Istituzioni Di Diritto Privato

Unità 1 - Il diritto e i suoi formanti (Capitoli 1, 2, 3 e 4 - pagine 1-27, 32)

<u>Teoria dei formanti</u>, cioè le norme sono diritto in senso oggettivo ma non lo esauriscono, quindi è un concetto di diritto in cui il diritto non è solo formato dalle norme ma anche da altri formanti che lo esauriscono, quindi il diritto reale parte dalle norme ma non si esaurisce in esse infatti ha bisogno di essere interpretato e applicato perché le norme sono un testo scritto e non ci rivelano quindi un concetto unico (infatti per esempio ci sono delle norme che nel tempo non sono state più applicate seppur non sono state abrogate e quindi formalmente ancora in vigore); vediamo i formanti del diritto:

Formante legislativo: il diritto in senso oggettivo (quindi l'insieme delle norme e leggi) →
chiamato anche diritto positivo (perché posto e fatto da chi ha il compito di fare le leggi; quindi, si
tratta esattamente di tutte le norme); a questo formante si rifanno i concetti di:

ordinamento giuridico;

norma giuridica

- Formante giurisprudenziale: Diritto «vivente» → Quindi è l'interpretazione del diritto positivo a fini applicativi concreti (cioè l'insieme delle decisioni dei giudici, la giurisprudenza non è la singola sentenza del giudice), infatti nel tempo da origine a orientamenti, non per forza uno solo, della giurisprudenza nell'interpretazione delle norme; quindi, riguarda la giurisprudenza che ha il compito di fare giustizia (anche se il diritto non coincide con la giustizia ma deve tendere ad essa).

- Formante dottrinale: diritto oggetto di studio → quindi in questo caso è l'interpretazione del diritto positivo non a fini applicativi ma per lo studio delle soluzioni giurisprudenziali a fini scientifici → scienza giuridica. Distaccata dai fatti concreti della vita, concentrandosi nel diritto in quanto tale; però studiando insieme alle norme anche come la giurisprudenza le ha intese, instaurando quindi un dialogo costante tra dottrina e giurisprudenza.

Questi tre formanti formano il Diritto.

1)Formante legislativo → Diritto positivo

Ordinamento giuridico: è l'insieme sistematico delle norme che regolano una data realtà organizzata, con la pretesa di ricondurre a forma giuridica la "totalità" della realtà di riferimento. I vari tipi di ordinamento:

 Ordinamento statuale (l'ordinamento dello Stato): in cui la realtà di riferimento è data dalla società di un dato stato.

Però per il principio di pluralità degli ordinamenti giuridici ci sono varie realtà e quindi vari
ordinamenti giuridici che si affiancano a quello statuale → per esempio, l'ordinamento canonistico
(che si rifà al Concordato e sue modifiche), oppure l'ordinamento sportivo, ecc. che si affiancano a
quello statuale.

 Gli ordinamenti sovranazionali (norme che regolano rapporti tra Stati): gli ordinamenti internazionali (regolati dal nostro art. 10 Cost.); ordinamento dell'Unione Europea (art. 11 Cost.); la CEDU (Convenzione Europea per la salvaguardia dei diritti dell'uomo e delle libertà fondamentali, essa non c'entra con l'Unione Europea).

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David Kirk

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In some sort of inundated with screens and the cacophony of instantaneous connection, the profound power and mental resonance of verbal beauty usually fade into obscurity, eclipsed by the continuous onslaught of noise and distractions. However, situated within the lyrical pages of **Esame Di Istituzioni Di Diritto Privato Yahoo Answers**, a charming perform of literary splendor that impulses with fresh feelings, lies an wonderful journey waiting to be embarked upon. Published with a virtuoso wordsmith, this magical opus instructions visitors on an emotional odyssey, gently revealing the latent potential and profound influence stuck within the elaborate web of language. Within the heart-wrenching expanse with this evocative evaluation, we will embark upon an introspective exploration of the book is central subjects, dissect its fascinating writing type, and immerse ourselves in the indelible impression it leaves upon the depths of readers souls.

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