

Diritto romano I

Istituzioni di diritto romano- Di Maria

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3.10.22

Oggi vi è la suddivisione tra fonti di produzione (atti o fatti da cui promana la norma) e fonti di cognizione (atti o fatti attraverso i quali noi conosciamo la norma). Attraverso il Corpus Iuris Civilis noi conosciamo e studiamo il Digesto.

- Età arcaica → nascita di Roma (574) fino al IV secolo a.C. (367), corrisponde al periodo della monarchia
- Preclassica → dal III fino al 27 a.C., coincide con la repubblica
- Classica → dal 27 a.C. fino al III d.C., principato
- Post-classica → dal III d.C. fino al VI d.C. (morte di Giustiniano), all'interno dell'età post-classica troviamo il periodo dell'età giustiniana (527 d.C. al 565 d.C.), coincide con il dominato

Nell'età arcaica, le fonti di produzione erano i *mores* (costumi degli antichi romani), accanto ad essi vi erano le *leges* (statuizioni del popolo riunito nei comizi). All'interno delle *leges*, vi sono le **rogate** (prodotte dai comizi, ma convocati dal magistrato, il quale veniva considerato un funzionario del re) e le **date** (il magistrato pronunciava la legge, l'assemblea dava il nullaosta). Nel periodo arcaico i plebei poteva riunirsi in un'assemblea a parte (concilia plebis) e le statuizioni approvate dai soli plebei venivano chiamati *plebisciti*. Ben presto questa distinzione tra *leges* e *plebisciti* venne eliminata.

Leges più importante → **La legge delle 12 tavole** venne rogata da un gruppo costituito da 10 saggi dopo che la plebe si era lamentata per l'incertezza del diritto data dall'oralità. Tavole cerate in cui vennero impresse dei precetti, unica legge scritta.

A chi era affidata l'interpretazione delle *leges* e dei *mores*? Ai pontefici (ingegneri del diritto), figura sacra che interpreta le leggi. La giurisprudenza dell'epoca arcaica è pontificale, l'interpretazione delle *leges* è affidata ad una classe sociale ristretta dei pontefici (no giurisprudenza laica).

Nel 367 a.C. al termine del periodo arcaico, viene creata una specifica magistratura, con la figura del *praetor urbanus* (**pretore**), creato per amministrare la giustizia tra i cittadini romani. La creazione del diritto avviene mediante l'editto. Il pretore non è un giudice, egli amministra la giustizia tra i cittadini romani e la sua carica dura 1 anno. All'inizio della carica, il pretore emana un programma, l'editto (il quale fornisce le indicazioni per concedere l'azione, strumento giudiziario per agire in giudizio, a seguito di una determinata situazione). Il pretore indica il soggetto a cui spetta l'azione, proprio perché non essendoci un codice è necessario specificare il soggetto da tutelare. Inoltre, il programma deve individuare le situazioni specifiche, perché il diritto è casistico.

Nel 130 d.C. Giuliano, codifica l'editto (chiamato Perpetuo), perché con il tempo gli editti erano l'uno uguale all'altro.

Quindi nell'età preclassica insieme alle *leges* e *mores*, vi sono gli editti del pretore. Le *leges* e i *mores* vengono chiamati *ius civile*, mentre l'editto integra e corregge lo *ius civile*. Il diritto creato da pretore viene chiamato *ius honorarium* o *ius praetorium*, il quale si affianca allo *ius civile*.

Istituzioni Di Diritto Romano

Giovanni Finazzi



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