari was easily accepted could be explained only by way of the enormous power that Zanardelli wielded. He was President of the Advisory Commission for the paintings until his death and personally chose the topics to be represented, based on the glorious legal tradition of Rome.

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To decorate the walls of the courtrooms with paintings able to inspire the judges is a well rooted practice in Europe, dating back to the late Middle Ages. The so-called *exempla iustitiae* have been defined as a subset of the *exempla virtutis*, i.e. “allegorical narratives of a person’s deeds exemplifying attributes seen as virtues”⁹. Georges Martyn, in describing the flourishing of this genre in the 15th-18th century Southern Netherlands, identified several characters of the judicial examples. First, the paintings must have a didactic aim: they have to show the consequences of both just and unjust decisions. Furthermore, they have to tell a story, providing a narrative of events including several actors, and they have to be “commanded by an institution with judicial power in order to hang in or around its official building(s), used for the administration of justice”¹⁰. All these characters can easily be found in the frescoes of the *Aula Massima*. However, the last feature considered does not fit in the list: according to Martyn, in fact, “the exempla indeed always concern judicial decisions”. This is not the case of the Italian Palace of Justice, where most of the stories refer to the importance of written (Roman) law and only one fresco refers to a trial, the one against Bacchanals, which, moreover, led to the enactment of a new decree, the *Senatus consultum de Bacchanalibus*. The context, of course, was very different from the late medieval and early modern Southern Netherlands. Post-Unitarian Italy had to affirm the rule of law, the importance of codification, the modernity of

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⁷ *Convenzione per la decorazione dell’Aula massima del Palazzo di giustizia in Roma* (July 18th 1901): Archivio di Stato di Brescia (ASB), Archivio Zanardelli, b. 618, f. 9.

⁸ The protest took place before April 1905, when the event was recalled during a meeting of the *Commissione consultiva per i lavori per il Palazzo di Giustizia*, dated April 6th 1905. According to the minutes of the meeting: “Il Prof. Calderini domanda la parola per spiegare come le predette decorazioni scultorie, le quali sarebbero state costituite da leoni sorreggenti le tavole della legge, e che egli ritiene indispensabili per finire gli attici centrali dei fianchi, fossero già state decise di accordo con S.E. Zanardelli, e che si era anche dato incarico ad un noto artista di presentare un bozzetto. Che però venutosi a sapere dal pubblico della cosa alcuni scultori promossero un’agitazione perché i gruppi fossero allogati per concorso, tanto da provocare un’interrogazione alla Camera (...)”. Archivio Centrale dello Stato (ACS), Min. LLPP, Opere Governative ed edilizie per Roma, b. 171, fasc. 470.

⁹ Resnik, Judith, *Reading Reinhardt: the Work of Constructing Legal Virtue (Exempla Iustitiae)*, in “Yale Law Journal”, 120 (2010), pp. 539-571, p. 541.

¹⁰ Martyn, Georges, *Painted Exempla Iustitiae in the Southern Netherlands*, in R. Schulze (ed.), „Symbolische Kommunikation vor Gericht in der frühen Neuzeit“, Berlin: Duncker & Humblot, 2006, pp. 335-356, pp. 336-337.

the new, liberal government. A modernity, however, that had to be based on strong and ancient foundations in order to be convincing.

The aim of this article is to demonstrate, using documents published for the first time, the exact role played by Minister Giuseppe Zanardelli in defining the iconographical project of the Italian Supreme Court as well as his links with the academic community of legal historians.

3 The Temple of Justice

At the time in which Rome became the capital of a Unified Italy, people had to be convinced that the new state represented an ancient nation. As Bruno Tobia has beautifully written, there was a *hiatus* between the *legal country* and the *real country*, a gap that led to an “invention of tradition”¹¹. The governments led by the Historical Left tended to be anticlerical, and concentrated on redesigning the city and studding it with monuments. Abstract concepts were made tangible by the most important Italian architects and artists of the period: *unity* and *liberty* (*Vittoriano*¹²), *economy* (*Banca d’Italia*¹³), *art* (*Palazzo delle Esposizioni*¹⁴) and, of course, *justice*. Like new deities for a brand new (secular) world, all these concepts suddenly gained a “temple”.

The new Kingdom of Italy wanted to reject everything that could remind it of the Pope’s dominance, including the way in which artists were chosen. Therefore, the artists involved in the design of the new Palace of Justice had to be selected on the basis of public competitions rather than on personal preferences and the old system of courtly connections. In general, artists appreciated the new public competitions, but they still had one criticism; that criterion for choosing their projects was also based on their estimated costs; essentially it came down to who could undercut the others rather than their artistic merit.¹⁵

The first competition, the one to select the design of the entire palace, lasted four years, involving different administrative and artistic Commissions¹⁶. According to the first law published on the

¹¹ Tobia, *Una patria per gli italiani*, cit., pp. V and VIII.

¹² Monument to Victor Emmanuel II, first King of Italy, by Giuseppe Sacconi (1885-1911).

¹³ Bank of Italy, by Gaetano Koch (1886-92).

¹⁴ Palace of Exhibitions, by Pio Piacentini (1877-83).

¹⁵ This criterion was stated in the Program for the first competition for the sculptures of the Palace, dated June 10th 1898 (Art. 8: “Una Commissione da nominarsi con decreto ministeriale e costituita da artisti fra i più chiari e che godono di maggiore riputazione, giudicherà del merito artistico dei concorrenti e designerà, tenuto anche conto del prezzo offerto, il bozzetto che per ciascun lotto sarà da prescegliersi per l’esecuzione. Il giudizio della Commissione sarà definitivo e inappellabile”). This rule was very much criticized, for example, by the *Associazione Artistica Internazionale*, which wrote in a letter (probably in November 1898), that the obligation to make an economic offer was contrary to the tradition and humiliating for the whole class of artists: “Ordine del giorno presentato dal Socio Sig. Micali all’Assemblea generale del 3 Novembre 98. I membri dell’Associazione Artistica Internazionale riuniti in assemblea generale, presa cognizione dei termini del Capitolato d’appalto per l’esecuzione delle opere di scultura decorativa per il Palazzo di giustizia in Roma, pur lodando la bellissima idea dell’architetto e del Governo di ornare con gruppi scultori l’edifizio sede della Giustizia, protestano altamente contro la novissima forma di pubblica gara a base d’offerta umiliante il decoro della Classe artistica (...)”. Both documents in: ACS, Ministero LL.PP, Opere governative ed edilizie per Roma, b. 220, f. 557.

¹⁶ For a more detailed overview on the architecture of the Palace of Justice and on its meaning, see: Gialdroni, Stefania, *Justice Petrified. The Seat of the Italian Supreme Court between Law, Architecture and Iconography*, in S.

competition (1883), the architects had very little information on which to base their designs: the building had to be “grand and severe”¹⁷ and the location had to be in the area of *Prati di Castello*, on the other side of the river Tiber with respect to the city center (a place of fields and vineyards, very close to St. Peter’s Basilica).

The first competition, which took place between 1883 and 1884, did not result in any winner; perhaps because other important architectural competitions were also underway at the same time¹⁸ and many of the most prominent architects of the period did not participate. In fact, only twenty-six projects were eventually submitted to a jury of twenty-four members, chaired by the Minister of Justice¹⁹. Architects from the *Accademia di San Luca* constituted the artistic subcommittee. The committee concluded that all the projects were reminiscent of the Catholic Church’s architecture (a preponderance of domes), or were not sufficiently national in style (Greco-Roman temples), or concentrated on regional traditions (the *Palazzo della Signoria* in Florence); and therefore were rejected.

The forty-four participants of the second competition (1885-87)²⁰ took advantage, as was often the case at that time, of the publicly exhibited projects of their predecessors. This time, the jury explicitly stated its criteria: the building had to be stable and able to assure a peaceful and comfortable use as well as being appropriate to its function without resembling a prison or a fortress²¹. The criteria remained vague and only started to be clarified during the long process of examination. Domes and bell towers were rejected also on aesthetic grounds while an inappropriate distribution of space and lack of light were rejected out of hand.

In the meantime, Giuseppe Zanardelli had progressed in his political career. On April 4th 1887, he was re-appointed Minister of Justice and decided to take on the project of the Palace of Justice. He announced a third competition on May 25th 1887, this time limited to (probably) seven finalists who were invited (by means of a letter that he wrote and not through a ministerial or royal decree) to rework their designs by the end of September²². Some of the candidates did not participate

Huygebaert, A. Condello, S. Marusek, and M. Antaki (eds.), “Sensing the Nation’s Law: Historical Inquiries into the Aesthetics of Democratic Legitimacy”, Cham: Springer, 2018, pp. 117-152.

17 “dovrà presentare un aspetto grandioso e severo”. The Royal Decree dated May 6th 1883 and later inserted in the *Raccolta ufficiale delle leggi e dei decreti del Regno n. 1309*, is available in the *Gazzetta ufficiale del Regno d’Italia n. 120*, May 23rd 1883, pp. 2235-2237. It refers to the *Legge 14 maggio 1881, n. 209: Concorso dello Stato nelle opere edilizie e di ampliamento della Capitale del Regno*.

18 Notably the one for the Monument to Victor Emanuel II and the one for the renovation of *Palazzo Montecitorio*, seat of the Chamber of Deputies.

19 Royal Decree dated May 6th 1883, see footnote 17.

20 All the details of the competition were described on the *Gazzetta ufficiale* n. 70, March 25th 1887, pp. 1652-1659. The report of the *Commissione ministeriale per il secondo concorso del Palazzo di Giustizia da erigersi in Roma* is dated February 5th 1887.

21 “(...) l’edificio dovrà offrire, e nell’insieme, e nei particolari, dimensioni e forme tali che, mentre ne assicurino la stabilità permanente ed il tranquillo e comodo uso, contribuiscano nel tempo stesso a dargli il carattere richiesto dall’alta sua destinazione; senza che perciò abbia l’aspetto di un carcere o di un fortilizio”: *Commissione ministeriale per il secondo concorso*. cit. p. 1652.

22 The various competitions were summarized by Calderini himself: “Il programma del concorso nazionale per ottenere il progetto del Palazzo di Giustizia fu inizialmente preparato da S.E. Zanardelli; e durante i Ministeri Pessina e Tajani si mandarono ad effetto due concorsi architettonici senza alcun frutto. Tornato Zanardelli al potere, emanò un invito, in data 25 maggio 1887, agli architetti italiani, onde prendessero parte alla gara (...)”.

and the competition narrowed to just three main candidates: Guglielmo Calderini, Ernesto Basile and Manfredo Manfredi. The artistic jury rejected the temple-style façade with external stairs and the central transverse hall proposed by Manfredi and on October 19th 1887 the full Commission engaged Calderini and Basile in a “head-to-head final run-off competition”²³: they had forty days to rework their designs again. Zanardelli took care of this “final rush” meeting both architects to explain how, in his opinion, their projects should be improved. *He* imposed the open central courtyard instead of the central covered space and *he* decreed that the top floor did not need to extend across the entire width of the building. The result was communicated on November 4th 1887: Calderini won with six votes to two. The jury unanimously approved the executive project on October 5th 1888, only after some modifications proposed by a specially appointed Commission (and, as usual, by Zanardelli himself) were introduced.

The architect, Calderini, appears in this never-ending story as a tragic figure. In the following years, he was accused of corruption, and obliged to continuously justify his project²⁴ (once celebrated as a masterpiece²⁵), often asked to provide clarifications and new details, and was limited in the execution of the decorations²⁶. However, what is worse is that art historians metaphorically destroyed his masterwork, describing it as an “undisciplined product of an eclectic architect lost in megalomaniacal delusion”²⁷. Many people believed that, because of these critics and the accusations of corruption, he committed suicide in 1916: a deeply-rooted yet not confirmed hypothesis²⁸.

23

Tre gare ebbero luogo, dove i concorrenti migliori furono ridotti prima a *sette*, poi a *quattro* ed infine a *due* (...): Calderini, Guglielmo, *La improvvisa soppressione della direzione artistica dei lavori del palazzo di giustizia presentata al giudizio della Camera e del Senato*. Roma: Casa editrice italiana, 1908, pp. 3-4.

²³ Rossi Kirk, Terry, *Roman Architecture before the Lateran Pact: Architectural Symbols of Reconciliation in the Competitions for the Palazzo di Giustizia, 1883-87*, in “Guglielmo Calderini. La costruzione di un’architettura nel progetto di una Capitale”, Atti del Convegno, Roma, Palazzo delle Esposizioni, 23 settembre 1995, Roma: Gangemi, 1996, pp. 83-125, p. 115.

²⁴ See for example the confidential report sent to the Minister of Public Works, Senator Saracco, dated April 30th 1895: “A me, autore e direttore dei lavori del Palazzo di Giustizia, deve stare impresso indelebilmente nell’anima e nel cuore di non veder deturpato il mio diletto lavoro sul quale ho riposto ogni mia aspirazione, ogni mio studio, ogni mio sentimento. L’E. V. può dunque immaginare quale ansia, quale cura, quale studio indefesso io abbia impiegati per risolvere il problema spinoso di vedere ultimato perfettamente l’edificio da me concetto, con la sola somma stabilita e votata dal Parlamento. Torturavi la mente in mille modi, provai e riprovai, fiducioso nel motto = volere è potere = tanto feci e tentai da potere oggi essere sicuro di aver trovato la soluzione all’arduo problema”: ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 219, f. 556.

²⁵ Still in 1929 it had its admirers: Van Buren, A.W., *Art Activities in Italy*, in “Parnassus” 1 (1929), pp. 4-6.

²⁶ For example during the meeting of the *Commissione consultiva per i lavori per il Palazzo di Giustizia* (April 6th 1905), when Calderini affirmed that several spaces of the building needed frescoes in order to complete it but his proposal was rejected: “Il Presidente dà quindi la parola al Prof. Calderini per parlare delle pitture, e questi dice che nelle aule, ambulatori, scaloni ed atrii è necessario che le pitture dei soffitti siano eseguite artisticamente e policromate (...). Osserva che non si tratta di lavori di lusso, ma di finire degnamente l’opera incominciata. Il Comm. Braggio fa riserva circa la spesa rilevando che con l’ultima legge del quadriennio, (...) si hanno somme stabilite e determinate per i varii lavori ed i varii bisogni per compiere l’edificio. In tale fa-bisogno per le pitture decorative è assegnata una somma relativamente modesta. Il Prof. Calderini dice che (...) egli ritiene che queste siano indispensabili e sarebbe una stonatura non provvedere ai soffitti delle aule (...)”. ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 171, f. 470.

²⁷ Kirk, *Roman architecture*, cit., p. 83.

²⁸ See for example: Praz, Mario, *Che artista quel bambino* (“Il Giornale Nuovo”, 24 luglio 1980), in “Geometrie anamorfiche: saggi di arte, letteratura e bizzarrie varie”, Roma: Ed. di storia e letteratura, 2002, pp. 102-104, p. 104.

The ceremony to lay the foundation stones took place on March 14th 1889. On that occasion, Zanardelli, as Minister of Justice, gave a solemn speech, which outlined the symbolic meaning of the new “Temple of Justice” and confirmed his role as “director” of the whole project: 24

Roma non fu il mondo della religione, delle scienze astratte, delle lettere, delle arti belle, poiché in ciascuno di que’ campi altre genti la vincono; Roma fu il mondo del diritto. Pel diritto i romani ebbero una vocazione storica, derivante dal loro genio intellettuale, dalla loro virtù morale, dal loro carattere, dalla forza e costanza della volontà. 25

And finally: 26

Perciò mi piacque innanzi a Voi ricordare (...) come nei campi di quel Diritto, di cui siamo per ergere il tempio, rifulgano senza eguali le glorie italiane²⁹. 27

4 Many Advisory Commissions, One Leader

Each temple should have its cell, its *sancta sanctorum* where the god lives, represented by a statue. In the case of the Palace of Justice in Rome, there are two spaces that can be interpreted this way: the main courtyard (*cortile d’onore*) and the *Aula Massima*. The first one is usually considered the most original element of the whole building, located on the riverside; it was initially conceived as the main entrance. A *scalone d’onore* dominates the courtyard, and that in its turn is towered over by a five meter high statue representing the Law, in the form of a crowned goddess holding in one hand a scepter and in the other the book of laws. At the base of the stairs, there are four eminent Roman jurists: Hortensius, Labeo, Ulpianus and Paulus. The courtyard’s walls are heavily decorated: at the top there is the she-wolf with the twins Romulus and Remus, and all around lions, heads of Minerva (goddess of wisdom)³⁰, coats of arms from the House of Savoy, tables of the law and more³¹. 28

Certainly, the Law seems to be the goddess of this secular temple of justice but, with respect to the ancient temples, she is “too accessible”, as she has been placed in a public area. The *Aula Massima* on the other hand, is located on the first floor, and was (and still is) a room reserved for very special occasions, usually accessible, nowadays, only to the “clergymen” of the judicial system (joint sessions of the Court of Cassation or opening of the judicial year). Here, there are many deities present. Two representations of Justice as female dominate the ceiling of the room³², and a statue of the law (*il Diritto*), in the form of a naked male, lies above the entrance. The room itself 29

²⁹ Zanardelli, Giuseppe, *Pel collocamento della prima pietra del Palazzo di Giustizia in Roma: discorso pronunziato dal Ministro guardasigilli G. Zanardelli il 14. marzo 1889*. Roma: Forzani e C., 18898, p. X and XIV. The opening of the speech referred to the “sanctuary of justice”: “Sire, È degno, è lieto, è fausto l’avvenimento, per quale oggi in Roma nel natalizio Vostro, festeggiato dalla Nazione, ottiene fortunatamente i proprii natali il santuario della giustizia (...)”: *ibid.*, p. V.

³⁰ In the *Aula Massima*, otherwise, many low-relieves represent her sacred creature, the owl of Minerva, sitting on a pile of (law) books. The owl is a symbol of wisdom and knowledge as it is able to rotate its head and to see in the darkness.

³¹ On August 20th 1898 the Program for the most important statues, dated June 10th 1898, was approved by Decree of the Ministry of Public Works. ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 220, f. 557.

³² See *infra*.

resembles a church, a kind of basilica complete with an apse; or if not a Christian church then the Temple of Solomon, so dear to Freemasonry, since many of the political leaders and artists of the period were freemasons, including Zanardelli and Calderini.

4.1 Statues

Special Commissions were in charge of judging the drafts of the decoration of the building: one for the sculptures and one for the frescoes. Zanardelli presided only over the second one. In theory, he had nothing to do with the decisions regarding the statues' sketches but, in practice, his lumbering personality loomed over the first Commission too. 30

This Commission was appointed through a Decree of the Ministry of Public Works on November 1st 1898. Seventeen months and three competitions later, all the sketches of the most important statues, including the bronze *quadriga* at the top of the former main entrance, were approved³³. Giulio Monteverde, senator and renowned sculptor, was the President of the Commission. The other members were Alfonso Balzico (sculptor and painter), Camillo Boito (architect), Giuseppe Sacconi (architect), Odoardo Tabacchi (sculptor) and Carlo Marzollo (secretary)³⁴. 31

None of the three official reports says a word about Zanardelli and his opinions³⁵. However, on May 13th 1899, during a meeting of the Commission, Calderini read aloud a letter that he had received from Zanardelli, in which the concepts exposed by the former Minister of Justice during the foundation stone laying ceremony were further developed. The Commission stated that the letter had to be put aside and that it had to be re-read the day after, when Commissioner Boito would be present. It is evident that the warnings of Zanardelli could not be disregarded: 32

Roma, 11 maggio 99 Caro Calderini Non ebbi tempo di andar a vedere i bozzetti; ma le osservazioni che a proposito di esse ho letto in alcuni giornali mi spingono a scriverle. Ho veduto lodati su qualcuno di detti giornali de' bozzetti di Papiniano che lo fanno in atto di parlare. Ora, fino dal discorso che feci quando si pose la prima pietra indicando le due statue di Cicerone e di Papiniano come quelle che mostravano nelle discipline del foro e del diritto il primato italiano, vollen in Cicerone indicare l'oratore, in Papiniano il giureconsulto, primo ne' secoli; in Cicerone l'eloquenza, in Papiniano la scienza del diritto. Quindi sta bene che Cicerone si effigii orando, non così Papiniano. (...) ad ogni modo troppo mi premeva indicare il concetto che mi guidò nel proporre quelle due statue come le principali del Palazzo. E in pari tempo ho così il piacere di mandarle i saluti più affettuosi del suo Zanardelli³⁶. 33

³³ See: *Giudizio della Commissione sul 3° concorso per le opere di scultura del Palazzo di Giustizia in Roma* (June 27th 1900), ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 220, f. 557.

³⁴ Decree of the Ministry of Public Works, 1 November 1898: ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 220, f. 557.

³⁵ May 21st 1899, November 23rd 1899, June 27th 1900.

³⁶ ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 219, f. 556.

When Zanardelli died, Scipione Ronchetti was appointed President of the Commission. On August 11th 1907, a new competition was launched for the last statues, which were meant to represent Bartolus de Saxoferrato, Giambattista De Luca, Giambattista Vico and Domenico Romagnosi. This time the jury included Calderini, Maccari (then substituted by Ettore Ximenes) and Pietro Canonica. These statues, which represent medieval and modern jurists, were there to signify the continuity of the legal tradition in Italy³⁷. 34

4.2 Frescoes

Otherwise, the role played by Zanardelli in the frescoes of the *Aula Massima* was, from the very beginning, clear and uncontested. 35

A first Commission in charge of supervising the artistic, technical and administrative direction of the works for the new Palace of Justice was appointed by Royal Decree on March 28th 1888. Giuseppe Zanardelli, Minister of Justice, was the President, while the other members were: Giuseppe Miraglia (First President of the Court of Cassation of Rome), Francesco Auriti (General Attorney at the Court of Cassation of Rome), Leopoldo Torlonia (Mayor of Rome), Francesco Calderini (President of the Bar Council of Rome), Giuseppe Pinelli (Chief Director at the Ministry of Justice), Andrea Scala (architect) and Nicola Alvaro as Secretary (Vice-secretary at the Ministry of Justice). 36

However, the Commission did not play the role it was supposed to play for a very long period of time³⁸ because the responsibility for the works passed, over the course of time, from the Municipality of Rome to the Ministry of Justice (1889) and then to the Ministry of Public Works (1891). Finally, on January 21st 1900, after almost twelve years, a new Commission (*Commissione per i lavori del nuovo Palazzo di Giustizia in Roma*) was appointed by Royal Decree. Less than a month later, Zanardelli wrote a letter to the Minister of Public Works Pietro Lacava to reiterate his commitment and to thank him for his trust.³⁹ 37

Certainly, the new Commission met on April 8th 1900, when the frescoes of the *Aula Massima* were mentioned for the first time. The members were: Giuseppe Zanardelli (President), Emilio Pascale (General Attorney at the Court of Cassation of Rome), Don Prospero Colonna (Mayor of 38

³⁷ Pagliai, Daniela, *Le vicende della decorazione del palazzo di Giustizia*, in “Roma Capitale 1870-1911. Architettura e urbanistica. Uso e trasformazione della città storica”, Venezia: Marsilio, pp. 255-261, pp. 258-259.

³⁸ All ups and downs are summed up in a document of the Ministry of Public Works. Among the documents of the *Archivio Centrale dello Stato* it is possible to find a first hand-written version of this document, dated February 26th 1899, a second typewritten version, dated December 5th 1899, and a Royal Decree (a kind of short version), dated January 21st 1900. ACS, Ministero LL.PP., Opere governative ed edilizie per Roma, b. 171, f. 469.

³⁹ “Maderno 14 febbraio 1900. Onorevolissimo Sig. Ministro, Ho ricevuto la gentilissima sua lettera del giorno 11 corrente, colla quale favorì accompagnarmi copia del R. Decreto in data 21 gennaio 1900, che ricostituì con carattere consultivo la Commissione per i lavori di costruzione del Palazzo di Giustizia in Roma, e mi nominò Presidente di questa Commissione. Mentre mi faccio un gradito dovere di ringraziarla della gentile fiducia, mi affretto a significarle che procurerò di secondare, con tutto lo zelo e coll’amore lungamente posto all’opera monumentale, le nobili cure da Lei assiduamente ed efficacemente spese, per ottenere che l’Italia col Palazzo di Giustizia abbia in Roma un edificio degno delle sue tradizioni giuridiche ed artistiche. Tornando fra giorni a Roma, non tarderò a convocare la Commissione medesima. Con devota osservanza. Suo obbedientissimo. G. Zanardelli?”. ACS, Ministero LL.PP., Opere governative ed edilizie per Roma, b. 171, f. 469.

Rome), Edoardo Braggio (General Director of the Division “Bridges and Streets” of the Ministry of Public Works) and Gaetano Koch (architect). On that day, Calderini and the Chief Engineer Domenico Miceli were also present. Minister Lacava intervened only to say that the time limits of the contract would be respected (April 30th 1902) and that he was sure that the palace would be finished in 1903. Despite his optimism, the palace was only inaugurated on January 11th 1911.

Perhaps it is no surprise that the topic of the frescoes was brought up by Zanardelli, who said that it would be appropriate, for such a great building, to be decorated with artistic frescoes, like those at the Senate, and he proposed, as a subject, the “School of Law of Rome”⁴⁰. This brief statement is particularly interesting, as it suggests that the President already had the idea to hand the task to Cesare Maccari⁴¹, who was at that time very famous for three works in particular. The first one was the fresco that Zanardelli particularly admired, *Cicero denounces Catiline*⁴² as well as the other paintings of the *Sala Gialla* of the Italian Senate, now known as *Sala Maccari* (1881-1888); second, the frescoes of the *Sala Risorgimento* of the *Palazzo Pubblico* in Siena, where Maccari depicted King Victor Emmanuel II receiving the plebiscite of the Romans along with the transportation of his remains to the Pantheon (1886-1887)⁴³; finally, the decoration of the dome of the Basilica of the Holy House in Loreto (1888-1907).

A few months later, the Commission met again but of the members, only Zanardelli and Koch were present. The others were substituted by their representatives or were not mentioned at all. Calderini and Miceli both contributed to the discussion and Zanardelli brought up, once more, the topic of the frescoes; discussing with Calderini if there was a wall big enough for a grand subject in the Great Hall of the Court of Cassation. Then, with a brief sentence, Zanardelli demonstrated his power: *he* was going to talk to the Minister of Public Works about the frescoes and *he* was going to designate Cesare Maccari as the right artist to carry out the task:

Presidente – Concorda in questa idea e aggiunge che egli intanto, se la Commissione lo crede, parlerà al Ministro per interessarlo alla cosa, designandogli anche il Prof. Maccari come l’artista che sarebbe più indicato per la esecuzione di pitture corrispondenti all’importanza artistica dell’edificio⁴⁴.

⁴⁰ *Commissione Consultiva per i lavori per il nuovo Palazzo di Giustizia in Roma*, April 8th 1900: “Presidente. - Dichiaro essere lieto di constatare che i lavori hanno notevolmente progredito in questi ultimi tempi. Aggiunge poi che, data la grandiosità dell’edificio, sarebbe opportuno che la sala della Corte di Cassazione venisse decorata con qualche affresco artistico a somiglianza di quanto s’è fatto nel palazzo del Senato. Un soggetto bellissimo potrebbe essere, a suo avviso, la Scuola del Diritto di Roma”. ACS, Ministero LL.PP., Opere governative ed edilizie per Roma, b. 171, f. 470.

⁴¹ Maccari (Siena 1840 – Rome 1919), pupil of Luigi Mussini, moved to Rome in 1867, where he was already quite famous for the paintings he had done for the *Chiesa del Sudario* on behalf of the Savoy family. Adolfo Venturi, one of the leading art historians of the period, was an enthusiast of his frescoes for the *Sala Gialla*: “E quando, nel 1888, verso la fine dell’anno, si videro gli affreschi meravigliosi, fu un coro di lodi, fu un inno di tutta Roma a lui che con sacrifici, con abnegazione, compì nobilmente una opera degna della nuova Italia”: A. Venturi, *Cesare Maccari e le sue pitture nella Sala del Senato*, in “Archivio storico dell’arte”, I, 1888, pp. 439-443, p. 441.

⁴² Maganzani, Lauretta, *L’arte racconta il diritto e la storia di Roma*, Pisa: Pacini ed., 2016, pp. 181-184.

⁴³ *Vittorio Emanuele II riceve in Firenze il plebiscito dei romani and Trasporto della salma di Vittorio Emanuele II al Pantheon*.

⁴⁴ *Commissione Consultiva per i lavori per il nuovo Palazzo di Giustizia in Roma*, July 16th 1900. ACS, Ministero LL.PP., Opere governative ed edilizie per Roma, b. 171, f. 470.

His initiative was successful, as he himself stressed during another meeting, a couple of years later, this time specifying that the topic should be the history of law in Rome, without any reference to the “School of Law of Rome”⁴⁵. 42

In the meantime, a contract between Cesare Maccari and the Ministry of Public Works had been concluded and registered on September 3rd 1901. According to the contract, the frescoes had to represent “historical and allegorical subjects taken from the History of Law in Rome”. Maccari had two years to submit his sketches to the Minister and four years to execute the paintings from the day of approval⁴⁶. Therefore, the frescoes should have been finished by 1907 but, when the painter was paralyzed in 1909, a lot of work was still to be completed⁴⁷. 43

On August 1st 1903, at 2:00 pm, a great event took place in Rome: in a room at the brand new General Hospital (*Policlinico Umberto I*), the sketches of the frescoes were displayed for the first time in front of a large group of representatives of the political, judicial and artistic elite, including Francesco Schupfer (Senator and Professor of History of Italian Law at the University La Sapienza) and the sculptor of the bronze *quadriga*, Ettore Ximenes. 44

The minutes of the meeting are detailed but, in order to fully understand them, it is necessary to analyze first an intriguing document with no title, no date and no signature, which, however, can be easily attributed to Giuseppe Zanardelli, and was probably written in 1902⁴⁸. 45

5 The Role of Zanardelli in the Iconography of the *Aula Massima*

In an article published in 1928, Gemma Ambrogetti affirmed that the topics for the frescoes were proposed by Francesco Schupfer and approved by Zanardelli⁴⁹. The participation of Schupfer, even if not documented, is plausible, considering that he was present when the sketches of the frescoes were first exhibited and also that (later on) he was the expert asked to suggest the Roman law mottos 46

⁴⁵ “Riguardo alle pitture, dice che il Ministero dei Lavori Pubblici, accogliendo la proposta della Commissione, ha già da tempo affidato il lavoro al Prof. Maccari. I soggetti però da svolgersi dovrebbero essere attinti non alla storia romana in genere, ma più precisamente alla storia del diritto in Roma”: *Commissione Consultiva per i lavori per il nuovo Palazzo di Giustizia in Roma, Adunanza del 1° Febbraio 1902*. ACS, Ministero LL.PP., Opere governative ed edilizie per Roma, b. 171, f. 470.

⁴⁶ “Le decorazioni delle quali il Prof. Maccari assume la esecuzione, consisteranno in pitture a fresco, rappresentanti soggetti storici ed allegorici tratti dalla Storia del Diritto in Roma, e dovranno svolgersi su tutti gli spazi del soffitto e delle pareti dell’Aula Massima del Palazzo di Giustizia lasciati a fondo bianco e designati con la lettera A nei due tipi uniti alla presente convenzione, e sottoscritti dalle parti, escludendo soltanto gli spazi tinteggiati in giallo, che sono occupati dalle finestre e lucernari, o destinati ad essere decorati con marmi e marmoridee”: *Convenzione per la decorazione dell’Aula massima del Palazzo di giustizia in Roma* (July 18th 1901), art. 1. ASB, Archivio Zanardelli, b. 618, f. 9.

⁴⁷ Paride Pascucci, Maccari’s pupil, worked on the frescoes up until 1918.

⁴⁸ This dating is based on two facts: on the one hand, in the *memorandum*, Zanardelli quoted a book on Justinian by Diehl, which could be *Justinien et la Civilisation byzantine au VIe Siècle* by Charles Diehl, published in 1901; on the other hand, on August 1st 1903, the sketches were ready to be exposed at the *Policlinico Umberto I* in Rome.

⁴⁹ “I temi che lo Schupfer sottopose all’approvazione del Ministro Zanardelli, e questi prescelse, non erano lievi né semplici: soprattutto per la profondità di cultura che richiedevano. Ma, sebbene avesse già varcato la sessantina, con giovanil baldanza e con sicura coscienza della propria capacità, il Maestro si addentrò nell’indagine storica (...)”: G. Ambrogetti, *L’apertura della Sala Maccari al Palazzo di Giustizia*, in “Capitolium”, 1928, pp. 657-668, p. 663.

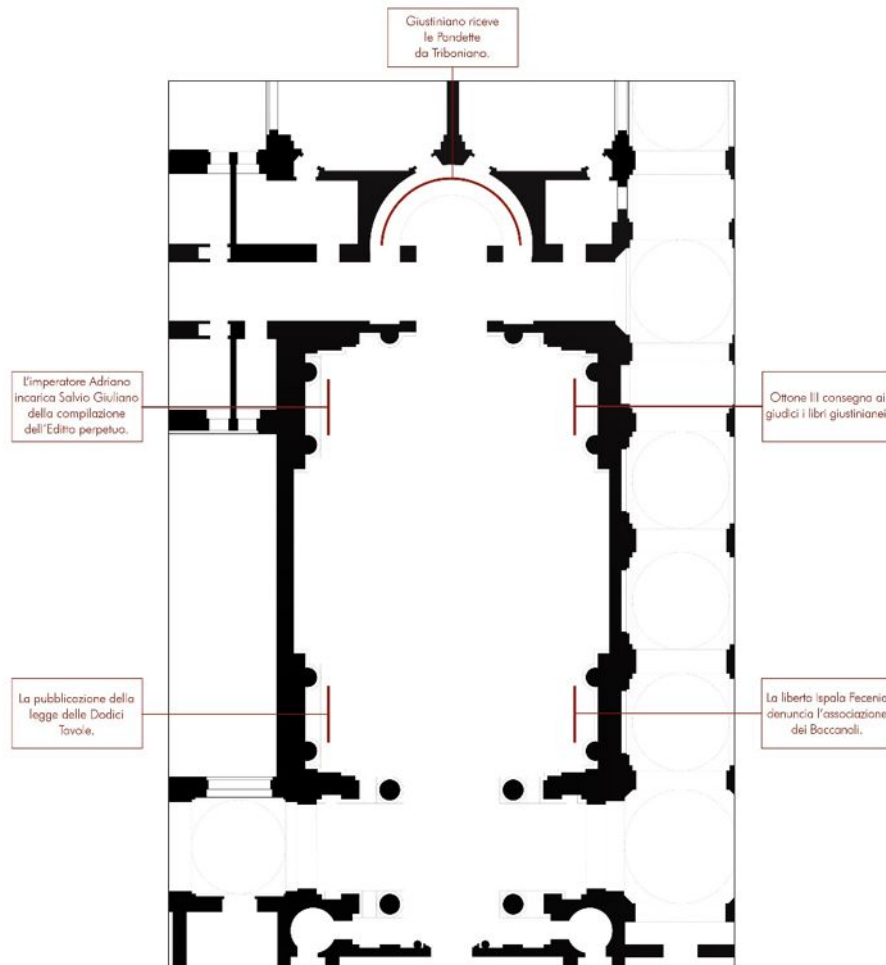
that should have been inscribed on bronze and put on all façades of the palace⁵⁰. At the time of the appointment of Maccari, Schupfer (born in 1833) had been professor of History of Italian Law and of Roman Law at the University of Rome for more than twenty years. He studied law in Verona, Innsbruck, Heidelberg and Vienna. Although he was a pupil of important Romanists such as Karl Adolph von Vangerow, he developed an interest in the history of “Germanic” law and devoted his first publications to Lombard law. He became Senator in 1898 and continued to teach at the University of Rome until 1920, when he retired aged 87⁵¹.

Despite the fact that Schupfer was certainly a leading legal historian, the documents at our disposal do not support Ambrogetti’s reconstruction, at least at first glance. In the *Archivio Zanardelli* at the State Archive of Brescia, the city where the Minister was born, there is a kind of *memorandum* in which the whole iconographical project of the *Aula Massima* is described. According to this document, the paintings should have been six: 1) The Jurists, 2) The Orators, 3) Justinian, 4) Otto III, 5) The Twelve Tables, 6) The Edict (by Salvius Iulianus). The fresco depicting Ispala Fecenia is not mentioned but it could also be that a page of the document is missing. The *memorandum* is handwritten but not by Zanardelli himself, rather by a clerk. It is written in the first person on headed notepaper of the “Presidenza del Consiglio dei Ministri”, and this is one of the reasons why it seems to come from Zanardelli and not from Schupfer. Furthermore, the peremptory tone fits Zanardelli’s personality perfectly. Finally, the document was found in the personal archive of Zanardelli in Brescia.

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⁵⁰ See for example the letter written by Schupfer, dated February 8th 1907: “Promemoria. In generale ho creduto opportuno di proporre sentenze più brevi di quelle indicate nello schizzo, sia per guadagnare in concisione, sia per rendere le iscrizioni meglio leggibili dal basso, coll’aumentare le dimensioni dei caratteri. Ritengo tuttavia prudente di far trascrivere le iscrizioni in tela e di farle mettere a posto provvisoriamente, per vedere che effetto faranno. Le otto iscrizioni D sugli attici degli avancorpi d’angolo nelle vie Ulpiano e Triboniano furono da me omesse perché non mi parvero leggibili senza sforzo, tenuta presente la limitata larghezza delle due vie e la sporgenza della cornice. (...) Roma li 8 Febbr. 1907. F. Schupfer”. ACS, Min. LL. PP., Opere governative ed edilizie per Roma, b. 220, f. 561.

⁵¹ Conte, Emanuele, Voce: *Schupfer, Francesco*, in “Dizionario biografico dei giuristi italiani (XII-XX secolo), vol II, Bologna: Il Mulino, 2013, pp. 1829-1831.



6. Map of the *Aula Massima* with the current position of the frescoes, based on an original map of the entire first floor of the Palace of Justice (ACS, b. 171, f. 470). Reconstruction by Architect Gaia Cané.

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5.1 The Jurists

The first two frescoes should have been enormous, 13x8 meters. They were never realized (two wide curtains cover, since 1911, the walls that should have been painted), but the pictures of the sketches were published in 1928, courtesy of Lady Maccari De Dominicis, daughter of the painter⁵². The idea for the first fresco was to represent an imaginary “School of Law of Rome”, inspired by the famous “School of Athens” by Raphael⁵³. It was to include the five jurists that the “Law of Citations” indicated as the only ones who could be quoted in court (Papinianus, Paulus, Ulpianus, Gaius and Modestinus), strongly curbing the creativity of lawyers. The *Lex citationum* was issued

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⁵² Ambrogetti, *L'apertura della Sala Maccari*, cit., pp. 666-667.

⁵³ Zanardelli had already referred to this subject in 1889, during the speech for the foundation stone laying ceremony: “Se, a dipingere le pareti della massima aula di questo Palazzo, l'età nostra sapesse suscitare artefici che ricordassero il divino autore della *Scuola di Atene*, questa sarebbe uguagliata di certo da que' magnifici subbietti che sono la scuola del romano diritto, della giurisprudenza italiana”: Zanardelli, *Pel collocamento della prima pietra*, cit., p. X.

under Emperor Valentinian III in 426 and then inserted in the *Codex Theodosianus* by Theodosius II (438) and afterwards also in the first edition of the *Codex Justinianus* (529). Limiting the number of works that could be used in a trial, the aim of this *constitutio principis* was clearly to bestow more certainty in the law: an aim that the young Kingdom of Italy, which in 1889 promulgated its fifth and last Code (the Criminal Code), could easily approve.

The *memorandum* also stipulated that the two law schools which existed in Rome between the 1st and 2nd cent. AD, the *Sabiniani* and *Proculiani*, should be represented and distinguished in some way. Furthermore, the document suggested that some jurists should be represented while advising a client, on legal or economic matters, others while writing and others while teaching. In the whole *memorandum* Zanardelli showed his erudition, quoting classic works (e.g. Cicero) and the most recent academic literature (e.g. Charles Diehl) as well as episodes and characters from Roman history, such as Tiberius Coruncanius, famous for being the first plebeian *Pontifex Maximus* and the first to publicly profess the law. Like the “School of Athens”, this fresco was meant to include celebrated “intellectuals” (in this case lawyers) through the ages⁵⁴. During the exhibition on August 1st 1903, the Commission devoted only a few words to this painting, which, nevertheless, was apparently the only one that completely satisfied Francesco Schupfer⁵⁵. The picture available to view in the 1928 publication is of bad quality but it is clear that the lawyers were divided in groups (the one in the foreground probably representing the five jurists of the Law of Citations) and that the attitudes suggested in the *memorandum* were respected. In the background, a great temple (of justice?) can be seen.

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The aim of this fresco was to celebrate Italian legal history, with special reference to ancient Roman jurists. The reference to the “School of Athens” was explicit: this painting was meant to glorify the ancient legal traditions, making contemporary jurists proud of their legacy as well as conscious of their duties.

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5.2 The Orators

While the first big painting, “The Jurists”, was intended to represent a kind of metaphor, “The Orators” was inspired by an historical event: the Trial of Verres. On one side of the fresco, the

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⁵⁴ “Quadro I. I giuristi. Ho presente la scuola di Atene e bisognerebbe fare qualche cosa di simile per Roma. Sarebbe la Scuola di Roma, in cui dovrebbero figurare in primo luogo i cinque grandi giureconsulti, che una costituzione di Teodosio II ha distinto su tutti gli altri: Papiniano, Paolo, Ulpiano, Gaio e Modestino. Né si dovrebbero dimenticare le scuole, fra cui principalmente quelle dei Sabiniani e Proculiani, spesso in lotta fra loro. Bisognerebbe farne due gruppi distinti, cercando di mettere, in qualche modo, in rilievo il carattere speciale di entrambe. Qualcuno di questi giureconsulti potrebbe essere rappresentato nell’atto di dare un responso al cliente, che potrebbe essere di natura diversa, e non solo di indole giuridica, p.e. de agro emendo, de filia collocando ecc, come dice Cicerone. Altri potrebbe essere riprodotto nell’atto di scrivere, e altri ancora nell’atto di insegnare. Ricordo quel Tiberio Coruncanio che fu appunto il primo che insegnò pubblicamente il diritto. Trattandosi di giureconsulti di tempo e anche di nazionalità diversa, - ce n’era di provinciali – bisognerebbe avere l’avvertenza di distinguerli appunto secondo l’età e la origine di ciascuno: la varietà del costume gioverebbe immensamente al quadro”. ASB, Archivio Zanardelli, b. 618, f. 9, pp. 1-2.

⁵⁵ “Questo è il bozzetto che più lo soddisfa: in esso sono raffigurati tutti i giureconsulti principali appartenenti a varie epoche e ciò appare anche dalla diversità delle vesti”. *Commissione Consultiva per i lavori per il nuovo Palazzo di Giustizia in Roma*, August 1st 1903. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, f. 470.

painter was tasked with representing Cicero, on the other the lawyer defending Verres, Quintus Hortensius Hortalus, and next to them some noblemen; all around, were Romans and Sicilians who testified during the trial. Also Alba Aemilius, defined as a vulgar man, should be represented while telling the people that Verres bought the judges. Zanardelli specified that Verres himself often intervened with an ironic and scornful attitude. Finally, he also suggested that the artist read a recently published book, in order to better understand how to render the location of the trial⁵⁶.

The comments in this case appear even more apathetic than those reserved for “The Jurists”: Schupfer stressed that they knew how the *rostra* looked thanks to an ancient medal and that the painter did not represent them in the correct manner. Others noted that the crowd present at the trial was excessive. Their few comments were silenced by Zanardelli⁵⁷. 54

Only this painting and the one depicting Ispala Fecenia represent a trial and could be therefore more easily included in the category of the *exempla iustitiae*. The Trial of Verres, nevertheless, is more famous, as Cicero described it in his speeches *In Verrem* (Against Verres), studied by generations of students, not just in Italy. 55

In the year 70 BC, the Sicilians asked Cicero - a person they were already familiar with since he had been *quaestor* of Lilybaeum (Sicily) -, to level a prosecution against Gaius Licinius Verres for the crimes he had committed when he was *pro-praetor* of Sicily, in the years 73-71 BC. Verres was accused of corruption and extortion through public office and of many other related crimes. 56

He was so rich that he had no problem in obtaining defense from the most famous lawyer of that period, Hortensius, who immediately tried to prolong the trial until a new, more favorable jury could be found. This maneuver, however, did not work, thanks to Cicero’s skills. He was officially appointed lawyer for the Sicilians and went to the island to collect evidence. In the meantime, Verres tried to buy Cicero too but he was not successful. When it became clear that he had no chance of winning, he went into exile, with his treasures, to Massilia (modern-day Marseilles), where he remained until his death. He was found guilty, but only of some of the crimes of which he was accused, and the Sicilians were indemnified only in part. Cicero was the real winner: the trial gave 57

⁵⁶ “Quadro II. Gli oratori. Prenderei come soggetto il processo di Verre. Da un lato Cicerone, dall’altro Ortensio, e seduti accanto ad essi altri nobili, tra cui P. Scipione per Verre. Si sa che cittadini romani in gran numero, anche dell’ordine senatorio e di quello dei cavalieri, deposero in questa causa; e con essi Siciliani. In un de’ lati potrebbesi anche collocare Alba Emilio, uomo volgare, in atto di bandire a un gruppo d’ascoltatori la tariffa secondo cui sarebbero stati comperati i giudici: si noti che la folla prese viva parte al processo. Dei giudici se ne conoscono 12. Verre era presente ed a volte interloquì sdegnoso o ironico. Per lo studio dell’ambiente si potrebbe vedere Ciccotti, “Il processo di Verre””. ASB, Archivio Zanardelli, b. 618, f. 9, pp. 1-2. The quoted book is: Ciccotti, Ettore, *Il processo di Verre. Un capitolo di storia romana*, Milano: edited by the author, 1895.

⁵⁷ “La Commissione esamina di poi il bozzetto relativo al grande affresco degli Oratori. S.E. il Presidente ritiene troppo moderno il banco degli oratori posto nel piano elevato a sinistra di chi guarda: fa notare che uno degli oratori è Cicerone. On. Schupfer dà spiegazioni sui rostri: in questi v’era infatti, come si rileva da una antica medaglia, una specie di pulpito che sorgeva sopra una base di pietra circolare: però non gli sembra che nel bozzetto sieno raffigurati esattamente e converrà dare in proposito qualche idea più precisa al Prof. Maccari. S.E. Pagano – Crede che si debba tenere molto conto delle notizie storiche ed archeologiche che si possiedono a questo riguardo. Gli pare poi eccessivo il pubblico esistente sullo sfondo. Comm: Palomba – Anch’egli è di avviso che si debba avere il massimo riguardo alle ragioni storiche. S.E. il Presidente – Osserva che la scena rappresenta il processo di Verre, al quale accorse tutta Roma, e quindi la folla è giustificata”. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

a boost to his political career after he published five speeches related to the trial, even though only the first one had been heard in court.

By including one of the most famous and scandalous trials in the history of Rome in the depictions, it is clear that Zanardelli wanted to warn judges against the temptations of corruption.

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5.3 Justinian

When he suggested that the Emperor Justinian should be depicted while receiving the Digest from Tribonian, Zanardelli underlined that also Theodora, wife and “great muse” of Justinian, had to be depicted next to him. He wanted the fresco to express the universal “spirit” of the new legislation, destined to become, in the Middle Ages, “the common law of society”. He even proposed personifying the elements that converged in the *Corpus Iuris Civilis*, such as *ius gentium* and *aequitas*. In this case too, he suggested a book; however, not by an Italian author but by the famous French historian Charles Diehl. Probably *Justinien et la Civilisation byzantine au VIe Siècle*, published in Paris in 1901.⁵⁸

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This is the one and only fresco that was, and still is, immediately comprehensible to the audience. The main reason is that the composition is reminiscent of the famous byzantine mosaics of the Basilica of San Vitale in Ravenna, not because of the features of Justinian, but because of the way in which the Emperor and his court were depicted, as a rigid and solemn row of dignitaries looking at the spectator, typical of Byzantine art. The only criticism of the Commission regarding this painting referred to the fact that the books (or better papyri) depicted on the floor deprived the imperial room of its dignity, and should be removed. Schupfer noticed, however, that this representation gave the idea of the great work done by Tribonian and the other compilers to extrapolate from the works of ancient jurists the *iura* to insert in the Digest and the final version of the fresco maintained this element⁵⁹.

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⁵⁸ “Quadro III. *Giustiniano*. Lo rappresenterei nel Palazzo di Bisanzio, in tutto lo splendore dell’arte bizantina, nell’atto di ricevere il Digesto dalle mani di Triboniano e degli altri giureconsulti incaricati della sua compilazione. In un gruppo a parte ne collocherei altri, coi volumi che avevano servito appunto per compilarlo. Né vorrei trasandata [sic] Teodora, la grande ispiratrice di Giustiniano: potrebbe stare degnamente a fianco di lui. E anche cercherei di mettere in rilievo lo spirito della nuova legislazione, che si spoglia generalmente del carattere strettamente nazionale, per assurgere fino alla concezione di un diritto universale. Molti istituti contrari del diritto quiritario e del diritto delle genti si fondono per opera di Giustiniano in un diritto unico dominato generalmente da un grande principio di equità, per non dire della tinta sociale che il diritto assume in contrapposizione al carattere individualistico del diritto delle Pandette: tutte cose che dovevano agevolare l’accettazione nel medio evo, come diritto comune dell’umano consorzio. Sarebbe bene se si potessero in qualche modo personificare. Per lo studio del periodo giustiniano (...) raccomando il nuovo splendido libro del Diehl su *Giustiniano*”. ASB, Archivio Zanardelli, b. 618, f. 9, pp. 4-5. The quoted book should be: Diehl, Charles, *Justinien et la Civilisation byzantine au VIe Siècle*, Parigi: E. Leroux 1901.

⁵⁹ “Infine si esamina l’ultimo bozzetto rappresentante Giustiniano che riceve le Pandette da Triboniano. In questo bozzetto pare ben ritratto il carattere e lo spirito bizantino. Comm: Riveri – Gli sembra che il concetto si comprenda meglio che negli altri quadri. S.E Pagano vorrebbe che fossero tolti i libri giacenti sul pavimento, sembrandogli ciò poco consono alla dignità dell’Aula imperiale. On: Schupfer. – Spiega che l’artista volle forse in tal modo rappresentare le molteplici opere di giureconsulti da cui furono ricavate le Pandette, per dare così l’idea del grandioso lavoro compiuto dalla Commissione presieduta da Triboniano. S.E. il Presidente.- Non crede che la Commissione debba fermarsi su certi dettagli che possono aver servito all’artista per ottenere un migliore effetto scenico”. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

The role of the *Corpus Iuris Civilis* in the history of Western law is undeniable and uncontested: no surprise that Zanardelli wanted it to be represented in some way. In this case, not all his recommendations were respected as he wanted it to be painted on the right wall, while the Twelve Tables had to dominate the room from the apse even though the scene was less solemn. Today, Justinian and Theodora welcome the visitors in the *Aula Massima* from the apse, sitting on a throne at the top of a steep staircase. Tribonian is submitting the Digest from the bottom of the stairs and the observer feels, in some way, in the same position as the *quaestor sacri palatii*.

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5.4 Otto III

The fourth fresco was designated to represent Otto III, as he was the first Emperor, in the Middle Ages, to declare that Roman law was universal, and that it should not be considered only the personal law of the defeated people. For this fresco, Zanardelli identified himself in the role of the painter, by writing: “*I would paint him [Otto III] in Rome, while appointing the judges*”. The Minister specified that the Emperor used to appoint the judges by handing them the *Corpus Iuris Civilis* and pronouncing a solemn formula according to which they had to judge “Rome and the world” on the basis of those books of law⁶⁰. This particular expression creates an unexpected link with Francesco Schupfer. In his *Storia del diritto italiano* (1888-1889), published only a few years earlier, in fact, he had used exactly the same words: “giudicare Roma e il mondo”.

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“Già nel concetto di Ottone III Roma doveva essere la sede dell’imperatore, la prima città dell’universo; ed è osservabile, che i giudici ivi istituiti, nel ricevere il codice giustiniano, erano ammoniti di attenersi religiosamente ad esso, e con esso giudicare Roma e il mondo”⁶¹. Zanardelli also suggested depicting a barbarian, i.e. a Lombard or a Frank, wearing his national clothes, before changing them for the Roman toga. In analyzing the sketches, though, the Commission thought it inappropriate to represent the “barbarian” judge about to wear the toga, but completely naked. The commissioners noticed that this nude had no artistic purpose, that it was not appropriate to the location and that, anyway, the Romans were not naked under the toga. This suggestion was evidently accepted⁶².

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⁶⁰ “Quadro IV. Ottone III. Questo imperatore, tutto imbevuto di idee romane, è il primo, nel medio evo, che dichiara a legge romana come legge universale, mentre per lungo tempo era stata solo la legge personale dei vinti. Io lo dipingerei a Roma nell’atto d’insediare i giudici: sappiamo di certo che soleva farlo consegnando loro i libri giustiniani con una formula solenne tendente a dichiarare che con essi dovevan giudicare Roma e il mondo. Al suo fianco metterei i professori della scuola romana di diritto, che, appunto coi loro scritti, lo avevano eccitato a quel solenne riconoscimento. In un gruppo a parte collocherei alcuni longobardi e franchi nell’atto di cambiare la loro legge nazionale con le leggi romane. Ai tempi di Ottone risale appunto un’altra formula intitolata così: come un barbaro possa diventare romano. Si potrebbe forse rappresentare uno di questi barbari (ormai non più barbari) nel loro costume nazionale nell’atto di indossare la toga romana. Sarebbe un gran quadro che servirebbe come di anello tra il mondo antico e il mondo moderno, e che collocherei di fronte all’altro rappresentante Giustiniano e il Corpus juris. Starebbero bene l’uno in faccia all’altro anche per la diversa intonazione dei colori, che li distinguerebbero dagli altri”. ASB, Archivio Zanardelli, b. 618, f. 9, pp. 6-7.

⁶¹ This very expression is already present in a handwritten version of his *History of Italian Law*, which was a summary of his lessons: Schupfer, Francesco, *Storia del diritto italiano. Sunto delle lezioni dettate dal Prof. F. Schupfer*, Roma, 1888-89, pp. 385-386.

⁶² “Nel bozzetto rappresentante Ottone III° non sembra appropriata la figura ignuda del giudice che s’accinge a spogliarsi per indossare la toga senatoria. Parrebbe conveniente che fosse scelta una forma diversa per volgere il

This image was meant to act as a connector between the ancient and modern worlds. For this reason, the fresco was meant to be positioned on the left side of the apse, in front of the one representing Justinian. 64

5.5 The Twelve Tables⁶³

The first Roman legislation was considered crucial by Zanardelli and the moment that was designated for representation was the publication of the Tables in the Roman Forum. As, according to tradition, a delegation of three Roman citizens travelled to Greece in order to transcribe Solon's laws and study the legislation of several Greek cities, Zanardelli suggested representing some Greeks in the Forum too. The difference between Romans and Greeks should be made evident by their clothes. At the same time, also the difference between patricians and plebeians should be underlined. According to the *memorandum*, it seems that Maccari, on the contrary, wanted to stress the principle of equality, but Zanardelli imposed his point of view, making clear that equality between Roman citizens was far from being realized, even though a certain balance was achieved in the field of criminal law⁶⁴. 65

This sketch was the first to be analyzed on August 1st, because it was considered, at this stage, to be the most important one, the one intended for the apse (from where Justinian now dominates the room). At that point, in fact, the entire distribution of the frescoes was conceived in a different way⁶⁵. 66

It was noted that the Tables should be made of bronze (and not ivory⁶⁶), that all Twelve Tables (or at least the first ten published) should be visible, that there were not enough people around the tables, that the temple in the background was too sumptuous for the archaic period and that the 67

concetto che si è proposto l'artista. Comm: Quarta osserva che la figura ignuda non ha nessuna finalità artistica. Comm: Palomba. I Romani sotto la toga indossavano altre vesti, e perciò non occorrerebbe presentare la figura proprio ignuda". ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

⁶³ Maganzani, *L'arte racconta*, pp. 112-114.

⁶⁴ "Quadro V. La legislazione decemvirale. Approvo che si ricordino le XII tavole e sceglierei il momento della loro pubblicazione al popolo. Insieme vi farei intervenire dei Greci. Siccome esiste la tradizione che i Romani, prima di compilare quelle leggi, abbiano mandato in Grecia per conoscerne il diritto, mi sembrerebbe opportuno che il pittore ne tenesse conto, facendo appunto assistere quei Greci alla pubblicazione della legge. La diversità del costume gioverebbe in pari tempo a rompere la monotonia di quello dei Romani. Così pure bisognerebbe mettere bene in evidenza la diversità, che esisteva tra patrizi e plebei, e che durò ancora a lungo, anche dopo la pubblicazione della legge decemvirale. Ad ogni modo il pittore dovrebbe astenersi dall'insistere, come sia sul principio, com'egli lo chiama di egualità, a cui la crede ispirata senza distinzione tra patrizi e plebei. Se le due classi furono rese uguali davanti alla legge, fu solo nei riguardi del diritto penale. Era già molto; ma non è tutto. Non lo furono neppure nei riguardi del matrimonio, tanto è vero che ci volle una legge posteriore, che rendesse possibili le nozze tra patrizi e plebei. Il pittore tenga fermo il concetto che la legge in questione rappresenta lo stretto diritto quiritario". ASB, Archivio Zanardelli, b. 618, f. 9, pp. 8-10.

⁶⁵ "S.E. il Presidente rileva che la disposizione seguita nel distribuire i vari soggetti sull'uno e sull'altro lato dell'Aula ha un carattere cronologico e tende a rappresentare da una parte il diritto più antico e dall'altra quello più recente: nel centro, ossia nell'abside di fondo, è raffigurato il punto iniziale con la pubblicazione delle XII tavole. Egli osserva però che l'ultimo affresco a destra dell'osservatore, il quale rappresenta Giustiniano e Teodora, dovrebbe essere collocato nel primo riquadro a destra dell'abside in luogo dell'affresco dell'Imperatore Ottone III° da mettersi invece per primo, e ciò per avvicinare l'inizio ed il compimento della grande legislazione romana". ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

⁶⁶ Only Pomponius in *his Liber singularis enchiridii* wrote that the tables were made of ivory.

wooden structure where the Tables hang was not historically accurate⁶⁷. Ettore Ximenes, author of the bronze *quadriga*, noted that it was only a sketch and that the painter still had to work on it. In reality, he was wrong, as the final painting remained near identical.

The topic of this fresco can be interpreted in several ways. Certainly, it stresses the importance of the first written law of the Roman world. However, the role played by the plebeians in obtaining a new political weight is also not to be underestimated.

68

5.6 The *Edictum perpetuum*

Toward the end of his Reign (after 132 AD), Emperor Hadrian asked Salvius Iulianus for a revision and codification of the praetorian and aedilian edicts, the most important source of *aequitas*. As the edict was fixed once and forever, many jurists started to comment on it (e.g. Pomponius, Pedius, Callistratus and Gaius) but they were soon superseded by the extensive commentaries of Ulpianus and Paulus, whose works were largely used by the compilers of the Digest. Furthermore, “The edictal system was followed in Justinian’s Digest and Code according to an express instruction of the Emperor to keep in the compilations the order of presentation as systematized in the Edict”⁶⁸.

69

With reference to how the scene should be represented, Zanardelli was very clear: “I would chose the moment in which Emperor Hadrian entrusts the jurist Salvius Iulianus with the compilation of the *Edictum perpetuum*”. He used the first person again and exhorted his interlocutor (maybe Calderini) to warn the painter that the Edict represented the *aequum ius* as opposed to the *strictum ius* of the Twelve Tables. For this reason, it should be placed in front of the one depicting the first legislation of Rome⁶⁹, at least that was the thinking before someone thought it better to place the Twelve Tables in the apse. Nevertheless, considering the aforementioned strict connection between the Edict and the Digest, the current position on the left of Justinian seems to be particularly appropriate.

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⁶⁷ “Si esaminano quindi i singoli bozzetti cominciando da quello di fondo, rappresentante “La pubblicazione delle XII tavole”. L’impalcatura a cui sono sospese le 12 tavole, di cui due maggiormente visibili, non fa buona impressione e solleva alcune critiche da parte dei Signori Commissari. Si riterrebbe piuttosto opportuno di trarre partito da un portico o da un peristilio per raffigurare il soggetto dell’affresco, in guisa poi da far apparire tutte le 12 tavole, ovvero le dieci che, come nota il Prof. Schupfer, furono pubblicate per prime. Però il rappresentarle tutte XII risponderrebbe più efficacemente alla tradizione. S.E. Pagano e il Comm. Quarta credono che le tavole dovrebbero essere il colore del bronzo. Pare inoltre che il Tempio accennato sullo sfondo sia troppo sontuoso e grandioso per l’epoca in cui avvenne la pubblicazione di quelle leggi, e certo l’impalcatura stona dinanzi ad esso. S.E. Pagano crede che dovrebbe darsi maggiore campo al pubblico. Comm: Ximenes osserva che si tratta solo di linee embrionali che l’artista deve poi svolgere e completare. L’impalcatura ha per scopo di mettere in evidenza le XII tavole: trattasi di una concezione dell’artista. Però l’impalcatura non soddisfa la Commissione, che dubita inoltre se essa sia storicamente ammissibile”. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

⁶⁸ Berger, Adolf, *Encyclopedic Dictionary of Roman Law*, vol. 43, part 2, Philadelphia: American philosophical Society, 1953, p. 449.

⁶⁹ “Quadro VI. L’Editto. Sceglerei il momento in cui l’imperatore Adriano incarica il giureconsulto Salvio Giuliano della compilazione dell’Editto perpetuo, sulla base degli editi precedenti, anche di quelli dei governatori delle province. Avverta il pittore che l’Editto rappresenta l’aequum ius in contrapposizione allo strictum ius della legge decemvirale, il diritto delle genti in contrapposizione a quello quiritario. Questo quadro dovrebbe fare il riscontro a quello delle XII tavole”. ASB, Archivio Zanardelli, b. 618, f. 9, p. 10.

In this case, Zanardelli himself noted that not enough importance was given to the jurist, who was the real “hero” of this scene. When the sketch was exhibited in Rome in 1903, Schupfer too intervened to stress that in some ways it should be made clear that the topic was the *Edictum perpetuum*⁷⁰. The main criticism of this particular painting was focused on its lack of clarity.

71

5.7 The Freedwoman Ispala Fecenia Denounces Bacchanals⁷¹

According to Livy⁷², the Bacchanals were “imported” to Rome from Southern Italy. They were first restricted to honored Roman matrons who met trice a year in a wood on the Aventine. Later on, the meetings turned into orgiastic rituals following an alternative model developed by a Greek priest who had migrated to Etruria, in which men were also admitted. These scandalous and secret rituals were seen with great suspicion. The first revelations of the crimes committed during the meetings were provided by the freedwoman Ispala Fecenia to the consul Spurius Postumius Albinus in the year 186 BC. According to Livy, she did not denounce the rituals in public, even though Maccari decided to represent her in front of the senators, who, anyway, were informed and stated that the consuls had to try all people involved. Thousands of persons, men and women, ended up being accused but only the ones that were found guilty of rape, homicide or fraud were condemned to death. All organizations related to Bacchanals in Rome and in Italy were terminated and a *Senatus consultum* prohibited the constitution of new associations of this kind in the future⁷³.

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This fresco is not described in the *memorandum*. It could be that a last page is missing, or that it was conceived only later. Certainly, it was among the sketches presented on August 1st 1903, when one commissioner even suggested representing Bacchanals in some corner or background of the fresco, as the topic (once again) was not comprehensible enough⁷⁴. Zanardelli, in this case, only underlined that this episode had to represent the moral authority of the State against dissoluteness and its preeminence over religious, or perhaps more precisely sacerdotal, power.

73

⁷⁰ “L’ultimo affresco a sinistra rappresenta l’Editto di Salvio Giuliano. S.E. il Presidente – Trova che spicca troppo poco la figura del grande giureconsulto, mentre è questi che si vuole onorare e non già l’Imperatore. Occorre quindi che egli sia fatto campeggiare maggiormente. On: Schupfer – Crede che bisognerebbe dare espressione al concetto vero dell’Editto di Salvio Giuliano, che è quello di aver raccolto l’editto dell’Urbs e quelli provinciali. In ogni modo devesi far comprendere che si tratta dell’Editto perpetuo, e far campeggiare il concetto dell’opera compiuta dal grande giureconsulto”. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

⁷¹ Maganzani, *L’arte racconta*, pp. 160-162.

⁷² Livy, *Ab Urbe Condita*, XXXIX, 8-18.

⁷³ A copy of the *Senatus consultum de Bacchanalibus* was found on a bronze table at Tiriolo in Calabria in 1640 and is now preserved in the *Kunsthistorisches Museum*, Vienna.

⁷⁴ “Riguardo al bozzetto che raffigura il Senatoconsulto contro i bacchanali, S.E. il Presidente osserva che esso ha per iscopo di dimostrare la previdenza dello Stato che tolse le dissolutezze e la sua preminenza sul potere sacerdotale. In: Comm: Schupfer – Il concetto è bello e gli piace, ma non approva pienamente l’esecuzione, che dovrebbe essere modificata. Anche da altri Commissari la concezione storica di questo bozzetto non sembra del tutto felice: bisognerebbe trovare modo di rendere più comprensibile il soggetto del quadro. Comm: Riveri - Crederebbe opportuno che apparisse un qualche accenno ai bacchanali: ciò potrebbe fornire anche un buon motivo pittorico, contenendolo però nei dovuti limiti, stante l’ambiente a cui sono destinati gli affreschi”. ACS, Min. LLPP, Opere governative ed edilizie per Roma, b. 171, fasc. 470.

6 Chronicle of an Iconographic Disaster

Considering the fact that Maccari was, at the time of his appointment, a very successful painter and that his sketches received only minor criticism from the Commission in charge of judging them, the reasons why his paintings were later on censured (if not ignored) by scholars deserves a deeper analysis. 74

The historical picture (*Historienbild*) has its own language, standardized over the centuries, and it has often been used for political purposes⁷⁵. Leon Battista Alberti, often considered the founder of modern art theory, was the first one to describe historical paintings, i.e. the pictorial transposition of a narrative, as the climax of any artistic activity⁷⁶. Nevertheless, Alberti focused only on the composition and ignored any reference to the subject. In the course of time, many different kinds of stories (mythological and literary themes, biblical stories, allegories) started to be used as a tool of political self-promotion. At the center of the painting was the hero, who had to be recognizable, unmistakable, distinguished from all other characters. The problem was how to make clear to the observer that the historical, religious, literary or mythological event had to represent a contemporary issue⁷⁷. The problem was often solved by representing the hero using the features of the political leader that was being promoted. This is the case, for example, in “The Battle of Ostia”, the fresco painted by Raphael in 1514 in one of the Vatican rooms as part of the same project that included “The School of Athens”. The painting represents the battle won in 849 by a Christian League led by Pope Leo IV against the Saracens but the Pope has the features of Leo X, who was elected on March 9th 1513. 75

Historical paintings petered out in the 17th century only to come back into favor again around the time of the French Revolution. “The Lictors bring to Brutus the bodies of his sons”⁷⁸, dated 1789, is one of the most famous paintings by Jacques-Louis David and can certainly be classed as a historical painting. However, it inaugurates a completely different kind of *Historienbild*. Here, there is no more hero to celebrate, or better, the observer is no longer asked to passively accept the moral or political exemplary nature (*Vorbildlichkeit*) of the protagonist’s act. David represented an unperturbed Brutus on one side of the painting and a group of desperate women on the other side: the reasons of State on one hand and sentimental reasons on the other hand. It is up to the observer to choose where to stand. According to Thomas Kirchner, this form of historical painting 76

⁷⁵ Kirchner, Tomas, *Historienbild*, in U. Fleckner, M. Warnke, H. Ziegler (eds.), “Handbuch der politischen Ikonographie”, I, pp. 505-513. See for example parr. 35 and 40 of the *De pictura* by Leon Battista Alberti (1435). For a very recent overview on historical paintings referred to the history and law of Rome, see: Maganzani, *L’arte racconta*, cit.

⁷⁶ Kirchner, *Historienbild*, cit., p. 505. See also: Baxandall, Michael, *Giotto e gli umanisti. Gli umanisti osservatori della pittura in Italia e la scoperta della composizione pittorica 1350-1450*, it. transl. by Fabrizio Lollini, Milano: Jaca Book, 1994 (orig. ed. *Giotto and the Orators*, Oxford University Press, 1971), pp. 173-174.

⁷⁷ “Wie konnte dem Betrachter klar gemacht werden, daß das historische, religiöse oder literarische beziehungsweise mytologische Ereignis nicht für sich stand, sondern auf die Gegenwart verwies, ja sogar vorrangig eine Aussage über die Gegenwart formulierte?": Kirchner, *Historienbild*, cit., p. 507.

⁷⁸ Maganzani, *L’arte racconta*, pp. 65-67.

wasn't about "glorification" as was the case of the *Historienbilder* of the 16th century⁷⁹. Following this analysis, Maccari's paintings are not convincing. Even though they were not intended to represent a single hero but rather concepts (the great history of Roman law, the virtues of the jurists of the past, the triumph of written law), they nevertheless should have focused on two or better on one person, in order to follow the well-established iconographical schema, for example by representing the hero at the top of an imaginary triangle.

The frescoes in the *Sala gialla* of the Senate, realized only fifteen years before the exhibition of the sketches for the Palace of Justice, matched the criterion of the isolation of the "hero" (in this case a positive one, Cicero, and a negative one, Catiline) and were highly appreciated. Moreover, if the historical painting at the end of the 18th century changed forever the role of the observer, Maccari's frescoes appear to be out of time. To conclude, both the composition of the frescoes of the *Aula Massima* and the passive role in which the observer was relegated could be considered wrong according to the above mentioned standards. At the same time, if we think of the particular context in which the frescoes had to be inserted, i.e. a courtroom, the paintings do not match the criteria of the *exempla iustitiae* either. They tell a story, they have a didactical aim but most of them do not refer to famous judgments and, what is more important, the stories told are not famous enough (e.g. the scenes depicting Ispala Fecenia and Otto III) or not clear enough in the composition (e.g. the scene depicting Emperor Hadrian and Salvius Iulianus).

The traditional iconography of the *exempla iustitiae* included the Last Judgment, the Judgment of Salomon, the judgment of Cambyses⁸⁰, but not the stories depicted in the *Aula Massima*. Furthermore, after reading Zanardelli's *memorandum*, it appears clear that the creativity of the painter, with reference to both the topics and the composition, was severely limited. The "histories of Roman law" in the *Aula Massima* did not leave any trace in art history because the function they pursued, i.e. to provide legitimacy to the recently established political and judicial order, overcame the rules of art and iconography.

Some of these rules are realized, though, in the representations of Lady Justice on the ceiling of the Great Hall. Unfortunately, also in this case, the abundance of "heroes" ends up spoiling everything, as there is not just one Lady Justice, but two, a "static" one and a "dynamic" one: *Giustizia in simbolo* and *Giustizia in atto*. Taken separately, they respect the above mentioned rules of composition (isolation, triangle) as well as the well-established attributes of Lady Justice. The problem is that instead of focusing on one goddess, the observer can choose between two deities.

It has been correctly observed that, "The figure of *Justitia* or *Justice* might very well be one of the most widely known personifications in the Western world"⁸¹. Therefore, we will not discuss her features here but only the way in which Maccari decided to represent her.

⁷⁹ "Glorifizieren kann diese Form der Historienmalerei nicht mehr". Kirchner, *Historienbild*, cit., p. 513.

⁸⁰ See: Martyns, *Painted Exempla Iustitiae*, cit.

⁸¹ Huygebaert, Stefan, *Justice: man-judge or earthly mother? Femininity of Justice and her sisters of virtue in Belgian fin de siècle legal iconography*, in S. Vandenbogaerde, I. Lellouche, H. Duffuler-Vialle, S. Dhalluin and B. Debaenst (eds.), "(Wo)Men in Legal History", Lille: Centre d'Histoire Judiciaire, 2016, pp. 23-44, p. 23. In this article, it is also possible to find an updated bibliography on the topic.

As for most frescoes in the *Aula Massima*, it is not clear where the work of Maccari ended and the work of his pupil, Paride Pascucci, started. On the official website of the Court of Cassation, the *Giustizia in simbolo* or *La Giustizia con la bilancia e la spada tra la Legge e la Forza* is described as a work by Cesare Maccari, while the *Giustizia in atto* or *La Giustizia in atto di scacciare, con la spada, il Delitto e la Calunnia e di premiare, con il ramo d'alloro, la Forza, l'Innocenza e la Verità* as a painting by Pascucci. Both sketches, nevertheless, were put up for auction in Maccari's atelier in 1921 and the sketch of the *Giustizia in atto* was donated by Maccari himself to the RR. *Gallerie di Firenze*⁸². 81

As a consequence, Pascucci probably painted the *Giustizia in atto* following Maccari's sketch, and similarly the fresco representing Justinian. 82

The *Giustizia in simbolo* is a crowned woman, with a scale in her left hand and a sword in her right hand. At her feet, there are the Law, holding a book, and Strength, caressing a lion. The other figures are not immediately recognizable, but they could be the other cardinal virtues, Prudence and Temperance. Unfortunately, while the figure on the right is holding a mirror, a typical iconography of Prudence, the one on the left is holding what seems to be a shield, instead of the usual jugs. This Lady Justice is not blindfolded⁸³ and holds the typical scale, whose connection to the concept of justice dates back to the Egyptian Book of the Dead. 83

In this case, finally, the “hero” is clearly recognizable, solemnly sitting on a kind of marble throne at the top of an imaginary triangle, completely dominating the whole scene. The same cannot be said for the second fresco, where an angel stands above an “ungainly” and blindfolded Lady Justice, holding a sword (this time unsheathed) and a laurel branch. With the sword, she is banishing Crime and Calumny; with the laurel branch she is rewarding Strength (Hercules with the lion), Truth (the naked woman) and Innocence. This last figure is not clearly recognizable among the many that crowd the right side of the fresco. At the top, an angel towers over Lady Justice, representing divine inspiration. Again, the composition is confused, the iconography unclear. 84

7 Conclusion

Despite the criticisms from an art-historical perspective, we can conclude that, in some ways, Zanardelli reached his goal; that is if we hypothesize that the frescoes in the *Aula Massima* should 85

⁸² “I bozzetti ed i grandi cartoni degli affreschi risultano esposti all’asta dello studio dell’artista che si svolse a Roma nel 1921 (cfr. *Vendita dello studio di Cesare Maccari*. Galleria d’arte casa di vendita, Roma 1921, p. XIII). Il bozzetto della Giustizia in atto risulta donato dallo stesso Maccari alle regie Gallerie di Firenze (cfr. F. Di Pietro, *Un dono di Cesare Maccari alle RR. Gallerie di Firenze*, in “Bollettino d’arte”, V, 1911, p. 237); Pagliai, *Le vicende della decorazione del palazzo di Giustizia*, cit., footnote 28.

⁸³ For a very exhaustive overview on the iconography of Lady Justice see: Prosperi, Adriano, *Giustizia bendata. Percorsi storici di un’immagine*, Torino: Einaudi, 2009. In the framework of legal-historical studies: Sbriccoli, Mario, *La benda della Giustizia: iconografia, diritto e leggi penali dal Medioevo all’età moderna* (2003), now in Id., *Storia del diritto penale e della giustizia. Scritti editi e inediti (1972-2007)*, b. 1, Milano: Giuffrè, 2009, pp. 185. For an overview of the (often ignored) literature devoted to the topic between the end of the 19th and the beginning of the 20th century, see a very recent and interesting contribution by Luigi Lacché: *La Giustiziadi Ludovico Zdekauer: idea e immagini. Una probusione maceratese*, in Pirani, Francesco (ed.), “Ludovico Zdekauer. Discipline storiche e innovazione fra Otto e Novecento”, Atti del Convegno di Studi, Aula Magna dell’Università degli Studi di Macerata, 19 marzo 2015, Ancona-Fermo: Deputazione di Storia Patria per le Marche, 2016, pp. 49-63, p. 55.

not describe the *history* of Roman law but rather Roman law as an *idea*⁸⁴. After the end of the Western Roman Empire, Rome has been used and re-used, again and again, from Constantinople to Moscow, from medieval Italy to 19th century Belgium to legitimize governments, institutions, and legal systems.

In the very same years in which Maccari was painting the frescoes of the Palace of Justice in Rome, Lodovico Zdekauer, the chair of History of Italian Law at the University of Macerata⁸⁵, devoted his inaugural lecture of 1908 to the idea of justice, entitled *L'idea della Giustizia e la sua immagine nelle arti figurative*⁸⁶.

At the beginning of a very long speech, Zdekauer stated:

Se veramente l'Italia ebbe una grande missione storica, – la missione d'iniziare la civiltà d'Occidente – lo deve in buona parte all'idea della Giustizia, nata sul suolo italico, ed ivi cresciuta e maturata, e che dall'Italia si diffuse per il mondo. Quest'idea ha un alto valore artistico. Tutta la vita del Diritto italiano è animata dallo sforzo di realizzare in pratica questa idea. L'Arte se ne impossessò, creando in modo definitivo la personificazione allegorica, e quindi la figura della Giustizia⁸⁷.

The very “idea of justice” was born, according to the Czech legal historian, in Italy. Furthermore, the characteristic of the Latin “ideal” of law was the spontaneous submission of the citizens to the law, their renouncement of a part of their liberty in favor of the State. The kind of sacrifice that had to be counterbalanced by the work of the magistrates and of the jurists.

L'ideale latino starebbe dunque nella spontanea sottomissione dei cittadini alle leggi: quali in sostanza rappresentano la rinuncia dei cittadini stessi ad una parte della loro libertà, a favore dello Stato. A questa sottomissione corrisponderebbe quindi l'obbligo del magistrato di dare corso alla legge, che parla per la sua bocca; assecondato in ciò dal giureconsulto, interprete dell'intimo suo pensiero⁸⁸.

⁸⁴ See on the topic: Fögen, *Römische Rechtsgeschichten*, cit., p. 213: “Seine große Karriere trat dieses Recht später an – als es kein Rom mehr gab, dafür aber eine Idee Rom?”. And also: Kytzle, Bernhard (ed.), *Rom als Idee*, Darmstadt: Wissenschaftliche Buchgesellschaft, 1993.

⁸⁵ Zdekauer was born in Prague in 1855 and became naturalized Italian in 1893. He worked especially in Tuscany (Siena) and obtained the chair in Macerata thanks to the support of Francesco Schupfer (see Lacché, *La Giustizia di Lodovico Zdekauer*, cit., pp. 49-50). For a detailed analysis of his biography and of his transdisciplinary interests see: Pirani (ed.), *Lodovico Zdekauer*, cit.

⁸⁶ Zdekauer, Lodovico, *L'idea della Giustizia e la sua immagine nelle arti figurative. Discorso inaugurale letto nell'Aula Magna della R. Università di Macerata l'VIII Novembre MCMVIII*, Macerata: Stab. Tip. Bianchini, 1909. In 1913 he published another essay on the topic, this time focusing more on iconography rather than on history: Zdekauer, Lodovico, *Iustitia. Immagine e idea*, estr. dal “Bullettino Senese di Storia Patria”, XX, III, 1913, Siena: Lazzari, 1913.

⁸⁷ Zdekauer, *L'idea della Giustizia*, cit. p. 5-6. The speech was pronounced in the Aula Magna of the University of Macerata, recently decorated by Giulio Rolland (1892-1894) with frescoes devoted to the medieval foundation of the university and allegories. The most recent publication on this work is significantly entitled “To legitimize through images an invented tradition”: Capriotti, Giuseppe, *Legittimare con le immagini una tradizione inventata. La decorazione dell'Aula Magna dell'Università di Macerata*, in “La valorizzazione del patrimonio culturale delle università: i beni artistici ed architettonici. Il patrimonio culturale come strumento didattico e campo di ricerca”, Genova: University Press-De Ferrari, 2016, pp. 116-130.

⁸⁸ Zdekauer, *L'idea della Giustizia*, cit., pp. 18-19.

All the above mentioned elements are indeed present in the *Aula Massima* at the Palace of Justice in Rome: the “historical mission” of Italy, the “idea of justice”, the importance of (written) law, the role of jurists and magistrates. **91**

Zdekauer played no role in the development of the iconography of the Palace of Justice but he was a favorite of Francesco Schupfer and an esteemed professor of legal history, chosen three times to open the academic year at the University of Macerata. He therefore expressed ideas and ideals that were widespread in the academic community at the beginning of the 20th century and were probably shared by the political elite. **92**

A long time ago, there was a Roman Republic and a Roman law. Afterwards many other laws developed, that used Rome *als Gründungsgeschichte* (founding history)⁸⁹. Zanardelli deployed all the weapons at his disposal, from architecture to sculptures and paintings to provide the newborn Kingdom of Italy and its brand new Codes with the necessary legitimacy needed to function in a world on the brink of experiencing the revolutionary and powerful tools of 20th century propaganda. **93**

But that, as they say, is another (hi)story. **94**

⁸⁹ Fögen, *Römische Rechtsgeschichten*, cit., p. 213.