

CORPORATIONS AND THE LEGAL DOCTRINE THEREON  
IN THE BEGINNING OF THE ITALIAN 20<sup>TH</sup> CENTURY,  
BETWEEN NATIONAL REALITY AND FOREIGN SUGGESTIONS.  
AVENUES OF RESEARCH

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**Abstract:** The studies of the *Belle Époque* on matters of company law reached, in Italy, a very high technical and cultural level, despite the tardiness in the capitalistic and industrial development and undoubtedly deserve in-depth investigation. In fact, they benefitted from a time, so to speak, both from the general climate of renewal of legal studies in a liberal State grappling with the many social and financial problems of economic development, and from the special circumstances of those years, marked by the widest circulation of people, ideas and capital beyond the national state borders.

In particular, based on the careful studies already completed by the historiography on the evolution of the discipline of limited companies in Italy, the contribution would like to highlight the approach to the theme of the Italian legal doctrine in the first decade of the 20<sup>th</sup> Century, to capture its particular method of analysing and evaluating its participation in the vast phenomenon of innovation and imitation in the field of company law, already in course in Europe since the second half of the 19<sup>th</sup> Century.

**Keywords:** Corporations (history); Company Law (history); Commercial Law (history); Legal Doctrine (19th-20th centuries); Comparative legislations (history)

**Table of contents:** 1. Introduction – 2. Company law and economic reality. – 3. The Italian legal doctrine approach. – 4. Conclusions.

## 1. *Introduction.*

The corporation as we know it today is a child of the capitalistic system and the fundamental characteristics of capitalism are the same throughout the countries within the sphere of the Industrial Revolution<sup>1</sup>.

Between the 19th and 20th centuries, corporations in the form of limited companies became the cornerstone mechanism of every economic organisation that wanted to be seen as modern, or rather the 'shuttle cock' of economy and business: it deals with a largely shared assumption. Abraham Howard Feller, of international education and experience, at the time in office at Harvard Law School and a future manager of the Legal Department of the United Nations, in reflecting upon this deducted the following transnational 'vocation' of indispensable juridical form for economic development and, in particular, the reciprocal influence between Anglo Saxon systems and Continental Europe in topics on company law.

His paper in 1934 was written in the climate of the New Deal which would have led to a wide reform of the American legislation in terms of companies and groups of businesses with the intent of punctually regulating economic activity. On this occasion, Feller, after decades of the Americans influencing and orienting European choices, hazarded the hypothesis that from Europe, exhausted from the consequences of the Great Depression, could come suggestions capable of giving course to a process of cross-fertilisation of company law in America<sup>2</sup>.

Only two years before had the famous co-authored study by Adolf A. Berle, an eminent jurist and counsel to Franklin D. Roosevelt, and the economist Gardiner C. Means appeared with the evocative title «The Modern Corporation and Private Property», dedicated to the analysis of recent developments of the great commercial companies, dominant productive units of capitalistic industrial organisations like the United

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<sup>1</sup> A.H. Feller, *The movement for corporate reform: a world-wide phenomenon*, «American Bar Association Journal», 20 (1934), p. 347.

<sup>2</sup> *Ibidem*, p. 348. Amongst the studies on the 'Americanization' of the European capitalistic system, H.G. Schröter, *Americanization of the European Economy. A compact survey of American economic influence in Europe since the 1880s*, Dordrecht, 2005; Id., *Economic Culture and its Transfer. Americanization and European Enterprise, 1900-2005*, «Revue économique», 58 (2007), pp. 215-230.

States<sup>3</sup>. This work would, in turn, have echoed across European countries for the innovative scope, for the method of investigation and for the pioneering character of the thesis expressed, which immediately generated debates that are still argued today<sup>4</sup>.

In the preface of the Italian translation, thirty years after the first New York edition, Berle observed how limited companies were put at the centre – a vast collectivist, non-state, type of organism which had changed the nature of property, putting control into the hands of the management and reducing the shareholders to impotency – noting the diffusion of the phenomenon, a kind of unnoticed transformation from both banks of the Atlantic<sup>5</sup>.

Taking inspiration from Feller's pages on the global movement of the reform of company law that had already been in progress since the end of the 19<sup>th</sup> Century, it seems interesting to me to look at the Italian situation at the beginning of the 20<sup>th</sup> Century and the development of limited companies in Italy.

Indeed, in the Giolittian age, a consistent industrialisation began, above all in strategic sectors of the second industrial revolution: businesses of considerable size emerged with various branches of activity in the field of the electrical and chemical industry and businesses in strategic sectors such as iron metallurgy and mechanics benefitted from State support through means of tax breaks and credits, protectionist measures and public commissions. By and large, the most important business activities in the country availed of finance from mixed banking and soon started building monopolistic corporate groups<sup>6</sup>.

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<sup>3</sup> A.A. Berle jr., G.C. Means, *The modern corporation and private property*, New York, 1932, reprint 1934.

<sup>4</sup> Inter alia, W.W. Bratton, *Berle and Means reconsidered at the century's turn*, «The Journal of Corporation Law», 26 (2000-2001), 3, pp. 737-770; W.W. Bratton, M.L. Wachter, *Tracking Berle's footsteps: the trail of The modern corporation's last chapter*, «Seattle University Law Review», 33 (2010), 4, pp. 849-875 and quoted bibliography; K. Lipartito, Y. Morii, *Rethinking the separation of ownership from management in American history*, *ibidem*, pp. 1025-1063.

<sup>5</sup> Only in 1966, with preface by the same Adolf A. Berle, did an Italian edition come out (the publisher was Giulio Einaudi): A.A. Berle jr., G.C. Means, *Società per azioni e proprietà privata*, Introduzione di G.A. Brioschi, trad. di G.M. Ughi, Torino, 1966, p. XXIII.

<sup>6</sup> «La società anonima, infatti, ha finito per designarsi quale forma meglio adatta a

Italian capitalism, typically family based<sup>7</sup> and based and characterised by the concentration of shareholder control in but a few hands<sup>8</sup> is certainly not that of the American managerial capitalism: here what light should be shed upon is how in liberal Italy questions arose, as in other countries, related to a profound economic and social change in place, inducing a necessary rethinking of legal schemes, of contractual civil law schemes, especially related to the perspective of 'landlords', and of commercial ones of company law.

In particular, based on the careful studies already completed by the historiography on the evolution of the discipline of limited companies in Italy, I would like to highlight the approach to the theme of the Italian legal doctrine in the first decade of the 20<sup>th</sup> Century, to capture its particular method of analysing and evaluating its participation in the vast phenomenon of innovation and imitation in the field of company law, evoked by Feller and already in course in Europe since the second half of the 19<sup>th</sup> Century<sup>9</sup>.

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costituire la maggior parte dei più potenti sindacati ... ed a conservarli sotto l'egida della legge»: A. Marghieri, *Prefazione*, in U. Bozzini, *I sindacati industriali*, Milano, 1906, p. X. On the debate from the 1920s on the topic, N. Rondinone, *I gruppi di imprese fra diritto comune e diritto speciale*, Milano, 1999, pp. 22 ff. See also A. Scialoja, *Le società commerciali, Relazione generale*, in *Progetto preliminare per il nuovo Codice di Commercio*, Milano, 1922, p. 249. For an overview, F. Amatori, in *La grande impresa, L'industria*, in F. Amatori, D. Bigazzi, R. Giannetti, L. Segreto (cur.), *Storia d'Italia, Annali*, 15, Torino, 1999, pp. 691ff., as well as F. Amatori, A. Colli, *Impresa e industria in Italia. Dall'Unità a oggi*, Venezia, 1999, pp. 43 ff. Moreover, see V. Castronovo, *Storia economica d'Italia. Dall'Ottocento ai giorni nostri*, nuova ed., Torino, 2006, pp. 5 ff.

<sup>7</sup> F. Amatori, *Italy: The tormented rise of organizational capabilities between government and families*, in *Big business and the wealth of nations*, in A.D. Chandler Jr., F. Amatori, T. Hikino (ed.), Cambridge, 1997, pp. 246-276. See also F. Amatori, A. Colli, *Models of Entrepreneurship in a Latercomer Country: Italy*, in *Country Studies in Entrepreneurship. A Historical Perspective*, Y. Cassis, I. Pevelasis Minoglou (ed.), Palgrave Macmillan, 2006, pp. 129-148.

<sup>8</sup> F. Amatori, A. Colli, *European Corporations: Ownership, Governance, Strategies and Structures. A Review of Five Countries: United Kingdom, Germany, France, Italy and Spain*, in *The European Enterprise. Historical Investigation into Future Species*, H.G. Schröter (ed.), Berlin – Heidelberg, 2008, pp. 23-36. For legal profiles please refer to F. Galgano, *La globalizzazione nello specchio del diritto*, Bologna, 2005, pp. 213 ff.

<sup>9</sup> See J. Hilaire, *Le comparatisme en matière commerciale au XIXème siècle*, «Revue

## 2. *Company law and economic reality.*

At the turn of the 19<sup>th</sup> Century, the economic development of different European countries, albeit of different content and progress, demanded undated and competitive discipline for commercial companies. Limited companies in particular needed suitable regulations to face changed conditions, determined by the establishment of the capitalistic structures and by the competition at an international level.

Ideas and principles for an effective company organisation crossed over State confines, as Feller illustrated well in his critical notes: concerning the discipline of limited companies there would not be obstacles to a continuous, inevitable comparison and exchange, so much so that institutional and linguistic barriers were overcome, as well as diversity of juridical methods and legal forms. Facing a «globalisation» of company models, there would be dilution of the same classic contrast between Civil Law and Common Law<sup>10</sup>, which also manifested in the diverse terminology and classifications employed<sup>11</sup>.

In continental Europe, the first steps towards an efficient legislation were marked, as it is known, by the 1867 French law on corporations, which was, in turn, in the wake of the recent British company reforms. The transalpine discipline was the fruit of decades of jurisprudence by the Conseil d'Etat and it arrived at the fulfilment of a complex journey which

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d'histoire des Facultés de droit et de la science juridique» (1991), pp. 127-142. For Italy, the reference is to Authors from the 'vivantina' school: A. Rocco, *La scienza del diritto privato in Italia negli ultimi cinquant'anni*, RDC (1911), I, in part. pp. 300-302; G.P. Chironi, *Il Diritto Commerciale e gli studi del Prof. Cesare Vivante*, now Id., *Studi e questioni di diritto civile*, vol. I, Torino, 1914, pp. 90-95; T. Ascarelli, *La dottrina commercialistica italiana e Francesco Carnelutti*, «Rivista delle Società» (1960), in part. pp. 2-7. See also P. Grossi, *Scienza giuridica italiana. Un profilo storico*, Milano 2002, pp. 65 ff. and R. Teti, *Codice civile e regime fascista: sull'unificazione del diritto privato*, Milano, 1990, pp. 44 ff.

<sup>10</sup> Feller, *The movement for corporate reform* (nt. 1), p. 347. Cf. however, for a 'business history' perspective, complementary and necessary to understanding the different legal aspects of the organization's corporate business, F. Amatori, *Imprenditorialità*, in Id., *La storia d'impresa come professione*, Venezia, 2008, pp. 505-543.

<sup>11</sup> R.B. Schlesinger, H.W. Baade, P.E. Herzog, E.M. Wise, *Comparative Law*, VI ed., New York, 1998, pp. 887-889. See also U. Santarelli, *Mercanti e società tra mercanti*, Torino, 1998, *passim*.

led to the abolition of governmental authorisation for the constitution of limited companies, already imposed by the *Code de Commerce*<sup>12</sup>.

From that moment began a new era for limited companies in France, already initiated amid hesitation and doubts, to be conceived as artificial persons, i.e. institutions, collective organisms, and no longer as 'contracts' between members<sup>13</sup>. Nevertheless, still in the middle of the 20<sup>th</sup> century, Georges Ripert, retracing the 'legal' steps of the French capitalistic development in connection with the economic facts and dwelling on corporations, reflected on the aporias of that system, which would require a new legal category, firstly a renewed definition of property, suitable to the execution of the business activity<sup>14</sup>.

With regards to Italy, the social, economic and political climate of the country in the aftermath of the Unification is without doubt oriented towards an agricultural and proprietary perspective and corporations are constituted only upon governmental authorisation<sup>15</sup>. The change arrived in 1882: the choice for substantial liberty in the constitution of limited companies was prepared and mediated well over the thirteen years necessary for the compilation of the new *Codice di Commercio* (Commercial Code)<sup>16</sup>.

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<sup>12</sup> A. Lefebvre-Teillard, *La société anonyme au 19ème siècle: du Code de Commerce à la loi de 1867. Histoire d'un instrument juridique du développement capitaliste*, Paris, 1985; J. Hilaire, *Introduction historique au droit commercial*, Paris, 1986, pp. 208 ff. See also E. Richard (dir.), *Droits des affaires. Questions actuelles et perspectives historiques*, Rennes, 2005, pp. 354 ss, *passim*; J.-P. Alline, *Le développement du droit commercial en dehors du Code et l'influence des droits étrangers 1807-1925*, in C. Saint-Alary-Houin (dir.), *Qu'en est-il du Code de Commerce 200 ans après? État des lieux et projections*, Toulouse, 2009, pp. 84 ff., and the papers joined in *Negozianti e imprenditori. 200 anni dal Code de commerce*, Pref. di A. Lefebvre-Teillard, Milano, 2008. Recently, J.W. Flume, *Law and Commerce. The Evolution of Codified Business Law in Europe*, «Comparative Legal History», 2014, 2 (1), pp. 45-83.

<sup>13</sup> Hilaire, *Introduction historique* (nt. 12), pp. 239-242.

<sup>14</sup> G. Ripert, *Aspects juridiques du capitalisme moderne*, Paris, 1946, pp. 274 ff. On the German situation, F.A. Mann, *The new German company law and its background*, «Journal of Comparative Legislation and International Law» 19 (1937), 4, pp. 220-238.

<sup>15</sup> A. Padoa Schioppa, *La legislazione commercialistica nell'Italia preunitaria*, now Id., *Saggi di storia del diritto commerciale*, Milano, 1992, pp. 149 ff.; F. Ranieri, *Gesellschaftsrecht*, in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, hrg. von H. Coing, III, 3, München, 1986, pp. 3261-3276.

<sup>16</sup> A. Padoa Schioppa, *La genesi del codice di commercio del 1882*, now Id., *Saggi* (nt. 15),

The *Mancini* Code, inspired by the most recent foreign legislations (from the English of 1864, from the French of 1867, from the Belgian of 1873), proposed original choices was greeted with enthusiasm: very positive opinions, as that of Tullio Ascarelli<sup>17</sup>, will be confirmed in the following decade. However, all too soon the code itself showed some limits exactly when Italy was hit by the industrial revolution, in those same Eighties<sup>18</sup>. Thus, starting from 1894-95, reform commissions were put in place, above all engaging company matters and bankruptcy.

In-depth research illustrated the routes of the various work that followed, pausing in a specific way on the commercial code projects of 1922 and 1925, clearly highlighting the prevalent attitude of the 19th and 20<sup>th</sup> century Italian legal doctrine, prone to valorising the role of the assembly, rather than the board of directors, in a defensive design of a typical conception of shareholder democracy or «dominance of the assembly»<sup>19</sup>.

This inevitably led to a clash with the entrepreneurial class: the jurists, above all the academics, requested strict protection measures for shareholders and creditors; businessmen and businesses, instead, fought for discipline that consented greater liberty of management of the company by the directors<sup>20</sup>.

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pp. 157-203.

<sup>17</sup> Ascarelli, *La dottrina commercialistica* (nt. 9), p. 2: the 1882 code would have proven to be an «efficace strumento di progresso economico fino alla crisi che seguì la prima guerra europea».

<sup>18</sup> Padoa Schioppa, *La genesi* (nt. 16), pp. 201-202.

<sup>19</sup> P. Ungari, *Profilo storico del diritto delle anonime in Italia*, Roma, 1974, pp. 61 ff.; F. Galgano, *Lex mercatoria. Storia del diritto commerciale*, Bologna 1976, ed. 1993, pp. 149 ff., as well as A. Padoa Schioppa, *Disciplina legislativa e progetti di riforma delle società per azioni in Italia (1862-1942)*, now *Id.*, *Saggi* (nt. 15), pp. 205-259, especially pp. 213 ff.; *Id.*, *La normativa sulle società per azioni: proposte e riforme, un concerto a più voci (1882-1942)*, in *Tra imprese e istituzioni. 100 anni di Assonime*, Roma – Bari, 2010, vol. 4, *La società per azioni*, pp. 7 ff. See also G. Ferri, *La disciplina delle società nel codice di commercio del 1882* and G. Cottino, G. Minervini, *Le società per azioni a cento anni dal codice di commercio, in 1882-1892. Cento anni dal codice di commercio*, Milano, 1984, pp. 91 ff.

<sup>20</sup> On the continuing search for a balance between liberalism and corporate control, Padoa

The reform efforts were not crowned with success in the short term and, therefore, the company legislation sanctioned in the code in 1882 remained in force until 1942, representing the legal situation of Italian commercial and industrial development in the period called 'Giolittian'<sup>21</sup>. Some special laws promulgated under Fascism, in the Twenties and Thirties, are exceptions. They were solicited by the need to face the outcome of the 1929 Wall Street Crash, as well as responding to the will of the regime to control investments and, more generally, economic activity<sup>22</sup>.

That which above all else here seems relevant is the intense doctrinal debate that was produced: «[...] ognuno sa che la società per azione è la forma che ormai s'impone per esercitare le più grandi imprese commerciali e industriali» – i.e. 'everyone knows that the limited company is the form which now imposes itself to exercise the biggest commercial and industrial businesses' –, wrote one of the most important protagonists of that scientific ferment, the Tuscan jurist Angelo Sraffa, at the beginning of the 1890s, very aware of the complexity of the context into which the discussion was inserted, of the 'imbalances' generated by a free market without regulations and of the necessary 'precautions' to take before the rise of big business<sup>23</sup>.

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Schioppa, *La normativa sulle società per azioni* (nt. 19), *passim*. See also R. Teti, *Imprese, imprenditori e diritto*, in *L'industria* (nt. 6), in particular pp. 1250 ff.

<sup>21</sup> Ascarelli, *La dottrina commercialistica* (nt. 9), p. 2, wrote about the 1882 Italian commercial code as the «inquadratura giuridica del nostro sviluppo industriale e commerciale nel periodo che potremmo chiamare 'giolittiano' della nostra storia».

<sup>22</sup> G. Toniolo, F. Salsano, *Da Quota 90 allo Sme*, in *Tra imprese e istituzioni. 100 anni di Assonime* (nt. 19), vol. 1, in particular pp. 23-73, as well as, for legal and corporate law profiles, Ungari, *Profilo storico* (nt. 19), pp. 100 ff.; Teti, *Imprese, imprenditori e diritto* (nt. 20), pp. 1257 ff.; widely, Padoa Schioppa, *La normativa sulle società per azioni* (nt. 19), pp. 52 ff.

<sup>23</sup> A. Sraffa, *Il congresso internazionale delle società per azioni tenuto a Parigi nel 1889*, included in «Archivio giuridico», 1890. Please refer to A. Monti, *Angelo Sraffa. Un 'antiteorico' del diritto*, Milano, 2011. See also C. Ciancio, *Les congrès internationaux de droit commercial: un réseau de commercialistes européens à la recherche d'un droit uniforme*, in T. Le Yoncourt, A. Mergey et S. Soleil (dir.), *L'idée de fonds juridique commun dans l'Europe du XIXe siècle. Les modèles, les réformateurs, les réseaux*, Rennes, 2014, pp. 253 ff.



Other actors, too, played an important role in the elaboration of the proposals for company law reform<sup>24</sup>. Next to the Chambers of Commerce, a non-negligible influence, if nothing else for the considerable economic interests for which they are the stakeholders (and that support them), came to two new associations, both founded in 1910, *Assonime*, the association of limited companies, and *Confindustria*, the industrial association<sup>25</sup>.

The matters under discussion echo those being examined elsewhere<sup>26</sup>, in Europe and in America<sup>27</sup>: they are company discipline and its management; the power of the assembly; the different types of shares and the rights to vote; issuing bonds; roles and responsibilities of directors; the rules to following the drafting of the balance sheets; the consequences of bankruptcy the companies and not least, tax burdens, which was the fulcrum of *Assonime's* first 'campaign'<sup>28</sup>.

An ambient non rarefied, but dynamic, became the privileged base of the debate, in continuous tension between the laws in force, widespread practices and rapid changes in economic life. As the point of view chosen, i.e. the perspective of juridical doctrine, Italian jurists undoubtedly had a strong propensity to widen their view to foreign experiences, in search of the best solutions tested abroad to resolve national problems<sup>29</sup>.

<sup>24</sup> See the *Atti del I Congresso Nazionale delle Società economiche*, Seconda Sessione, ottobre 1893, Torino, 1894.

<sup>25</sup> Padoa Schioppa, *La normativa sulle società per azioni* (nt. 19), *passim*. On the History of *Assonime*, besides *Cinquant'anni di vita della Associazione fra le Società italiane per Azioni*, Roma, 1961, refer to *Tra imprese e istituzioni 100 anni di Assonime* (nt. 19), 6 voll.

<sup>26</sup> See for example the report *Congresso internazionale delle società per azioni tenuto a Bruxelles (settembre 1910)*, RDC (1910), I, pp. 831-832. At a national level, amongst other things, see the *Atti del primo congresso nazionale delle società anonime. Torino, 11,12,13 giugno 1911*, Torino, 1912. In addition C. Vivante, *Ragioni della riforma*, in *Progetto preliminare* (nt. 6), pp. 198-199.

<sup>27</sup> Not only in The United States: *inter alia*, Ph.J. Eder, *Company Law in Latin America*, «Notre Dame Lawyer», 27 (1951-52), pp. 5-42.

<sup>28</sup> A. Pedone, *Il contributo di Assonime alla formulazione della politica tributaria*, in *Tra imprese e istituzioni 100 anni di Assonime* (nt. 19), vol. 3, *Imposte e sviluppo economico*, pp. 5 ff.

<sup>29</sup> On the role of the legal doctrine from the early twentieth century, A. Padoa Schioppa,

This tendency, on the other hand, had already been consolidated in the decade preceding the end of the 19<sup>th</sup> century and it was accentuated for the devotees of commercial law for the growing transnational dimensions of economic relations, for the expansion of commercial exchanges and for the increase in the circulation of capital during the *Belle Époque*.

The phenomenon, at an economic level, is certainly stronger outside Italy, and yet it is also sensitive here<sup>30</sup>: in general, the ‘cosmopolitan’ character of that season seemed to reflect on company law, too, which accentuated its already international propensity. The jurists, from their side, persevered in the attitude of openness to different juridical experiences, especially those of continental Europe.

It was on the other hand highlighted as, not by chance, the same *Belle Époque* was the cradle of new doctrine on juridical comparison: the first congress on comparative law was, indeed, held in Paris, in 1900, on occasion of the *Exposition Universelle*<sup>31</sup>.

### 3. *The Italian legal doctrine approach.*

To quote Feller’s essay again, it seems that in the first decade of the 20<sup>th</sup> century commercial law became the new common law of the civilised world. Company law, in particular, followed this evolutionary line because the various economic systems and the world of business required ‘standard’ rules, to be more dynamic and efficient. Therefore, also ‘Comparative’ studies were preferred<sup>32</sup>.

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*Sulle fonti del diritto dell’economia in prospettiva storica*, in L.A. Bianchi, F. Ghezzi, M. Notari (ed.), *Diritto, mercato ed etica. Dopo la crisi, Omaggio a Piergaetano Marchetti*, Milano, 2010, pp. 796-797.

<sup>30</sup> Castronovo, *Storia economica d’Italia* (nt. 6), pp. 107 ff.; G. Toniolo, *Storia economica dell’Italia liberale*, Bologna, 1988, pp. 159 ff.

<sup>31</sup> C. Petit, *Lambert en la Tour Eiffel, o el derecho comparado de la Belle Epoque*, in *La comparazione giuridica tra Otto e Novecento*, Milano, 2001, pp. 53 ff. For further reference see M. Sabbioneti, *Democrazia sociale e diritto privato. La Terza Repubblica di Raymond Saleilles (1855-1912)*, Milano, 2010, in particular pp. 246-247. See also K. Zweigert, H. Kötz, *Introduzione al diritto comparato*, I, *Principi fondamentali*, Milano, 1992, pp. 68-70.

<sup>32</sup> *Inter alia*, W. Hallstein, *Die Aktienrechte der Gegenwart. Gesetze und Entwürfe in rechtsvergleichender Darstellung*, Berlin, 1931.

The rules, however, are not necessarily of legislative provenance, in fact, the development of the discipline of commercial companies is above all linked to the practices, to the commercial uses and to the courts' case law.

In the international framework, which goes from the Anglo Saxon incorporated companies to the French *anonymes* to the German *Aktiengesellschaften*, Italian corporations live a slightly different reality, determined by the delay and the peculiarity of the industrial development in the country. As mentioned, in the first coming of businesses and of a system of mixed banking thanks to the provision of foreign capital, Italian company law was far from being able to satisfy industrial and investor needs in an economy that tended towards the concentration of capital itself<sup>33</sup>.

From numerous points of view, the question appears complicated, due to the interweaving of different interests:

L'Istituto delle Società anonime è fra i più tormentati del codice; appena l'opera legislativa è promulgata, comincia l'opera corrosiva degli uomini d'affari, degli avvocati che con proteiforme finezza raggirano il precetto legislativo (i.e. The Institute of Limited Companies was amongst the most tormented of the code; no sooner was the legislative work promulgated than began the corrosive activities of businessmen, of lawyers who with Protean finesse circumvented the legislative precept')<sup>34</sup>.

Amongst the authors who dedicated themselves to the study of these arguments is a name that has already appeared, Angelo Sraffa, author of two volumes on company matters at the end of the 19<sup>th</sup> century, *La liquidazione delle società commerciali*, edited in Florence in 1891 and *Il fallimento delle società commerciali*, which appeared at the Florentine editors Cammelli in 1897, as well as a considerable number of essays on the matter throughout the first four decades of the 20<sup>th</sup> century<sup>35</sup>.

It is interesting, in regard to this, that Raymond Saleilles<sup>36</sup>, appreciated in Italy above all for his essays on German doctrine and legislation, and

<sup>33</sup> C. Vivante, *Per la riforma delle società anonime*, RDC (1913), I, p. 149.

<sup>34</sup> C. Vivante, *Un progetto di legge sulle società anonime*, RDC (1905), I, p. 212.

<sup>35</sup> Monti, *Angelo Sraffa* (nt. 23), in particular pp. 85 ff. e 160 ff.

<sup>36</sup> P. Grossi, *Assolutismo giuridico e diritto privato. Lungo l'itinerario scientifico di Raymond Saleilles*, now Id., *Assolutismo giuridico e diritto privato*, Milano, 1998, pp. 193-261 and Id.,

remembered in 1912 in the pages of the *Commerciale* as the founder of the modern French school of comparative law<sup>37</sup>, commended, in 1891, Sraffa's studies<sup>38</sup>. At a prestigious publishing base, the *Annales de droit commercial* edited by Thaller<sup>39</sup>, Saleilles praised his twenty-six year old colleague who was already recognised for his excellent contributions to commercial law.

Angelo, in the opinion of the Burgundian jurist, seemed to have understood the practical importance of what Saleilles called «les données générales» of comparative law, to which he currently turned in order to face the interpretation of a special legislation, that of the Italian commercial law, managing to draw practical consequences from the study of laws and foreign juridical science, to enlarge the scope of the national laws<sup>40</sup>.

The authoritative transalpine professor, in 1891, appreciated the amplitude of breath of Sraffa's work, which did not spare the study of

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*Nobiltà del diritto. Profili di giuristi*, Milano, 2008, pp. 269-337; Sabbioneti, *Democrazia sociale e diritto privato* (nt. 31), spec. pp. 227 ff. See also A. Aragonese, *Recht im Fin de siècle. Briefe von Raymond Saleilles an Eugen Huber (1895-1911)*, Frankfurt am Main, 2007, as well as F. Audren, C. Chêne, N. Mathey et A. Vergne (dir.), *Raymond Saleilles et au-delà*, Paris, 2013.

<sup>37</sup> Raymond Saleilles, RDC (1912), I, p. 316.

<sup>38</sup> On the review of Saleilles on Sraffa, which actually immediately takes the form of a paper on the methodology of comparative law, A. Somma, *Giochi senza frontiere. Diritto comparato e tradizione giuridica*, «Boletín Mexicano de Derecho Comparado» (2004), pp. 169-205; A. Aragonese, «Au-delà du Code civil mais par le Code civil». *Raymond Saleilles (1855-1912) y la lucha por el derecho comparado*, Girona, 2006, as well as Sabbioneti, *Democrazia sociale e diritto privato* (nt. 31), pp. 227 ff.; Monti, *Angelo Sraffa* (nt. 23), pp. 89-90.

<sup>39</sup> J.-L. Halpérin, *Thaller Edmond-Eugène*, in P. Arabeyre, J.-L. Halpérin, J. Krynen (dir.), *Dictionnaire historique des juristes français: (XIIe-XXe siècle)*, Paris, 2008, p. 735; Ph. Nelidoff, *La naissance de la doctrine commercialiste au XIXe siècle*, in *Qu'en est-il du Code de Commerce 200 ans après?* (nt. 12), p. 51 e pp. 55-56; F. Garnier, *Edmond-Eugène Thaller (1851-1918) et les annales de droit commercial*, in N. Hakim, F. Melleray (dir.), *Le renouveau de la doctrine française. Les grands auteurs de la pensée juridique au tournant du XXe siècle*, Paris, 2009, pp. 159 ff.; F. Garnier, *De la coutume et des usages dans la doctrine commerciale française à la fin XIXe siècle et au début XXe siècle*, «Quaderni fiorentini» 41 (2012), spec. pp. 313 ff.

<sup>40</sup> R. Saleilles, *Contribution à l'étude des méthodes juridiques. A propos d'un Livre de M. A. Sraffa. (La Liquidazione delle società commerciali)*, «Annales de droit commercial français, étranger et international» (1891), pp. 217 ff.

doctrine nor of case law, national and foreign, not limiting itself to a simple juxtaposition of different themes, but always trying to grasp the meaning of their choices, to draw conclusions useful in the resolution of concrete problems of Italian law<sup>41</sup>.

Sraffa, himself, over the following years, continued to be interested in legislations, in case law, and in foreign commercial customs and uses, but – it is important to state this – despite the praise received from Saleilles, not in developing a method of study strictly ‘comparative’, but rather as an almost indispensable aid to identify the most suitable reforms for Italian national legislation.

Comparative law was not among his interests, indeed, decades later, at the head of the section of Private Law of the Treccani Encyclopaedia, he was to be able to explain how comparative legislation had always been far from his thoughts<sup>42</sup>, clearly distinguishing the widespread use amongst jurists of using foreign law to illustrate and interpret the Italian law, from the elaboration and employment of a comparative methodology, which implies, among other things, thorough investigative work and a not so common knowledge of the content of foreign laws<sup>43</sup>.

Above and beyond Sraffa’s fundamental contributions, in Italy the recognised and undisputed maestro of company law was, at the time, Cesare Vivante<sup>44</sup> and it is well known that in those times the *Commerciale*,

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<sup>41</sup> *Ibidem*, p. 218.

<sup>42</sup> So he wrote to Ugo Spirito, on May 30, 1930: «Caro Spirito, la legislazione comparata ... mi fu sempre nemica per una intuizione quasi geniale. [...]», in Istituto della Enciclopedia italiana, Archivio Storico, Fondo Enciclopedia Italiana di scienze, lettere ed arti, 1925-1939, serie III, Materiali redazionali, sottoserie 1, Corrispondenza 1925/01/29 – 1939/11/25, fasc. «Angelo Sraffa».

<sup>43</sup> Angelo Sraffa to Giovanni Gentile, 22nd June 1927, *ibidem*. See Monti, *Angelo Sraffa* (nt. 23), pp. 238-239. Sraffa had sustained the same position a few years earlier, when the Board of Law Faculty of Turin had discussed the approval of a course of comparative law: see Archivio storico dell’Università di Torino, *Registro dei verbali delle sedute del consiglio di facoltà dal 24 gennaio 1917 al 23 dicembre 1927*, Adunanza 3 maggio 1920, pp. 98-99.

<sup>44</sup> See above nt. 9 and refer to the introduction of A. Rocco to *Studi di diritto commerciale in onore di Cesare Vivante*, Roma 1931, I, pp. XIII-XIX. Recently, A. Sciumè, *Cesare Vivante*, in *Il contributo italiano alla storia del pensiero, Diritto*, Enciclopedia italiana, Ottava appendice, Roma, 2012, pp. 446 ff.

directed by Sraffa and Vivante from 1903 to 1937, gathered authors around a common project regarding the 'organisation and modernisation' of commercial law<sup>45</sup>. Moreover, it was one of the periodic papers with a distinctly 'international', indeed cosmopolitan, even though it was not a periodic on comparative law<sup>46</sup>.

Nevertheless, amongst the youngest collaborators were jurists (of different calibre) who nurtured a sincere interest for comparative law. Since the first published volumes, distinguished contributions had been provided by Mario Sarfatti, who specialised in English law and was highly regarded, among others, by Edouard Lambert<sup>47</sup>; from the second half of the twenties, those of Mario Rotondi, a member of the editorial board<sup>48</sup>. Both were educated in the environment of the magazine, which had become a sort of *pépinière* of jurists of worth and lovers of new branches of law<sup>49</sup>.

Returning to the more general issue of the approach of the doctrine to company law, if you run your finger down along the indexes of the first years of the same *Commerciale*, the law journal chosen in these pages as a

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<sup>45</sup> C. Vivante, A. Sraffa, *Il nostro programma*, RDC (1903), I, pp. I-II. See G. Castellano, *Le riviste giuridiche italiane fra le due guerre: I. La «Rivista del diritto commerciale», «Politica del diritto»* (1972), pp. 873-917; B. Libonati, *Premessa*, in B. Libonati, L. Farenga, U. Morera, G.L. Brancadoro, *La Rivista di diritto commerciale (1903-1922)*, «Quaderni Fiorentini» 16 (1987), pp. 343-348; P. Marchetti, *L'eredità di Angelo Sraffa*, in P. Marchetti, M.A. Romani (dir.), *Angelo Sraffa*, Milano, 2009, pp. 125 ff., 131 ff., as well as Monti, *Angelo Sraffa* (nt. 23), pp. 220 ff., also for further bibliographical reference.

<sup>46</sup> A. Gambaro, *I primi anni della Rivista di diritto commerciale: comparazione e cosmopolitismo giuridico*, in *La comparazione giuridica* (nt. 31), pp. 39-52.

<sup>47</sup> For example, in corporate matters, M. Sarfatti, *Sulla validità o invalidità della cessione del diritto di voto nelle assemblee di società anonime nell'America del Nord*, RDC (1911), I, pp. 71-75. On this jurist better known abroad than at home, A. Monti, *Alla scoperta del diritto anglo sassone: il contributo di Mario Sarfatti (1876 – 1962) alla comparazione giuridica*, in M.G. di Renzo Villata (cur.), *Lavorando al cantiere del "Dizionario biografico dei giuristi italiani (XII-XX sec.)"*, Milano, 2013, pp. 589-623.

<sup>48</sup> U. Santarelli, «Un illustre (e appartato) foglio giuridico» la *Rivista di diritto privato (1931-1944)*, «Quaderni Fiorentini» 16 (1987), pp. 665-715; A. Padoa Schioppa, *Ricordo di Mario Rotondi*, in *La comparazione giuridica* (nt. 31), pp. 5-8; Marchetti, *L'eredità di Angelo Sraffa* (nt. 45), *passim*.

<sup>49</sup> Gambaro, *I primi anni della Rivista di diritto commerciale* (nt. 46), pp. 45-47.

reference for its 'driving' role in the debates of a legal science attentive to the problems of actuality, you can understand how the complexity of the Italian economic and social reality reverberates within the same choice of content.

The first issue, in particular, as we have already noted, opens with a rich contribution from Vivante, attentive to foreign experience and history, on the thorny but crucial topic of the legal personality of commercial companies<sup>50</sup>, which was to return to the pages of the magazine, on several occasions, with contributions of different tones and often in disagreement with each other<sup>51</sup>, precisely because this was one of the fundamental hubs around which the operation not only of the companies themselves, but of the credit system and industrial as a whole was disputed<sup>52</sup>.

To give you an example, in 1910, two contributions were published in this same issue: a paper on German doctrine relating to legal personality and the patrimonial autonomy of limited companies appeared, edited by Francesco Ferrara<sup>53</sup>, and a review by Chironi on Saleilles's lessons on juridical persons<sup>54</sup>. In both cases, the attention to the juridical nature of commercial companies was combined with, once again, the interest in foreign teachings.

In short, what seems to emerge from many of the writings from the period, other than an effort of dogmatic framework, was the willingness to

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<sup>50</sup> C. Vivante, *La personalità giuridica delle Società commerciali*, RDC (1903), I, pp. 1-22.

<sup>51</sup> For the contributions of Ferrara, Carnelutti, Bonelli and Manara, see L. Farenga, *Società*, in Libonati, Farenga, Morera, Brancadoro, *La Rivista* (nt. 45), pp. 349-354.

<sup>52</sup> T. Ascarelli, *Principi e problemi delle società anonime*, now *Id.*, *Saggi giuridici*, Milano, 1949, pp. 354 ff.; G. Scafì, *L'idea di persona giuridica e le formazioni sociali titolari di rapporti nel diritto privato*, Milano, 1968, pp. 74 ff. See also F. Galgano, *Persona giuridica*, in *Digesto delle Discipline Privatistiche, Sezione Civile*, XIII, Torino, 1995, pp. 392-407; I. Bircocchi, *Persona giuridica nel diritto medioevale e moderno*, in *Digesto delle Discipline Privatistiche, Sezione Civile*, XIII, Torino, 1995, pp. 407-420; G. di Renzo Villata, *Persone e famiglia nel diritto medioevale e moderno*, *ibidem*, pp. 484-492.

<sup>53</sup> F. Ferrara, *La personalità giuridica delle società di commercio*, RDC (1910), I, pp. 13-39, 94-121.

<sup>54</sup> G.P. Chironi, *Personalità e persona giuridica. (A proposito di un lavoro recente: Saleilles, De la personnalité juridique, Paris, Rousseau, 1910)*, RDC (1910), I, pp. 908-916. On the debate during the Third Republic in France and for the contribution of Saleilles refer to Sabbioneti, *Democrazia sociale e diritto privato* (nt. 31), pp. 418 ff.

promote a reform of limited companies in which severe regulations protected partners and minorities, for example in the preparation of the balance sheet, and combined with rules apt for the flow of capital to the companies themselves, given the financial intertwining between banks and companies typical of the Italian industrial development<sup>55</sup>.

In this scenario, a paper by Vivante on the legal regime of foreign companies operating in Italy seems worthy of attention, as it dealt with a problem which was considered of great importance for the defence of 'moral and economic interests of the country' in an open economy.

In this paper Vivante defined the corporation as a 'two-faced' institute, which had an internal juridical activity with the shareholders, and an external one for the activities of the business. Consequently, in order to determine if the company had to be disciplined according to Italian legislation, relationships emerging from the practice of its business had to be distinguished and, following Mancini's code to the letter, taken into consideration<sup>56</sup>.

The effort is clear – in many ways new and foreboding of further developments – to take into account the functions performed by limited companies in the economic reality, without losing sight of the partners' rights. Equally clear is a 'nationalistic' spirit, of defence, which seems to be in contrast to the cosmopolitan tendencies to which we have referred, and yet equally typical of the years that preceded the First World War.

In the period of time under examination, the *Commerciale* welcomed a plurality of different entries: in 1915 an unsigned, yet particularly significant editorial about Antonio Scialoja's report to the Chamber of Deputies on ministerial project of reform of the majorities necessary for the emission of bonds and the right of withdrawal of shareholders in the event of a capital increase or merger of corporations (seen as an episode of the 'struggle' of commercial enterprises for their development<sup>57</sup>), points out, on the one hand, the call for the continued progress of foreign reforms

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<sup>55</sup> In this sense the observations of Teti, *Imprese, imprenditori e diritto* (nt. 20), pp. 1250-1254 (with specific reference to the heated debate on the abolition of bearer shares) and pp. 1257 ff. See however Vivante, *Per la riforma delle società anonime* (nt. 33), pp. 152 ff.

<sup>56</sup> C. Vivante, *Le società estere*, RDC (1910), I, pp. 1-12.

<sup>57</sup> *Modificazioni agli art. 158 e 172 del cod. di comm.*, RDC (1915), I, pp. 173-176.



in corporate affairs, to which Italy should adapt itself; on the other, a 'certain national character' in the Companies Act<sup>58</sup>.

#### 4. *Conclusions.*

The studies of the *Belle Époque* on matters of company law reached, in Italy, a very high technical and cultural level, despite the tardiness in the capitalistic and industrial development and undoubtedly deserve further in-depth investigation<sup>59</sup>. In fact, they benefitted from a time, so to speak, both from the general climate of renewal of legal studies in a liberal State grappling with the many social and financial problems of economic development, and from the special circumstances of those years, marked by the widest circulation of people, ideas and capital beyond the national state borders.

In such context, the prominent role of the *Commerciale* was confirmed: the jurists involved in this ambitious publishing project entered the circle of Sraffa and Vivante where a working method open to foreign influences was experienced. One was confronted with colleagues from other countries, theories and proposals were read and discussed: the knowledge of what was practiced and taught outside the national borders was considered essential to keeping the debate up to the standards of the country's requirements.

In reference to company law, the intent of ensuring the protection of the 'weak' parties is clear, without however, showing insensitivity to the financial and management needs of limited companies or ignorance of the real situation of Italian capitalism. If, then, legal comparison is not - consciously - on the horizon of the Review, the analysis of corporate law matters does not ignore a broad critical perspective, 'comparative' perhaps, but in an a-technical sense, still capable of holding together practices, lessons from other countries (especially in continental Europe),

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<sup>58</sup> *Ancora le modificazioni al regime delle società per azioni*, RDC (1915), I, pp. 257-259.

<sup>59</sup> On the 'horizons' of Italian corporate law after World War II, P. Marchetti, *Diritto societario e disciplina della concorrenza*, in F. Barca (cur.), *Storia del capitalismo italiano dal dopoguerra a oggi*, Roma, 1997, pp. 467-499; P. Marchetti (cur.), *La mancata riforma e le riforme delle società azionarie nel secondo dopoguerra*, in *Tra imprese e istituzioni. 100 anni di Assonime* (nt. 19), pp. 87 ff.

previous historical experiences, always favouring the problems of current events, with a touch of 'nationalism'<sup>60</sup>.

#### ABBREVIATIONS

RDC «Rivista di diritto commerciale, industriale e marittimo», from 1910,  
«Rivista del diritto commerciale e del diritto generale delle obbligazioni»

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<sup>60</sup> That same 'nationalist' attitude will go on to inspire the draft Commercial Code of 1922: on the refusal of an imitation «fedele di istituti vigenti in paesi di tradizioni e di costumi diversi» and on the necessary national autonomy of legislative thought on the subject of companies, A. Scialoja, *Le società commerciali* (nt. 6), pp. 224-226.