IN MEMORY OF PROFESSOR PIERO ZICCARDI, EUROPEAN JURIST*

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The last public occasion on which professor Piero Ziccardi spoke in a University setting was in March 2004, when his students, his students’ students, his friends and his colleagues of the Faculty wanted to gather to mark his having turned 90 years of age the previous September.

The gathering was more festive than celebratory (in accordance with the wishes of someone who did not like celebrations or ceremony) and allowed those present to review not only the career of a great jurist, but also some chapters of recent history which he lived through as a member of the resistance in the 40s, when he was arrested and deported for standing for principles and ideals which have characterised his life both as a scholar and as an academic.

That period saw the birth of the Scuola milanese di diritto internazionale (Milan School of International Law), driven by Roberto Ago, with Piero Ziccardi as its first assistant lecturer, and the founding (in 1942) of the journal Comunicazioni e Studi of the Istituto di diritto internazionale (Institute of International Law), of which Ziccardi was Co-Editor and subsequently Editor, continuing the work of its founder until 2007 (its twenty-three volumes are now published online here at this website). According to the preface to the tenth volume, the journal back then (1960) already sought to reflect, in its rich content, the development of international law and the steady broadening of the subjects being researched and studied and the interests of scholars (in particular the growing number of them working and contributing to the work of the Institute). The way in which international law was developing called for ever greater specialisation and refinement of knowledge both for teaching and research.

Among the “new subjects” and the “new problems” to be researched, European Community law has always been, since its creation, the focus of special attention, and Piero Ziccardi dedicated very broad and deep study of its characteristics and peculiarities in the context of that international legal system and that international legal community. Today, reading over the course delivered at the Hague
Academy of International Law in 1976 (Règles d'organisation et règles de conduite en droit international. Le droit commun et les ordres juridiques), much of which found its way into the text of the entry entitled Ordinamento giuridico (diritto internazionale) published in the Enciclopedia del diritto (vol. XXX, 1980), stimulates reflection on the way in which the international community has taken shape, on the role of States and on the rules devised to organise forms of cooperation. As part of this, regional cooperation has characterised the phenomenon of regionalism where the sovereignty of States, the result of tradition, history and culture, has retracted in favour of the creation of common rules and organisation. Europe and European regionalism were the subject of Piero Ziccardi’s study, in particular after the Second World War and the birth of the United Nations, emphasising the need to overcome the particularism of the nation State, dangerous forms of imperialism, the shortcomings of Europe and the failure to create a “United States of Europe”. In 1946, writing under the title Per una nuova politica estera (“For a New Foreign Policy” – editions No 1 and No 3 of the journal Società nuova), Ziccardi expressed a sincere and justified hope for European unity, to be achieved, in particular, “by means of a definitive dismantling of all the barriers that divide the peoples of Europe” and that States should “be led to renounce … the most characteristic attributes of national sovereignty” , in other words, their particularism. He pointed out the need to overcome “the State-based fragmentation of Europe” and to achieve that “minimum level of European unity without which the very life of the continent risked being snuffed out” and which is essential to “confer on Europe a constructive role in international politics”.

The pages of Ordinamento giuridico (diritto internazionale) referred to above, and Organizzazione internazionale (in generale), published in the Enciclopedia del diritto (vol. XXXI, 1981) show the creation of regional unions among States as the outcome of a development of organisations which led to a sizeable broadening of the matters regulated by international law and to a corresponding reduction in the sovereignty of States which is their reserved dominion.

International society has undergone a profound change and the organisations have become subjects or actors alongside the States which have set them up. In some of his writing he concentrated on the treaties establishing the European Communities and, in particular, on the economic rules and on the rules on competition (for example Programmazione ed autonomia negoziale rispetto al diritto comunitario, in Il diritto dell'economia, 1966 and in Scritti in memoria di Antonino Giuffrè, IV, Milan, 1967; La libertà di concorrenza nel diritto delle Comunità europee, in La libertà di concorrenza, Milan, 1970), without overlooking, moreover, the specific area of the environment from the point of view of the challenges which Community law set on national legislatures with regard to compliance (Derivazione internazionale e comunitaria della normativa italiana degli scarichi in mare aperto, in Il Diritto marittimo, 1988).

Ziccardi was incisively critical of Community legislation because, although he shared and, doubtless, appreciated the purpose of the new regional international European organisations such as the Communities, he nevertheless questioned the results achieved in particular by the EEC by comparison to the ECSC. The special nature of the law of the ECSC made it different from the EEC and more able, albeit somewhat uncertainly and with contradictions and limits, to realistically apply the model.
that was intended to safeguard economic initiative and the development of the decision-making
powers of the Community institutions in matters of economic policy.

Admittedly, ECSC law concerned certain sectors of the economy and related to specific undertakings
and was, by comparison to the two Communities which came about in 1957, a kind of "experiment in
economic policy at a supranational level" and, “from a historical perspective”, an “early manifestation
of action resulting from European economic unity”. The limits to the EEC, according to the Court of
Justice, were coextensive with the limits on the powers of its institutions; however, certain aspects of
such limits ran counter to the objectives of the Community. The freedom of economic initiative is
clearly present at "European level", but what was missing was the concreteness which the Institutions
should have had if they had been provided with the necessary powers as were (and are) recognised at
the Italian level, where the Constitution devotes Article 41 to such freedom of initiative.

Although Ziccardi, in his more important articles, stood out for his quality as a fine legal theoretician,
he also demonstrated that he was fully aware of practical realities at both international and European
level, stressing the essential need for a “more vigilant realism” by the Community institutions in the
pursuit of its objectives. When asking himself what legal means were available to the Community to
set out and implement an economic policy as well as to dismantle external barriers (customs barriers
in particular), Ziccardi could not have imagined the extent to which his doubts and “concerns” are still
those of today.

A representative statement if we were to read it again today, at a time when the economic and
monetary union is going through such a complicated and stormy moment, is the following: “The
missing link in the Treaty is the organisation of an effective economic policy of the Community,
intended as a concrete action of the institutions to guide, responsibly, the broad outlines of economic
activity within the area of the Community.” He therefore proposed, in view of the evident limits (and
the “lag in Community law” in relation to the objectives of the Treaty), “a review of the priorities in
relation to the means and the results which the Community should set for itself in view of the ends
sought”.

The School of Milan, which benefited from his teaching of international public and private law, offered
the Professor, in their last celebration in January 2015, a token of their affection and gratitude for
having received a genuine life lesson. As his students wrote in the presentation to the volume entitled
Vita giuridica internazionale (Milan, 1992) which contains in two volumes a selection of his shortest
articles (which are also less well-known because they appeared in journals which were not easily
obtainable), “the life lesson” which Piero Ziccardi provided was not only a lesson in knowledge but in
“simplicity, balance and serenity”. These are gifts “which enhance and strengthen the uncommon
depth of his genius” and which (for me) stand as an example that is more than ever alive and present.

* Piero Ziccardi, born in Arezzo on 26 September 1913, died in Milan on 3 January 2015. The Italian
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