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Codes and Codification in Liberal Italy

Abstract
The essay sets out the events of the codification process in the Italian peninsula, starting with the spread of the Code Napoléon and the ABGB, then in the pre-unification States, and along the course of the Kingdom of Italy up to the 20th-century recodification, highlighting the adherence of the codes following Italian Unification to liberal social and economic models.
Keywords: code, codification, Kingdom of Italy, liberalism

1. The Italian Codes of the Restoration

The early years of the 19th Century saw the appearance of the first Codes: the French *Code Napoléon*, of 1804, and the Austrian *Allgemeines Bürgerliche Gesetzbuch* (ABGB), of 1811[431]. The Italian lands knew the French legal text early on, since the Peninsula, with the exception of the islands of Sicily and Sardinia, was occupied by French troops, between the Italic Kingdom in the north and the Kingdom of Naples in the south[432]. With the Restoration, the Austrian Code was also extended to the Lombardy-Venetia Kingdom. The two Codes can be considered as the two fundamental elements of the Italian

430 Professor of Law, University of Messina, Italy
431 On the phenomenon of codification, it is always useful to read some classics, such as Caroni, 2001; Petronio, 2002.
432 On the legal experience of Napoleonic Italy see the interesting research by Solimano, 2017; Solimano, 2021.

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codification trunk, although with a clear predominance of the French model: they inspired the Codes that were promulgated in the Italian Restoration States after the Congress of Vienna.

Above all, the *Code Napoléon* became a model to look up to, because of the great innovations it contained: a Code-monument, such as the one sculpted by Tronchet's admirable words, ‚the Code is like the peristyle of French legislation', which reminds us of a noble and respectable neoclassical building erected in the shape of a Greek or Roman temple, a peristyle whose columns are made up of the main elements of private law, such as property and contract; which recent historiography instead looks up to as a Code-document[433]: numerous researches have helped to unveil the real intentions of the Napoleonic codifiers, highlighting the interests at stake[434]. These interests are well expressed in the work of Honoré de Balzac, which constitutes for us a privileged observatory for understanding the concrete dynamics of the use of the Code. Not a passive tool, but a dangerous protagonist endowed with a life of its own, as we can glimpse from the words of another great French writer, Henri Beyle, well known as Stendhal: "*Le code civil arrive rapidement à tous les millionaires, il divise les fortunes, et force tout le monde à valoir quelque chose et à vénérer l'énergie*"[435].

Once the Constitutions, such as that of the Kingdom of Sicily in 1812[436], were removed from the scene, the constitutional value of the protection of individual rights was rediscovered in the Codes: the administrative Monarchy, still following the path of absolutism, maintained the guarantee of the private sphere in the codified legal texts. Revolutionary and constitutional values were replaced by a sense of the State and dedication to the crown; thus rediscovering the sense of codification within a culture based on loyalty to the monarchy: awareness of an impossible return to the system of *Ius Commune* spread, however, despite the attempts of some monarchs to eliminate the idea of the Code from their states. The sovereigns rely on the so-called amalgamation policy: the economic part of the Code Napoléon is maintained, property, contracts, consolidating the elimination of feudalism;

433 Caroni, 2001.
434 Arnaud, 2006.
435 Stendhal, 1854, pp. 297-330: Nantes, le 25 juin 1837; Pace Gravina, 2021, pp. 353 ss.
436 *Costituzione di Sicilia stabilita nel generale straordinario Parlamento del 1812. Preceduta da un discorso sulla medesima, e da diplomi relativi alla Convocazione del Parlamento, ed alla Sanzione di tutte le proposte di esso: Coll'aggiunta di un Compendio della Costituzione d'Inghilterra*, Palermo, Solli, 1813; Palmieri, 1847.

while changing the rules of personal and family law to adapt them to the postulates of the Restoration, to the embrace between Throne and Altar, eliminating divorce and civil marriage, re-establishing the power of the father and religious marriage.[437]

The first code was promulgated by King Ferdinando I of Borbone in 1819 for his new State: it was the Code for the Kingdom of the Two Sicilies, in five autonomous parts corresponding to the Napoleonic codes: the Civil Laws; the Criminal Laws; the Laws of Procedure in Civil Judgments; the Laws of Procedure in Criminal Judgments; and the Laws of Exception for Commercial Affairs[438]. In 1820, the Codes of the Duchy of Parma, Piacenza and Guastalla were promulgated, which were inspired by the Austrian model too in some respects, given that the Duchess of Parma was Maria Luisa, daughter of the Emperor of Austria and second wife of Napoleon. There are four Codes, the Civil Code, the Penal Code, the Code of Civil Procedure, the Code of Penal Procedure: the Code of Commerce is not promulgated, at the behest of the jurists of the Duchy, given the impossibility of trading by sea and the hegemony of agriculture over the economy. This codification is considered among the best of the Restoration, due to the evident role of Austrian legal technicism.[439] In the Kingdom of Sardinia, which now includes Liguria too, King Carlo Alberto published the Albertine Civil Code in 1837, which was followed by the Criminal Code (1839), the Commercial Code (1842) and the Code of Criminal Procedure (1847).[440] The Civil Procedure Code was published by his successor, King Vittorio Emanuele II in 1854, as Carlo Alberto had to go into exile in Portugal for his important role in the war against Austria in 1848-1849. Only in the Kingdom of Sardinia did the Constitution of 1848, the *Statuto Albertino*, remain in force, of basic importance because the Savoy dynasty maintained a constitutional regime, thus becoming the point of reference for the patriots and intellectuals of the Risorgimento, Statuto which later became the Constitution of the Kingdom of Italy.[441] The Papal States saw a somewhat different experience. The Pope did not promulgate

437 For an overview of the Italian pre-unification codes and their links with the French and Austrian codes see Ghisalberti, 1998, pp. 223 ss.; Alpa, 2000, pp. 52 ss.
438 Mastroberti, Masiello, 2020.
439 Errera, 2023.
440 Aimerito, 2008.
441 Ghisalberti, 2002; L. Lacché, 2012, pp. 294 ss.; Ferrari Zumbini, 2016; Ferrari Zumbini, 2019; Ferrari Zumbini, 2011, pp. 13 ss.

new codes, but only regulations: the word 'code' was banned for its revolutionary taste. A Regulation of Civil Procedure (1817) and a Provisional Regulation of Commerce (1821), inspired by the Code de Commerce, saw the light of day. The only state within which the French Codes remained in force was the Duchy of Lucca, while in the Duchy of Modena it was Francesco V who promulgated new Codes only between 1851 and 1855. In the Grand Duchy of Tuscany the role of the *Ius Commune* remained: only Leopold II succeeded in promulgating a penal code (1853), considered the best of the Restoration, advanced and with a peculiar innovative and avant-garde character, typical of Tuscan legal culture.[442] In 1859, the death penalty was abolished. In the Lombardy-Venetia Kingdom, annexed to the Austrian Empire, the ABGB was extended in 1815.

The experience of the Napoleonic code did not disappear with the Restoration: in the new pre-unification codes one finds similar characters deriving from the common French codifying matrix, considered by the *Risorgimento* intellectuals as a common legal source for the creation of Italian legal unity. The pre-unification codes also contributed to the sharing of the idea of codification as popular and not belonging only to a small group of intellectuals[443]. Giovanni Cazzetta in this regard spoke of the perception of an "imaginary code", a model "*che assorbe l'idea stessa di diritto, travalica la storia delle codificazioni e diviene spazio libero attorno a cui aggregare identità del passato e progetti per il futuro*".[444] The *Code Napoléon* becomes a meta-historical model that overcomes the differences between the different political systems of the Peninsula in the name of a common legal tradition that even goes back to the matrix of Roman law, preparing the ground for the perception of the Code as "national", the "gift of the foreigner"[445].

As in France, the *École de l'Exégèse* method spread in Italy, with a scholarly production represented by commentaries and treatises designed to explain the codes, as well as a massive use of translations of the works of French jurists such as Marcadet, Toullier, Zachariae, Delvincourt.[446] It affirms the thought of numerous jurists who develop an original method of approaching

442 Sbriccoli, 2002, pp. 191 ss.; Vinciguerra, Da Passano, 1993.
443 Ghisalberti, 1998, pp. 257 ss.;
444 Cazzetta, 2012, p. 14.
445 Cazzetta, 2012, pp. 93 ss.
446 Hespanha, 1999, pp. 206 ss.; Ferrante, 2011; Spinosa, 2017.

the study and interpretation of law that Luigi Lacchè has relatively recently identified as the "eclectic canon".[447]

However, there is also a new literary genre that searches for parallels between the codes of the various Italian states, and between the French and Austrian codes, to demonstrate the existence of a single language of codification of homogenous legal institutions present in the legislation of all Italian States:[448] In this context, we also look at the jurisprudence of the judgments of the French Court of Cassation, although within the limits of a context that does not consider judgments among the sources of law.

However, we should not consider the pre-unification codes as a passive copy of the French and Austrian codes: in some contexts, autonomous solutions were sought and found. This is evident, for example, in the penal sphere: the Penal Laws of the Two Sicilies of 1819 were based on the Italian criminalistic tradition in numerous points; the Tuscan penal code of 1853 proved to be much more advanced than the models indicated, due to the interest of the jurists at the University of Pisa in German legal science, documented by the use of the draft of the Baden Code, in which Karl Joseph Anton Mittermaier played an important role.[449]

In the civil sphere too, there were autonomous choices: a notable example is the maintenance of the emphyteusis contract, present in a traditional version in the Austrian code, and expunged from the Code Napoléon due to the aversion to constraints that conflicted with the new property asset affirmed by Art. 544. The contract was introduced in the Code of the Two Sicilies[450] and in the Code of Parma[451], with a ‚modern' configuration, to reaffirm an autonomous way in the definition of rights over land ownership, in certain realities where it proved appropriate to subdivide the latifundia owned by the aristocracy, ecclesiastical bodies and cities, favouring access to land by the new middle class, which considered itself more malleable than the old nobility and willing to collaborate with the crown in the mechanisms of the administrative Monarchy.

The pre-unitary Italian states also adopted military penal codes, some of which were of a good standard, such as the Military Penal Statute of the

447 Lacchè, 2010, pp. 153 ss.
448 Ghisalberti, 1998, pp. 269 ss.
449 Pace, 2000.
450 Pace Gravina, 2016; Pace Gravina, 2020, pp. 195-211; Pace Gravina, 2023a.
451 Pace Gravina, 2023b, pp. 175-191.

Kingdom of the Two Sicilies: in addition to the ordinary procedure, these also provided for an abbreviated one to be used in time of war and in the theatre of war operations: this version was used by the governments to contrast the *Risorgimento* uprisings, through the use of special courts, massive use of the death penalty and hard prison, to be served in fortresses.[452]

2. The Post-Unitarian Codes

After the failure of the revolutions of 1848, most Italian patriots began to look to the Kingdom of Sardinia as the only pre-unitary state that could lead the process of national unification, as it was the only State that had maintained a liberal Constitution: the *Statuto Albertino*. After being defeated in the war against Austria, Carlo Alberto himself was forced to go into exile in Portugal: the crown passed to his nephew Vittorio Emanuele II, who maintained the constitutional regime. In 1859 the Second War of Independence broke out: the Kingdom of Sardinia allied with France and invaded Lombardy, defeating the Austrian armies at Solferino and San Martino, forcing the Empire to the armistice of Villafranca. On 11 May 1860, Giuseppe Garibaldi landed in Sicily and quickly conquered the Kingdom of the Two Sicilies. In September 1860, the troops of Vittorio Emanuele II invaded Marche and Umbria, also occupying a large part of the Papal States. Thus Italy was unified in a short time, and on 17 March 1861 the Kingdom of Italy was proclaimed, with Turin as its capital: the Papal State was reduced to Latium while Veneto was still in Austrian hands. In 1866 with the Third War of Independence the Veneto was annexed; Rome was taken later, in 1870. Only Trentino and Venezia Giulia were missing, which only became part of Italy after the First World War, when the victory over the Austrian Empire made it possible to consider the Alps as the sacred inviolable border of the Italian homeland and nation. The Italian nation had been created, but a common right for the entire population was needed. Three possible alternatives were considered: the first, preferred by the government of the Kingdom of Sardinia, was to apply the Sardinian codes to the new State, by right of conquest. A second model intended to keep the pre-unification codes in

452 For the Military Criminal Statute and its implementation Pace Gravina, 2015.

force, modifying and adapting them to the constitutional regime, for a law on a regional basis. The third way was more radical, and turned towards the promulgation of new legislation. The thesis that slowly prevailed was the third. The first draft was prepared by Minister Cassinis in 1860: it was a revision of the Code Albertino that took into account both the Code Napoléon and the experience of the ABGB and the pre-unitary codes; however, it was described as too secular, liberal and tied to the French model. There were some important innovations, one of which was the complete enjoyment of civil rights for foreigners even without reciprocity: after 1848, many exiles from the pre-unitary Italian States had taken refuge in Turin, where they had found the opportunity for freer political debate, growing up in the shadow of the Savoia dynasty. Civil marriage was instituted according to the jurisdictionalist tradition and the marital authorisation was abolished, the wife was given greater legal capacity to administer her own property and the preference of legal succession for sons was re-established, reserving it also for natural sons. After the conquest of the Southern Kingdom, Cassinis prepared a second draft that was presented after the proclamation of the Kingdom of Italy, similar to the model of the Neapolitan translation of the Code Napoléon, which was extended to the Kingdom of Naples in 1808. This project did not succeed either, and was replaced in 1862 by one prepared by the new Minister of Justice, Miglietti: this one still looked to the French model with amendments inspired by the Code of the Two Sicilies.[453] After the new minister, Pisanelli, prepared a new draft of the Civil Code: the main idea was a codification discussed and approved by Parliament title by title, as had been the case with the 1804 Code. The Civil Code was to have as its object goods and property, while persons and family were to belong to the constitutional sphere, because they were the political basis of the Kingdom, but the Senate eliminated the parts that were too innovative compared to the pre-unification tradition. The fear of a new war against Austria induced the government to proceed with legislative delegation and not with parliamentary discussion, so on 23 November 1864 the Council of Ministers asked parliament for authorisation to proceed by decree and not by law. On 2 April 1865, the law on national unification was promulgated, the Code came into force on 1 January 1866 together with a new Code of

453 Solimano, 2003.

civil procedure prepared by Pisanelli himself together with two experts, the lawyers Astengo and Vaccarrone.[454]

An important role in the events of national unification was played by numerous lawyers, who had taken part in the revolutions of the *Risorgimento* and had suffered imprisonment and exile, and who proved ready to cooperate in the construction of the legal system of the new Kingdom.[455]

The Civil Code of 1865 remained in force until 1942 because it was in line with the needs of Italian society in the liberal period. The first book concerned persons; foreigners were admitted to the enjoyment of civil rights even without reciprocity. Civil marriage was reintroduced and made indissoluble, so there was no existence of divorce but only the personal separation of the spouses; furthermore, the negotiating inferiority of women was maintained with marital authorisation, and adoption was maintained and improved. The second book, concerning goods and property, focused mainly on this, following the model of Art. 544 of the 1804 Code; it also included the protection of intellectual property and copyright. The third book, on the acquisition of rights, favoured legitimate succession over testamentary succession, preferring family ties and prescribing the public deed for donations.[456]

Three strong criticisms were levelled at the Civil Code of 1865: the absence of an autonomous consideration of the employment contract, still framed in the Napoleonic systematics of the Romanist tradition of *locatio operis*[457]; the introduction of emphyteusis into the Code, which was absent in the Napoleonic model but had played a fundamental role especially in the Kingdom of the Two Sicilies for the feudal eversion and could have been a useful instrument for the division of ecclesiastical property[458]; the other concerned the retention of a hated institution, personal arrest for debt.[459]

The Civil Code was promulgated together with the Civil Procedure Code and the Commercial Code, which reproduced the text of the Kingdom of

454 On the codification of 1865Aquarone, 1960; Cazzetta, 2012, pp. 30 ss.; Ghisalberti, 1997, pp. 29 ss.

455 Padoa Schioppa, 2009; Borsacchi, Pene Vidari, 2012; Borsacchi, Pene Vidari, 2015; Migliorino, Pace Gravina, 2013; Colao, 2006; Cappuccio, 2018; Tacchi, 2002.

456 Ghisalberti, 1997, pp. 77 ss.

457 Cazzetta, 2012, pp. 163 ss.; Cazzetta, 2002, pp. 139 ss.

458 Pace Gravina, 2014, pp. 261-276; Pace Gravina, 2016, pp. 29-46; Pace Gravina, 2023a.

459 Pace Gravina, 2004.

Sardinia. The space for laws outside the Code was still very small, and the text retained its centrality for a long time. In fact, a few laws were promulgated later, such as the law of 7 July 1866, which restored full legal and political capacity to the religious; some laws of 1866-67 suppressed religious corporations, and laws on the liquidation of the ecclesiastical real estate abolished the *manomorta*. A measure of 1877 cancelled personal arrest for debts in civil and commercial matters, allowing it to survive only in the penal sphere, while another law of the same year admitted women to testify in public and private acts. On the whole, there were few regulations that dealt with certain matters not regulated by the code and did not aim to undermine the primacy of the code: it fully embodied the founding values of the middle class, guaranteed individual rights and laid down the rules of the game between private individuals. The equation between law of the State and Civil Code was clearly visible: the Code adhered well to the society of which it was an expression, and which politically identified with the historical Right Party, which represented the landowners, who fell in the elections of 1876, which saw the Left Party, representing the new, more dynamic entrepreneurial classes, prevail.[460] The New Policy was evident in the genesis of the 1882 Commercial Code, which only partially retraced the paths of the French *Code de commerce*, drawing mainly on the German General Commercial Code, the *Allgemeine Deutsche Handelsgesetzbuch*, which supported, according to Chancellor Bismarck's insights, the economic expansion of the Second *Reich*. The new commercial code became the banner of the entrepreneurial bourgeoisie, prevailing over the Civil Code, the legacy of the landowners, seeing the development of legal thinking on commercial issues, with an important simplification of the tools available to economic operators, in line with liberalist thinking[461]: Italy was thus moving towards a process of industrialisation, concentrated mainly in the North of the Peninsula, while the South remained anchored to the agrarian economy.

A very troubled process was that of the penal code, which was promulgated in 1890, well thirty years after the Unification of Italy, and was named after the minister Giuseppe Zanardelli. It was a code that embodied the postulates of liberalism in criminal matters, in harmony with the principles of the new constitutionalism: crimes were divided into crimes and

460 On the Codes of the Left Ghisalberti, 1997, pp. 149 ss.
461 Such as the Treatise on Commercial Law by Cesare Vivante: Grossi, 2000, pp. 51 ss.

contraventions, eliminating the Napoleonic tripartition; crimes of opinion in the press were eliminated, punishments were reduced and were to aim at the offender's emendation and re-education. The death penalty was abolished, which had been the stumbling block on which all legislative projects presented by Zanardelli's predecessors had run aground. The punishment had the function of re-educating the offender, in line with the most modern trends; conditional release was introduced, attempt and recidivism were more leniently regulated. The Zanardelli code was therefore seen as fully adhering to the social values of its time. It was accompanied later, in 1913, by the Code of Criminal Procedure, which was named after the Minister of Justice Finocchiaro Aprile, which comprehensively guaranteed the defendant and protected the rights of defence, in line with liberal achievements in criminal proceedings.[462] On the Zanardelli Code developed the thought of a liberal school of criminal law[463] that was later labelled by the jurists of penal positivism, followers of Cesare Lombroso, as the Classical School, inadequate to understand the profound innovations brought by the Turin master to the study of criminal law.[464] As is well known, it is to Lombroso that the Positive School of Criminal Law dates back, which attacked the postulates of the liberal school by affirming an integrated conception of criminal law, including criminology and anthropology, based on the postulate of atavism and the determination to evil of the perpetrators of crimes, recognisable through peculiar somatic traits.[465]

The 1880s saw the most sensitive Italian jurists abandon the traditional exegetical method that had accompanied the interpretation of the new civil code throughout the first decades[466] in favour of the systematic approach advocated by the German School, the Pandectistic, which allowed a more free interpretation and enhanced the role of the jurist[467]. Perhaps this change also explains the small number of special laws promulgated in the period and the long life of the Civil Code of 1865: jurists regained possession of interpretation, and the contents of the code could be expanded to include the novelties emerging from society. However, liberal ideas were not the only

462 Sbriccoli, 1974-1975a, pp. 557-642; Miletti, 2003.
463 Sbriccoli, 1990, pp. 217 ss.; Sbriccoli, 1987, pp. 105-83.
464 Sbriccoli, 1998, pp. 485 ss.; Colao, 2012, pp. 349 ss.
465 Sbriccoli, 1998; Marchetti, 2012.
466 Cazzetta, 2012, pp. 119 ss., Solimano, 2010, pp. 244-248; Solimano, 2012.
467 Grossi, 2000, pp. 13 ss.; Cazzetta, 2012, pp. 143 ss.; Alpa, 2000, pp. 150 ss.

ones to hold the field: the social sensibility of legal socialism was energising, which also developed the law, but failed to gain a grip on Italian society, which remained profoundly bourgeois and liberal. Socialism fought against the individual owner model, against contractual autonomy, and although it remained a minority current, it managed to obtain the promulgation of some laws of a social nature, such as the 1883 law on the national insurance fund for accidents at work, or the 1886 law on the work of children; in the same year workers' societies were recognised. In 1898 in 1904 we have the law on accidents at work, in 1904 the conquest of weekly and holiday rest for workers; in 1907 that on the protection of the work of women and children.[468] There is also a move towards some reforms of landed property, such as in the field of emphyteusis, as witnessed by the works of Vincenzo Simoncelli.[469]

In this period, constitutional law developed, abandoning the previous historicist and sociological orientations to follow the model of the great German publicists such as Gerber or Laband: the renewal was due to Vittorio Emanuele Orlando, who also looked to the Pandectistic model in the field of public law[470]. At the same time, on the identical postulates, the study of administrative law was deepened by Orlando himself and his school.

The fifty years without reforms ended with the First World War. It strongly affected the liberal model that saw private property as almost untouchable by the State, because in a war economy the primacy of the private sphere could be undermined by the urgency and needs typical of war. Thus, there were changes in Italian legislation that were considered temporary and exceptional in nature, but which then left lasting repercussions. The law of 22 May 1915 delegated to the government full powers and a legislative power that could be implemented through decrees. The wartime legislation was expressed with strong limits on private property: administered prices, blockade and restrictions on urban leases, compulsory food supply, requisitions, militarisation of labour, shaking the liberal edifice of codification.[471]

With the war, plans for colonial legislation, such as the Code of the Eritrean Colony, were abandoned: Italy had already embarked on African

468 Alpa, 2000, pp. 224 ss. On the genesis of labour law in Italy, Cazzetta, 2012, pp. 163 ss.
469 Simoncelli, 1910; Pace Gravina, 2023a.
470 Fioravanti, 2001; Cianferotti1980; Lacchè, 2012, pp. 294-301; Lacchè, 2023; Pace Gravina, 2011.
471 Alpa, 2000, pp. 240 ss.; Roggero, 2020a; Roggero, 2020b.

expansion at the end of the 19th century; after the defeat at Adua, which marked a long setback, Eritrea was joined by Libya in 1911.

After the war there was a progressive return to a normality that was now impossible to achieve[472], given the social and economic upheavals that had taken place. The model of bourgeois liberalism based on the binomial Liberty and Property is shaken by the workers' question and socialist movements, conflicts between groups and interests become visible and difficult to reconcile. In 1919, the law on the abolition of marital authorisation was passed in recognition of the role played by women in the difficult wartime period.[473]

3. The New Codification

Victory in the First World War permitted the annexation of Venezia Giulia and Venezia Tridentina, to which the national codes were extended, in place of Austrian law, without consideration for the German and Slovene minorities, according to the paradigm equating State and Nation.[474] In the post-war years, the government moved towards a new draft penal code. The Positivists were pressing for the replacement of the Zanardelli Code, which no longer corresponded to the new Lombrosian scientific postulates: in 1919, Minister Mortara commissioned the well-known penalist Enrico Ferri to prepare a new text.[475] The Ferri project, however, stalled on the first book, the general part, as contemporary scientific dynamics had overtaken the Lombrosian postulates of the Positive School, so the Zanardelli Code remained in force.

In the meantime, the Post-War Commission had been established, which sought to standardise the rights of the Kingdom of Italy in the aftermath of the conquest of Venezia Giulia and tried to recreate a common legal substratum for all conquered lands. From the work of this commission came the idea of creating an organic reform of the codes, and in 1924 the Royal Commission was established, which was to prepare amendments to the civil code, and new codes of commerce, procedure and merchant navy. The parable of

472 D'Amelio, 1913, *ad vocem*; Costa, 2004-2005, pp. 173 e segg.; Martone, 2008; Martone, 2012.
473 Ghisalberti, 1997, p. 217.
474 Ghisalberti, 1997, pp. 215 ss.
475 Sbriccoli, 1974-75b, pp. 873 ss.; Colao, 1986, pp. 107 ss.; Messinetti, 2020.

the new codification intersects with the coming to power of Fascism, after the March on Rome on 28 October 1922, which in a short time dismantled the armour of the liberal state by establishing a dictatorship. Mussolini made it a priority to promulgate new codes that could embody the essence of the fascist revolution[476]. In 1927, a French-Italian project for a common legislation on bonds was prepared, which failed due to the simultaneous rise of fascism with the idea of a new codification.[477]

In 1930 the Criminal and Criminal Procedure Codes appeared, named after the Minister of Justice Alfredo Rocco, which marked the abandonment of the tendencies of the Positivist School and the adherence to a new technical-scientific direction[478]; the genesis of the Civil Code proved more complex and was only concluded during the Second World War, with its promulgation in 1942: the preliminary draft of the Royal Commission was discussed and enriched by parliamentary commissions; in 1940, moreover, the Minister Dino Grandi established that the Commercial Code was to be integrated into the Civil Code, becoming the fifth Book, of Labour, implementing what has been called the commercialisation of private law.[479]

In 1941, the Military Penal Code of War and that of Peace were also promulgated, which replaced the 1870 Military Penal Code at the height of the conflict.[480]

A complex recodification of the law, which came to fruition during the tragedy of the Second World War, nevertheless survived the fall of the fascist regime and remained in force (it largely still is today), because it was the result of technical knowledge that was still predominantly liberal in nature, a feature that is particularly evident in the Civil Code of 1942[481]: it is precisely these codes that, in continuous confrontation with the 1948 Constitution, formed the foundations of the legal experience of democratic and republican Italy.

476 Alpa, 2000, pp. 263 ss.; Ghisalberti, 1997, pp. 213 ss.
477 Alpa, Chiodi, 2007.
478 Sbriccoli, 1999, 817 ss.
479 Alpa, 2000, pp. 304 ss.
480 On military criminal law before the new codes see Vico, 1917.
481 An example in Pace Gravina, 2023a. See the remarks of Cappellini, 1999.

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