

Market (*forum*) and theft in the historical perspective: back to the concept of Paolo Prodi*

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The article concerns the concept of history of the market and the concept of theft (perceived in the broad sense), earlier presented and related to each other in the P. Prodi's book *Settimo non rubare. Furto e mercato nella storia dell'Occidente*. The article recalls the sources and main points of reference of Prodi's ideas: the concept of the specificity of Western civilization as defined by M. Weber, H. Berman's concept of the „papal revolution”, the notions *furtum* and *restitutio* in canon law. The perspectives for the continuation of Prodi's thoughts in the field of the history of ideas, the history of philosophy

and the history of law are discussed. Prodi's comments on contemporary social changes in the light of the discussed ideas. are also referred to. The significance of different meanings of the term *forum* is underlined.

Key words: social history, economic history, history of ideas, ethics of economic life, history of civilization, Paolo Prodi, Max Weber, Harold Berman, the market, VII Commandment, *forum*, moral norms, juridical norms

More than 10 years have passed since Paolo Prodi published his book *Settimo non rubare. Furto e mercato nella storia dell'Occidente* [“Seventh: *Thou shalt not steal*. Theft and Market in Western History”]. The book is a successful synthesis of scholarship in the fields of economic history, the history of ethics and religious ideas, and the history of law and institutions¹.

* P. Prodi, *Settimo non rubare. Furto e mercato nella storia dell'Occidente*, Bologna 2009 (= Prodi 2009₁); cf. the authors texts about the book: Prodi 2009₂, 2009₃, 2010.

¹ Cf. discussion articles and reviews in Italian: Capitani 2010; Felice 2009; see also: Bukala 2018.

The crucial notion of theft, indicated in the title with reference to the VII Commandment (“Non furtum facies” – *Exodus* 20, 15), has three main meanings: a sin, an offense against professional ethics and market rules, and a crime within the meaning of criminal law². In a broad sense, theft also covers various forms of fraud. It indirectly alludes to the traditional understanding of theft in the canon law: as a theft was considered any conscious breach of norms of justice, so serious that triggered an obligation of *restitutio*, i.e. return of unfair profit to the aggrieved party³.

Historical perspective: continuity in the European history

The studies presented in the book concerned mainly a period of more than seven centuries, the chronological boundaries which are marked by, on the one hand, the transition from the Early to High Middle Ages, related especially to the Church’s reforms during the pontificate of Gregory VII and his immediate predecessors and successors (the so called “papal revolution”)⁴; and on the other, the period of the Napoleonic wars. However, P. Prodi’s considerations also apply to the 19th and 20th centuries and the today situation, as he believed that the transformation of the turn of the 11th and 12th centuries⁵ opened a long period ending only in our times.

P. Prodi (1932–2016) was a historian, an outstanding specialist in the history of the Church of the Counter-Reformation epoch [cf.

² The topic of the Seventh Commandment was taken by P. Prodi also in another book: Prodi, Rossi 2010.

³ Not every breach of the principles of commutative justice could be identified with theft and require the restitution. This issue has always been the subject of a discussion in which the reasons of commutative justice, on the one hand, were balanced with the need of ensuring the legal certainty in economic exchange, on the other. For historical foundations of *restitutio* see: Dig. [= *Digesta Iustiniani*] 4.1. *De in integrum restitutionibus*; Giglio 2007: passim. See also: „Słownik terminów”, *RESTITUCJA*, in: Gasparski (ed.) 2012: 560.

⁴ The process of its independence of the Church from secular power, see note: 5.

⁵ Cf. Berman 1983 (especially chapter 2., about the sources of the western legal tradition in the „papal revolution”); Prodi 2000: 59–64; 2009₁: 25–29; 38–40.

Prodi 1982; 2015]. He combined deep knowledge with a broad intellectual outlook and great orientation to the achievements of other specialties and disciplines. The synthesis *Settimo non rubare* presents, *inter alia*, the most important results of research on the history of pre-classical economic ideas, by such scholars as Joseph Schumpeter, Raymond de Roover, Ovidio Capitani, Odd Langholm, Julius Kirshner, Giacomo Todeschini, and Lawrin Armstrong⁶. The author presents in-depth considerations on Max Weber's concepts of civilization [Prodi 2009₁: 26] – the concepts which, as Prodi emphasized, are too often reduced only to the ideas on Protestant ethics and the spirit of capitalism⁷. He also discusses in the final part of his book, some concepts of John Rawls' philosophy of law [Prodi 2009₁: 369–370]⁸. Therefore, the work of an Italian historian – who died in 2016 – should be treated as an indispensable reference point in research concerning market concept, which is conducted in the framework of various scientific disciplines, including business ethics.

P. Prodi took up the subject of theft and of markets presenting mainly the contribution of historical science, which he calls „the oldest of social sciences” [Prodi 2011: §1]. According to the author, the contribution of history is more clearly visible in field of economic issues provided that historians, liberated from Marxist schemes of economism and economic determinism, take into account the influence of political power on the economy, the relationship between various moral, cultural, and legal norms, and results of other social disciplines [Prodi 2009₁: 12–17⁹; 2010: 2–3].

At the same time, Prodi elsewhere explains that the “birthright” of history does not translate into its social meaning because for the

⁶ Referring also to the works of younger researchers, as: G. Ceccarelli, W. Decock, P. Evangelisti, S. Piron, or the author of this article.

⁷ In the so-called „school weberism” (Prodi 2009₁: 17).

⁸ Cf. Prodi 2000: 461–462.

⁹ The title of this subchapter would sound in English: “Economics and history. Economic anthropology, economic sociology”.

political elites in today's Europe, such disciplines as sociology, political science, and the science of communication usually turn out to be more useful [Prodi 2011: §2]. The indicated disciplines can be called, by some simplification, as being „beyond time” (contrary to history, the subject of which is the reality that changes over time – Bloch 1949: 18–19¹⁰). In this “beyond time” approach, the subject of study is modernity, the origins of which are traced farthest back in the 18th century. Let us add that in the dominant approach, a further historical perspective – i.e. going beyond the Age of Enlightenment – seems unnecessary, and perhaps is even badly seen or eliminated as a form of self-censorship.

The author of *Settimo non rubare* distanced himself from the view that „modernity” was mainly the result of the elimination of the *sacrum* from history [Prodi 2011, §20]. He demonstrated continuity especially in the history of economic (and related ethical) ideas. For example, he emphasized that Adam Smith's critique of monopolies came into being under the influence of the thinkers of several earlier centuries [Prodi 2009₁: 292]¹¹. His conclusions in this field correspond to those of H. Berman's studies on the Western legal tradition [Berman 1983]. Such historical continuity, as Prodi noted, is frequently overlooked for ideological reasons. For progressivism, only new ideas merit attention, whereas from the conservative perspective, a departure from earlier proven routes and values is usually emphasized. Therefore, in both perspectives, there is the similar distorted historical perception which overestimates the breakthrough of the late 18th century, albeit the final evaluations differ depending on ideological backgrounds¹². Fortunately, how-

¹⁰ Subchapter I.III: „Le temps historique”.

¹¹ Cf. R. De Roover, *Monopoly theory prior to Adam Smith*, in: De Roover 1974: 273–305

¹² „La visione tradizionale ancora prevalente consiste sostanzialmente da parte della storiografia laica nel considerare la modernità come nata dai lumi del secolo XVIII (con qualche barlume di precursori nei secoli precedenti), con un processo di secolarizzazione, di esclusione del sacro dalla storia; da parte della storiografia cattolica cambia soltanto il giudizio finale di positività o negatività del »moderno«, ma la definizione del processo storico della

ever, the approach that accentuates, after Prodi, the mentioned historical continuity – especially in the history of ideas – is present in the works of younger researchers appearing in the recent years¹³.

Looking for answers to the questions about the specificity of Western civilization, Prodi, like H. Berman, emphasized the distinct autonomy of political and spiritual (religious) powers and a certain tension between them. Institutionally, that autonomy was marked in the 11th century by the reform of the Church and its becoming legally independent from secular authorities. According to Prodi, the distinction between religious and political powers enabled the formation of a separate “economic sphere” in the 13th and 14th centuries [Prodi 2009₁: 38–44]. These autonomies are mutually related and dependent on each other: the disappearance of one of them most likely leads to the disappearance of others. They *simul stabunt aut simul cadent* [Prodi 2009₁: 11]. This pluralism and the independence of the spiritual, political, and economic spheres constitute a peculiar feature of Western civilization, figuratively called “our genetic code” [Prodi 2009₁: 370]¹⁴.

It is worth noting that these ideas are surprisingly consistent with the 20th century Polish concepts of the plurality of civilization, inspired by the ideas of Gianbattista Vico and Montesquieu in distinguishing different areas of human activity¹⁵. The crucial point of reference was, however, the thought of Max Weber, which shows unique features of certain concepts and institutions of Western civilization. Still, the Bolognese historian did not avoid kind of Eurocentrism, which is noticeable both in Weber and in other conceptualizations of the plurality of civilizations formulated in the first half

modernità come secolarizzazione ed esclusione del sacro sembra identico sia per i pensatori laici che per quelli confessionali” (Prodi 2011, §20).

¹³ Cf. Decock 2013; 2019; Bukala 2014.

¹⁴ See note 24, in this article.

¹⁵ E.g.: Feliks Koneczny considered as essential questions about the sacrality or insacrality of civilization, the relation between law and morality, and the relation between physical and spiritual power, cf.: Koneczny 1962 (chapters VIII.III–IV, VIII.VI).

of the 20th century. In Prodi's approach, a broader comparative outlook on civilization's differences (as, for example, Fernand Braudel tried to present in reference to the Mediterranean) may be lacking. Nevertheless, the emphasis on the autonomy of coexisting powers and orders and the concept of the *forum* seem to be a very interesting conceptual framework, acceptable from various axiological perspectives.

Forum: place of judgment, evaluation and assessment

As noted by the author's close collaborator – and one of the most prominent medievalists in the 20th century – Ovidio Capitani, the key to understanding Paolo Prodi's approach is not Weberism, but the semantic-historical research on the concept of *forum* [Capitani 2010: 9–11].

The Latin word *forum* means a public square, a place of assembly, and also a place where trials are held. As P. Prodi emphasized, in most ancient civilizations it was a place where political, economic, and spiritual powers were concentrated in one center. In the High Middle Ages, the *forum* was often understood as a market square, being the center of a given *civitas*. Prodi reminds us of the Latin definition of *forum* in E. Forcellini's dictionary, which shows that the *forum* was both a place for the exchange of commodities, as well as a place for political gatherings and the administration of justice¹⁶. This led to the use of the term in the abstract meaning of the market: *forum commune*.

The word *commune* etymologically refers to a community which commonly participated in the exchange of goods in the given *forum*.

¹⁶ Forcellini 1864–1890, t.II: 527c–528a: „Speciatim dicitur locus spatiosus in urbe, in quo res venduntur, et negotia fiunt: *ἀγορά* [agora], *piazza*, *mercato* (...) Item speciatim dicebatur locus, in quo populus conveniebat, *luogo dei pubblici convegni*; item locus, in quo iurisdictione exercetur, contiones habetur ad populum, cause aguntur, *foro*, *palazzo*; qui saepe idem est locus cum foro negotiorum, quae occasione convenientium civium fiunt, ut in quo Foro Romano, *piazza*, *banca*”. Cf. Prodi 2009, 9.

The first use of this term known to historians in the context of the ethics of trade is by Thomas Aquinas in his letter on credit sale¹⁷. In another sense, *forum* is a type of law (e.g. *forum civile*, *forum canonicum*), or the way in which a matter is assessed (e.g. in conscience = *in foro conscientiae*)¹⁸. Prodi emphasized that in each of these meanings, *forum* is a center of judgment (*sede di giudizio*), even when it refers to „market” (on which *valor rerum* is estimated) [Prodi 2007].

Before *Settimo non rubare*, Prodi’s interest in the notion of *forum* has been showed in his studies, in the context of ethics and law. The result of these studies is his book on the history of justice [Prodi 2000]. Prodi highlighted the role of the pluralism of distinct *fora*, on which human conduct is deliberated and judged. According to the author, since the 19th century, this pluralism has mainly been reduced to a dualistic relationship between positive law and conscience. The conscience, however, always influences the social dimension too, i.e. it is reflected in the social awareness of validity of moral norms. The market itself has also been influenced during its historical genesis by the tension between three orders of norms: the norms of positive law coexist here both with ethical norms in general and with the norms of professional ethics shaped through their connection with the market (the so-called customs of merchants – *lex mercatoria*) [Prodi 2009₁: 355]. The economic sphere has a certain autonomy, but any economic theory ignoring cultural and political conditions have little to do with reality¹⁹.

Theft in the perspectives of different norms

Referring to Prodi’s expression that theft was also understood as a „violation of market rules,”²⁰ it is worth remembering that, not

¹⁷ He wrote about the value of commodity *secundum commune forum* (Thomas Aquinas 1974: cap.2).

¹⁸ And the analogous terms *forum externum* and *forum internum*.

¹⁹ As e.g. Milton Friedman’s approach (Prodi 2009₁: 356).

²⁰ Cf. subchapter: „Il furto come violazione delle regole del mercato” (Prodi 2009₁: 121–125)

every violation could be identified as theft, but only grave infringements such as fraud regarding the nature or origin of the sold goods. This essential distinction between a theft and minor offences perhaps could be emphasized and explained more extensively (to avoid its omission by the reader).

Inspired by the Prodi's discourse about the significance of the coexistence of different norms, I would note that ethics not only defines additional requirements in business activity (supplementing the requirements of law), but it plays vital role at the fundamental level too. Firstly, because the effectiveness of a legal system (especially in the field of economics) is conditioned by the existence of parallel, commonly recognized moral norms. Secondly, besides the observance of contracts and fairness in relation to each stakeholder (i.e. "individual" justice), the issue of general motivation is of crucial importance too. Therefore, profit-oriented business activity must not harm the common good, but should contribute to it in some indirect way, so that business profit may be regarded as a reward for this contribution. The idea of common good (*bonum commune*) should not be narrowed down and identified only with the area of activity of public institutions or non-profit organizations²¹. The business' contribution to common good consists, first of all, in the social utility of the business itself. Such a contribution could be discussed in the context of entrepreneur's vocation [Sirco 2010]. Józef Maria Bocheński pointed out this issue in the context of the philosophy of enterprise in stressing the role of industrial production, even though he did not mention the term „common good” explicitly [Bocheński 1987: section 4.4]²². Trade, while being profit-oriented, may also contribute to the common good, unless it harms the market through monopolistic practice. The latter idea was developed in the framework of centuries-old tradition of merchants' ethics. For example, Matthew of Krakow (†1410) stressed

²¹ See also: „Słownik terminów”, DOBRO WSPÓLNE, in: Gasparski (ed.) 2012: 560.

²² The same section in later translations. For Bocheński's contribution see also: Gasparski 2009: 33–34.

that a merchant's ethics does not only require fairness in individual transitions, but also requires the general intention of making business useful for our neighbors²³.

Market and theft – contemporary problems

The aforementioned coexistence of several perspectives of evaluation and assessment of human activity (on the market, but not only) has been for some decades seriously undermined by the tendency to increase the sphere regulated by positive law to a greater and greater extent [Prodi 2000: 480–481]. Presently this sphere includes those areas which until recently were mainly subject to moral norms. It is accompanied by a trend to eliminate further the *sacrum* from public space. That leads, according to the author *Settimo non rubare*, to the secularized cult of positive law:

“Whether the positive norm is sanctified, and, at the same time, completely secularized, the result is that we are losing the pluralism of the levels of norms, of places of judgment, and the pluralism of *fora* which constitute, as it was said, our genetic code of Western people.”²⁴

²³ What is, as Matthew noticed, unfortunately rare: “valde rarum est, ut quis recte intendat in mercando utilitatem proximorum et sic secundum utilitatem officii vel obsequii sui victum mereri. Que tamen intentio tam necessaria est, quod sine tali intencione actuali vel habituali nullus actus negociacionis est meritorius apud Deum; eciam si quoad homines et iusticiam particularem nichil iniusti fiat, sed accipiat debitem lucrum”/„Niezmiernie rzadko zdarza się bowiem, aby ktoś handlując uczciwie miał na celu użyteczność bliźnich i tak odpowiednio do użyteczności swego zawodu i swojej posługi zasługiwał sobie na swoje utrzymanie. Intencja taka jest jednak tak konieczna, że jeśli nie jest rzeczywiście przyjmowana ani zwyczajowo zakładana, działanie handlowe nie stanowi zasługi u Boga. Jest tak nawet wówczas, gdy z punktu widzenia ludzi i sprawiedliwości jednostkowej niczego niesprawiedliwego się nie czyni i przyjmuje się należny zysk” (Matheus de Cracovia 2011: 246/247–249; cf. Bukała 2014₂; 2018₂).

²⁴ The quotation translated by M.W.B., cf.: „Sia che la norma positiva venga sacralizzata sia che essa sia del tutto secolarizzata, il risultato è che si sta perdendo quel pluralismo dei piani normativi e delle sedi di giudizio, dei fori che costituisce, come si è detto, il nostro codice genetico come uomini occidentali” (Prodi 2009₁: 370).

Minimizing the importance of the *forum* in moral judgment leads to „an enormous chain of theft, unpunished and almost legalized, in the absence of any protection offered by universally binding ethics”²⁵

The intensification of this problem is fostered by the blurring of the distinction between public and private enterprises in our economy. The “false autonomy” of certain authorities (excluding political responsibility), the increasing role of international arbitrage, the stifling of market competition by monopolies and the system of public subventions, the increasing number of commercial companies with major share of the state, the increasing number of licensed private companies providing services under a public tariff – all these social phenomena facilitate extension of violations of market rules, which in many cases equates to theft [Prodi 2009₁: 370²⁶]. It appears that the autonomy of the political and economic spheres (and the spiritual one too) is inherently related to the coexistence of different “levels of norms.” Both features of civilization are historically related to each other: they *simul stabunt aut simul cadent*.

Apart from re-establishing a clearer legal distinction between private and public spheres, the remedy for the threats described in the book *Settimo non rubare* should be a change in our culture leading to revisited approach to business. Such a change, however, cannot be planned or decreed in any way *a priori*. It may be the result of sustained efforts of various business circles as long as they genuinely involve themselves in promoting ethical values, and as long as philanthropic engagement is not taken as an excuse to deflect focus from the violation of ethical rules in the principal activity of an enterprise.

²⁵ The quotation translated by M.W.B., cf.: „un'enorme catena di furti impuniti o quasi legalizzati, senza più alcuna rete di protezione fornita da un'etica condivisa” (Prodi 2009₁: 376).

²⁶ It is related, accordingly, with blurring the distinction between public and private law.

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²⁷ The original orthography is used, instead of the classical: „Matthaeus”.

²⁸ Pars I & pars II, tract. 1–2.

Thomas de Aquino 1979 = S. Thomae Aquinatis *Opera omnia, iussu impensaue Leonis XIII P.M. edita*, t. 42, Romae, [includes:] *De emptione et venditione ad tempus*: 379–394 (available also on line: <https://gallica.bnf.fr/ark:/12148/bpt6k9494h.r>; access: 10.12.20).

STRESZCZENIE

Rynek i kradzież w perspektywie historycznej: aktualność koncepcji Paola Prodiego

Artykuł dotyczy koncepcji historii rynku oraz szerokiego pojęcia kradzieży, które zostały przedstawione w książce P. Prodiego *Settimo non rubare. Furto e mercato nella storia dell'Occidente*. Prezentowane są źródła i główne punkty odniesienia idei Prodiego (koncepcja specyfiki cywilizacji zachodniej w ujęciu M. Webera, koncepcja „rewolucji papieskiej” H. Bermana, pojmowanie kradzieży i obowiązku restytucji w prawie kanonicznym), oraz perspektywy kontynuacji jego myśli na polu historii idei, historii filozofii i historii prawa, a także uwagi o współczesnych przemianach społecznych w świetle dyskutowanych koncepcji. Kluczowe znaczenie ma rozumienie pojęcia *forum*, oznaczającego centrum życia społecznego w różnych dziedzinach: politycznej, ekonomicznej /rynek/, religijnej.

Słowa kluczowe: historia społeczna, historia gospodarcza, historia idei, etyka działalności gospodarczej, historia cywilizacji, Paolo Prodi, Max Weber, Harold Berman, rynek, VII przykazanie, forum, normy moralne, normy prawne