

# The Teaching of International Law in Cagliari, the 'Italian School' and the Unification of Italy

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Ideas are the product of their times and they contribute to events with their fruitful spark; they do not stem from the human mind just out of the blue, but from all the efforts that unite in a definitive act; facts, indeed, inspire ideas, whilst ideas, in turn, govern the course of events, fortunate products of the former, propitiously triggering the latter.<sup>1</sup>



## 1 The Study of International Law in Cagliari before 1850: The Missing Story

It is well known that the inception of international law as a positive science resulted from the efforts of the legal theory that, from the nineteenth century onwards, worked to get rid, on the one hand, of the alleged abstractness of natural law and, on the other hand, of the political concreteness of the old law of nations.<sup>2</sup> Admittedly, although the proposals deriving from Christian Wolff

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1 Guido Bortolotto, 'Nazionalità', in *Il Digesto Italiano. Enciclopedia metodica e alfabetica di legislazione, dottrina e giurisprudenza* (Torino: Unione tipografica Editrice Torinese, 1905–1910), vol. 16, 11: 'Le idee sono figliuole dei tempi e agli eventi portano la loro spinta feconda; esse non sorgono ex novo dalla mente d'un uomo, ma sono il prodotto faticoso di tanti sforzi che si uniscono in un'energia definitiva; e se i fatti esse danno l'ispirazione, esse alla lor volta presiedono al corso degli avvenimenti, figlie felici dei primi, provvide genitrici degli altri'.

2 An earlier and shorter version of the present chapter has been published as 'A cavallo dell'Unità d'Italia. L'insegnamento del Diritto internazionale a Cagliari e l'adesione alla cosiddetta Scuola italiana', *Annali di Storia delle Università italiane*, 2 (2020): 213–233. On the emergence of international law as a positive science see Luigi Nuzzo, *Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo* (Frankfurt am Main: Vittorio Klostermann, 2012), in particular 4; and Luigi Nuzzo and Miloš Vec, 'The Birth of International Law as a

and popularized by Emer de Vattel's widely dispersed *Droit des gens*<sup>3</sup> promised to overcome 'reveries' and 'misunderstandings', they did not satisfy the new international law scholars, whose aspiration, if anything, was to found a science independent of individual government policies as these were expressed in diplomatic endeavours. Indeed, the deductive method – not least in Wolff – led to the suspicion that such constructions actually disguised the attempt to 'order nature according to one's ideas, and not order one's ideas according to nature' (Gotthold Ephraim Lessing).<sup>4</sup>

We should also note the historical link between the labels 'international law' and 'law of nations'. Their meaning overlaps only partially, but anyone wishing to understand the situation prior to the spread of the term 'international law' in the nineteenth century should undoubtedly look into the law of nations, or natural law *and* the law of nations, or public law.<sup>5</sup> Accordingly, this investigation has to start with an analysis of the institution (or non-institution) of the chair of natural law and law of nations.

The reform of the University of Cagliari advocated by Giovanni Battista Lorenzo Bogino, the superintendent at the Secretariat of the Affairs of Sardinia,<sup>6</sup> and implemented in 1764,<sup>7</sup> served to restore its original task, which it had long ceased to fulfil, and made it operational again in training prospective graduates for both legal and academic practice.

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- Legal Discipline in the 19th Century', in *Constructing International Law: The Bird of a Discipline*, ed. Luigi Nuzzo and Miloš Vec (Frankfurt am Main: Vittorio Klostermann, 2012), ix–xvi.
- 3 In a vast literature see in particular Koen Stapelbroek and Antonio Trampus, 'The Legacy of Vattel's *Droit des gens*. Contexts, Concepts, Reception, Translation and Diffusion', in *The Legacy of Vattel's Droit des gens*, ed. Koen Stapelbroek, Antonio Trampus (Cham: Palgrave Macmillan, 2019), 1–25; and Elisabetta Fiocchi Malaspina, 'The Legacy of Vattel's *Droit des gens* in the Long Nineteenth Century', *ibid.*, 267–283, and the bibliography there.
- 4 Quoted from Aldo Mazzacane, *Savigny e la storiografia giuridica tra storia e sistema* (Napoli: Liguori, 1976), 5.
- 5 See Emmanuelle Jouanet, 'Droit des gens (Du droit des gens au droit international)', in *Dictionnaire de la culture juridique*, ed. Denis Alland and Stéphane Rials (Paris: PUF, 2003), 463–467.
- 6 See Giuseppe Ricuperati, 'Il Settecento', in *Il Piemonte sabauda. Stato e territori in età moderna, Storia d'Italia*, ed. Giuseppe Galasso (Torino: UTET, 1994), vol. 8, pt 1, 515–528 and 549–562.
- 7 Boginian reform was extended in 1765 to a second university in Sardinia, the University of Sassari, founded in 1562. On the common history of the two Sardinian universities and especially the two law faculties see Antonello Mattone, 'La storia delle Facoltà di Giurisprudenza di Cagliari e di Sassari, una storia parallela?', in *La Facoltà di Giurisprudenza di Cagliari e l'insegnamento del diritto tra Otto e Novecento. La storia e la memoria*, ed. Giuseppina De Giudici (Napoli: ES1, 2023), 17–75. Concerning the law faculty there, see Antonello Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari (secoli XVI–XX)* (Bologna: Il Mulino, 2016).

Founded in 1620 as a city university and operational from 1626, the University of Cagliari did not fully function as such until the end of the seventeenth century.<sup>8</sup> Nevertheless, at the beginning of the eighteenth century it was essentially ghost-like: although chairs and assignments were formally decided, the secretariats did not function; student registers were not kept; although university degrees (bachelor's, licentiate and baccalaureate) were formally conferred, examinations were not held; and, above all, no actual teaching took place.<sup>9</sup> The aim of the Bogino's reform was to relaunch the original university, as is clear from the scope of the initiative by the House of Savoy, that is, moderate in content and, as far as legal studies were concerned, with an unwillingness to reconsider the classical curriculum of jurists *in utroque jure*.<sup>10</sup>

Despite this, there is no reason to rule out that the Savoy government felt the need to form new classes of intellectuals. Indeed, Bogino's reform was modelled on Turin, though adjusted due to the more limited financial resources available, and it was conceived as an essential basis for more wide-ranging reforms; in fact, a 'new flourishing of Sardinia' was expected. It is no coincidence that this phrase (in Italian: *Rifiorimento della Sardegna*) is the title of a work that was written by Francesco Gemelli at Bogino's request and which can be regarded as a manifesto of that period.<sup>11</sup> Effectively, the late-eighteenth-century reform of the Sardinian universities determined, as has

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- 8 The University of Cagliari was founded by a charter granted by Filippo III of Spain. See *I documenti originali di fondazione dell'Università di Cagliari*, ed. Luisa D'Arienzo (Nuoro: Ilisso, 1997), *passim*. For a historical reconstruction on the birth of the University of Cagliari and the function of teaching during the seventeenth and eighteenth centuries, see Gian paolo Brizzi, 'Tra Roma e Madrid: la genesi dello Studio generale di Cagliari (1543–1626)', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, vol. 1, *Dai progetti cinquecenteschi all'Unità d'Italia*, ed. Italo Birocchi (Pisa: ETS, 2018), 23–64, and Antonello Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 45–51.
- 9 See Italo Birocchi, 'Graduati e professori nell'età preboginiana (1709–1763)', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, vol. 1, 171–181. However, the decline of the University of Cagliari before the 1764 reform is not an isolated case in the history of Italian universities. On the topic see Emanuela Verzella, 'La crisi dell'assetto corporativo e le riforme universitarie', in *Storia delle Università in Italia*, ed. Gian Paolo Brizzi, Piero Del Negro and Andrea Romano (Messina: Sicania, 2007), vol. 1, 159–191. Regarding the review of legal studies, see Italo Birocchi, 'Contenuti e metodi dell'insegnamento: il Diritto nei secoli XVI–XVIII', in *Storia delle Università in Italia*, vol. 2, 243–261, at 253–256.
- 10 Law firms remained, in fact, tied to the humanistic model, as stated by Italo Birocchi, 'Università e riforme: il modello neoumanista e le facoltà giuridiche', in *Governare un Regno. Viceré, apparati burocratici e società nella Sardegna del Settecento*, ed. Pierpaolo Merlin (Roma: Carocci, 2005), 422–441.
- 11 On the reform conceived by the House of Savoy between the late 1750s and the late 1760s see Giuseppina De Giudici, *Interessi e usure nella Sardegna di Carlo Emanuele III* (Pisa: ETS, 2010), esp. 31–36.

been recognized,<sup>12</sup> an intellectual awakening and triggered a sort of revolution of ideas. This also occurred thanks to the initial recruitment of foreign lecturers, called to teach, mainly in the Faculty of Philosophy and Arts, preparatory to admission to the three higher faculties (Law, Theology and Medicine), and in that of Theology. This is what happened with the Lombard Augustinian Carlo Nicolò Fabi,<sup>13</sup> the Genoese Scolopian Liberato Fassoni,<sup>14</sup> the Carmelite Paolo Maria Oggero<sup>15</sup> and the Turin Dominican Gian Battista Vasco.<sup>16</sup>

In the Faculty of Law in Cagliari – where, as at the University of Sassari, there had been a lack of external recruitment<sup>17</sup> – the major themes of natural law did not find a place in the courses on *jus civile* and *jus canonicum*.<sup>18</sup> However, it cannot be said that law students were entirely exempt from study of

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- 12 See Antonello Mattone and Piero Sanna, 'La rivoluzione delle idee: la riforma delle due università sarde e la circolazione della cultura europea (1764–1790)', in idem, *Settecento sardo e cultura europea. Lumi, società, istituzioni nella crisi dell'Antico Regime* (Milano: Franco Angeli, 2007), 13–106. See also Italo Birocchi, *La carta autonomistica della Sardegna tra antico e moderno: le leggi fondamentali nel triennio rivoluzionario (1793–96)* (Torino: Giappichelli, 1992), 53–72; Piero Sanna, 'L'assolutismo sabaudo e l'Università di Sassari. Il rinnovamento degli studi', in *Storia dell'Università di Sassari*, ed. Antonello Mattone (Nuoro: Ilisso, 2010), vol. 1, 81–97; Italo Birocchi, 'Università e riforme', esp. 57; and Walter Falgio, *Libro e università nella Sardegna del '700* (Cagliari: AM&D, 2011), 13–29.
- 13 In Cagliari from 1764 to 1770, Fabi taught for the first two years Ethics or Moral Philosophy and Metaphysics and Logic and for the remaining four years Moral Theology. On Fabi see Guido Fagioli Vercellone, 'Fabi, Carlo Nicola Maria', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia italiana, 1993), vol. 43, 697–699, at 698.
- 14 Fassoni taught Moral Theology from 1764 to 1770. On Fassoni see Carlo Fantappiè, 'Fassoni, Liberato', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia italiana, 1995), vol. 45, 308–311, at 310.
- 15 Oggero taught Sacred Scripture and Hebrew Language from 1764 to 1770. See Mattone and Sanna, 'La rivoluzione delle idee', 23.
- 16 Vasco was professor of Scholastic-dogmatic Theology and Ecclesiastical History from 1764 to 1766. On his teaching in Cagliari see Franco Venturi, 'Gian Battista Vasco all'Università di Cagliari', *Archivio storico sardo* 25 (1957): 12–41; idem, 'Giambattista Vasco', in *Illuministi italiani*, vol. 3, *Riformatori lombardi, piemontesi e toscani*, ed. Franco Venturi (Milano-Napoli: Riccardo Ricciardi Editore, 1958), 757–768; Gianni Marocco, *Giambattista Vasco* (Torino: Fondazione Luigi Einaudi, 1978), 24–26; and Paola Bianchi, 'Giovanni Battista Vasco', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia italiana, 2020), vol. 98, 388–392. The text of his prologues to courses on Scholastic-dogmatic theology and Church history (under the name of Thomas, assumed as a Dominican) is now in Giambattista Vasco, *Opere*, ed. Maria Luisa Perna (Torino: Fondazione Luigi Einaudi, 1989), vol. 1, 15–23 and 27–28.
- 17 Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 100.
- 18 This statement is reflected in the guidance provided by the government on course holding (see the 'Piano per l'Instituta civile', in Archivio di Stato di Cagliari, Cagliari, Italy (hereinafter ASCa), Segreteria di Stato, series II, vol. 819; the document, undated but referable to the years of the start of the reform, is contained in the file concerning the

the topics discussed by the natural lawyers. If anything, the problem lay in the quality and quantity of the teaching.

## 2 Preparing for Higher Courses: The Ethics and Logic and Metaphysics Classes

As noted above, prior to specialist training, aspiring jurists – as well as aspiring theologians and aspiring physicians – were required to take courses at the Faculty of Philosophy and Arts. Here they were taught, in addition to classes in Experimental Physics, those in Ethics (or Moral Philosophy),<sup>19</sup> designed as an introductory discipline to the natural law sciences, and Logic and Metaphysics, useful for acquiring the principles of a 'sound criticism', away from 'superstitious credulity' or 'intemperate freedom of thought'.<sup>20</sup> It is interesting to consider that Ethics texts included, in addition to those of Aristotle, St Thomas and Cicero, Samuel Pufendorf's *De officio hominis et civis*, Johann Franz Budde's *Elementa philosophiae practicae* and Johann Gottlieb Heinecke's *Elementa philosophiae rationalis et moralis*, as well as works by Christian Wolff and Ludovico Antonio Muratori.<sup>21</sup>

For the Logic and Metaphysics lectures, on the other hand, the texts of Francis Bacon, Pierre Gassendi, René Descartes, Nicholas de Malebranche, Jean Le Clerc, Johannes Clauberg, Gerhard Johannes Voss, Willem Jacob's Gravesande, Jean-Pierre de Crousaz, Antonio Genovesi and so on were to be used.<sup>22</sup> It is during Ethics classes, for the purpose of highlighting the main 'errors, on which the human mind had stumbled for lack of principles and rules',<sup>23</sup> that Father Fabi, for example, had delivered the lecture 'De humanae

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University of Sassari, but since the reform affected both universities, it also applies to that of Cagliari. It should be added that dictation from treaties left little room for in-depth studies other than those contained in the sources of Roman or canon law and perhaps also during the exercises that took place on Saturdays.

19 The Ethics course was taught by the faculty members of Logic and Metaphysics and of Experimental Physics in alternating years, as required by the *Costituzioni di Sua Maestà per l'Università degli studi di Cagliari* (Torino: Nella Stamperia Reale, 1764), tit. x, §§ 1–7, 26–27. For the course programme see the *Idea del modo in cui si avrà a dettare l'Etica*, in ASCa, Segreteria di Stato, series II, vol. 819.

20 Ibid.

21 Ibid.

22 See the *Idea del modo in cui si avrà a studiare la Logica e la Metafisica*, in ASCa, Segreteria di Stato, series II, vol. 819.

23 Ibid.

mentis, brutorumque animae discrimine adversus Petrum Baelium et Helvetium dissertatio', to criticize Pierre Bayle's rationalism and Helvétius's sensism. On that occasion he had also recalled the thought of the 'gravissimus philosophus' John Locke and referred to Antonio Genovesi and the encyclopaedists.<sup>24</sup>

On the other hand, Helvétius's thought was not liked by Giuseppe Gagliardi, Turin Jesuit Professor of Experimental Physics and Ethics in Cagliari from 1784 to 1789 and author of the essay *L'onest'uomo filosofo* (1772).<sup>25</sup> Moved by the aim of re-establishing the authority of civil laws, questioned by those who emphasized their variety and mutability, he acknowledged the existence of norms of the law of nations, as part of natural law. After critiquing the contributions of Machiavelli, Hobbes and Bayle and of many theories on the origin of sovereignty and on the rights of the citizen, he referred to Grotius, Pufendorf, Locke and Burlamaqui. He then blamed the 'extravagant and free opinions' of Rousseau and Helvétius on the equality of men and criticized the thought of Montesquieu.

Interesting spaces for the discussion of issues addressed by the great natural lawyers are found, perhaps to an even greater extent, in the Theology courses,<sup>26</sup> which responded to a more 'openly innovative' approach<sup>27</sup> but with a slant strictly functional to the aim of affirming the doctrine of the Church. The dissertations of Giambattista Vasco and Liberato Fassoni are well placed in this context.

Vasco – in addition to refuting in the dissertation *De certitudine in quaestionibus facti* (1764), inspired by the *Encyclopédie* entry on 'Certitude',<sup>28</sup> the opinion of those who excluded the possibility of certainty in historical subjects – quoted during lectures in the course of *Theologia scholastica* Thomas Campanella, Baruch Spinoza, John Locke, Gottfried Wilhelm Leibniz, Christian Wolff and Johann Christoph Gottsched as well as Voltaire, Denis

24 See Franco Venturi, 'Gian Battista Vasco all'Università di Cagliari', 25; and Mattone and Sanna, 'La rivoluzione delle idee', 25–26.

25 Gagliardi had the Cagliari position after teaching in Sassari; see Antonio Delogu, 'Gli studi filosofici nell'Università di Sassari (1765–1960)', in *Storia dell'Università di Sassari*, 344–345.

26 In-depth study of topics on natural law and the law of nations, accomplished within the bounds of thinking not unwelcome to the Church, was done within Moral Theology classes. It concerned human acts (*de actibus humanis*) and the principles that governed them, as well as topics *de justitia et jure*, *de legibus*, *de contractibus*.

27 The expression is used by Mattone and Sanna, 'La rivoluzione delle idee', 27.

28 The entry is by Jean-Martin de Prades.

Diderot, Étienne Condillac and Jean-Baptiste D'Alembert,<sup>29</sup> and praised John Locke for his famous work *De intellectu humano*.<sup>30</sup> As part of his teaching on moral theology, Fassoni,<sup>31</sup> on the other hand, had given a lecture later published as *De morali patrum doctrina adversum librum Jo. Barbeyraci ad disputationes de ecclesiastica historia introitus* (1767).

The criticism of Jean Barbeyrac, 'excellenti ingegno et doctrina vir',<sup>32</sup> was related to the positions expressed in the preface to the French translation of Pufendorf's *De jure naturae et gentium*. Here, Barbeyrac had discussed the positions and authority of the Holy Fathers in the area of the philosophy of morals, provoking the lively reaction of Rémy Ceillier, author of the *Apologie de la morale des Pères contre les injustes accusations du sieur Jean Barbeyrac* (Paris, 1718).

After the first generation of professors, however, our knowledge of the content and circulation of the thought of natural lawyers is less than episodic, due to the lack of most lecture texts.<sup>33</sup> The circulation in the university environment of some classic texts of natural law can, however, be verified through the increase in the number of books in the city's university library, opened to the public in 1792 with a holding of about 8,000 volumes, many of which came

29 See Venturi, 'Gian Battista Vasco all'Università di Cagliari': 17–41; Gianni Marocco, *Giambattista Vasco*, 26–27; and Gian Giacomo Ortu, 'Tra etica, diritto ed economia: intrecci di cultura e di pratica', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, 463–464.

30 The manuscript is in the Cagliari University Library (collocation: s.b., 1–4, 32–33).

31 Already author of *De leibnitziano rationis sufficientis principio dissertatio philosophica* (Senogalliae, 1754), he had also presented to the island's university the dissertation *De viro laico cum haereticis disputante ...* (Liburni, n.y.), dedicated to Antonio Genovesi.

32 Liberato Fassoni, *De morali patrum doctrina adversum librum Jo. Barbeyraci et ad disputationes de ecclesiastica historia introitus* (Liburni: Ex Typographia Marci Coltellini, 1767), 2.

33 This applies to both manuscript and printed texts. On the difficulties of finding and studying lecture treatises see Silvia Conti, 'Dettati e trattati per la "studiosa gioventù": trasmissione e diffusione delle idee a Cagliari tra Seicento e Settecento', in *Circolazione d'idee, parole, uomini, libri e culture: Sardegna, Corsica, Toscana*, ed. Giancarlo Nonnoi (Cagliari: CUEC, 2009), 187–194 (in Annexes I and II, pp. 195–230, the author provides a list of the manuscripts of lectures held between the seventeenth and eighteenth centuries that have been found; since Silvia Conti wrote her work, the only change has been that the University of Cagliari's Historical Archive is now accessible). Among the printed editions, it is worth mentioning the text of the lectures of Sebastiano Deidda, *Institutiones logicae et metaphysicae* (Carali: Aloysium Lecca Paucheville, 1836, 2 vols). He asserted that Descartes, Malebranche, Leibniz, Wolff and especially Locke were responsible for a more mature metaphysics. Hume and d'Alembert had contributed to this along with Condillac, Genovesi and others.

from the libraries of the colleges following the suppression of the Society of Jesus (1773).<sup>34</sup>

Between 1786 and 1794 it had been expanded by the addition of volumes by Hugo Grotius, Samuel Cocceji, Johann Gottlieb Heinecke and Jean-Jacques Burlamaqui, as well as with Antonio Genovesi's *Diceosina o la filosofia del giusto e dell'onesto* and the select compilation *Les Pensées de Jean-Jacques Rousseau*.<sup>35</sup> We also know that the importance of Vico's *Scienza nuova* and the debates about it did not escape Giacinto Hinz, Professor of Sacred Scripture from 1770 and in charge of the Library for more than fifteen years from the end of 1785.<sup>36</sup> After the economic difficulties that greatly conditioned the possibilities for growth of the library holdings,<sup>37</sup> finally in the early 1840s, the Library, directed by Pietro Martini (from 1842 to 1866), increased the number of titles significantly for the purpose of equipping the university with useful texts for all courses.<sup>38</sup> The massive number of volumes purchased mostly covered science subjects. Among those acquired during that period the following stand out: Samuel Pufendorf's *De jure naturae et gentium* in the French edition by Jean Barbeyrac, the *Corso di diritto naturale* by Heinrich Ahrens, Robert-Joseph Pothier's treatises, two copies of Jean Domat's *Le loix civiles dans leur ordre naturel*, one work by Jeremy Bentham and one by Arnold Vinnen, and several works by Gian Domenico Romagnosi, Antonio Rosmini and Vincenzo Gioberti.<sup>39</sup>

34 Together with the volumes of the college libraries, the University Library also absorbed the important library of the Sardinian humanist jurist Monserrat Rosselló (which had about 4,450 titles, not only of law). On Rosselló Enzo Cadoni and Maria Teresa Laneri, *Umanisti e cultura classica nella Sardegna del '500*, vol. 3, pt 1, *L'inventario dei beni e dei libri di Monserrat Rosselló* (Sassari: Gallizzi, 1994), 11–79; and Carla Ferrante, 'Rosselló Monserrat', in *Dizionario Biografico dei Giuristi Italiani*, vol. 2, 1736–1737. On the events surrounding the establishment of the library's holdings see Giovanna Granata, 'La Biblioteca Universitaria di Cagliari e i libri di diritto', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, 383–384.

35 See the list of books purchased by Giacinto Hinz, in charge of the Library, in Archivio Storico dell'Università di Cagliari (hereinafter ASUCa), sezione 1, series 5, Biblioteca, busta 157, n. 12.

36 See Granata, 'La Biblioteca Universitaria di Cagliari e i libri di diritto', 384.

37 Among the books purchased by Faustino Baille between 1827 and 1838 we find several works by Melchiorre Gioia, Adam Smith's *Wealth of Nations* in French language and some of Robert-Joseph Pothier's treatises (see the list of books in ASUCa, sezione 1, series 5, Biblioteca, busta 158, n. 23).

38 See Granata, 'La Biblioteca Universitaria di Cagliari e i libri di diritto', 413–418.

39 ASUCa, sezione 1, series 1.9, Deliberazioni, busta 37, n. 21 and series 5, Biblioteca, busta 158, n. 23.



Between 1852 and 1853, the Library's funding increased further and consequently the University was able to keep abreast of the evolution of faculty studies and of the teaching needs imposed by the mid-century reforms.<sup>40</sup> On more than one occasion the new acquisitions also included titles on – as could be expected – natural law and law of nations and international law. In the meantime, for just under a decade from 1818, the direction of the Library was entrusted to Sassari's international law scholar Domenico Alberto Azuni, who had returned to Italy after the fall of Napoleon. The purchase of volumes in the field of maritime law dates to that period.

### 3 Ambiguous Times: From a Discipline 'on Paper' to an Actual Course of International Law

Thanks to the 'perfect incorporation' of Sardinia into the Savoy States, which took place in 1847–1848,<sup>41</sup> the universities of Cagliari and Sassari were absorbed within the general university system of the Kingdom of Sardinia and started to overcome a sort of cultural paralysis which had hampered them after the eighteenth-century reform. In contrast to the lively reforms at the mainland universities, the Sardinian ones had remained substantially hidebound.<sup>42</sup> Thus, when the autonomy of the former Regnum Sardiniae was relinquished, this had a significant impact on the functioning of the Sardinian universities and the organization of legal studies, which had recently been heavily criticized by Carlo Cattaneo in the essay *Della Sardegna antica e moderna* (1841).<sup>43</sup>

The departure in 1851 from the old lecture text dictation system that had enabled the government to keep a watchful eye on the legal theories taught by the professors<sup>44</sup> was immediately followed by the decision to discontinue

40 Granata, 'La Biblioteca Universitaria di Cagliari e i libri di diritto', 416–418.

41 See Italo Birocchi, 'La questione autonomistica dalla "fusione perfetta" al primo dopoguerra', in *La Sardegna. Storia d'Italia. Le regioni dall'Unità ad oggi*, ed. Luigi Berlinguer and Antonello Mattone (Torino: Einaudi, 1998), 136–199, at 138.

42 See Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 157–168.

43 Carlo Cattaneo, *Della Sardegna antica e moderna con 56 lettere intercorse tra lo studioso e i suoi corrispondenti sardi*, ed. Assunta Trova (Nuoro: Ilisso, 2010), esp. 78. This work had originally appeared as 'Di varie opere sulla Sardegna', *Il politecnico repertorio mensile di studj applicati alla prosperità e coltura sociale* 2 (1841): 219–273; the essay was later published under the title given in the text.

44 In this respect, there had been a number of complaints from those who, like Borgna, opposed the system. See Italo Birocchi, 'L'impianto filosofico e il quadro normativo della riforma boginiana', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, vol. 1, 223.

the teaching of Latin (1852).<sup>45</sup> An even more important decision had been the opening, from mid-century, of the Faculty of Law to disciplines that were not consistent with the by now obsolete model of traditional courses shaped on the *jus civile* and on the *jus canonicum*. The introduction in legal studies of the chair of *res mercatoria* in 1846 was of little importance, since this subject was mainly aimed at meeting the needs of tradesmen. Besides, even professors publicly stigmatized the unbridgeable gap between the Faculty of Law of Cagliari and that of the main Italian universities. For instance, in Cagliari in December 1848, the young Giovanni De Gioannis went so far as to affirm, in the presence of the 'highly adorned scholars of Law', that while in Turin and Genoa 'the new chairs of civil code, public law, economics and constitutional science had been established' and while 'our young continental brothers are educating themselves for the real studies of progress', in Sardinia university students were 'doomed to feed on minutiae of old schools of thought', since they still had to study 'that law most of which reflected conditions that have remained unchanged for the past thirteen centuries'.<sup>46</sup>

From the first decades of the new century, there was a widespread idea that curricula needed to be renewed and adapted to educational models more in tune with the times, and in particular with the German one, which was becoming a leading example. Also in this period we have the resolute words of a renowned visiting professor, Friedrich Carl von Savigny, who in the 1820s made clear the distance between university studies in Italy and those in Humboldt's Germany.<sup>47</sup> It is noteworthy that Savigny's judgement, which circulated in a reduced and simplified form, further widened the gap between these cultural worlds,<sup>48</sup> so much so that Giovanni Carmignani in 1841 acknowledged it

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Laura Moscati, 'La Facoltà legale e la scienza giuridica della Restaurazione', *Annali di storia delle università italiane* 4 (2000): 77–94, relates the first signs of modernization in the curricula of the Law Faculty of the Sapienza in Rome to the prohibition of dictation from textbooks.

45 See the royal decree of 7 May 1852, in ASCa, Atti governativi ed amministrativi, vol. 32, no. 1366.

46 Giovanni De Gioannis, *Parole dette agli ornatissimi studiosi di Giurisprudenza (23 dicembre 1848)* (Cagliari: Timon, 1849), 13. Also quoted by Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 167.

47 Carl von Savigny, 'Sull'insegnamento del dritto in Italia', in idem, *Ragionamenti storici di diritto del prof. C. Savigny, tradotti dall'originale tedesco e preceduti da un discorso da A. Turchiarulo* (Napoli: Tipografia all'insegna del Diogene, 1852), pt IV, 67–84. That essay follows 'Sulla qualità e sul merito delle Università tedesche', *ibid.*, 46–66.

48 Laura Moscati, 'Un'inedita lettera di Savigny a Poerio', in *Quaderni fiorentini per la storia del pensiero giuridico* 21 (1992): 663–669; and Luigi Lacché, 'La nazione dei giuristi. Il

as a 'serious and degrading reproach' from the learned men of Germany.<sup>49</sup> In the 1840s there followed the sad account by Carl (or Carlo) Mittermaier, who, after recalling that 'Italy had been the cradle of European civilization',<sup>50</sup> pitied it because of the 'present decay, of the impoverishment of science and art' and the 'decline of its people'.<sup>51</sup> Scientific speculation was, in his opinion, spoiled by the excessive pragmatism of the professor-lawyers in particular.

The issue of the modernization of studies and of the reform of the curricula was also dealt with by a jurist in the making, Francesco Forti, the maternal nephew of the great Jean-Charles-Léonard Sismondi, who, in his *Lettera sulla direzione degli studj* addressed to a friend, asserted that devoting oneself to the law of nations was 'an important part of the science of a jurisconsult'.<sup>52</sup>

In Cagliari, international law was first introduced as a discipline in 1850.<sup>53</sup> However, this is in fact a fictitious landmark date since in Sardinian universities the public law chairs were 'cumulative', that is, designed to bring different disciplines together. This was the case of the incredibly capacious chair of public, constitutional, administrative and international law, assigned to a single professor who was vested with the impossible task of covering such an extensive programme in a one-year course. Therefore, it is not surprising that the professors in question – Giuseppe Siotto Pintor (1850–1855)<sup>54</sup> and Giovanni De

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canone eclettico, tra politica e cultura giuridica: spunti per una riflessione sull'esperienza italiana della Restaurazione', in *Diritto, cultura giuridica e riforme nell'età di Maria Luigia*, ed. Frank Micolo, Giuseppina Baggio, Edoardo Fregoso and Atti del Convegno (Parma: Monte Università Parma, 2011), 263–307, at 269–270.

49 See Enrico Spagnesi, 'Giovanni Carmignani e il problema dell'insegnamento del diritto', in *Giovanni Carmignani (1768–1847). Maestro di scienze criminali e pratico del foro sulle soglie del Diritto Penale contemporaneo*, ed. Mario Montorzi (Pisa: ETS, 2005), 463–498.

50 Carlo [Carl J. A.] Mittermaier, 'Dell'importanza d'Italia ne' progressi della civiltà in Europa, e delle speranze pel suo avvenire. Lettera dell'autore al traduttore', in idem, *Delle condizioni d'Italia con un capitolo inedito dell'autore e con note del traduttore Pietro Mugna* (Leipzig: stampato da G. B. Hirschfeld at Tendler & Schäfer, 1845), 229–251, at 236–237.

51 Ibid., 237.

52 See Francesco Forti, 'Lettera sulla direzione degli studj', in idem, *Scritti varii. Opere edite e inedite* (Firenze: Presso Eugenio and F. Cammelli Editori-Libraii, 1865), 1–81, at 52.

53 See the *Regolamento provvisorio per l'esecuzione della legge del 1850 contenente alcune nuove disposizioni per le Università di Cagliari e Sassari*, approved by royal decree of 14 May 1850 (in ASCa, Atti governativi e amministrativi, vol. 27). Regarding the innovations brought about by the reform and the objectives pursued by the subalpine government by means of the same, see Mattoni, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 183–184.

54 By his own admission Giuseppe Siotto Pintor never actually taught international law. Regarding Siotto Pintor, who graduated in Cagliari in 1832, Professor of Latin Eloquence in 1834, of Civil Law in 1839, of *Digest* in 1841 and from 1850 of Public, Constitutional,

Gioannis (1855–1859) – pointed out on several occasions the absurdity of such an arduous task, especially since it concerned subjects closely related to the achievement of ‘national well-being’.<sup>55</sup> In 1853, Siotto Pintor suggested dividing the subjects into two different courses (one of public and constitutional law and the other of administrative and international law). The same request was subsequently made by De Gioannis on several occasions (for instance in 1856–1857).

Things eventually changed in 1859, when the Casati law, which made the study of international law compulsory in the universities of the Italian peninsula, was enacted.<sup>56</sup> International law was thereby incorporated into philosophy of law, and this secured the speculative foundations essential for a discipline that was considered endangered by positivism and, therefore, at risk of being represented as a *summa* of arbitrary and contingent norms, in other words, as a product of politics and power. In this way, the two subjects were mutually reinforcing,<sup>57</sup> all the more so since in 1852 Giuseppe Siotto Pintor had denounced the serious shortcomings of future jurists in the philosophy of law.

Certain that every provision could be traced back to natural law, ‘like the streams to their source’, he voiced the idea, revealed by the ‘best public law scholars’, that every society was not ‘a product of man, but of nature’. Nonetheless, his students were not able to grasp ‘the essence, the definition, and [...] the existence of a law considered as an ideal and moral entity’.<sup>58</sup> The will to disprove the peripatetic philosophy testified by the short-sighted closure in Ulpian’s definition of natural law (‘*ius naturale est quod natura omnia animalia docuit*’) had led Siotto Pintor to endeavour for ‘over two months’<sup>59</sup> to strengthen his students’ familiarity with natural law. Indeed, international law was a science enriched by the philosophical spirit.

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International and Administrative Law, see *Giuseppe Siotto Pintor*, ed. Efsio Siotto Pintor (Cagliari: Tipografia nazionale, 1855).

55 Giovanni Siotto Pintor, *Storia letteraria di Sardegna* (Cagliari, 1843–1844; Bologna, Forni, 1966), vol. 2, l. IV, 199.

56 For the legal subjects established under the Casati law, and an opinion on the latter, see Mattone, *Storia della Facoltà di Giurisprudenza dell’Università di Sassari*, 181–184 and 193–195.

57 Pasquale Stanislao Mancini, *Prelezione al corso di diritto pubblico marittimo insegnato nella R. Università di Torino nel 1852–53 pronunciata nel dì 29 novembre 1852*, in idem, *Diritto internazionale. Prelezioni con un saggio sul Machiavelli* (Napoli: Giuseppe Marghieri, 1873), 93–116. International Law was a two-year course; in the second year, public maritime law was addressed.

58 Quote from G. Siotto Pintor in his report on the teaching activity carried out in 1853 (see the document in ASUCa, sezione 2.2, series 1.2, Carteggio, busta 3, no. 59).

59 Ibid.

Those were also the years when Pietro Luigi Albini, Professor of Legal Encyclopaedism at the University of Turin, encouraged historical-philosophical studies. He was convinced that Italian jurists, 'with the exception of those who had the patience and courage to start their scientific education from scratch, remedying the imperfection of the University's narrow-minded and petty studies', ignored not only the German philosophy of law, but also that taught by 'Lampredi, Genovesi, and, above all, Giambattista Vico', not to mention that 'of the more recent [scholars]'.<sup>60</sup>

In addition, the establishment of a chair of philosophy and international law was in line with the proposal put forward by Giovanni De Gioannis<sup>61</sup> on the occasion of Pasquale Stanislao Mancini's visit to Cagliari in 1859, in the latter's capacity as ministerial inspector in charge of evaluating the functioning of the two Sardinian universities.<sup>62</sup> The request by De Gioannis, who later became a renowned administrative law scholar after moving first to Pavia then to Pisa,<sup>63</sup> must have impressed the internationalist; he had started teaching less than a decade before in the renowned course on international public law in Turin and had previously been supply professor of natural law and law of

60 Luigi Albini, 'Sull'importanza dello studio della filosofia del diritto', in Pasquale Stanislao Mancini and Terenzio Mamiani, *Filosofia del diritto e singolarmente del diritto di punire. lettere di Terenzio Mamiani e di Pasquale Stanislao Mancini accresciute di quattro discorsi di Terenzio Mamiani sulla sovranità e di una prefazione del prof. Luigi Albini* (Livorno: Coi Tipi di Franc. Vigo Editore, 1875), 5–13, at 10.

61 In the report of April 1851, the rector of the University of Cagliari considered the impossibility 'for a single professor to teach public, constitutional, administrative and international law in 140 lessons at most'. See ASUCa, sezione 2.2, series 1.1, Carteggio, busta 2, no. 45.

62 See Claudia Storti, 'Mancini, Pasquale Stanislao', in *Dizionario Biografico dei Giuristi Italiani (XII–XX secolo)*, ed. Italo Birocchi et al. (Bologna: Il Mulino, 2013), vol. 2, 1244–1248; Luigi Nuzzo, 'Da Mazzini a Mancini: il principio di nazionalità tra politica e diritto', *Giornale di Storia Costituzionale* 14(2) (2007): 161–186; idem, 'Pasquale Stanislao Mancini', in *Enciclopedia italiana di scienze, lettere e arti. Appendice 8. Il Contributo italiano alla storia del Pensiero – Diritto* (Roma: Treccani, 2012), 307–310; idem, *Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo* (Frankfurt am Main: Vittorio Klostermann, 2012), *ad indicem*; *Per una rilettura di Mancini. Saggi sul Risorgimento*, ed. Italo Birocchi (Pisa: ETS, 2018). See also Chapter 9 of the present volume, by Frédéric Ieva.

63 See Giulio Cianferotti, 'Lo Stato nazionale e la nuova scienza del diritto pubblico', in *Enciclopedia italiana di scienze, lettere e arti. Appendice 8*, 321. On the jurist as administrative law scholar, see idem, *Storia della letteratura amministrativistica italiana*, vol. 1, *Dall'Unità alla fine dell'Ottocento. Autonomie locali, amministrazione e costituzione* (Milano: Giuffrè, 1998), *ad indicem*.

nations (1847–1849) in Naples.<sup>64</sup> However, the unified teaching of philosophy and international law was short lived, since in 1872 the first chair of international law was inaugurated in Cagliari, later surviving the ministerial changes to the curricula at the Faculty of Law.<sup>65</sup>

#### 4 The Principle of Nationality as the Foundation of a New Law of Nations

The establishment of an Italian legal science that took into account the specializations of the different branches almost represented the *leitmotiv* of Italy's unification. As if illuminated by a 'new light',<sup>66</sup> political unification did, in fact, give jurists the enthusiasm to feel part of a collective scientific movement with a synergy to construct a common theoretical heritage.

It is no coincidence that in 1869 the young international law scholar Augusto Pierantoni, Professor of International and Constitutional Law in Modena, addressed the Italians who had finally recovered their self-awareness, urging them to dedicate themselves to the 'serious task of combining political unity' with the consolidation of 'national awareness'.<sup>67</sup> Likewise, it is no coincidence that his *Storia degli studi del diritto internazionale in Italia* (1869) became the symbol of an idealized intellectual brotherhood of the Italian people. Dramatically divided 'between many States, with varying attitudes', Italians had to draw energy from their nation's independence in order to

64 Storti, 'Mancini, Pasquale Stanislao', 1245. The discipline of international public law was introduced in 1850 within a post graduate specialist course. On the establishment in 1808 of a chair of 'public and commercial law in relations between the State and foreign States' (diritto pubblico e commerciale nei rapporti dello Stato cogli Stati esteri), see Pasquale Fiore, *Trattato di diritto internazionale pubblico*, 2nd edition (Torino: Unione Tipografico-Editrice, 1879), vol. 1, 141, note 2; Enrico Catellani, *La dottrina italiana del diritto internazionale nel secolo XIX: lezioni alla Accademia di diritto internazionale all'Aia nel 1933* (Roma: Anonima Romana Editoriale, 1935), 10–11. In Genoa, the chair of constitutional and international law had been established in 1848 and entrusted to Ludovico Casanova, whose lectures were published after his death.

65 The main reforms following the Casati law had been introduced under the Regulations of the Universities of the Kingdom of Italy (1862), under the Regulations of 1876 and under those of 1885, concerning which see Mattone, *Storia della Facoltà di Giurisprudenza di Sassari*, 194–195.

66 Enrico Pessina, *Dei progressi del diritto penale in Italia nel secolo XIX. Discorso* (Firenze: Stabilimento Civelli, 1868), 147.

67 See Augusto Pierantoni, *Storia degli studi del diritto internazionale in Italia* (Modena: Coi tipi di Carlo Vincenzi, 1869), Prefazione, iii.

emancipate the 'native ingenuity from the overwhelming foreign power'.<sup>68</sup> Clearly, Pierantoni was driven by enthusiasm for the nation and perceived the effects that the same could display with regard to the law of nations. Besides, the Risorgimento events could but enhance their impact, showing that that factor was not a mere creation of the intellect. On the contrary, the concept of nation was based on naturalness and was therefore the expression of a true force, capable of actually affecting peoples,<sup>69</sup> the Italian events testifying to the nation that was finally constituted as a state were proof of this.

In addition to the Risorgimento restraints burdening that generation of jurists, there was yet another factor. Indeed, the legal theory of international law had long been shaken, if not by a real crisis, at least by profound restlessness. The latter called for the rejection of 'Grotius's erudition, Wolff's geometric formulas, Vattel's excessive simplicity, De Martens's practical knowledge', as effectively stated by Pellegrino Rossi in his summary in a famous review of Henry Wheaton's *Elements of International Law*.<sup>70</sup> In Rossi's opinion, the last century – roughly the period since the publication of Vattel's *Le Droit des gens* (1758) – had not reaped any fruit.<sup>71</sup> According to him, in fact, the law of nations was still too tied 'to the miseries of empiricism', since it lacked 'independent principles which could bear all the consequences of necessary deductions'.<sup>72</sup>

The words of Rossi, who was murdered in Rome during the riots of 1848, were bitterly true but not totally devoid of hope; in fact, the crisis could be regarded as a prelude to change.<sup>73</sup> Those words had not gone unnoticed.<sup>74</sup> Indeed, Pasquale Stanislao Mancini must have been so impressed that he quoted them in his lecture for the inauguration in 1851 of the course that had been assigned to him in Turin after he had left Naples for political reasons. It is well known that on that occasion at the University of Turin he delivered the

68 Ibid.

69 Bortolotto, 'Nazionalità', 14.

70 Pellegrino Rossi, 'Droit des gens, Intervention', in idem, *Mélanges d'économie politique, de politique, d'histoire et de philosophie publiés par ses fils. I (Économie politique)* (Paris: Librairie de Guillaumin et C., 1867), 443–477, at 443. Regarding Rossi as an exponent of legal eclecticism, which combined romantic historicism, the philosophical school and liberal-moderate thought, see Luigi Lacché, 'La nazione dei giuristi. Il canone eclettico, tra politica e cultura giuridica: spunti per una riflessione sull'esperienza italiana della Restaurazione', 263–307; and idem, 'Rossi, Pellegrino Luigi Edoardo', in *Dizionario Biografico dei Giuristi Italiani*, vol. 2, 1741–1744.

71 Rossi, 'Droit des gens. Intervention', 443–444.

72 Ibid., 444.

73 Concerning the notion of crisis according to Pellegrino Rossi, see Luigi Lacché, 'La nazione dei giuristi. Il canone eclettico, tra politica e cultura giuridica', 266–267.

74 Bortolotto, 'Nazionalità', 14.

lecture later published as *Della nazionalità come fondamento del diritto delle genti*.<sup>75</sup> The lecture had also been a remarkable success abroad, stimulating discussion and triggering debates.

In Italy, that lecture by Mancini quickly became the manifesto of the newly formed Italian 'school of international law',<sup>76</sup> which, in hindsight, sublimated the objective of reconsidering the political events, affording them a legal basis. As a result, the Risorgimento history emerged freed from the crass connotations of diplomacy-driven politics, thus becoming the history of a nation untainted by politics.

It must be noted that the concept of nationality foregrounded peoples who, having reached a certain level of development, recognized themselves as a united and highly committed natural community. According to Mancini, such a concept also testified to the triumph of natural law, as a consequence of the nation being finally acknowledged as the holder of absolute and inalienable rights, traditionally attributed to the state (equality, freedom, morality, dignity, etc.).<sup>77</sup> As a matter of fact, Mancini's theoretical structure adhered to the canons of natural law for the intrinsic belief that the connection between morality and the law should not be broken.<sup>78</sup> It also marked the success of an idea drawn from the scheme of Giambattista Vico's *Scienza nuova*, which now disruptively revealed itself with the force of a philosophical principle laying the foundations for the entire legal theory of international law.<sup>79</sup> This principle arose from the historicization of natural law: it was no longer the laws 'subject to the logics of change, that were universal, but the ways in which

75 See Pasquale Stanislao Mancini, *Della nazionalità come fondamento del diritto delle genti* (Torino: Fratelli Bocca, 1851; ed. Erk Jayme, Torino: Giappichelli, 2000). On Mancini's teaching in Turin see in particular Elisa Mongiano, 'Pasquale Stanislao Mancini. Nazionalità e diritto internazionale all'Università di Torino', *Rivista italiana per le scienze giuridiche*, new series, 4 (2013): 363–377. Notes from Mancini's lessons, taken by Giuseppe Todde, have been published by Eloisa Mura, *Mancini in cattedra. Le lezioni torinesi di diritto internazionale dal 1850–51 e 1851–52* (Pisa: ETS, 2018), 91–345. See also Chapter 9 of the present volume, by Frédéric Ieva.

76 On the emergence in Italy and abroad of the Italian school of international law see Eloisa Mura, *All'ombra di Mancini. La disciplina internazionalistica in Italia ai suoi albori* (Pisa: ETS, 2017).

77 Antonio Droetto, *Pasquale Stanislao Mancini e la scuola italiana di diritto internazionale del secolo XIX* (Milano: Giuffrè, 1954), *passim*; Nuzzo, 'Pasquale Stanislao Mancini', 307–310, at 308–309.

78 On this matter see Italo Birocchi, 'Pasquale Stanislao Mancini e la cultura giuridica del Risorgimento', in *Per una rilettura di Mancini*, 32.

79 Bortolotto, 'Nazionalità', 11.



they evolved and were affected by the succession of different phases of civil coexistence'.<sup>80</sup>

Having ascertained the antithesis between law and politics, the nation was valued for its inherent ability to propose itself as a natural legal subject, unlike the artificially constructed state.<sup>81</sup>

Professing the right to a free and harmonious development of nationality enabled Mancini and those who shared his opinions to sever their ties with the traditional law of nations. This served the purpose of moderating the craving for positivism of those who regarded international law as being rooted in 'accepted and established' historical facts, that is, in customs and treaties, believing that the same resulted from the material causes that had determined them and not from indispensable precepts of justice, which could not be disregarded.

A solution to the conflict generated by the twofold nature, rational and positive, of international law was still an open issue, as can also be inferred from a matter that is only apparently a thing of the past. The need to reconcile those two aspects – aimed at allowing international law to be studied systematically and not to become unfruitful by way of mere case studies or mere abstraction – was evident even from the title of Mancini's course. The two phrases at stake, law of nations and the more recent international law, were not used by everyone indifferently. The concern regarding the risk of turning international law into arbitrary law sometimes led to the adoption of a binary logic, in order to avoid mistaking the rational principles of the law of nations (*droit des gens*, *diritto delle genti*, etc.) for those of international law.<sup>82</sup>

## 5 Science Taught and Developed: Cagliari and Its Participation in the Italian School of International Law

A lively debate on the role to be assigned to Italian universities ensued throughout the second half of the nineteenth century.<sup>83</sup> Despite the different

80 Andrea Battistini, 'Giambattista Vico', in *Enciclopedia italiana di scienze, lettere e arti. Appendice 8. Il contributo italiano alla storia del pensiero. Filosofia* (Roma: Istituto della Enciclopedia fondata da Giovanni Treccani, 2012), 313–322, at 317–318.

81 Droetto, *Pasquale Stanislao Mancini*, 205–210.

82 See Francesco Contuzzi, 'Diritto internazionale', in *Il Digesto italiano. Enciclopedia metodica e alfabetica di legislazione, dottrina e giurisprudenza* (Torino: Unione Tipografico Editrice, 1898–1901), vol. 9, pt II, 1105–1141, at 1108–1110.

83 Cf. the interesting considerations by the Genoese professor Pietro Cogliolo, *Malinconie universitarie* (Firenze: Barbera, 1887), 4.

opinions and changes in ministerial views, it seemed clear that universities were called upon to perform at least two important tasks, both related to creating a national identity: training new professionals and contributing to the development and promotion of science. Such tasks required a modernization of the cultural habitus of the professors, for whom new forms of recruitment were put in place. In addition, the idea that, unlike the minor universities, the major ones selected professors on merit had been implemented by ranking universities in groups, which even affected remuneration.<sup>84</sup>

In fact, education in Italian universities seemed to change at different speeds; alongside large and important universities, there were others in which recruitment was driven purely by local factors and not based on the professor's skills or on the standard of the discipline studied and taught. This reflected the situation after the recent unification of the Kingdom, which had not yet managed to bridge the historical gaps between the territories that had been unified. As far as Cagliari was concerned, a young 'jurist by chance',<sup>85</sup> Giuseppe Saredo, had been entrusted with the teaching of public and constitutional law in Sassari in 1860,<sup>86</sup> despite the fact that he had not yet finished his own university studies. In 1861, Saredo published a provocative article addressing the need to modernize higher studies.<sup>87</sup> His idea was evident: the progress of legal science in France, Germany and England was a consequence of the appointment of eminent scholars to chairs, which did not happen in Italy, where 'distinguished jurists and public law scholars'<sup>88</sup> could be found only in major universities. With a view to corroborating this hypothesis he proposed to examine the theses in the law faculties in order to map the legal theories taught in Italian universities. The first research on this topic started precisely with the dissertations discussed in Cagliari in 1861, and concluded, in a lapidary fashion, that despite the recognized merit of some of the documents examined, in the main city of the island, 'none of the great challenging issues raised in the social sciences were discussed'.<sup>89</sup>

84 See Mattone, *Storia della Facoltà di Giurisprudenza dell'Università di Sassari*, 187–188.

85 See Lorenzo Sinisi, 'Dal giornalismo all'Accademia. Giuseppe Saredo giurista "per caso" nell'Italia postunitaria', *Materiali per una storia della cultura giuridica* 37 (2007): 225–237.

86 Concerning Saredo, see Francesco Verrastro, 'Saredo Giuseppe', in *Dizionario Biografico dei Giuristi Italiani*, vol. 2, 1801–1803.

87 Giuseppe Saredo, 'Dell'insegnamento delle scienze giuridiche nelle Università italiane. I. Cagliari', *Rivista italiana di scienze, lettere ed arti colle effemeridi della Pubblica Istruzione*, 2 (14 October 1861): 918–919.

88 Ibid.

89 Ibid.

His stance called for disapproval. This is precisely what Giuseppe Orano did in 1862, in a sort of introduction to his degree dissertation *La nazionalità*.<sup>90</sup> The extensive work, in which he agreed with Mancini's thesis, shows the depth of his studies concerning at least the texts by Giambattista Vico (*Scienza nuova*), Vincenzo Gioberti (*Sulla nazionalità*) and Pietro Luigi Albini (*Principi di filosofia del diritto*).

Orano's assent to Mancini's theory was matched by that of other young students at the faculty in Cagliari, including Antioco Cadoni, who in 1863 had applied to become a member of the academic board, with a volume also concerning nationality,<sup>91</sup> and Enrico Lai. The latter, who later became a successful civil law scholar, had entitled his degree dissertation *Principii sulle convenzioni internazionali*,<sup>92</sup> which highlight the fact that from Grotius onwards the main concern had been to demonstrate either the inviolability of treaties or their non-existence, without, however, ever reaching a solution. Indeed, there was a divide in legal theory between those who argued that treaties should conform to the rules of natural law and those according to whom unenforceable duties between nations became enforceable only by virtue of the stipulation of conventions. In addition, he found that a large number of public law scholars, while not completely disregarding the existence of eternal principles, believed that these should be used as a supplement, that is, after flipping through the pages of 'the dusty diplomatic protocols'<sup>93</sup> to no avail. Thus, conventions were 'always at risk, since the peoples declared the conventions invalid as soon as they no longer felt the weight of their oppressor'.<sup>94</sup>

Many of the observations in his thesis on the subject at issue (and others) were biased by the significance of the person who, in all likelihood, had been his professor, namely Francesco Tronci, initially supply professor, then full Professor of Philosophy of Law and International Law, but for only five years (1862–1868), due to his untimely death.<sup>95</sup> He had graduated in Cagliari in 1852, then had attended the 'specialization course' in Turin, probably to carry on his specialization in international law by attending Mancini's lectures. To publicly qualify as an expert graduate, he had written an essay titled 'Delle

90 Giuseppe Orano, *La nazionalità* (Cagliari: Tipografia Timon, 1862).

91 Antioco Cadoni had published *Saggio di filosofia del diritto* (Cagliari: Tipografia della Gazzetta popolare, 1863), for the competition for the chair of Philosophy of Law and International Law. In the text there was room to explore the issue of nationality.

92 See Giuseppina De Giudici, 'Lai, Enrico', in *Dizionario Biografico dei Giuristi Italiani*, vol. 2, 1135–1136.

93 Enrico Lai, *Principii sulle convenzioni internazionali* (Cagliari: Timon, 1863), 5.

94 *Ibid.*, 6.

95 Tronci started teaching only in 1863.

Convenzioni internazionali', aimed at demonstrating that treaties and conventions were an expression of voluntary law and that the latter, as a secondary form of law, had to comply with the law of nations (a primary form of law), that is, with rational law.<sup>96</sup> It is a distinction that echoes the one drawn in Christian Wolff's *Jus Gentium* and repeated by Emer de Vattel.<sup>97</sup>

After correcting Grotius's distinction between natural law and the law of nations, which referred the latter to consent and usage, he expanded on the theory of nationality in order to state one of its most consequential corollaries. Treaties detrimental to the nation were null and void, as were those that imposed the victor's power over the loser. He therefore proposed that international law do away with arbitrariness, which obscured 'the light shed by universal justice'.<sup>98</sup>

As for Orano, he had most likely been a pupil of De Gioannis, an authentic follower of Vico in Sardinia.<sup>99</sup>

In his 1853 *Saggio d'introduzione generale alla scienza del diritto* De Gioannis had presented his syncretism and invited the Cagliari audience to combine the three fundamental elements 'fostered by Kant [...], Savigny [...] and Thibaut' in order to obtain a balanced reconciliation of the contrasting forces.<sup>100</sup> At the same time, he recommended that scholars study natural law thoroughly, while he cautioned them (as well as himself) both legal positivism and exegetical studies.<sup>101</sup>

96 Francesco Tronci, *Saggio filosofico-giuridico sulle convenzioni internazionali* (Torino: Unione Tipografico Editrice, 1863), 7.

97 See Giuseppina De Giudici, Sanctitas legatorum. *Sul 'fondamento' dell'indipendenza giurisdizionale in età moderna* (Napoli: ESI, 2020), 29–32. On the nineteenth-century circulation of Vattel, see Elisabetta Focchi Malaspina, *Leterno ritorno del Droit des gens di Emer de Vattel (secc. XVIII–XIX). L'impatto sulla prospettiva giuridica in prospettiva globale* (Frankfurt am Main: Max Planck Institute for European Legal History, 2017), *passim*, see also Chapter 7 of the present volume, by Antonio Trampus.

98 Tronci, *Saggio filosofico-giuridico sulle convenzioni internazionali*, 10–11.

99 Goele Solari, 'Floriano del Zio a Cagliari e l'introduzione dell'hegelismo in Sardegna', *Archivio Storico Sardo* 13 (1921): 23–74, at 32, note 1.

100 See Giulio Cianferotti, 'De Gioannis, Gianquinto Giovanni', in *Dizionario Biografico dei Giuristi Italiani*, vol. 1, 678–679.

101 In *Saggio d'introduzione generale alla scienza del diritto* (Cagliari: Timon, 1853), whose content was to be partially repeated in the *Prolusione al corso di Enciclopedia giuristica nella R. Università di Pisa* (Firenze: Barbera, 1875), the lecture given in Pisa in 1875, De Gioannis underscored the undisputed success of the theories of natural public law, which he considered an 'admirable harmony of the threefold element of what is right, what is honest and what is of benefit'. On the circulation of the thought of the School of Exegesis and that of the German historical school of law in nineteenth-century Italian universities see Laura Moscati, 'Insegnamento e scienza giuridica nelle esperienze

Twelve years later, in his inaugural lecture in Pavia,<sup>102</sup> he explicitly stated that 'the division of mankind into Nations was not the product of violence or chance', but, rather, of a constitutive force coming from 'certain special similarities, which brought men akin together'. Such force revealed itself in all aspects of evolution,<sup>103</sup> including philosophy (what is true)<sup>104</sup> and law (what is right), as well as the native language.

Philosophy, law and the national language formed an inseparable entity in his mind, which did not merely result from Savigny's school of thought – in fact, we are led to believe that he was 'the mind' of the insurrection at the Faculty of Law of Cagliari in 1861 against the decision to stop teaching Latin and to 'embrace the heroic language of Lazio', the ancient Sardinian dialect. That request, in fact, did not derive from an 'exaggerated veneration of the past', but it seemed useful with a view to recovering 'the greatest and most glorious elements' Italy had, that is, the closely interrelated Roman language and law.

Of the three professors in charge of the chair of international law in Cagliari from 1859 to the end of the century, Gaetano Orrù appears to have been the minor figure, or at least the most elusive from a scientific point of view, since, like so many professor-lawyers of the time, he continued to practise his profession – scarcely devoted to science.

The only written contribution he left is the lecture, 'strictly observant of Mancini's theory',<sup>105</sup> entitled 'Dell'attività scientifica esplicita in questo secolo nel campo del diritto internazionale', inaugurating the 1885–1886 academic year. He explained that international law was an expression of a 'rational principle',<sup>106</sup> of the eternal norm of what is true and what is right. He publicly recalled and celebrated the fortunate shift in such a discipline. From being 'almost arcane, reserved for the privileged few, regarded by many as being useless, and excluded from university teachings by suspicious or fearful governments, as full of dangers',<sup>107</sup> it was now entering the milieu of jurists in the

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italiane preunitarie', in *Studi di storia del diritto medievale e moderno*, ed. Filippo Liotta (Bologna: Monduzzi, 1999), 277–321, at 279–294.

102 Giovanni De Gioannis, *Prolusione accademica letta nella Regia Università di Pavia nel 23 novembre 1863* (Pavia: Tipografia in ditta Eredi Bizzoni, 1864), 7.

103 *Ibid.*, 10.

104 *Ibid.*, 13–15.

105 Quote from Laura Passero, *Dioniso Anzilotti e la dottrina internazionalistica tra Otto e Novecento* (Milano: Giuffrè, 2010), 80.

106 Gaetano Orrù, 'Dell'attività scientifica esplicita in questo secolo nel campo del diritto internazionale', in *Annuario della Regia Università di Cagliari 1885–86* (Cagliari: Timon, 1886), 22.

107 *Ibid.*, 14.

making. That was also an opportunity to talk about Mancini's legacy, which 'was a spark almost capable of shaking the political and scientific world'.<sup>108</sup>

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<sup>108</sup> Ibid., 26.

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