



AGRICULTURAL GOODS AND FAMILY BUSINESS: LEGAL AND ECONOMIC DYNAMICS IN THE FORMATION OF THE ITALIAN CIVIL LAW MODEL IN THE FIRST HALF OF THE 20TH CENTURY

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ABSTRACT

*This chapter traces how wartime emergency legislation and fascist ruralism reconfigured Italian private law by elevating the farming family from a sociological fact to a juridically meaningful subject and by redefining ownership for the purpose of production. Centring on Francesco Ferrara and Filippo Vassalli, it shows how World War I measures reshaped agrarian contracts, normalised state intervention, and exposed the gap between the *comunione tacita familiare* and codified categories. It then reconstructs the 1930s debate (Enrico Finzi versus Salvatore Pugliatti), demonstrating methodological divergence (asset-based vs. subjective-right approaches) yet convergence on the social function and limits of property within an ideological climate of fascist*

Ciccolo, F. (2026) 'Agricultural Goods and Family Business: Legal and Economic Dynamics in the Formation of the Italian Civil Law Model in the First Half of the 20th Century' in Szilágyi, J.E. – Ilyés, K. (eds.) *Instruments for Preserving the Unity of Family Businesses and Agricultural Assets: Perspectives of Legal History*, pp. 119–140. Budapest – Miskolc: Central European Academic Publishing. https://doi.org/10.54171/2026.jeszik.ipufbaa_5



“ruralism”. A close reading of the *travaux préparatoires* and enacted provisions reveals that the 1942 Civil Code consolidated a new paradigm (arts. 832, 834, 838, and 846–851), introducing productive-aim expropriation and minimum cultivation units while relegating family enterprise to custom (art. 2140). The conclusion explains why full juridical recognition of the family business was deferred until the 1975 reform (art. 230-bis) and reflects on the lasting implications for agrarian law and governance.

Keywords: social function of property, fascist ruralism, Italian Civil Code of 1942, Francesco Ferrara, Filippo Vassalli, Finzi–Pugliatti debate.

1. THE FARMING FAMILY AT WAR: THE ROLES OF FRANCESCO FERRARA AND FILIPPO VASSALLI

In May 1936, in the control room of Palazzo Venezia in Rome, the prize-giving ceremony of the “*Fedeli della terra*” (*Faithfuls to the Land*) was being held. An initiative promoted – at least according to the rhetoric of the fascist regime – to pay tribute to the sacrifices of those families of colonists and peasants who have lived and prospered on the same piece of land for generations. The master of ceremonies was the Head of Government, Prime Minister Secretary of State Benito Mussolini, who welcomed the winners at the opening of the celebration with the following words:

*This greeting goes out to all the Italian rural people, to all the peasants of Italy, to all those who work the land and, because of this fact, are particularly dear to me – seeing as how the land and the race are inseparable. The history of the race is made through the land, and the race dominates and develops the land fruitfully.*¹

The theme of “ruralism” – intended as the recovery of the traditional values of peasant society – was widely successful in Italy in the 1930s, exerting a significant influence not only on the economic and political

1 Piccoli describes this specific episode. Piccoli, 1936, p. 87.

level but also on the legal. In the same period, unprecedented reflections began on property, especially land ownership and family businesses, which were mainly applied in the land context of the time.

In fact, at the beginning of the century, Europe experienced a renewed interest in the world of agriculture amidst profound transformations such as industrialisation, urbanisation, technical specialisation, and commercialisation. These phenomena, while not entirely novel, had taken on greater intensity than in the past, to the point of imposing a re-evaluation of the relationship between capital and labour.² In this scenario, the growing importance of the social question, closely linked to the rise of the “*Quarto Stato*” (*Fourth Estate*), made it necessary to take a more articulated and complex approach to the business world.³

In particular, the abandonment of a policy of repression and the consequent move towards a regime of trade union tolerance had contributed decisively to the emergence of a social pluralism that could hardly be contained within the traditional legal categories.⁴

This led to the overcoming of the nineteenth-century vision of business as the exclusive asset of an individual owner in favour of a perspective that recognised and valued the collective dimension of work. The “*collettività operaia*” (*working community*) had become the central role within the company structure, accompanied by growing attention to contracts and collective agreements, fundamental tools for regulating the rights and responsibilities of owners and workers in economic governance.⁵

In the face of such changes, the theoretical positions and political responses had, however, been antithetical. On the one hand, classical Marxist analyses had theorised the imminent advent of the large capitalist enterprise, which, from there, in a short time, through a process of collectivisation and socialisation of the land, would definitively sweep away the small family business. On the contrary, proposals had been

2 Tolaini, 2010, p. 361.

3 Cazzetta, 2007, p. 12.

4 Ibid., p. 13.

5 Ibid., pp. 17–18.

formulated to demonstrate emphatically the superiority of agriculture on a moral, and social, as well as technological and productive level.

In this sense, one may refer, for example, to the well-known, widely cited works of the Russian agricultural economist Alexander Chayanov, who, using a direct study of the Soviet countryside and the living conditions of its inhabitants, combined with the analysis of thousands of family business budgets, developed an autonomous scheme of economic behaviour of the peasant family as an alternative to the “*maximising of the agricultural business*”. In particular, the family unit concentrated its efforts on meeting the annual needs of its members, reallocating, if necessary, internal resources, and also extra non-agricultural activities. Based on this logic, the size of the family business was more closely associated with the family’s life cycle than with income growth.⁶

The thesis in question is useful for our discussion only because it reveals a particular attention to the mechanisms governing family businesses, a device firmly rooted even in the rural areas of the Peninsula in the nineteenth century.

Years before the political unification, which took place in 1861, the Italian countryside had been populated by peasants and sharecropper families who, although not formally owners, resided there permanently and derived their livelihood from it.

This reality was, however, completely ignored by the Civil Code of 1865 and later also by the Commercial Code of 1882. In the absence of precise normative coordinates, relationships within the family units continued to be regulated by an intricate customary network, the so-called “*comunione tacita familiare*” (*tacit family communion*). At the death of the head of the family, the heirs retained their assets undivided and continued to pursue the economic activity pursued by the deceased. The “*new*” family, thus, constituted and supported a community of life and shared interests and activities. It was led by a new head, selected by consensus, who also represented the various members of the family before third parties.⁷

6 Tolaini, 2010, p. 362.

7 Carrara, 1959, pp. 84–85.

The situation described above was also present in the years of the First World War. Although millions of peasants had been mobilised to the front, the Italian agricultural market managed to maintain almost stable levels of production.

This was facilitated by the state's intervention, which had adopted a targeted strategy to meet the growing demand for food, such as encouraging the use of agricultural machinery by developing uncultivated land and removing the obligation for farmers to pay rent, to the detriment of absentee property.⁸ If, therefore, the national economy appeared to be stable on the political plane, there was, on the contrary, a growing tension destined to explode intensely in the immediate post-war period.

The main protagonists of these tumultuous events were the members of the labourer class, co-opted among the ranks of the White and Red Leagues, trade union organisations – of Catholic and socialist inspiration, respectively – which fought strenuously for the complete revision of the colonial pacts, previously stipulated with the landowners, in order to obtain more favourable normative and salary conditions.⁹

This season, referred to as the “*Biennio Rosso*” (*Red Two-Year Period*) from 1919 to 1920, was marked by a liberal ruling class incapable of channelling these tensions through effective reforms to meet the opposing demands of the parties involved.

The way out of this *impasse* would eventually be identified by the agrarians themselves, who, through fascist squads, would suffocate with force the peasants' and sharecroppers' trade union movements, thus putting an end to the ongoing social tensions in action.

Beyond the violence, the tragic parenthesis of war represents a crucial point destined to irreversibly upset the existing equilibrium, especially those between public and private.¹⁰

The war brings with it new needs and urgencies, as well as priorities never known in peacetime, which require immediate responses; to meet these needs, a series of innovative and pervasive regulatory

8 Fano, 1975, pp. 474–475.

9 Ibid., p. 475.

10 Sordi, 2020, pp. 154–165.

interventions were adopted, able to shake the foundations of the ground “*until then substantially quiet private law*”.¹¹

The awareness of the profound changes in progress emerges clearly from the reflections of contemporaries, who observe and comment with great attention on growing state interventionism.

But why are they the ones having to deal with it? The answer to this question is found in the very nature of war legislation, which is the result of contingent requirements rather than a rational design. It insinuates itself into the folds of the Civil Code of 1865, modifying it at its roots to the point of altering established principles and institutions.

The science of civilisation, for its part, feels the need to confront such an event, perceiving in it a force that undermines the traditional legal order and, therefore, worthy of careful and profound reflection.

It is not possible to dwell here on the numerous contributions developed in these years; we will therefore confine ourselves to two particularly important examples of which the clarity of their presentation and analysis bear witness to that lively intellectual season.

Specific references are made to the reflections of Francesco Ferrara and Filippo Vassalli, the latter of whom later became a protagonist in the drafting of the Italian Civil Code of 1942.

In his inaugural speech for the academic year 1918-1919, at the “*Institute of Social Sciences Cesare Alfieri*”, Ferrara wondered whether the “*law of war*” represented a simple “*anomaly*” dictated by the moment or whether one could see into it “*the seeds of new rights*”, which is intended to be applied even after the “*extraordinary state of affairs*”¹² had ceased. He favoured the latter hypothesis, believing that the “*temporary measures of war*” contained principles capable of offering insights and solutions designed to influence future regulations. Among the subjects in which the first signs of change could be detected was that of agrarian contracts, formally regulated by the Civil Code of 1865 as agreements between the landowner and the settler. However, Ferrara observed that in practice, such contracts involved the whole farming family, represented by the head of the family. Nevertheless, the head of the family

11 Grossi, 2000, p. 130.

12 Ferrara, 1954, p. 70.

could be replaced following changes in the family composition, such as marriages or deaths, highlighting a much more articulated scheme than the normative one. In support of this view, he recalled the Lieutenantancy Decree No. 1480 of the 2nd of November 1916.

The measure, in one respect, granted the surviving heirs of the settler who had died in the war the right to request an extension of the contract. In another respect, it allowed both the landowner and the farming family to integrate the workforce on the estate by employing outside workers to compensate for absences caused by military services or incapacities. The provisions under consideration, in the opinion of the jurist who came from the city of Avola, had therefore sanctioned the emergence of a completely different figure: The farming family is no longer understood as a simple aggregate of individuals but rather as an organic and cohesive entity founded on solidarity, which will ensure the continuity of work and the stability of the land's means of production.¹³ Also, for Vassalli, the wartime rules had produced "*lasting and profound*" consequences, implications that would be felt long after the war ended.¹⁴ Whether it was the constraints imposed on land ownership, the concession of agricultural machinery purchased by the Government, the forms of assistance to fighters and their families, or the prohibitions on import and export, the dominant note always remained, in the opinion of the Roman civilist, the prevalence of public reasons over private ones.¹⁵ Taking as a starting point the decree of the 10th of May 1917, No. 788, which gave the prefect the power to impose on anyone who managed an agricultural holding the extension of areas intended for food crops, the lawyer emphasised the unprecedented role of the State as a key player in agricultural activities. It was particularly striking to him the complex system of control and regulation introduced by the decree under consideration, which involved administrative and political bodies: appeals against prefectural provisions had to be submitted to the Minister of Agriculture after consulting a technical section of the Agricultural Committee; any disputes between owners and tenants

13 Ibid., p. 94.

14 Vassalli, 1960, p. 339.

15 Ibid., pp. 343–344.

were referred to an arbitration board, whose decisions were final and unappealable; even the application of penal sanctions for violations was entrusted to an administrative authority, the intendant of finance, with the possibility of submitting it to the Minister of Agriculture.¹⁶ This was seen by Vassalli as a very eloquent example of the progressive capacity of the state to reshape the traditional relationship governing agricultural property and management. To put it differently, this act was not just a regulation to meet extraordinary needs but a greater change, able to redefine the boundaries of private property and to orient the aims of the institute in rational and collective exploitation of the land.¹⁷

2. THE ITALIAN LEGAL DEBATE IN THE 1930S ON AGRICULTURAL PROPERTY, LAND AND FAMILY: ENRICO FINZI AND SALVATORE PUGLIATTI

Well, Fascism will be the one to take up this legacy.

In the years of its rise to power, the political interference which we have just mentioned becomes increasingly evident, with the state assuming the role of “*supporter of companies in crisis*”, “*competitor of private individuals*”, and “*director and controller of their activities*”.¹⁸

Every part of society is affected by this process, including the agricultural sector, where the government intervenes with various significant legislative measures, such as remediation, agricultural credit, the regulation of civic uses and the enactment of the new forestry law.¹⁹

Of course, this renewed ideological system also benefits the legal discipline: while on the one hand, it reopens the site for the adoption of a new civil code to replace that of 1965, on the other hand, the provisions in the agricultural field not only stimulate reflection but also consolidate and decisively promote the emergence of a new branch of law, the agricultural one.

16 Ibid., pp. 350–351.

17 Grossi, 1997, pp. 377–405

18 Alpa, 2018, p. 425.

19 Iannarelli, 1999, p. 666; Marinelli, 2020, pp. 22–27; Volante, 2018, pp. 1073–1078.

Examining the agricultural reflection of those years reveals significant transformations in certain civil law institutions, and among these, property – both real estate and land – whose functional and productive roles have become evident.

This final point will be discussed again shortly. First, though, a clarification is required: the space reserved by the regime for agriculture throughout the twenty years is not uniform, since two distinct periods may have distinct phases, with the year 1927 representing a watershed.

At first, the main objective of the fascist party was to exalt the importance of the peasant role and its virtues in the wake of a nineteenth-century approach that can easily be homologated to the category of “*Catonismo*” (*Cathonism*). Thus, the most decidedly propagandistic aspects prevail, the emphasis is being placed on the “*moral virtues of those who work the land, their ability to endure any deprivation and their strong spirit of sacrifice*”.²⁰

In Mussolini’s Ascension speech, presented to the Chamber of Deputies on May 26, 1927, a significant shift began, reshaping the concept of “agriculture” through an ideologically driven perspective that emphasised the exaltation of lineage.

The rural world is, in practice, an emblem of physical health, morality and prolificacy, proposing, in the structure of the “*traditional and extended*” sharecropping family,²¹ a prototype that not only embodies these values but also stands as a guarantor of the instances of order and social cohesion desired by the new state apparatus.

This family model is defined by the “*Carta della Mezzadria*” (*Charter of the Sharecropper*), a measure adopted in 1933 to regulate working relationships between landowners and sharecroppers. It prescribed that a sharecropper was to be the head (ruler) of an entire cohabitation dependent on him, composed of his spouse, ascendants, descendants and relatives-in-law, and of all those who cohabited in the house as permanent employees on the farm and were listed in the farm colonial. The sharecropper was also responsible for the exclusive representation of

20 Di Michele, 1995, p. 250.

21 Cavina, 2007, p. 263.

the family, both in the management of the farm and in negotiations with the grantor, acting as sole contractor and irrevocable tacit agent.²²

Among the many interpreters who took an interest in the subject was also Fulvio Maroi, a lawyer very close to the regime, who, in his scholarly production, devoted particular attention to the theme of the farming family, as shown by the reflections he gave in a speech in June 1935 at the Fascist Cultural Institute. In the analysis presented by Maroi, who has a background in legal history, it is possible to see an obvious sign of rupture with the Civil Code in force at the time, particularly with regard to two institutions that, according to the author, are intimately linked: family and property. He begins by criticising the selfishness that characterised private property in the old system, defined as a “*granitico macigno*” (*granitic boulder*), from which only Fascism had succeeded in drawing a new “*linfa*” (*sap*), transforming it into an instrument of social and family solidarity. According to Maroi, the first form of solidarity had been implemented mainly through the “*Labour Charter*”, which assigned property as a “*function of national interest*” and imposed on the owner, holder of an activity or of an enterprise, a direct responsibility towards the state. Regarding the second one, the family property, he pointed out that it had been promoted through a series of provisions – among them the abolition of inheritance tax within the family unit – introduced by Royal Decree No 3770 of the 30th of April 1930.

The latter measure was, in his view, crucial since it aimed to preserve the unity and cohesion of families, particularly agricultural families, by strengthening the communion between members and preventing the division of assets that would compromise the integrity of the patrimony and the solidarity within the nucleus.²³

Three years later, Maroi would return to these ideas in an essay published in the “*Rivista di Diritto Agrario*” (*The Journal of Agrarian Law*), reaffirming his criticism of the Civil Code of 1865, which he accused of having sacrificed in the name of a petty individualism: “*All that cohesion and cooperation, fraternity and patriarchalism*” that was still alive in the rural family. On that occasion, the lawyer outlined the principles which

22 Passaniti, 2011, pp. 414–419.

23 Maroi, 1935, pp. 27–33.

he said should have guided the new Civil Code, with particular attention to “*the rights of the land*”. These included the protection of agricultural holdings in the context of succession, the normative recognition of tacit family communions in the rural areas, and the adoption of measures to guarantee the continuity and stability of the agricultural business within the family unit.²⁴

Indeed, as will be seen in the following pages, some of the criticisms made by the lawyer were shared by most. The Italian Civil Code of 1965 had, in fact, immediately made clear its links/debts – of architecture and content – with the “*Code Napoléon*” (*Napoléon Code*), assigning property an absolute central role, such as “*the right to enjoy and dispose of things in an absolute manner with the sole limitation that they shall not be used of them contrary to the law and regulations*” (art. 436). Moreover, the discipline of family ties, traditionally based on a hierarchical and central conception of the individual, was defined by the same individualism. This vision tended to privilege the head of the family as the sole reference, ignoring the interdependencies that defined family life, especially in peasant communities and was distanced from the actual collective and solidaristic dynamics of the rural community. And yet, during the Great War itself, some lawyers’ reflections – including those already mentioned by Vassalli and Ferrara – had highlighted the first signs of the collapse of this approach, highlighting its inadequacy because of the socio-economic transformations of the time.

By the mid-twentieth century, this awareness had already been consolidated: the relationships which regulated family businesses, historically anchored to the so-called tacit family communion, could no longer be entrusted exclusively to a customary system, the inadequacy of which was increasingly evident concerning the changing demands of rural society.

Concurrently, the concept of agricultural property was also profoundly changed: the rustic estate evolved from a simple object of property to a “*vital reality*”, a dynamic entity carrying its own rules and requirements.²⁵

24 Maroi, 1956, pp. 264–267.

25 Grossi, 2012, p. 23.

The changes underway were highlighted, with the clarity and lucidity of analysis typical of those who are able to anticipate the times, by two civil servants, Enrico Finzi and Salvatore Pugliatti, who once again spoke at the “*Primo Congresso Nazionale di diritto agrario*” (*First National Congress of Agrarian Law*), held in Florence in 1935.

For the former, the event represented a propitious occasion to review the conclusions from a long course of study, having already previously dedicated heartfelt pages to the institution of property²⁶ in 1922 and 1933.²⁷

In his speech entitled “*Diritto di proprietà e disciplina delle produzioni*” (*Property Law and the Regulation of Production*), he reinforced the idea that it was in the regulation of property that the best changes in property law were taking place. First, by doing so, a distinction regarding the proprietary institution was introduced, highlighting the different relationship between property and the individual, with some goods grouped within the classical dominical scheme and others more intensely linked to a general or public interest, for example, land meant for socially relevant production. In second place – this was a real novelty compared to the previous reflections of the '22 and '23 years – the differentiated regulation of property made it possible to grasp a conceptual distinction to be made between the purely static profile of property linked to productive assets and the dynamic profile of exploitation; it is intended to include subjects other than the bare owner, such as that concerning the mere user of the thing.²⁸ According to the lawyers from Mantua, the progressive functionalisation of property found its full expression in the introduction of limits on the owner's powers, whose sovereignty over the property, once untouchable and absolute, was now reformulated in the service of the collective interest. In this new perspective, it was not unreasonable to speak of “legal figures” such as abuse or misuse of power concerning the proprietary paradigm.

26 Grossi, 2008, pp. 19–45; Grossi, 2013, pp. 377–433.

27 Iannarelli, 2018, pp. 12–14.

28 Ibid., p. 15.

After the presentation by Finzi, it was up to Salvatore Pugliatti to take the floor during the conference, offering a profound and articulate reflection on the institution of property.

While the former had placed assets at the centre of his analysis, considering them the cornerstone of a new perspective of ownership, the civilist from Messina, anchored to the traditional approach, privileged the subjective dimension of the law under consideration by emphasising the superiority of the individual element over the objective element of things.

This divergence was inevitably reflected also in the question of the “*proprietà funzione*” (*property function*). Due to the owner’s positive obligations, the legislation on land reclamation that raised the question of the social function of property provided again a tangible basis for comparison. According to Pugliatti’s methodological approach, Finzi’s thesis, which interprets this legislation as the “*tendency of the legislator to carry the social purpose of property into the content of the law*”, turned out, in his opinion, to be merely descriptive, and, above all, it would be unnecessary to apply more rigorous hermeneutic criteria. As an alternative, he suggested a reading of the discipline of the reclamation divided into two levels: the first relating to the typical legal relationship of property, where the owner was considered to have the absolute right but always within the limits set by the legal system; the second, more complex, concerning the personal relationship, completely foreign to the right of ownership, which interacted between a private subject, as owner of a certain thing, and the public administration.²⁹ On the contrary, this did not compromise the unitary character of the proprietary institution. Pugliatti argued that the system should be conceived as a complex entity, similar to a system of concentric circles. Firstly, the largest circle, relating to consumer goods, would guarantee the owner an absolute and unlimited right. Secondly, as the world moved on to the smaller circles concerning goods of collective interest, the limitations became more and more evident in a careful balance between individual rights and social needs.

29 Ibid., p. 17.

Beyond the different theoretical and methodological approaches, the reflections of the two lawyers converged on a crucial point: the definitive overcoming of the nineteenth-century individualistic conception of ownership³⁰ and the simultaneous emergence of a different type orientated towards collective and social interests.

Having thus briefly summarised the main developments of the Italian legal debate on agricultural property and the Italian family in the

30 The Italian Civil Code of 1865, inspired by the Napoleonic codification and in line with the pre-unification codes, assigned a role of absolute centrality to property – so much so that it devoted two of the three books of which it was composed of – what is surprising, however, is that there is no specific regulation of agricultural property and how goods are moved. This absence is even more significant, especially if one considers the value, however appreciable, that agriculture held in the social and economic structure of the time. Furthermore, this regulatory omission was not remedied even by the 1882 Commercial Code, Article 5 of which merely excluded, in a pleonastic manner, the commercial nature of the alienation of agricultural products by farmers or landowners. In the final analysis, the reference to the standard, far from solving the problem, paradoxically generated two others: the first was that by establishing the non-commerciality of the agricultural activity without clearly specifying – except for the sale of the products of the fund – which operations fell under this exclusion, the interpreter was forced to redraw in the absence of precise regulatory coordinates the boundaries of commercial matter. From here the second was born. For one part of the doctrine, this meant, in fact, bringing agricultural activity back to the traditional patterns of ownership, and in particular to those of “real estate by destination” provided for by Art. 413 of the Civil Code of 1865. Thus, assets such as livestock, tools and stocks necessary for agricultural operation were considered an integral part of the estate and destined exclusively for enjoyment, without adequately taking into account complementary activities, such as livestock breeding or the transformation of agricultural products (e.g. grapes into wine, olives into oil, and milk into cheese), which, although were not directly linked to the cultivation of the land, constituted a fundamental part of it. In the end, the thesis most widely accepted by contemporary doctrine was based on the so-called criterion of ancillary nature, in the application of which the processing and sale of agricultural products fell under civil law, except where such operations had an autonomous economic purpose separate from the cultivation itself and did not possess an instrumental character concerning the cultivation of the land. On the other hand, it was excluded; therefore, the reference to Art. 5 c.co. – whenever economic activities are governed by a purpose different from that pursued through the cultivation of the fund. On this subject, see Bione, 1978, pp. 449–454.

mid-twentieth century, it remains to be seen to what extent these ideas have found a place in the Civil Code of 1942.

3. AGRICULTURAL PROPERTY AND THE FAMILY BUSINESS IN THE CIVIL CODE OF 1942: THE CONSOLIDATION OF A NEW OWNERSHIP PARADIGM

The first phase (1924–1939) of the preparatory work for the Civil Code of 1942 was marked by a rather slow pace, which had struggled to translate into concrete results.³¹ Indeed, progress proceeded in a piecemeal way, at least until September 1930, when the project of the First Book, “*Delle persone e della Famiglia*” (*Of the People and the Family*), was finally completed. This achievement marks a crucial moment, paving the way for new milestones. Following some “*stormy discussions*” before the Parliamentary Commission tasked with reviewing it³² and incorporating the changes imposed by the racial legislation were adopted,³³ it was finally approved by Royal Decree No. 1852 of the 12th of December 1938, which went into effect on the 1st of July 1939.

In the interim, in 1936, the drafting of the Third Book, “*Successioni e Donazioni*” (*Successions and Donations*), had been finalised. It explicitly exhibited the intention to “*protect and strengthen the family organism*”, with particular attention to the rights of heirs, the importance of

31 In fact, as recalled in retrospect by Vassalli himself, as early as June 1918, the “*Commissione per il dopoguerra*” (*Commission for the post-war period*), appointed by legislative decree no. 1519 of the 16th of September 1917, had already begun the first studies of reform on the Civil Code of 1865 in order to make technical amendments. The European Commission had also been involved in the work of the International Criminal Court and, in particular, in the field of personal and family law, which would have been used, to varying degrees, by the subsequent Commissions; however, the growing political instability during the *Biennio Rosso* (*Red Two-Year Period*) had made it impossible to reach concrete solutions. See Rondinone, 2003, pp. 17–19.

32 Ibid., pp. 119–127.

33 Ibid., pp. 153–162.

inventory, and the succession of spouses and legitimate children, all intended to protect the so-called family patrimony.³⁴

In the following year, a further step was taken with the drafting of the Second Book entitled “*Delle cose e dei diritti reali*” (*Of Things and Real Rights*).

Well, was there any news on the ownership? Indeed, more than expected.

In presenting the report, Mariano D’Amelio, chairman of the Commission responsible for drafting the Second Book, already pointed out the main differences compared to the regime contained in the 1965 Code. In the opening, he stated:

*The Royal Commission considered that, in accordance with the provisions of the Labour Charter, it could not and should not disregard the function of private property itself and emphasised this character both in defining it and in regulating it, in the application of the Fascist principle, that property is a right, but it also implies the duty to use it in such a way that the exercise and enjoyment of it satisfies individual needs without causing harm and, indeed, favouring the interests of production, which are those of the Nation.*³⁵

This was followed by the explanatory report of the draft, which reaffirmed the Neapolitan lawyer’s assertion that general and production interests prevailed over individual interests, while also highlighting the inclusion of a specific chapter dedicated to family communion.³⁶

Once the examination was completed, the draft was sent, as usual, to the technical bodies for the necessary observations, which were then collected in three thick volumes for a total of two thousand three hundred and ninety-six pages. In essence, it is an operation of considerable importance, further confirming the importance and complexity of the subject matter. It is not surprising, therefore, that Filippo Vassalli, reflecting on those events later on, wrote a letter in November

34 Ibid., pp. 62–63.

35 Ibid., p. 144.

36 Ibid., p. 145.

1940, addressed to the then Keeper of the Seals, Dino Grandi, emphasising that:

*The observations were all of greater importance for this book than for the others, both because of the importance of the institutes perceived by a wider circle of interested parties and because of the different degree of elaboration achieved by the project concerned, some parts of which had been fully examined by the Royal Commission, while others represented little more than the formulation of personal proposals by the rapporteurs.*³⁷

Between 1938 and 1939, along with the observations of the “official bodies”, additional reflections from various lawyers and organisations were included, particularly the *Confederazione Fascista dei Lavoratori dell'Agricoltura* (Fascist Confederation of Agricultural Workers), which in 1939 published the volume “*La concezione fascista della proprietà private*” (*The Fascist Conception of Private Property*). In this paper, the relationships between the agricultural business and land ownership were examined in depth, focusing more and more on the conceptual autonomy of the agricultural business and its intrinsic link with the land itself.³⁸

The debate among agrarians had been centred on these ideas for a long time, as they had already been addressed at the “*Secondo Convegno Nazionale di Diritto Agrario*” (*Second National Conference on Agricultural Law*) in 1938.³⁹ Examining the literature of the time, it is clear not only that a more dynamic view of land ownership is gradually consolidated but also the obvious inability of the legal language at that time to provide adequate responses to the emerging needs and ongoing changes.

Among the misunderstandings of terminology that had to be urgently resolved and, at the same time, which had to be appealed while waiting for legislative intervention, stood out the difficulties related to the definition of concepts such as “funds”, “enterprise”, and “rural fund”.

Although, for some authors, the former was destined to take an atypical dimension in order to include activities not necessarily connected

37 Ibid., p. 147.

38 Ibid., p. 175.

39 Ibid., p. 177.

with the cultivation of the land. For others, on the other hand, it was identified as business in both its subjective and objective aspects.⁴⁰

Upon a closer inspection, the year 1939 is also notable for another reason, namely the appointment of Grandi as “The Keeper of the Seal”, under whose direction the approval of the Book dedicated to the property was finally achieved with the Royal Decree No. 15 of the 30th of January 1941.

Having thus briefly outlined some of the salient stages of the approval process of the Civil Code of 1942, let us now examine its contents, with particular reference to property in general.

The rupture with the past was already apparent from the general provisions (art. 832–839), which established that the owner retained the full and exclusive right to enjoy and dispose of the property, but always in compliance with the limits and obligations defined by the legal system (art. 832). Furthermore, the legal system introduced the concept of expropriation for the benefit of the public (art. 834 sec. 1).

And what about agricultural property? Of course, even there, it was possible to see further aspects worthy of note.

In relation to the topic of expropriations, Art. 838 of the legislation stipulated that, for specific categories of goods deemed relevant to the context of “*national production*”, such a transaction could be carried out if the owner failed to maintain them or did not ensure appropriate cultivation or management practices, thus negatively impacting the production process itself (art. 838.1). Articles 846–847 then stipulated that in transactions involving the transfer of ownership, divisions, assignments “*for any reason whatsoever*” or the constitution of real rights concerning the property of land intended or suitable for cultivation, the owner was forbidden to proceed with fractionations that did not respect the “*minimum cultivation unit*”.

What specifically made up this limit? And what did this mean for the owner of a right of ownership? The second paragraph defined it as the sufficient land area for a family’s agricultural work or, in the case of uncultivated land, for example, that is already part of an agricultural holding, the extent required to ensure adequate cultivation in

40 Iannarelli, 1999, pp. 668–669.

accordance with the principles of good agricultural practice (art. 846 par. II).

This was followed by Article 847, which mandated the administrative authority, after consulting with the professional associations, to determine the minimum cultivation units area by area, with the production system and the local demographic situation serving as guidelines.

With Article 850, it was finally established that, at the request of the interested parties or on the initiative of the same authority, consortia could be set up for the purpose of land recomposition, with a view to greater exploitation of the land, the possibility of proceeding with expropriations, compulsory transfers, rectifications, and finally, rounding up of land (art. 851 par. II).

The considerations so far made assume decisive importance not only in order to fully understand some of the challenges that the civil codification of 1942 had to face but also to justify the circumstance that the introduction of unpublished elements on the subject of agricultural property and family holdings had found its main place in the final version of the Third Book of the new Civil Code, the one devoted to real rights.

Indeed, it was in this very area that, in the course of the preparatory work, a considerable effort was made to regulate by law the tacit family communion, a pivotal institution that had always been the historical and legal foundation of the family business.

In this context, in the preliminary draft of the book dedicated to real rights (art. 330-340), Maroi drafted an outline that sought to generalise the institution in question to the exercise of extra non-agricultural activities, which, at the same time, was regulated in a comprehensive manner.

However, the proposal quickly ran aground due to the numerous objections raised by the bodies responsible for formulating their personal opinions, especially those put forward by some Parliamentary Commission members, who reiterated the greater suitability of local customs to regulate family business.⁴¹

41 Flore, 1961, pp. 288–289.

In the drafts that followed, the rules dedicated to tacit communion were even reduced to a single article, namely 2140 of the Civil Code, which stated, with reference only to agricultural activities: “*The family communions in the exercise of agriculture are regulated by customs*”.

In the long run, a truly modest result for such a phenomenon as lively and present in the Italian social fabric as family businesses, especially if one considers that a decisive change of course would have had to wait for the 1975 reform of family law, which, by introducing it into the Civil Code provision 230 bis, entitled “*family business*”, would have guaranteed adequate legal recognition of the work carried out in the context of the family community.

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