

LE FONTI E LE EPOCHE DEL DIRITTO ROMANO

La **fonte** è un atto un fatto che la vita è un'arma giuridica sanzionatorio vincolante, con una determinata procedura creato da determinati soggetti.

Epoca arcaica (dall'inizio di Roma fino all'istituzione del pretore): le fonti del diritto erano i mores (consuetudini interpretate dal pontifices strettamente legate alle tradizioni e alla magia) e le legis emanate all'inizio del re e poi dal assemblea popolare, il diritto inizia diventare scritto e laico la sua interpretazione dà vita all'ius civile vetus.

Epoca pre classica (dal 367 a.C. fino al 27 a.C. con l'istituzione del principato): le fonti del diritto erano la giurisprudenza laica insegnata nelle scuole, le lex pubbliche emanate dall'assemblea e dal magistrato e l'editto del pretore. Il pretore imposta il caso e applica la norma e se non trova la crea e la pubblica nell'editto esposto il foro. I tre ruoli del pretore sono rafforzare il diritto civile (adiuvare), ha una funzione di supplenza (supplire) è una funzione di correzione (corriggere), inoltre IL PRETORE NON ABROGA LE LEGGI MA LE DISAPPLICA. Il pretore dà vita al processo formulare formato da due fasi:

1 fase in iure

2 fase apud iudicem

L'insieme delle decisioni prese dai pretori (Diritto pretorio) e dai pretori Peregrini (Diritto onorario) danno vita al diritto civile. È con la Lex Cornelia che il pretore viene vincolato a ciò che scrive nel suo editto. Sempre in quest'epoca le fonti si basano anche sui valori cardine dell'equitas (soluzione più adatta al caso concreto) e la fides (rispetto della parola data).

Epoca classica (27 a.C. fino al 285 con l'avvento del cristianesimo): le leges e i mores sono comunque fonti del diritto ma vanno ad esaurirsi e gli editti cessano di prodursi con l'istituzione dell'editto perpetuo (con Adriano sistemazione di tutti gli editti e stop all'emanazione). La giurisprudenza si limita a commentare gli editti per creare del nuovo diritto e ai giuristi viene riconosciuto l'ius publici rispondendi (riconoscimento dato dall'imperatore ai giuristi migliori) ed entrano così a far parte del consiglio del principe. Una nuova fonte è il Senatus consultis, ovvero provvedimenti presi dei senatori e poi accettati dal principe, e anche le costituzioni imperiali ovvero provvedimenti presi direttamente dall'imperatore. Possono essere di vario tipo: epistole (dal principe funzionario), prescritti (dal principio del privato), editti (norme generali) e decreti (sentenze del principe).

Epoca post classica (dal 285 al 565 con la morte di Giustiniano): le fonti di diritto rimangono le costituzioni imperiali (legis) che verranno poi codificate e raccolte dall'imperatore Teodosio, la giurisprudenza decade ma la sua classicità viene usata nei tribunali e con l'imperatore Valentiniano nei tribunali vengono accettati solo cinque giuristi (Gaio, Paolo, Modestino, Ulpiano, Papiniano) per quanto riguarda i mores vengono utilizzati solamente per le lacune e sono sottoposti alla legge.

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