



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA
DIPARTIMENTO DI SCIENZE GIURIDICHE

Annex I
Excellent University Departments Project - DSG

GENERAL DEVELOPMENT GOAL:
THE LEGAL SCHOLAR OF THE BOLOGNA SCHOOL

Within the framework of the Excellent University Department Project, the DSG intends to focus its overall activity on the training of a new type of scholar, who shall not limit his/her working skills to a national dimension and the performance of traditional legal professions; indeed, he/she shall be capable of:

- 1) interacting with traditional sources and systems of national dimension, on the one hand, and with new supranational and transnational legal forms driven by globalization, on the other; in doing so, he/she shall manage to reconcile the hermeneutics' traditional technical tools and new problem-based methodologies focusing on practice and inspired by the empirical method;
- 2) establishing links between his/her own national law and the laws of other legal orders, even if they do not belong to the Western legal tradition;
- 3) combining a precise technical knowledge of law with a robust awareness of the philosophical themes and the historical, scientific and technological context, as they both contribute to forming a background that shall be necessarily taken into account.

This new type of legal scholar shall thus be adequate to work not only in Europe, but also worldwide. He/she shall likewise be ready to work in a flexible way, by carrying out also activities other than those referred to the typical institutional roles, so to provide answers to a wider set of social needs. Accordingly, a brand new "model" of legal training is envisaged which shall however be consistent with the renowned tradition of the Bologna School.

As for teaching and research activities, a major emphasis is to be placed on the capacity to fully understand the interaction between law sources of national, supranational and transnational dimension. The core problems can be summarized as follows.

- 1) *Acts and facts adequate to produce law: evolution towards the supranational dimension.*

Over last decades, it was possible to note a growing influence from international bodies and norms on the effective content of national law provisions and a progressive limitation of national legislative autonomy, due to the action of an integrated and multilevel law system.



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In this respect, it is worth to consider the European integration, which has led, also by virtue of the role played by the Court of Justice of the EU, to the creation of a new legal order comprising both States and individuals amongst its subjects. Quite the same is true of Public and Private International Law, as they have long had a huge influence on the internal substantive law. A similar trend embraces Constitutional and Administrative Law as well (for example, one could recall the debate on the possibilities and limitations of a Global Constitutionalism and a Global Administrative Law). This phenomenon extends to all fields of law, including those, like Criminal Law, characterized by a high degree of statehood, and it proves very problematic for the legal orders linked to the continental tradition.

2) *Acts and facts adequate to produce law: evolution towards a transnational dimension*

In addition to the classical model based on statehood/legal positivism and the supranational systems some transnational phenomena appeared. They produced new forms of pluralism, the statutes of which are not always definable with precision. That is often connected to the growing urgency of regulating economic, scientific or technological issues. It happens, in particular, in the framework of Private Law and the so called *lex mercatoria*, because of the evolution of the economic globalization, and in the field of Labor Law, given the need to provide public interest with a transnational dimension, which has resulted in early examples of supranational collective bargaining. Similarly, it is important to mention the prominent role acquired by certain private actors in the governance of the Internet or the health policies.

3) *Acts and facts adequate to produce law: resurgence of statehood*

Nevertheless, one should not take for granted the obsolescence of classical statehood when it has to stand the legal sources analysis test. The reaffirmation of the State occurred in multiple instances, even from the legal point of view. As far as the European level is concerned, reference can be made to Brexit and to constitutional reforms promoted by some States of the Central and Eastern Europe, which run counter the founding values of the EU. Even the ongoing evolution of the “dialogue” between the Court of the EU and national Supreme/Constitutional Courts is meaningful, since the threshold of friction between the former and the latter is increasing.

4) *Validity sources: soft law and governance in technical areas*

As regards this aspect, a problem concerning the validity adds to those relating to the acts and facts adequate to produce law: applicable norms in force, understood in a positivist sense, may take the form of acts of weaker nature, as it is not always easy to distinguish prescriptions from recommendations or mere technical regulations. This is particularly evident in the regulation of emerging biotechnologies, since their field of application is rather indefinite and the risks they entail are not predictable. As a consequence, the technical nature of some norms is spreading, while this process is leading to a lower degree of certainty.



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5) *Documents containing the texts of the norms in force: IT standards*

Besides the abovementioned issues, also the digitization of the documents containing the texts of the norms in force represents a problem. These documents are currently created, published, circulated and stored mainly in digital format: with a view to analyzing new sources of global law, it is necessary to search for shared technological standards to accede normative provisions.

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