CHAPTER 4

The Law of Nature and Nations in the Mirror of the Academy of Fists: Reforms, Philosophy, Law and Economy

Gabriella Silvestrini

1 Introduction

The institutional reorganization of Lombardy during the reign of Maria Theresa reached its highest point and its paradigmatic moment in the reform of the university. That work took around two decades to complete, from 1753 to 1773,[1] and represents an exemplary case inasmuch as it prefigured the new centralized model of state administration that revoked the power of intermediary bodies: the Milanese Senate was deprived of its authority over educational matters in 1765, all elements of which, from the appointment of teachers, to the administration of schools and colleges, to the design of curricula up to the awarding of academic qualifications, became a prerogative of the Habsburg sovereign. It was in these decisive years of reform that the most significant theoretical works of the 'Milanese school' were produced: Pietro Verri's *Meditazioni sulla felicità* (1763), Cesare Beccaria's *Dei delitti e delle pene* (1764) and the periodical *Il Caffè* (1764–1766). The link between the Lombard Enlightenment and the reform process in Lombardy is well known, even though there were the ups and downs brought about by changes in the personal relations between the main protagonists, in particular (but not only) the rift between Beccaria and the Verri brothers at the end of 1766, and also by the expectations, successes and disappointments of the Lombard Enlightenment thinkers with regard to Viennese politics.[2]

1 See the previous chapter, by Elisabetta Fiocchi Malaspina. I would like to thank Gianni Francioni for his helpful comments to a first draft of this chapter.

2 The term 'école de Milan' was coined by Voltaire. For a guide on the sources and a bibliography of the Lombard Enlightenment updated to 2014, see the website http://illuminismolombardo.it/. See also Philippe Audegean, *La philosophie de Beccaria: savoir punir, savoir écrire, savoir produire* (Paris: Vrin, 2010); *Cesare Beccaria. La controverse pénale XVIIIe–XXIe siècle*, ed. Michel Porret and Élisabeth Salvi (Rennes: Presses Universitaires de Rennes, 2015); Pierre Musitelli, *Le flambeau et les ombres: Alessandro Verri, des Lumières à*

I will not revisit events that are already familiar nor seek to corroborate whether or to what extent the alliance between the exponents of the Austrian government and the members of the Academy of Fists[3] was undermined by the different objectives and political cultures of the various protagonists.[4] My aim is instead to reconsider the relationship between natural law and utilitarianism in the key works of the 'Milanese school', as well as to rethink the relationship between contractualism and legal positivism, using the debates and the public education reform plans as the interpretative context.

As has been authoritatively and repeatedly confirmed, the educational reform had a conceptual framework grounded in natural law, and natural law also gave the new Habsburg power theoretical legitimacy. Equally significant, and no less charged with ideological meaning, was the 'utilitarian' concern with public happiness, with the common good being a substantive goal of government policy.[5] The motto of the 'Milanese school', 'the greatest happiness shared among the greatest number', echoed in several variations and is also present in the *Memoria sopra la riforma generale degli studi nella Lombardia austriaca*, which was probably written by Pietro Paolo Giusti at the end of

la Restauration (*1741–1816*) (Paris: École française de Rome, 2016); *Il caso Beccaria. A 250 anni dalla pubblicazione del 'Dei delitti e delle pene'*, ed. Vincenzo Ferrone and Giuseppe Ricuperati (Bologna: Il Mulino, 2016); *Le bonheur du plus grand nombre. Beccaria et les Lumières*, ed. Philippe Audegean et al. (Lyon: ENS, 2017); Sophus A. Reinert, *The Academy of Fisticuffs: Political Economy and Commercial Society in Enlightenment Italy* (Cambridge, MA: Harvard University Press, 2018); John Bessler, *The Celebrated Marquis: An Italian Noble and the Making of the Modern World* (Durham, NC: Carolina Academic Press, 2018); Peter Garnsey, *Against the Death Penalty: Writings from the First Abolitionists – Giuseppe Pelli and Cesare Beccaria*, texts translated and with historical commentary by Peter Garnsey (Princeton, NJ: Princeton University Press, 2020); and the journal *Beccaria. Revue d'histoire du droit de punir* (Geneva: Georg, 2015–). See also Richard Bellamy, 'Introduction', in Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. Richard Bellamy (Cambridge: Cambridge University Press, 1995), ix–xxx. Henceforth this English translation will be used, abbreviated as *CPO*.

3 The Academy was a well-known informal society or circle, founded by Pietro Verri, that met regularly from 1761 to 1766 in Verri's house in Milan and was the centre of the Lombard Enlightenment. The name comes from the fact that someone had told the group that met at Verri's house had argued and punched each other. Criticizing formal academies, they decided to call themselves the Academy of Fists (or Fisticuffs, according to Reinert). It was a satirical and ironic gesture of appropriating criticism.

4 The Habsburg view implied the primacy of the State, whereas the Lombard thinkers embraced liberalism and the defence of civil rights, according to Adriano Cavanna, 'La codificazione del diritto nella Lombardia austriaca', in *Economia, istituzioni, cultura in Lombardia nell'età di Maria Teresa*, 3 vols, ed. Aldo De Maddalena, Ettore Rotelli and Gennaro Barbarisi (Bologna: Il Mulino, 1982), vol. 3, 611–657, at 632.

5 Giulio Guderzo, 'La riforma dell'università di Pavia', in *Economia, istituzioni, cultura in Lombardia*, vol. 3, 852.

1768, in which it is stated that: 'nothing should be of greater interest than how to spread the greatest amount of knowledge to the greatest proportion of the nation'.[6]

In the copious documentation that accompanied the reform of the university, the coexistence of natural law and 'utilitarianism' does not seem to have caused problems. Was this a foregone conclusion for those involved, or did it immediately appear to be a mismarriage, at least in the eyes of the radical intellectuals writing for *Il Caffè*? The latter hypothesis would imply the existence of an unbridgeable gap between radical demands for reform made by the members of the Academy of Fists and the actual implementation of those same reforms from the late 1760s to the early 1770s. What is more, even from the point of view of criminal law and its teaching, which was equally subject to the winds of change, the question is far from irrelevant: was the principle of the 'mildness of punishment', at the heart of the call for the abolition of torture and the death penalty, inspired by a completely secularized, utilitarian and positivist view of criminal justice, or was it instead part of a view that ultimately referred to the idea of natural justice?

I share the view of other contributors to this volume that there was a reception leading to a critical reappraisal and reformulation of the main themes of the modern tradition of natural law and the law of nations. In the context of the university reform it is possible to demonstrate that the critique of the tradition of natural law in *Il Caffè* does not constitute a complete rejection of natural law and of the study of law.

In the next two sections I respectively consider critiques of the natural law tradition made by the 'pugilists' and give thought to the reinterpretation of this tradition by some of them: the *gius di natura* (natural law), together with public law and contractualist theories, will appear as the true language of the reforms. In section 4 I will highlight how the critique of jurisprudence and the adherence to the emerging science of economics were not meant to replace legal science with the science of 'public economy', but were aimed at a reformulation of the hierarchy of knowledge that saw the 'citizen philosopher' at the top of the scale. In complete harmony with the plan of university reform, members of the Academy of Fists looked to a new type of expert who could

6 Maria Gigliola di Renzo Villata, '1765–1771: Gli anni decisivi per la riforma. Dall'incubazione ai risultati', in *Almum Studium Papiense. Storia dell'Università di Pavia*, vol. 2.1, *Dall'età austriaca alla nuova Italia*, ed. Dario Mantovani (Milano: Cisalpino Istituto Editoriale Universitario, 2015), 83–114, at 99. On Pietro Paolo Giusti, see Carla Federica Gallotti, 'Diffusione dei lumi e crisi delle riforme in Spagna nella testimonianza di Pietro Paolo Giusti (1772–1781)', *Studi Settecenteschi* 11–12 (1988–1989): 237–303.

recover the original principles of the sciences, in particular the new 'philosophical jurist'. As section 5 highlights, it was in fact Beccaria who in this role proved himself capable of 'discovering' the principles of criminal justice.[7] Finally, in section 6, I will focus on the very close connections, even from a biographical point of view, between the Lombard Enlightenment and university reform.

2 The Academy of Fists and Natural Law: Which Natural Law?

The harshest and most radical critique of natural law by the authors of *Il Caffè* can be found in an unpublished article by Alfonso Longo,[8] which contains a satirical depiction of humans, described through the fiction of an assembly of dogs. In the name of brute force and of a materialist vision of reality, the entire text condemns without qualification all pretence to truth and universal justice, and it culminates in a corrosive conclusion: 'This canine assembly reserves the full, inalienable, natural right to publish these laws even in countries yet to be discovered, and even on the moon, since our power extends that far, as is clearly demonstrated by the way we howl at it'.[9] Having survived among Pietro Verri's unpublished papers, Longo's essay could be construed as

7 Beccaria was awarded the title of Doctor of Law by the University of Pavia in 1758. He was probably a student of Venanzio De Mays, who was teaching public law at that institution. See Elisabetta Fiocchi, 'De Mays, Venanzio', https://naturallawdatabase.thulb.uni-jena.de/item/natlaw_196. Beccaria later wrote, in his celebrated letter to Morellet of 26 January 1766, of his 'conversion to philosophy', in Cesare Beccaria, *Edizione Nazionale delle Opere di Cesare Beccaria*, ed. Luigi Firpo and Gianni Francioni, 16 vols (Milano: Mediobanca, 1984–2014, henceforth abbreviated as *EN*), vol. 4, *Carteggio* (*parte I: 1758–1768*), ed. Carlo Capra, Renato Pasta and Francesca Pino Pongolini (Milano: Mediobanca, 1994), 222; *CPO*, 122. On Beccaria as a competent jurist, see Loredana Garlati, 'Tradition et réformisme. Les inspirateurs culturels du Beccaria processualiste', in *Le bonheur du plus grand nombre. Beccaria et les Lumières*, 63–77; ead., 'Beccaria: Filosofo acclamato del passato e giurista misconosciuto del futuro', in *Dialogando con Beccaria. Le stagioni del processo penale italiano*, ed. Giovanni Chiodi and Loredana Garlati (Torino: Giappichelli, 2015), 1–30.

8 On Alfonso Longo, see Carlo Capra, 'Longo, Alfonso', *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2005), vol. 65, 687–692; Maria Francesca Turchetti, 'Alfonso Longo e l'Accademia dei Pugni (con quattro lettere inedite)', *Archivio storico lombardo* 140 (2014): 152–185.

9 'Del diritto naturale de' cani', in *'Il Caffè' 1764–1766*, 2nd edition revised, ed. Gianni Francioni and Sergio Romagnoli (Torino: Bollati Boringhieri, 1998, hereafter cited as *Caffè*), vol. 2, 836. *Il Caffè* was a periodical published from June 1764 until November 1766, and then unified in two volumes, the first volume 'from June 1764 to May 1765', the second 'from June 1765 until the next year'. See Gianni Francioni, 'Storia editoriale del "Caffè"', in *Caffè*, vol. 1, lxxxi–cxlvi.

the truth hidden behind the pages destined for publication, a sort of esoteric lesson beneath words exposed to the rigour of criticism and censorship.

Given this interpretation, the articles by Alessandro Verri published in volume 2 of *Il Caffé* (in particular, the praise of Carneades over Grotius) at first glance appear to be an indisputable attack on the 'law of nature', which is contrasted with the principle of utility as a foundation of human societies and their institutions. On this reading, the juridical perspective of natural law would be contrasted with a new form of 'economic' knowledge: the calculation of interests and the predictability of human passions. The principle of utility that replaces natural law, a new economic reason that marginalizes the old jurisprudence, the philosopher who takes the place of the jurist: these would be the ideas shared by the group of intellectuals linked to the Academy of Fists on the anthropological, epistemological and institutional level.[10] These ideas appear to have been sketched already in Pietro Verri's *Meditazioni sulla felicità* and in the first draft of Beccaria's *Dei delitti e delle pene*. In the *Meditazioni* Verri adopted for the first time in Italian the maxim of the 'greatest possible happiness shared with the greatest possible equality'[11] and made it part of a unified anthropology that explains all human actions as effects of pleasure and pain, that is, of interest in a broad sense, physical and moral. Rejecting what he took to be Shaftesbury and Hutcheson's dualism, which envisaged the possibility of a 'disinterested' love of one's neighbour compatible with self-love, Pietro Verri, like Helvétius, believed that even compassion originated in a desire to escape pain.[12] Despite the reference to the social contract as the foundation

10 See Luigi Ferrajoli, 'Beccaria e Bentham', *Diciottesimo secolo* 4 (2019): 75–84, at 77; and Philippe Audegean, 'Droit naturel et droit à la vie. Beccaria lecteur de Hobbes', *Diciottesimo secolo* 4 (2019): 33–45. For a different position, see Gianni Francioni, 'Beccaria, philosophe utilitariste' (first Italian edition 1990), in *Le bonheur du plus grand nombre. Beccaria et les Lumières*, 23–44; and Dario Ippolito, 'Contrat social et peine capitale. Beccaria contre Rousseau', in *Rousseau et l'Italie. Littérature, morale et politique*, ed. Philippe Audegean, Magda Campanini and Barbara Carnevali (Paris: Harmattan, 2017), 147–176.

11 For the history and the different interpretations of this 'utilitarian' maxim, from Francis Hutcheson to Jeremy Bentham, see Robert Shackleton, 'The Greatest Happiness of the Greatest Number: The History of Bentham's Phrase', *Studies on Voltaire and the Eighteenth Century* 90 (1972): 1641–1682. As Gianni Francioni highlights, Pietro Verri read Hutcheson's *Inquiry* in the French translation by Marc-Antoine Eidous, *Recherches sur l'origine des idées que nous avons de la beauté et de la vertu*, 2 vols (Amsterdam [i.e. Paris], 1749); cf. Gianni Francioni, 'Nota introduttiva', in Pietro Verri, *Meditazioni sulla felicità* (1763), in *Edizione Nazionale delle Opere di Pietro Verri*, vol. 1, *Scritti letterari, filosofici e satirici*, ed. Gianni Francioni (henceforth *ENPV*, vol. 1) (Roma: Edizioni di Storia e Letteratura, 2014), 685–687.

12 On Francis Hutcheson in Italy, see Chapter 6 of the present volume, by Serena Luzzi.

of societies and of the law, mention of natural law appears to be absent in this 1763 text: the phrase 'law of nature' refers exclusively to the mechanism of the passions and to the love of pleasure, and the term 'law' designates the law in force in political societies. The natural liberty partly forfeited through the social contract is not defined as a right. This, therefore, should be interpreted as a form of contractualism without natural law.[13]

The language of natural law is almost entirely absent also in the first manuscript version of Beccaria's *Dei delitti e delle pene*, in which terms like 'interest', 'natural sentiments of mankind' and 'self-love' recur frequently. The 'right to security' explicitly alludes to a political right, inasmuch as it is one 'which each citizen has earned'.[14] There is only one instance in which we encounter a concept above the positivist legal horizon, namely the 'rights of humanity'.[15] This one occurrence does not seem to weaken the framework of legal positivism that appears to structure the whole text with great consistency, beginning with the definitions both of law, seen as 'the restraint necessary to hold particular interests together, without which they would collapse into the old state of unsociability', as well as of justice.[16] Thus also in this case we are faced with a contractualism that is anti-natural law and clearly positivist, being closely connected with a materialism that denies human freedom and, in analogy with the physical world, sees humanity as motivated solely by the 'force which attracts us, like gravity, to our own good'.[17]

From the first autograph manuscript onward, Beccaria's work included references to the union of the soul with the body, to the connection between morality and politics, and to the rights of humanity. All these references should, however, be dismissed as being a form of self-censorship or purely rhetorical concessions within a new horizon of thought that, in the mid-eighteenth century, was completely secularized, partly through a materialism

13 *ENPV*, vol. 1, 734–762.

14 *Dei delitti e delle pene. Prima redazione*, ed. Gianni Francioni, in *EN*, vol. 1, 152. This formulation remains until the 'fifth' edition, ibid., 48; *CPO*, 9; on the complicated publication history of *Dei Delitti*, see Richard Bellamy's *Introduction*, *CPO*, xli–xliv.

15 *EN*, vol. 1, 157: 'the rights of humanity and the invincible truth'. From the first edition onwards, this expression becomes 'the rights of men'. *EN*, vol. 1, 54; *CPO*, 30.

16 *EN*, vol. 1, 140. The same formulation is repeated in the published editions, ibid., 32; *CPO*, 11.

17 *EN*, vol. 1, 146 and 41; *CPO*, 19. Cf. Jérôme Ferrand, 'La nécessité, passager clandestin de l'abolitionnisme beccarien', in *Le bonheur du plus grand nombre. Beccaria et les Lumières*, 127–138. For a 'Christian' interpretation of Beccaria's works, see Maria Gigliola di Renzo Villata, 'Cesare Beccaria (1738–1794)', in *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, ed. Orazio Condorelli and Rafael Domingo (London: Routledge, 2021), 331–347.

inspired by Lucretius. The different stages in the drafting of the *Delitti*, which ended with the 'fifth' edition of 1766, reflected the attempt to make these theses in the first edition ever less heterodox, above all under the pressure of vehement charges of irreligiousness that rained down on the head of the anxious Beccaria, whom Ferdinando Facchinei accused of wanting to repudiate natural law.[18]

But, we might ask, does the denial of the existence of a law of nature established by God imply the rejection of natural law? In other words, who was right: the abbot Ferdinando Facchinei, who included Beccaria in the ranks of the 'modern publicists' who, according to him, denied natural law, or Jeremy Bentham, who detected incoherent residues of natural law in *Dei delitti*?[19]

As has been authoritatively argued, natural law has been defined in many ways;[20] it does not necessarily imply a theological foundation but can easily fit within a materialist or at least secular horizon of thought. On the one hand, Grotius's rationalist perspective was used, for example by Pierre Bayle, to advance the theory of the virtuous atheist. On the other, from Hobbes to Pufendorf to Locke, the possibility of knowing natural law through natural reason could coexist with the idea that the obligation to follow this law originates in divine will.[21] Conversely, as the line running from Grotius to Wolff,

18 See Paolo Preto, 'Facchinei, Ferdinando', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 1994), vol. 44, 29–31; Alberto Bondolfi, 'Beccaria et la religion: la réaction de Facchinei et du Saint-Office', in *Le moment Beccaria: naissance du droit pénal moderne* (*1764–1810*), ed. Philippe Audegean and Luigi Delia (Liverpool: Liverpool University Press/Voltaire Foundation, 2018), 33–42. On the self-censorship by members of the Academy of Fists, see Gianni Francioni, 'Censura e autocensura nella rivista "Il Caffè"', in *Varianti politiche d'autore. Da Verri a Manzoni*, ed. Beatrice Nava (Bologna: Pàtron, 2019), 15–57.

19 On the question of natural rights, see Herbert L. A. Hart, 'Bentham and Beccaria', in idem, *Essays on Bentham: Studies in Jurisprudence and Political Theory* (Oxford: Clarendon Press, 1982), 40–52; Jean-Pierre Cléro, 'Un tournant dans la conception du droit pénal: Beccaria and Bentham', in *Entre droit et morale: la finalité de la peine*, ed. Annette Sousa Costa (Bern: Peter Lang, 2010), 63–98; Emmanuelle de Champs, 'Bentham et l'héritage de Beccaria: du *Projet d'un corps complet de législation* aux *Traités de législation civile et pénale*', in *Cesare Beccaria. La controverse pénale*, 99–110.

20 See *The Cambridge Companion to Natural Jurisprudence*, ed. George Duke and Robert P. George (Cambridge: Cambridge University Press, 2017), especially the 'Introduction' by the editors, 1–13, and the chapter by Knud Haakonssen, 'Early Modern Natural Law Theories', 76–102.

21 On Bayle and natural law, see Elena Muceni, *Apologia della virtù sociale. L'ascesa dell'amor proprio nella crisi della coscienza europea* (Milano: Mimesis, 2018), 95–132. On the different theories of obligation in the tradition of natural law, see Tim Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000), and Chapter 10 of the present volume, by Francesca Iurlaro.

Burlamaqui and Vattel demonstrates, an authentically religious position did not necessarily imply adherence to a voluntarist theory of natural obligation.

Among the most representative authors in the materialist wing of the *philosophes* in the middle of the eighteenth century, both Diderot and Helvétius were far from making a radical rejection of natural law. The most significant case is that of Diderot, who in the entry 'Droit naturel' of the *Encyclopédie* suggested that the criterion for just and unjust was to be found in the general will of the human species. The idea of a hypothetical 'general assembly' of rational beings mentioned by Diderot appears to echo Wolff's ideal of the *civitas maxima*, although for Diderot this would be the foundation not only of the law of nations, but also of the 'truly inalienable natural rights' of humanity.[22]

As for Helvétius, although he clearly did not set out to discuss natural law theories, it would be wrong to consider him a critic of natural law because of his atheism or his materialism. On the contrary, natural law raises its head in *De l'esprit* – albeit incidentally, as if it were something that went without saying – in the context of a critique of tyrannical and arbitrary power. Such power is accused of deterring men from educating themselves in natural law, public law and the law of nations.[23] There is an undeniable link between ignorance of these sciences and the violation of human rights, which can occur where the principle of the happiness of the minority holds sway: 'In policed countries, the art of legislation has often consisted in making an infinite number of men

22 Denis Diderot, 'Droit naturel', in *Encyclopédie, ou dictionnaire raisonné des sciences, des arts et des métiers, etc.*, ed. Denis Diderot and Jean le Rond d'Alembert, University of Chicago, ARTFL Encyclopédie Project (autumn 2022 edition), ed. Robert Morrissey and Glenn Roe, https://encyclopedie.uchicago.edu (accessed on 14 January 2023). English translation of select passages are given in Denis Diderot, *Political Writings*, ed. and trans. John Hope Mason and Robert Wokler (Cambridge: Cambridge University Press, 1992), 17–21. Cf. Peter Schröder, 'Natural Law and Enlightenment in France and Scotland – A Comparative Perspective', in *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment*, ed. Tim J. Hochstrasser and Peter Schröder (Dordrecht: Springer, 2003), 297–317; Ann Thomson, 'French Eighteenth-Century Materialists and Natural Law', *History of European Ideas* 42 (2016): 243–255.

23 C[laude]-A[drien] Helvétius, *De l'esprit, or, Essays on the mind, and its several faculties* (London: Albion Press, 1810), Essay II, ch. 12, 98: 'Now, in most arbitrary governments, the citizens cannot, without displeasing a despotic prince, employ themselves in the study of the law of nature, or in that of the public, moral, and political. They dare not ascend to the first principles of those sciences, nor form grand ideas'. See also Essay IV, ch. 15, 473. On Helvétius' republicanism, see David Wootton, 'Helvétius: From Radical Enlightenment to Revolution', *Political Theory* 28 (2000): 307–336.

subservient to the happiness of a few; in keeping, for this purpose, the multitude under oppression, and in violation all the privileges of humanity they have a right to demand'.[24]

As has often been stressed, Beccaria appears to have taken inspiration from this passage when writing the introduction to his main work. His knowledge of the *Encyclopédie* and of Diderot's 'Droit naturel' entry is certainly beyond doubt, not only because of its prosopopoeia of the thief who chooses a life of crime, 'gambling' on a happy life in exchange for moments of suffering: Diderot's 'violent reasoner' is without question an example of an 'apologia of injustice'.[25] The mention of the 'rights of humanity' is, from the first version of *Dei delitti*, full of references to inalienable natural rights.

Hence the embrace of materialist theories does not in itself indicate a rejection of natural law. For a historical understanding of Beccaria and the members of the Academy of Fists when criticizing traditional knowledge and proposing a reform of the law, one must therefore disregard whatever religious ideas one may harbour and instead consider more deeply the close connections with a broader cultural and social reform.

3 The Modern Innovators and the New Language of Natural Law, the Law of Nations, and the Social Contract

Before verifying whether some form of natural law continued to constitute the more or less implicit theoretical framework of *Dei delitti e delle pene*, we must consider the way in which the authors of the natural law tradition are mentioned in the works of Beccaria and the *Il Caffè* authors. From this perspective not only must one bear in mind the plurality of natural law traditions, which were quite familiar to these internationally minded Italian authors, but one must also avoid undervaluing the way these traditions were constantly reinterpreted. As such, beyond the specificity of individual intellectual and

24 Helvétius, *De l'esprit*, Essay I, ch. 3 ('Of ignorance'), 18 (footnote). See also Essay II, ch. 17, 175–176 (footnote *): 'In most of the empires of the East, they have not even the least idea of the laws of nature and nations [...] Whoever should endeavour to enlighten the people in this respect, would almost constantly expose himself to the fury of the Tyrant [...] In order to violate with the greater impunity the laws of humanity, they will have their subjects ignorant of what, as men, they have a right to expect from the prince, and of the tacit contract by which he binds himself with the people'.

25 Echoing, while paraphrasing, the title of the essay by Céline Spector, *Éloges de l'injustice. La philosophie face à la déraison* (Paris: Seuil, 2016); on Diderot and the violent reasoner, see 95–122.

professional paths, it is possible to discern a polemical intent shared by the members of the Academy of Fists that also corresponds to the peculiarity of the Lombardy context during the age of Maria Theresa and Leopold II.[26]

The group gathered around the academy, although largely coming from families of the patriciate, battled against the two pillars that supported the power of the local aristocracy, who opposed the reform policies desired by Vienna: the Church and the Senate, of which Count Gabriele Verri, father of the Verri brothers, was a member. The intellectual activities of the members of the group were thus motivated by a twofold (but indivisible) philosophical-cultural and political-professional aspiration: on the one hand, that of gaining entry into the enlightened republic of letters, pursuing fame and influencing public opinion; and on the other, that of supporting the Habsburg government and constructing a curriculum that would prepare them for participation in the new ruling group, searching for a suitable role, including in economic terms.

To this end, the politics of book dedications and submissions did not diverge from the normal practice of the era and certainly did not reduce the philosophical and scientific significance of the works. Unlike the French *philosophes*, who were excluded from government and universities, the intellectuals linked to *Il Caffè* acted in a context similar to a wide variety of European local realities in which the clash of powers and institutions offered the possibility of imagining reform paths and of obtaining occupations in the institutions, posts which might include, albeit not necessarily, academic careers. In this respect the Milanese environment seems to have been not dissimilar to that of Switzerland, if we consider, for example, Emer de Vattel, whose literary and philosophical activity was clearly oriented to finding a position at home or abroad.[27]

If the Senate and the ecclesiastical institutions were the main enemies, even from the personal point of view – especially for Pietro and Alessandro Verri, who, more than the others, had to endure the rigid views of their family – the polemical targets on the theoretical level were the pillars on which these authorities rested, which can be summarized in two words: tradition and whim. All the philosophical and political battles waged by the *Il Caffè* authors can be linked to these two.

26 The bibliography on the Lombardy context is vast, but see at least Carlo Capra, *La Lombardia austriaca nell'età delle riforme, 1706–1796* (Torino: Utet, 1987).

27 See *Concepts and Contexts of Vattel's Political and Legal Thought*, ed. P. Schröder (Cambridge: Cambridge University Press, 2021).

In the *Orazione panegirica sulla giurisprudenza milanese*, composed by Pietro Verri and discussed by the members of the Academy of Fists in 1763, a representative of tradition, supposedly personifying Senator Gabriele Verri, takes the floor. He denounces the corruption of the century and the 'ultramontane' poisons that were spreading throughout Italy thanks to 'modern inept innovators', all the while looking, however, with relief at the Milanese area where the power of local courts remained intact.[28] The object of this ironic polemic was the existing local legislation, the Nuove Costituzioni of 1541, criticized for clashing with nature and for its lack of proportion between crimes and punishments, in particular in cases which carried the death penalty. That work presented the same arguments later taken up by Beccaria for the impunity of crimes of conscience, abortions, sexual indiscretions, as well as on the right to emigrate.

Apart from the Nuove Costituzioni, the institution that was directly attacked was the Milanese Senate, then made up of only jurists.[29] This was a body that united 'the person of the legislator and the judge' and kept for itself the power both to interpret laws and to judge according to equity. In this attack on the Milanese political scene specifically, as well as local laws and the Senate, Pietro Verri also criticized the doctrinal tradition on which they were predicated, in particular the ideas of the jurists Bossi, Claro, Sacchi, Tiraqueau, Mantica, Menocchio, De Luca and Fulgosio, against whom he set the authors who had introduced 'a new language of *Gius naturale*, *Gius delle genti*, *Patto Sociale*'. The text unhesitatingly named the 'modern innovators' who were opposed to that tradition: Voltaire, and then Bacon and Montesquieu with regard to the separation of legislative and judicial power, and the Rousseau of *Emile*, who had been condemned by the Paris parliament. Pietro Verri considered Rousseau to be a supporter of natural law. The practice of torture was also denounced, for being contrary 'to the inalienable natural right to self-defence'.[30]

28 *ENPV*, vol. 1, 426 and 425.

29 On the Milanese Senate and its eighteenth-century decline, see Ugo Petronio, *Il Senato di Milano: istituzioni giuridiche ed esercizio del potere nel ducato di Milano da Carlo V a Giuseppe II* (Milano: Giuffrè, 1969).

30 *ENPV*, vol. 1, 430. On natural law as a common language, see Maurizio Bazzoli, 'Aspetti della recezione di Pufendorf nel Settecento italiano', in *Dal* De Jure naturae et gentium *di Samuel Pufendorf alla codificazione prussiana del 1794*, ed. Marta Ferronato (Padova: Cedam, 2005), 41–60, at 52. For a more nuanced reading of the legal culture criticized by Beccaria and the Verri brothers, see Maria Gigliola di Renzo Villata, 'Avant Beccaria. La culture juridique à l'épreuve du temps', in *Le bonheur du plus grand nombre. Beccaria et les Lumières*, 47–61.

If we compare this text with what was published in *Il Caffè* and the works of Beccaria, we can see that the polemic was not directed at the science of law in general, but at the 'reigning Jurisprudence' in the Milanese area, from a point of view that ran parallel to the Austrian government's reform programme, in which members of the Academy of Fists and their collaborators actively participated.

In the first volume of *Il Caffè* Alessandro Verri criticized the Justinian Code for being cumbersome and contradictory, and for making no reference to the 'constant and general principles of justice' that were at the root of all useful laws.[31] Nevertheless, the mass of Justinian laws contained not only opinion, but sometimes also reason, and the *Institutes* were defined as 'the only ordered code of Roman laws'.[32] According to him, the greatest degeneration lay in the rediscovery of Roman law by the glossators and commentators, Irnerius, Accursius, Bartolus and Baldus. Alessandro took up this analysis of Roman law again in his essay *Ragionamento sulle istituzioni civili* (1765), where he explained in greater detail why he approved of the *Institutes*: 'they are the only real code that we have', since, by setting out 'the elements of the law taken as general rules and without reference to particular cases', they expose 'the principles for deciding questions', in order to educate young people.[33] Outlining the main stages of the establishment of the common law in Europe, Verri emphasized the gulf between theory and practice, between erudite jurisconsults and forensic jurisprudence, which became a legal language unknown to those coming from the university and the study of the *Institutes*. And while the jurists of local courts and all the legal practitioners were educated on local practices and statutes, producing a sort of Pyrrhonism insofar as 'jurisprudence changes with the post-horses',[34] the development of legal science, starting with Cujas, had led to a similar disorder, by increasing the number of books and interpretations. In this way, the proliferation of laws and

31 Alessandro Verri, *Di Giustiniano e delle sue leggi* (1764), in *Caffè*, vol. 1, 185. More than simply setting out a radical criticism of Roman law, Verri aimed at a renewal of it, as did other authors such as Giovanni Maria Lampredi, based on the idea of its 'tendential "correspondence" to natural law', as Maria Gigliola di Renzo Villata writes regarding Lampredi, in 'Introduzione. La formazione del giurista in Italia e l'influenza culturale europea tra Sette e Ottocento: il caso della Lombardia', in *Formare il giurista. Esperienze nell'area lombarda fra Sette e Ottocento*, ed. Maria Gigliola di Renzo Villata (Milano: Giuffrè, 2004), 1–106, at 36.

32 *Caffè*, vol. 1, 183.

33 *Caffè*, vol. 2, 573; a little later (574) Alessandro specifies: 'their brevity makes them merely an idea of a code'.

34 Ibid., 580.

doctrines led to a sort of anarchy in which the sheer number of laws paradoxically meant an absence of law. Arbitrariness of interpretation inevitably followed the disorder of jurisprudence and affected in particular the right of ownership.[35]

The reform of civil law and its procedures proposed by Alessandro Verri, in agreement with other *Il Caffè* authors, was aimed at ending this disorder by introducing a new code that was both universal and suitable for the growth of trade and relations between citizens that marked the modern era. Consequently, criticism of the excessive number of laws and professionals in the public sphere went hand in hand with the awareness of a new and different function for jurisprudence. There was also the consciousness of the difficulty of enacting a reform whose end was that of removing legislative power from the legal experts and the judges through the introduction of laws that were clear, simple and necessary rules for guaranteeing not only the institution of property but also, and primarily, the 'universal good'.

The main protagonist of this reform that aimed more at destroying than building was to be the 'jurisconsult philosopher',[36] who had the collective profile of *Il Caffè*'s contributors and embodied the figure of the expert ideally suited to the task of renewing the educational institutions. Developing a new code in fact required a jurisconsult with expertise in Roman law, in particular the *Digest*, and who had an understanding of the treatises that offered clear expositions of all aspects of jurisprudence, such as Heineccius's and Domat's.[37] However, at the same time he had also to be a 'philosopher' in the sense of understanding the infinite multiplicity of social relations ('commerce, the new arts, new customs, the contracts of various types') and intellectually able to 'tie the many threads into a knot'.[38]

It is interesting to observe that both volumes of *Il Caffè* included an index of topics; in the first volume we find under 'Public economy' not only essays on commerce, luxury and contraband but also the articles 'On the Fideicommissum' by Alfonso Longo and 'On the Legislation of Justinian' by Alessandro Verri, alongside 'Political Thoughts' by Sebastiano Franci.[39] Thus, from the point of view of the *Il Caffè* editors, there was a close link between ethics, politics, law and public economy – a connection that we see again a few years

35 Ibid., 585.
36 Ibid., 599.
37 Ibid., 598.
38 Ibid., 598–599.
39 *Caffè*, vol. 1, 7; in the second volume the topic is enlarged: 'On Legislation and Public Economy' (vol. 2, 409).

later in the inaugural lecture for the chair of cameral sciences delivered by Beccaria on 9 January 1769. In this, while denouncing the times and places in which 'private jurisprudence became the public legislator', he presented 'public economy' as a science that was also important for the study of civil law since it was aimed at 'the invariable law of utility and the eternal norms of universal equity'.[40] For him, therefore, it was not a question of replacing law with economy, but of re-establishing the right relationships between disciplines and professions, overcoming the general subordination of jurisprudence to 'private justice', a subordination that had had the effect of enabling the rise of the 'anti-political canon' that rewarded inertia at the expense of work: 'These and others are the effects of restricting jurisprudence within the boundaries of private justice when it ought to embrace all the greatest principles of morals and politics'.[41]

The reference to the 'greatest principles of morals and politics', in the plural, cannot be interpreted only as a reference to the formula of maximum happiness for the greatest possible number. Morals and politics relate to the language of the 'law of nature', of the 'law of nations' and of the 'social contract' mentioned by Pietro Verri in the *Orazione panegirica*.

In essence, if we return to Alessandro Verri's essay on Carneades and Grotius, the conclusion was certainly not that of rejecting *in toto* the science of the law of nature and nations. As in the case of Roman law, the critique did not involve a total rejection, but a qualified reconsideration that marked a radical break not only with the representatives of tradition, like Senator Gabriele Verri, but also with those who, like Venanzio de Mays, had introduced the teaching of this discipline into the chair of public law.[42] While in Italy the success of Grotius and Pufendorf in the mid-eighteenth century was reflected in the translation of their works, the members of the Academy of Fists, and in particular the Verri brothers and Beccaria, had already distanced themselves from those authors in favour of Montesquieu, Vattel and Rousseau.

Alessandro's critique of Grotius was radical and took to the utmost the accusation of tyranny and despotism made by Rousseau. The contraposition of Carneades and Grotius served to shed light on what Alessandro saw as the contradictory arguments of the latter to justify slavery on the basis of a presumed 'law of nature' as well as his arguments on the possibility of making pacts of unconditional subordination, which Verri saw as a form of voluntary

40 *EN*, vol. 3, 85; *CPO*, 132.

41 *EN*, vol. 3, 86; *CPO*, 132.

42 See Chapter 3 of the present volume, by Elisabetta Fiocchi Malaspina.

servitude so extreme that it involved the obligation to renounce one's right of defence and advantage:

> He who, out of delirium and fatuity hands his limbs over to someone who might beat him and kill him with impunity, or make him drag a cart and bury him in a prison because of such a contract, according to the dictates of the law of nature would be guilty of a crime against nature and of breaking a contract if he were to attempt to escape from such servitude, all because in a moment of madness he transferred to someone else his right of existence and there is no longer any action that his own limbs can perform that is his. Such a person has become a thing.[43]

These are ideas that recall the essential statements of *Dei delitti e delle pene*, making explicit the basic premises of contract theory: there are reasons why contracts can be null and void, and these mainly coincide with the principle of voluntariness and rationality, and whose justice or injustice depend on the advantage of the contracting parties.

This made it possible to pour criticism on the theories of Grotius, who, it was considered, by confusing law with fact, justified both tyranny and tyrannicide and sedition, and allowed a right of war that granted permission to commit any atrocity against the enemy: 'The voice of nature screams against these blood writings'. The conclusion was a rehabilitation of Carneades in the very name of the rights of nature:

> Who therefore, Carneades or Grotius, has violated justice? Who has praised the rights of nature only to prove himself ignorant of them and to violate them, or who was less hypocritical, more human, when he professed them and put the chimeras to flight, appearing to destroy them only in the eyes of those who did not understand him?[44]

The condemnation of Grotius continued in Alessandro's article 'Di alcuni sistemi del pubblico diritto' (1766), which went on to criticize also the theories of Pufendorf and Gravina on the origins of society. Albeit in different ways, all three of these authors were thought to justify war against nations that violated 'the first laws of humanity'. Grotius, in particular, was deemed to hold that it was permissible to punish primitive peoples as if they were 'enemies of the

43 *Caffè*, vol. 2, 717.
44 Ibid., 720.

human race'. At this point Verri made a criticism of the 'humanitarian' war that justified conquest in the name of compassion:

> They conquer and then pay a jurisconsult. This doctrine may be dictated by compassion but not by law. It makes one nation the judge of another without any convention and without any need. I do not see what this law can be based on when the ferocious customs of the barbarians do not offer any disadvantage, either by fact or by example.[45]

Verri was undoubtedly aware of the debates on the various currents of natural law, the different positions on the power to punish and on just war, and his preference for the doctrines of Rousseau, although not explicitly cited in these two contributions to *Il Caffè*, and for Vattel is undeniable:

> Among the large ranks of publicists it seems to me that Mr Vattel has grasped the truth and is the one who has stripped this science of chimeras and misunderstandings by reducing it to a system of ideas, not words. He establishes the principle that nations must seek their happiness and perfectibility since this leads them to happiness itself. He imposes some worthwhile duties. Nobody can argue with them. His principle is based on the human heart as it is, not as we might wish it to be.[46]

In this way Vattel was considered the author who was able to develop the science of public law (or the law of nations) by basing it on the true interests of the nations.

If we pause to consider the meaning of this praise for Vattel, it seems impossible to interpret it as a critique of natural law, given that the subtitle of the *Droit des gens* was 'ou Principes de la Loi naturelle appliqués à la conduite et aux affaires des Nations et des Souverains'. The fundamental point seems to me to be the contraposition between the 'human heart as it is' and 'as we might wish it to be'. As the essay on Carneades and Grotius shows, as do other writings of the members of the Academy of Fists, the anthropology of utility looks at the motives behind human action, bringing them back to a single principle, that of self-love, the pursuit of pleasure and escape from pain, pro-

45 Ibid., 736.
46 Ibid., 736.

vided, however, that utility does not only mean material or present interests. The concept of utility included, for Vattel and for Pietro Verri in *Meditazioni sulla felicità*, otherworldly goods, long-term goods, of which compassion and an easy conscience are a part.

Following the tradition of well-understood self-love, the Verri brothers and Beccaria rejected a double position in matters of moral justice: the hard-line one that sees virtue as self-renunciation[47] and the dualist one, which identifies in compassion a principle of sociality distinct from self-love and therefore draws a distinction between duties performed for oneself and those performed for others. On the opposite side, we find the critique of amoral realism embodied in Machiavelli, who, according to Verri, legitimized both tyranny and wickedness, choosing to forget that 'men have hearts and are capable of terrible remorse'. The theoretical vice of Machiavellianism ran parallel to that committed by those who based moral principles on reason: 'you establish the principles of righteousness as if men did not feel, as if there were no painful feelings in the soul, as well as in human limbs'.[48]

The proposal made by Alessandro Verri – as well as by other members of the Academy of Fists – was for a rational science of public law, construed as part of a broader science of ethics and politics, namely that of the 'science of humanity' that had evolved since ancient times[49] and ultimately consisted of a doctrine of legislation and duties. As a science, the determination of its first principles and the deduction of its consequences belonged to reason, and competence in it resided with the 'humane philosopher'. The raw material of the science is human nature, but not all men are able to understand themselves and the motives for their actions: 'It is certain that man is constantly in search of his utility. Let us therefore base the system on this. Only the man

47 It is in this sense that we should interpret Beccaria's passage in *Dei delitti e delle pene*, ch. 2: 'No man has made a gift of part of his freedom with the common good in mind; that kind of fantasy exists only in novels' (*CPO*, 10). An analogous position, in a transcendent key, can be found in Alessandro Verri, *Saggio di Morale cristiana* (1763), ed. Pierre Musitelli (2016), http://illuminismolombardo.it/testo/saggio-di-morale-cristiana/?tipo=1.

48 *Caffè*, vol. 2, 738–739. However, it should be remembered that the relationship between the members of the Academy of Fists and Machiavelli is far from one of pure opposition, as evidenced by the letter from Beccaria to Morellet dated 26 January 1766: 'Nello scrivere l'opera mia ho avuto innanzi gli occhi Galileo, Machiavello e Giannone. Ho sentito scuotere le catene della superstizione e gli urli del fanatismo soffocare i gemiti della verità', *EN*, vol. 4, 221; 'But I can say that, in writing my work, I had before me the examples of Machiavelli, Galileo, and Giannone. I could hear the rattling chains of superstition and the howls of fanaticism stifling the faint moans of truth', *CPO*, 121.

49 *Caffè*, vol. 2, 728: 'la scienza dell'uomo è vecchia'.

who thinks about them, sees utility relationships: everyone seeks happiness, desires it, and has a confused notion of it'.[50]

The rationalism of the moderns, whose principal representative was considered to be Pufendorf, produced a science of duties predicated on the false assumption that all men are rational and therefore guilty when they ignore the right standard of moral action. This system translated into a circular logic and an injustice: on the one hand, it considered natural law only as a rational science, forgetting that not everyone was capable of developing reason to the point of being aware of these standards. On the other hand, by wrongly presupposing that such standards were clear and knowable by everyone, it did not recognize ignorance as an extenuating factor. Modern moral rationalism was therefore impaired by its erroneous conception of responsibility and the imputability of human actions, and thus failed to distinguish the guilty from the innocent.[51]

4 The Ignorant Citizen and the Citizen Philosopher

Alessandro Verri's texts help to clarify the dual anthropological and epistemological level on which the philosophical and political project pursued by the 'Milanese school' proceeded, and the particular articulation of passions and reason, of particularism linked to historical context and the universality of principles of justice. While there is only one human nature and the science of man is ancient, there are different gradations in which the elements of human nature, passions and reason combine, depending on the individual and the level of development of nations. Human nature is at the same time variable and immutable. An enormous interval was considered to separate savage nations from civilized ones and to divide the 'common rustic' from the 'sublime philosopher'.[52] This contrast can be found in Beccaria's manuscript of *On Crimes and Punishments*, which in fact aimed to demonstrate how public legislation should account for the fact that its intended beneficiaries are not only rational beings, but also others, of all conditions, thus assuming that men animated by the desire for personal happiness may have a limited ability to weigh up 'utility relationships'.

50 Ibid., 738.

51 Ibid., 732–733; see in addition the article, also by Alessandro Verri, 'Alcune idee sulla filosofia morale', which begins: 'Most men understand themselves the least'; ibid., 685.

52 *EN*, vol. 1, 143.

In the revised version of the work by Pietro Verri, the latter changed the terms, reducing to a common denominator the differences, which lose the social and individual absoluteness of the first version: 'the ignorant citizen and the citizen philosopher'[53] are both members of society and their differences do not cancel out their common traits as 'citizens'. But the terms of the question do not change: the human material that is the object of politics is identical to that of the science of man and concerns a being endowed with a mixture of reason and passions. Man's freedom consists in the possibility of choice, and the ability to choose is reduced the greater the grip of the passions is. Torture is the perfect example of how the domination of pain can become unnatural by annihilating freedom of choice and using the individual's desire for self-preservation to bring about self-destruction, through forced confession.

The law and the government – as long as they are not tyrannical – must intervene in this space of liberty in order to transform individual interests into public happiness. Far from presupposing a spontaneous or natural harmony of interests, the members of the 'Milanese school' considered the legislative sphere crucial to correct the 'confusion' of the 'ignorant citizens', starting by administering a judicious dose of incentives and disincentives. Given these premises, the sphere of politics depended on the broader one of moral justice, of which it was a part, but at the same time must disregard any consideration that was not properly linked to the goal of preserving political society. The exclusion of religious motives did not simply respond to an editorial strategy of self-protection from censorship but was based on a distinction rooted in the tradition of natural law. Having said that, the preservation of society did not exclude religion from matters of relevance to government and legislation.[54]

The fundamental point, however, was the role attributed to the 'citizen philosophers' or to the 'philosopher jurisconsults'. While the 'ignorant citizens' were the targets and beneficiaries of social laws, the philosopher citizens, *qua* citizens, were like the ignorant citizens, but, as philosophers, were the experts who must develop the science of legislation and therefore instruct sovereigns

53 Ibid., vol. 1, 38. On Pietro Verri's changes to Beccaria's manuscript, see Gianni Francioni, 'Confronto tra la prima e la seconda redazione', ibid., 267.

54 See § XXXIX of *Dei delitti* and the difficulties Beccaria had in writing it, with the related notes by Gianni Francioni and his textual commentary, *EN*, vol. 1, 117–119, 268–270. We can only recall that the self-censorship exercised here by Beccaria relates to a fear of the ecclesiastical authorities, not of the Habsburg government, which aimed to control the religious sphere as much as possible: see Ettore Passerin d'Entrèves, 'Le premesse del riformismo di Maria Teresa e di Giuseppe II nel campo ecclesiastico, in Austria e in Lombardia', in *Economia, istituzioni, cultura in Lombardia*, vol. 2, 729–740.

on the reforms to be undertaken, as did those citizens who aspired, through higher education, to become part of the ruling class.

So we see that the conception of law and economy elaborated by members of the 'Milanese school' was aimed at redefining the hierarchies of power and knowledge in a way that largely coincided with the reformist politics of the Austrian government. In the new 'Piano scientifico per l'Università di Pavia' of 1773, the first of the newly established faculties was that of philosophy, whose subject is the science of man, who 'must know himself, other things, their different relationships, and the alterations they have undergone, in order to benefit from them for his own education and happiness. All this is the purpose of Philosophy, the most important of all the studies'.[55] In first position among the proposed courses we find logic and metaphysics, understood as the study of knowledge and its progress, and of the language and method relating to the discovery of truth. After this comes moral philosophy, which combined natural law with utilitarianism and sensualism, similarly to the 'pugilists'. The foundation of obligation refers back to the existence of God, who is known through sentiments inspired by the 'spectacle of nature'.[56] This is therefore a natural law independent from revelation, whose precepts are derived from a sociability based on self-love: 'Man is weak, he needs the help of others: he recognizes in them their similar shape, actions, and needs; He recognizes them as his equals; This is the source of all social duties, of that love of one's Neighbour founded on the first Laws of sociability and on properly understood self-love'.[57]

It is not possible to follow in detail the contents of the plan, but the references to first principles, to a method of instruction aimed at creating debate and not erudition, emerge repeatedly. History is the continuation of morals and the person called to teach it must be a 'Philosophical Man', who knows how to 'unfold its causes, deduce its effects, and investigate its circumstances, thus weaving a genuine essay of Philosophical History and of the human heart'.[58] As such, there is a strict connection between moral philosophy, natural law and the teaching of jurisprudence in the broadest sense as a science of society: 'The security, property, peace and harmony of society are the most essential and precious things. The task of procuring and preserving them falls

55 'Piano scientifico per l'Università di Pavia', in *Statuti e ordinamenti della Università di Pavia dall'anno 1361 all'anno 1859. Raccolti e pubblicati nell'XI centenario dell'Ateneo* (Pavia: Tipografia cooperativa, 1925), 228–255, at 228.

56 Note here the evocation of Noël-Antoine Pluche's famous work *Le spectacle de la nature* (1732–1750) and of 'La confession de foi du vicaire Savoyard' in Book IV of Rousseau's *Émile*.

57 'Piano scientifico per l'Università di Pavia', 229.

58 Ibid., 230–231.

to Jurisprudence and the more noble Philosophy, founded on the intimate understanding of the human heart'.[59] Particularly with regard to the teaching of law, the objective was to establish a new 'model of the jurist', and thus 'in time producing a Philosophical Jurisconsult and a Legislator',[60] as Senator Pecci wrote in the 'Plan of Legal Studies' from 1767, in full agreement with Alessandro Verri's proposal in *Il Caffè*.

In short, there was a clear convergence between the reform plans and the pugilists' battle to overthrow the existing hierarchies of knowledge and power. Both ascribed primacy to the legislative philosopher, as the one responsible for recovering the true principles of natural and political law and serving as a true adviser to the prince. The new hierarchy reduced and then swept away the intermediary bodies and common law, but it did not translate into a form of omnipotence for legislative power and positive law; rather, it meant a despotism of laws derived not from the will of the legislator, but from the principles of philosophy.[61] The clearest example is the teaching of criminal law, which Beccaria gave a new foundation by tracing its principles to those of public law and the theory of the social contract.

5 The Principles of Criminal Law: On Crimes and Punishments

Even though the contribution to the history of economic thought made by the 'Milanese school' has been widely recognized, it cannot be denied that its biggest breakthrough and most original work was Beccaria's famous treatise, *Dei delitti e delle pene*. The work represented a methodological revolution in the field of criminal law.[62] With the education reform, the Austrian government also aimed to introduce criminal law as an independent subject of study.

59 Ibid., 255, also cited by Elisabetta Fiocchi in the previous chapter.

60 Archivio di Stato di Milano, Studi, p.a., cart. 375, fasc. 3, Nicola Pecci, 'Piano legale degli studi', fol. 10. The Archive stores two copies of Pecci's 'Plan', the first described as complete and the other as an incomplete version. I could verify that both manuscripts are incomplete, as we will see below. On the new 'model of the jurist', see Maria Carla Zorzoli, 'La formazione dei giuristi lombardi nell'età di Maria Teresa: il ruolo dell'Università', in *Economia, istituzioni, cultura in Lombardia*, vol. 3, 743–769, at 767.

61 On the despotism of law, see Christof Dipper, '*Despotie* und *Verfassung*: Zwei Freiheitskonzepte der Mailänder Aufklärung', in *Beiträge zur Begriffsgeschichte der Italienischen Aufklärung im Europäischen Kontext*, ed. Helmut C. Jacobs and Gisela Schlüter (Frankfurt am Main: Peter Lang, 2000), 23–58.

62 In relation to previous criminalists and judicial practice, Beccaria's work is certainly an 'epistemological' revolution. Compared with the works of preceding contractualist authors, it is a methodological revolution due to the extension of the deductive method from the 'principles of public law' to the 'principles of criminal law'.

In traditional curricula it had been included either in the final part of the Justinian *Institutes*, dedicated to obligations that originated *ex delicto*, as shown by the treatise of Venanzio de Mays, or else in lessons on local law. In treatises of politics and the law of nature and nations, from Pufendorf to Burlamaqui and Vattel, the power to punish was considered a prerogative of sovereignty and consequently constituted one of the most important parts of political or civil law, once again defined, in the language of the Verri brothers, as 'particular public law', which, together with universal public law – in other words the law of nations – was one of the two branches of public law.[63]

At the very time Beccaria was working on the first draft of his masterpiece, the original title of which was *Delle pene, e delitti*, the Milanese Senate published, on 5 October 1763, a call for professorships to be filled in the Palatine School of Milan and in the University of Pavia in accordance with a reformed study plan instead of the traditional one. Among the disciplines included was that 'Of criminal practice, or of crimes and punishments'.[64] If we are right to surmise that among the members of the Senate who had issued the call was the father of the Verri brothers, it seems hard to believe that the members of the Academy of Fists, at the very time they were beginning their implacable fight against the Senate and local jurisprudence, ignored the title of that chair and that the decision to rethink the order of the title of Beccaria's work was not partly inspired by it. The plan for the French translation of *Dei delitti e delle pene*, launched and then abandoned by Pietro Verri in 1764, appears to have been the counterpoint to that course of studies: *Des délits et des peines, ou Principes de la jurisprudence criminelle*.[65] The title opposes principles against practice, against the claims of sovereignty by a Senate acting as judge and legislator and resorting to arbitrary judgements, torture and the death penalty.

The radical innovation of Beccaria's text consisted precisely in the rigorous deduction of the principles of the power to punish from the theory of

63 For this distinction in the plan by Nicola Pecci, see Elisabetta Fiocchi Malaspina in Chapter 3 of the present volume. On the power to punish and the right to life and death in modern natural law, see Gabriella Silvestrini, 'Fra diritto di guerra e potere di punire: il diritto di vita e di morte nel *Contratto sociale*', *Rivista di Storia della filosofia* 70 (2015): 125–141; Dieter Hüning, '"Is not the power to punish essentially a power that pertains to the state?" The Different Foundations of the Right to Punish in Early Modern Natural Law Doctrines', *Politisches Denken Jahrbuch* 14 (2004): 43–60.

64 Archivio di Stato di Milano, Studi, p.a., cart. 296. The call is reproduced in Maria Gigliola di Renzo Villata, '1740–1765: un declino inarrestabile? Il Senato milanese "recalcitrante" tra misure riformistiche di ripiego e modesti segni di rinnovamento dell'Ateneo pavese', in *Almum Studium Papiense*, vol. 2.1, 63–82, at 77.

65 *ENPV*, vol. 1, 795–800.

the social contract, thus filling a gap in eighteenth-century moral and political science, which had already developed, through Rousseau and Vattel, 'the true relations between the sovereign and the subjects, and between the nations'.[66] However, this genuine theoretical originality cannot be interpreted as being opposed to natural law, since public law presupposes natural law and the science of politics depends on moral science.

The tripartition of 'revelation, natural law and the conventions arrived at by society' seen as the three main sources of the 'moral and political' principles 'regulating mankind' was not a mere screen erected to protect the work from religious censorship.[67] Pietro Verri had already made mention of this tripartition in his *Meditazioni sulla felicità*, which he found in Protestant theories of natural law that had distanced themselves from revelation. The tripartition also inspired the plans for the reform of the university, which aimed to bring the teaching of theology under state control, albeit while seeking mediation with the ecclesiastical institutions. Theology found itself in fourth place in the list of faculties proposed by the various reform projects, reflecting the marginalization of revelation and the Catholic religion in contrast to natural law, which remained central, but was nevertheless inscribed in the 'heart' of man, and had principles which could be discovered rationally.

The separation of religion and politics, of sin and crime, that is clearly established in Beccaria's work can also be found in the more cautious but no less decisive reform plans. In lessons on criminal law, professors had to demonstrate 'What is the nature and essence of crime, and the difference between the moral and political order in this matter'. In consequence, the principle of proportionality between crimes and punishment and the purpose of penal laws, namely 'the wellbeing of the Public', were affirmed. From these premises a three-part division of 'criminal law' was established: (1) the nature of crimes and punishments, (2) the judicial authority, termed the executor, and (3) criminal procedure.[68]

From this perspective, and in particular in the Milanese context, bracketing revealed religion – another of *Il Caffè*'s defensive editorial strategies – did not mean abandonment of natural law. Correctly understood, the latter continued

66 On Beccaria's introduction to *Dei delitti e delle pene*, see Gabriella Silvestrini, 'Cesare Beccaria: "Il Rousseau degli Italiani"?', in *Nell'officina dei Lumi. Studi in onore di Gianni Francioni*, ed. Giuseppe Cospito and Emilio Mazza (Como-Pavia: Ibis, 2021), 179–194.

67 *On Crimes and Punishment*, 'To the Reader', CPO, 4.

68 See Pecci's 1767 'Piano legale', Archivio di Stato di Milano, p.a., cart. 375, fasc. 3, copy 1, fols 12v–13r. See also the 'Piano scientifico per l'Università di Pavia', 239–240.

to constitute the boundaries of what was conceivable within the social and political science proposed by members of the Academy of Fists.

The reference to the inalienable right to self-defence that appears in the various editions of *Dei delitti*, in other words to the 'rights of man', is repeated in Pietro Verri's *Osservazioni sulla tortura*. And in chapter 16 of the *Ricerche intorno alla natura dello stile*, which remained unpublished, Beccaria, musing on the origin of the idea of justice, wrote: 'right can be defined as a necessary consequence of the use of our faculties, and justice as not preventing others from using the same faculties; just as duty may be defined as that which is necessary for us to do to ensure that the necessary use of the faculties of others is not impeded'.[69]

Therefore, if any difference can be discerned between the reform projects and the works of the 'pugilists', the most important one is that the former make no reference to inalienable rights of man nor to the possibility of finding a discrepancy between the duties of man and the duties of the citizen established by positive law. The 'pugilists' obviously thought that such discrepancy must be judged by the individual, who might then exercise a legitimate right to disobedience, if not outright resistance.[70]

6 Conclusions: The 'Pugilists' in the University Reform and the 'Imbroglio' of the Chairs

As is well known, on 9 January 1769 Beccaria delivered his inaugural lecture as professor of cameral sciences, a discipline later renamed 'public economy'.[71]

69 *EN*, vol. 2, 205. When having to express an opinion on the 'punishment of the nobles', beginning with the distinction between criminal and political offences, Beccaria defined criminal offences as those which, apart from leading towards the destruction of society, 'violate natural law'; see *EN*, vol. 9, 481–482.

70 Pietro Verri, *Meditazioni sulla felicità*, 748: 'I don't know if religion allows us to obey the prince's proclamations when they call on us to betray or kill a criminal, but if religion allowed it, it would be better to calculate whether the good that is done to men by freeing them from one judged to be a danger to public peace is greater than the evil of authorizing by example cold-hearted treason and legitimate murder'. In the correspondence of the Verri brothers there is an undeniably positive view of the execution of Charles I of England. See the letter from Alessandro Verri to Gian Rinaldo Carli, 20 June 1767, in *Lettere e scritti inediti di Pietro e Alessandro Verri*, vols 4, ed. Carlo Casati (Milano: Giuseppe Galli, 1879–1881), vol. 2, 265–274, at 270. See also Gianni Francioni, '"Ius" e "potestas". Beccaria e la pena di morte', *Beccaria. Revue d'histoire du pouvoir de punir* 2 (2016): 13–49, at 47–48.

71 On Beccaria's lecture, see Wolfgang Rother, 'The Beginning of Higher Education in Political Economy in Milan and Modena: Cesare Beccaria, Alfonso Longo, Agostino Paradisi', *History of Universities* 19(2) (2004): 119–158.

Rather than an intentional choice, the creation of this position appears to have been the result of a series of circumstances that dramatically altered the original plan to give the author of the *Delitti* the chair of public law in the Palatine School of Milan.

On 25 June 1765 Beccaria wrote to the chancellor, Prince Welzel Anton Kaunitz, requesting his support for his application for a post. The reform of the university was at a turning point, the Senate had been deprived of its educational competences, and the new delegation appointed by Vienna had begun its work. The wording of the message does not appear to leave any doubt: by sending the prince the 'two little books' he had published up to then, *Del disordine e de' rimedi delle monete nello Stato di Milano* and the third edition of the *Delitti*, the young marquis explained that he had no interest in 'forensic studies' and the 'career of the gown'. This was therefore a clear rejection of forensic jurisprudence and judicial practice, but not of the law in general. In fact, the text continues, 'I have always made my delight and my occupation those sciences that pertain to the regulation and economy of a state'.

The first version of this sentence had read 'of politics and the public jus, of the finances, of commerce and of that which belongs to the [...]'.[72] Beccaria was not requesting just any position, but a professorship in the political sciences, which included public law and public economy. The 'jurisconsult philosopher' was writing to offer his knowledge in the context of the reform of the institutions and of the education system theorized by the 'pugilists'. A few months later Vienna revoked responsibility for trade matters from the Milanese Senate and with a royal dispatch dated 20 November 1765 established the Supreme Council of Public Economy, which Gian Rinaldo Carli and Pietro Verri joined.[73] In October 1765 the marquis repeated his request, this time asking for a position in the same council, but was once more made to wait.[74]

In the meantime, the fame of his book spread like wildfire. The French translation brought him an invitation to Paris and led to his famous journey to the capital of the *philosophes* in the autumn of 1766, accompanied by Alessandro Verri, who had been encouraged to go by his brother Pietro, whose work commitments did not allow him to leave Milan. The trip, though, was marked by conflict between Beccaria and Alessandro, which resulted in the end of the intellectual and personal solidarity of the members of the Academy of Fists. But it did not disrupt the strong network of relations between Milan

72 *EN*, vol. 4, 101.

73 Carlo Capra, *I progressi della ragione. Vita di Pietro Verri* (Bologna: Il Mulino, 2002), 247–250.

74 *EN*, vol. 4, 263.

and Vienna that helped to find an 'annexation' (*annicchiamento*) in the Viennese administration for the pugilists and their friends.

Meanwhile, Catherine the Great of Russia had discovered the young Italian's work and invited him to Moscow. Beccaria used the invitation by the Russian sovereign to ask Vienna for a position at home. In this he was helped by friends who were preparing the plan to reform the university, in particular Gian Rinaldo Carli and Nicola Pecci. The latter, when drafting the 'Piano di studi legale', proposed, apart from the chair in public law at the University of Pavia held by Venanzio de Mays, the introduction at the Palatine School of Milan of a course in public law which, in an initial plan, covered, within 'particular public law', also the 'Rules of public Economy, of luxury, of Sumptuary Laws, exportation and importation of goods, the procedures for civil and criminal judgments, and of testamentary dispositions'.[75] Intended for a wider audience than that of students preparing to embark on a career in courts, as judges, lawyers and notaries, the course at the Palatine School was conceived as part of the general training of citizens who aspired to play a part in public administration. The right person for the role was Beccaria, who was the subject of correspondence in the spring of 1767 between the Count of Firmian and Prince Kaunitz, who declared himself in favour of introducing the chair in Milan and of assigning it to a young man who, unlike many Italians, intended to dedicate himself to the study of philosophy and not 'merely to the trivial jurisprudence of the court, deprived of any erudition, or to frivolous studies'.[76]

A dramatic change occurred during the autumn of 1767: Beccaria's name had become attached to a different chair – still at the Palatine School in Milan – that in cameral sciences. Was this destiny or chance? We know for certain that the first version of the 'Piano degli studi legale' written by Nicola Pecci and sent to Vienna on 10 September 1767 did not include a chair in economics or cameral sciences. This professorship was instead proposed in the documents accompanying the plan, and for this very reason Prince Kaunitz, in his response to the plan of 16 November 1767, which was very critical of the project but enthusiastic about introducing to Milan a course in cameral

75 Nicola Pecci, 'Piano', Archivio di Stato di Milano, p.a., cart. 375, fasc. 3, copy 2, fol. 10 verso. In the copy 1 of the manuscript there is an evident gap between fol. 19 verso and fol. 20 recto: the folio 19 verso stops with 'Sumptuary Laws' and folio 20 recto begins with 'del Feudo rimangono al Vassallo'. It is therefore impossible, on the basis of copy 1, to understand what Pecci originally included in the course on public law.

76 Letter from Kaunitz to Firmian, 21 May 1767, in Angelo Mauri, 'La cattedra di Cesare Beccaria', *Archivio storico italiano* 91 (1933): 199–262, at 211.

sciences like the one held by Sonnenfels in Vienna, expressed his disappointment that the description of the course had not been included in the academic plan.[77]

We might therefore presume that the idea of *doubling* the Milanese chair of public law and creating a parallel one in cameral sciences had come to the members of the Deputation only belatedly, when it was no longer possible to alter the plan before sending it to Vienna. What had happened in the meantime?

Perhaps the answer lies in the correspondence between Pietro and Alessandro Verri. The latter, when Beccaria returned to Milan in November 1766, left for London, where he remained a couple of months. He then returned via Paris to Italy where, without passing through Milan, he headed for Tuscany and eventually ended up in Rome. The letters between Alessandro and his brother gradually reveal a desire on Alessandro's part to turn his temporary journey into a permanent abandonment of the city of his birth, while Pietro, hoping for his brother's return, made strong arguments against. And in this crescendo of emotions, Pietro sought to entice Alessandro back to Milan with promises of employment, thanks to the support of Firmian and of Carli.

However, Alessandro made plans to establish himself elsewhere, as he feared a return to his family. At a certain point he dreamed of a chair in Pisa, hoping for the support of Pompeo Neri:

> I have an idea that is not yet mature, about which I will do what you advise. There are many empty chairs in Pisa: it is up to President Neri whether I might get one. I find that I enjoy some esteem for the work I have published. Logic, metaphysics, ethics, public and private and criminal law suit me, and I can keep my word. One cannot live with Father in Milan, there would be constant anger, an immortal desire to do harm: perpetual and cruel war! Waiting for a position is a long antechamber, and then I feel positively oppressed by the idea of a type of slavery that takes me away from letters, towards which I feel enraptured by yearning.[78]

77 Archivio di Stato di Milano, *Studi*, p.a., cart. 375, fasc. 1, Letter from Kaunitz of 16 November 1767, fol. 8: 'I therefore do not know why the plan for the chair in Cameral Sciences has been omitted from the other projects and plans for the respective sciences and chairs to be established in Milan. Is this not a chair which, considering the circumstances of the time, must be one of the most important and most useful to the nation?'

78 Alessandro Verri to Pietro Verri, 20 April 1767, in *Viaggio a Parigi e Londra* (*1766–1767*). *Carteggio di Pietro e Alessandro Verri*, ed. Gianmarco Gaspari (Milano: Adelphi, 1980), 405–406.

Pietro, disconsolate, dissuaded him, just as he stated his opposition to Alessandro journeying to Vienna to ingratiate himself with the Habsburg authorities. At a certain point, however, the situation came to a head in an alarming manner. In Rome Alessandro fell in love with a married woman and risked never returning to Milan. Pietro first attempted to 'disillusion him' by casting severe doubts on the respectability of his lover. Then, when Alessandro confessed his genuine love, the unexpected 'imbroglio' of a chair in public law appeared. In a famous letter of 17 October 1767 a distraught Pietro informed his brother that, through no fault of his own or of his father, Gabriele, the request for the creation of a chair of public law at the Palatine School had been sent to Vienna on Alessandro's behalf. By a series of circumstances and misunderstandings, Count Gabriele Verri, urged by Paolo Frisi, Nicola Pecci and Gian Rinaldo Carli, had already made a formal commitment to the Viennese authorities on behalf of his son. What, in the end, would it cost him to commute between Milan and Rome, the older brother asked, probably in league with his father. It would be too difficult to turn back now.[79] But Alessandro, indignant, asked his brother not to interfere further in his personal pursuit of happiness and firmly rejected the proposal.[80]

We can only imagine how things went. Faced with the threat of a permanent estrangement from Alessandro and a romantic attachment that would have been difficult for the family to swallow, Pietro and Gabriele Verri increased their pressure on their friends to find Alessandro not just any position, and one that he probably would not want, but a 'niche' in the reform of the university, thus indulging his passion for 'letters'. The main protagonists, the Verri family, Carli, Firmian and Pecci, hurriedly found a solution in the idea of doubling up the chair in public law and offering Beccaria the equivalent position in economics as compensation. This explains the unexpected appearance, in the presentation of the plans sent to Vienna in September 1767, of the course in cameral sciences.

Alessandro's refusal to return to Milan and renounce his happiness, and Kaunitz's enthusiasm for the proposal of a course in the cameral sciences led

79 *Carteggio di Pietro e di Alessandro Verri*, ed. Emanuele Greppi and Alessandro Giulini (Milano: Cogliati, 1926), vol. 1, II, 90–92.

80 As attested in the copy, written by Pietro Verri's copyist, conserved in Fondazione Mattioli, Milan, Italy, Archivio Verri, 279, fol. 418, Alessandro's letter dates to 23 October 1767; I would like to express my gratitude to Sara Rosini, Fondazione Mattioli, who helped me to decipher the handwriting of Pietro Verri's copyist; in the *Carteggio di Pietro e di Alessandro Verri*, vol. 2, this letter from Alessandro is attributed to 13 October, following the copyist of the Società Storica Lombarda; it is conserved at Biblioteca Nazionale Braidense, Milan, Italy, Carteggio Verri, 2, fol. 856.

to a modification of the initial project. The course in public law in the Palatine School of Milan would be dropped and Alfonso Longo would be given the task of presenting lectures in ecclesiastical public law. Beccaria would instead find himself hurriedly compiling, for Gian Rinaldo Carli, the plan for the chair in cameral sciences and his course. This, launched at the start of 1769, would be the first step in the reform that would be fully enacted only in 1773, when Beccaria, despite the success of his lectures, having already obtained a position as an 'employee' in the Council of Cameral Sciences, abandoned the university post.

These were the crossed destinies and dreams that resulted in the less than 'triumphal' entry of economic science into the Palatine School of Milan. Far from being an autonomous science, to Beccaria's mind as well as to others involved in the reforms, while public economy was indeed a fundamental branch of knowledge, it was not the backbone of a political science, but instead remained firmly anchored in morality and the law of nature and of nations.

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