Introduction

From Roman legal experience to the present day, in commercial practice the parties have adopted autonomous regulation to create binding contractual terms, immediately enforced. How has this "regulatory autonomy" developed? This can be investigated in various possible ways.

We know of two types of agreement in Roman law for resolving future disputes between parties, outside of ordinary jurisdiction. On the one hand, there were the *pacta*: whoever claims a right renounces taking legal actions; on the other hand, there were the formularies of Cato[1] considered as a model for contractual regulation. As Prof. Bassanelli Sommariva notes, "they [formularies of Cato] include many, very detailed, clauses that demonstrate technical knowledge of the various operations needed to complete the requirements of the *dominus*. Very often these obligations are guaranteed by an oath and normally the consequences of any non-fulfilment by the *redemptor* are indicated in order to avoid possible disputes. These penalties precisely quantify deductions that the *dominus* can make on what is due, or specify a dispute based on facts, in which a technical assessment is decisive, thus paving the way for arbitration".[2]

In modern language, we could say that these formularies are 'contract law', exactly as it now exists for international contracts, where clauses can refer to and make binding for the parties rules of foreign laws or clauses of international agreements (for example, bank contracts). Another purpose of Cato's formularies was to reduce litigation to a minimum and, if it was necessary, to resort to arbitration rather than to ordinary jurisdiction, which should be involved only if the circumstances were imperative for the legal system.

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[1] Marcus Porcius Cato (234-149 BC), also known as Cato the Censor. In his work *De agri cultura*, a rambling work on agriculture, farming, rituals, and recipes, there are formularies of contracts of *locatio-conductio* (leasing and hiring) regarding the olive harvest, with very detailed clauses to prevent any future disputes.

[2] G. Bassanelli Sommariva, *Due parole di introduzione: i formulari Catoniani quali documenti della prassi e dell'attività cautelare dei veteres*, in *Ravenna Capitale. Localizzazioni e tracce di atti negoziali* (G. Bassanelli Sommariva a cura di), Santarcangelo di Romagna, 2020, 4: "comprendono numerose clausole, molto dettagliate, che dimostrano la conoscenza tecnica delle singole operazioni necessarie per portare a termine l'attività richiesta dal *dominus*; molto spesso gli obblighi fissati sono garantiti da giuramenti e normalmente sono indicate le conseguenze di eventuali inadempimenti da parte del *redemptor* in modo da evitare possibili contenziosi, quantificando in modo preciso le trattenute che il *dominus* potrà fare su quanto dovuto, o da ricondurli a contenziosi su fatti, in cui determinante è una valutazione tecnica, facilitando così il ricorso all'arbitrato" (translated by the editors).

In our research project, we have involved colleagues from different scientific legal areas, who kindly and enthusiastically answered our call. We met on 26 February 2021 and discussed how "contractual autonomy" developed over the centuries and across various nations. The results of the workshop are published here.

Our interdisciplinary dialogue allowed us to investigate the legal mechanisms typical of contract law: the concept of contractual obligation; keeping agreements; contract negotiation; responsibility of the parties; the connection between civil and international law, and their theoretical and practical links.

The broad timespan considered, from Roman law to the present day, and the diversity of topics addressed in this publication highlight the circulation, reception and adaptation of specific legal principles, and how these travelled through time and space. On the one hand, one might compare ancient contract clauses conserved in the Babatha archive concerning sales of palm groves in Nabatean kingdom (Simona Tarozzi) with modern contractual principles and clauses. The fifth-century Albertini Tablets show not only how agricultural resources were managed and regulated, but also the nature of landowner-tenant relations (Paola Biavaschi). The Roman cardinal contract law principle "pacta sunt servanda" is examined from legal-historical and contemporary perspectives, considering the decisions made in the private law sector at national level, as in the German civil code (BGB), and at European level (Christoph Schärtl). Particular attention is reserved for contractual obligations; and requirements of solidarity in Italy between the late 19th and first half of the 20th centuries are subject of a case study, analysing how jurisprudence, under certain circumstances, received, adapted and modelled the relative doctrinal theory to make renegotiating contracts possible, but without affecting their reciprocally binding nature (Alan Sandonà).

On the other hand, respect of contractual obligations becomes particularly important in stipulating international contracts, and specific clauses, introduced to ensure obligations, are carried out properly, as penal clauses, the "autonomous guarantee contract" (performance bond), and, in some instances, the so-called smart contracts (performance bond) (Laura Maria Franciosi). Here, too, in this combination of contract-international treaty, an invisible thread can be distinguished running from antiquity to modern times.

From Theodosius II to commercial relationships between Romans and Persians, Roman law received specific clauses deriving from international legal practice (Silvia Schiavo). The latter is examined with focus on capitulations, provisional treaties or preliminary articles, and on their role in the law of nations doctrine during the 18th century and in diplomatic relations. These legal instruments were often used to lead to stipulation of an international contract that in practice, however, never took place (Frederik Dhondt).

Two examples, taken from different contexts and disciplines, are of particular interest in understanding the functioning of contractual autonomy. The first concerns maritime law and, in particular, the Paramount Clause which, in a bill of lading or charter party, demonstrates the expansive force of autonomy of parties in identifying the law regulating the contracts (Anna Montesano). The second concerns German labour law, where specific clauses – for example, the post-contractual non-competition clause – can be included in employment contract relations to prevent the emergence of disputes (Julia Maria Gokel).

In once more thanking all contributors for their participation, we would like to point out that the study of contractual autonomy through an interdisciplinary perspective allows us to understand how this has been shaped, modelled, received and adapted over time and space, according to contexts and various needs, both private and public, with important repercussions up to the present day.

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