

# Pufendorf and Hutcheson in the Alps: Variations on Natural Law in Eighteenth-Century Italy

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## 1 Making It a Duty to Translate Pufendorf: Almici's Project

If we look at the works brought to press in mid-eighteenth-century Venice, which at the time was the capital of Italian publishing, we would be led to conclude that a major cultural and confessional taboo had been overcome. For it is here that, in response to the demands of an increasingly growing clientele, a series of re-editions and translations began to appear that made it possible for the wider public to gain access to the foundational works of Protestant natural law. Samuel Pufendorf, Hugo Grotius, John Locke and Christian Wolff thus became household names; their works left the close confines of richly stocked private libraries and began to circulate, gaining a wider readership, even if all these works were at the time censored by the Roman Catholic Church; meanwhile, literary periodicals began to feature the first articles devoted to modern natural law. For the print shops in Venice, sensitive to trends in the market, it was now becoming easier to obtain the secular authorizations needed to publish those books, though they did have to resort to false place-names so as to avoid tensions with Church hierarchies.<sup>1</sup> What was happening in Venice was not extraordinary; we now know that the reception of natural law up and down the Italian peninsula had already been underway; in fact, the works of Grotius, Pufendorf and Hobbes were familiar, and were used as textbooks in the universities.<sup>2</sup> The publishing market in Venice therefore reflected a broad

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- 1 See Mario Infelise, *L'editoria veneziana nel '700* (Milano: FrancoAngeli, 1989), 87–88, at 94. See also Patrizia Bravetti and Orfea Granzotto, *False date: Repertorio delle licenze di stampa veneziane con falso luogo di edizione (1740–1797)* (Firenze: Firenze University Press, 2008), 113 (no. 279, 27 February 1757, Hugo Grotius, *De jure belli, ac pacis*), 116 (no. 290, 14 September 1757, Samuel von Pufendorf, *De officio hominis et civis*), 116 (no. 291, 12 January 1758, John Locke, *De intellectu humano*), 120 (no. 305, 27 May 1758, Samuel Pufendorf, *De iure naturae et gentium*), 125 (no. 324, 11 February 1759, Christian Wolff, *Philosophia moralis*).
  - 2 See Chapter 1 of the present volume, by Emanuele Salerno, and Chapter 2, by Alberto Clerici.

and widespread trend both in Italy and beyond. And yet, perhaps ahead of anywhere else and more forcefully, there emerged out of Venice a sense of restless innovation involving the approach to Protestant natural law in the Italian cultural and confessional context. It was not a settled matter that the works of Protestant authors should be able to circulate. And even less uncontroversial was the possibility of public debate on sensitive topics in ethics or on the role of human reason, or, more to the point, on the rational foundations of natural law.

At issue, in other words, was the possibility of going to the heart of transalpine systems of natural law. An important signal was sent out when Pufendorf's 1672 *De iure naturae et gentium* received its first Italian translation.<sup>3</sup> The translator was Giambattista Almici (1717–1793), a lawyer from Brescia, a wealthy town in the subalpine belt that was subject to the Republic of Venice.<sup>4</sup> The first two volumes appeared in Venice in 1757, and only in 1759 was the work completed – four volumes in all, the translation based on Jean Barbeyrac's French edition, possibly the second one (1712) but more probably the later ones (1732, 1740, 1750).<sup>5</sup> It should be underlined that this is a selective translation: in many passages, Pufendorf's text undergoes major reworking and 'corrections', as Almici calls them. And Almici follows Barbeyrac's notes only in part, to leave plenty of room for his own reasoning. Nevertheless, despite the many rearrangements, Almici's work still represents a significant moment, because it is the first attempt to render into Italian the work of the prince of Protestant natural law. The initiative drew great interest. In fact, it had been preceded by a well-conducted promotional effort,<sup>6</sup> and all along

3 Samuel Pufendorf, *Il diritto della natura e delle genti o sia sistema generale de' principii li più importanti di morale, giurisprudenza e politica, rettificato, accresciuto, e illustrato da Giovambattista Almici* (Venezia: Pietro Valvasense, vols 1 and 2 1757, vol. 3 1758, vol. 4 1759).

4 See Stefania Stoffella, 'Almici, Giovambattista', in *Dizionario biografico dei giuristi italiani (XII–XX secolo)*, ed. Italo Birocchi et al. (Bologna: Il Mulino, 2013), vol. 1, 45; and Maurizio Bazzoli, 'Giambattista Almici e la diffusione di Pufendorf nel Settecento italiano', *Critica storica* 16 (1979): 3–100, at 17 and n. 55.

5 It is not possible to say which edition was used by Almici but he certainly did not use the first: Almici's translation refers to a note by Barbeyrac that was not present in the first edition (1706), whereas it is present from the second edition (1712) onwards. Pufendorf, *Il diritto della natura e delle genti*, 6, n. 1; Samuel Pufendorf, *Le droit de la nature et des gens, ou Système général des Principes les plus importants de la morale, de la jurisprudence, et de la politique*, 2 vols (Amsterdam: Pierre De Coup, 1712), vol. 1, 8, n. 6. Public libraries in Padua and in Venice suggest a greater circulation of the later editions, especially the fourth edition (1732), which Almici may also have used. I owe this information to the courtesy of Gabriella Silvestrini.

6 Bazzoli, 'Giambattista Almici e la diffusione di Pufendorf'.

the peninsula, from Turin to Naples, from Venice to Palermo, it gained many orders – at least 206 – from lawyers, literati, booksellers and the clergy.<sup>7</sup>

What had driven Almici to embark on such a venture, in defiance of the veto and censorship it could well be expected to face? What was his project? In the preface to the translation, Almici describes his enterprise as a scientific and cultural ‘duty’;<sup>8</sup> every language barrier had to be taken down to give Pufendorf’s masterwork the widest circulation. The first goal was to narrow the gap with the rest of European culture, where this work was so important that it had already been made available in several languages. Almici was driven by a sense of esteem even greater than that which he describes in the preface, which was written so that the book might pass the censorship screening by either the state or the Church – two ever-present entities capable of shaping the writing and choices of an author. The first part of the preface is therefore mainly a long *pars destruens* peppered with unforgiving and opinionated judgements about the work he is about to translate. That was, in reality, a strategy designed to soften the shock and scandal the book was bound to elicit in some circles.<sup>9</sup> It falls to the reader to slog through the boredom of these presumptuous and aggressive pages before finally grasping the translator’s true feelings about Pufendorf, described later in the preface as the most compelling and accurate of the ‘philosophical natural lawyers’, this work being the best in the entire landscape of natural law.<sup>10</sup> From the reader Almici expects

7 The list of subscribers can be found in the back matter of the second volume (1757) and it is published in Diego Quagliani, ‘Pufendorf in Italia: Appunti e notizie sulla prima diffusione della traduzione italiana del *De iure naturae et gentium*’, *Il Pensiero politico* 32 (1999): 235–250, at 246–250.

8 He states: ‘It was squarely a matter of duty that a work of such great merit, and of such importance [...], should also make its entry into the Italian Republic of Letters, which in no respect falls behind the others of Europe’. The Italian original reads: ‘Era ben di dovere che un’opera di tanto merito e di tanta importanza [...] vedesse anche la Repubblica Letteraria d’Italia, che in nulla cede all’altre d’Europa’. Almici’s preface to his translation of Pufendorf, *Il diritto della natura e delle genti*, vol. 1, i, § 1, ‘Prefazione’.

9 Backing up this claim is a letter of April 29, 1756, in which Camillo Almici – Giambattista’s brother and a priest – writing to Giovanni Battista Chiaramonti comments that the ‘book’s very title, and to an even greater extent its preface, will serve to avert the scandal the book attracts: through the former and the latter, both, the work will come out self-corrected, and all but rewritten in many of its parts’. The Italian original: ‘Il titolo istesso del libro, e molto più la prefazione servirà ad ovviare allo scandalo preteso del libro: mentre sì dell’uno, come dell’altra risulterà essersi l’opera corretta, e quasi rifatta in molte sue parti’. Quoted in Bazzoli, ‘Giambattista Almici e la diffusione di Pufendorf’, 25.

10 See Almici, ‘Prefazione’, in Pufendorf, *Il diritto della natura e delle genti*, xvii and following, but see also vii, § vi.

an unbiased mind, free of ‘scholastic cavilling’ and ‘misconceived ideas’,<sup>11</sup> in short, an emancipated reader. These innuendos are aimed at those who are intent on waging battle against natural law of a Protestant stripe, unwavering in their allegiance to Scholasticism – well-known and highly regarded personalities such as the theologian Daniele Concina (1687–1756), who in his writings associated natural law with atheism, forging a violent and dangerous identification, as well as the Bavarian monk Anselm Desing (1699–1772), the Jesuit Ignaz Schwarz (1690–1740)<sup>12</sup> and many other more or less influential figures, all engaged against heretical thinkers and their theories, regarded as fatal to the mind and the soul.

Almici had previously staked out a position against those who took exception to transalpine natural law theories, in a 1750 article titled ‘Saggio sopra la Ragione umana, o sia la Natural legge contro i disapprovatori di un tale studio’ (Essay on human reason, or natural law, *contra* those who disapprove of such inquiries).<sup>13</sup> This is testimony of his prior interest in a topic that was increasingly attracting attention and controversy, but also shows his short patience with naysayers who were unwilling to engage in open debate. The article announces the project of the translation and should be seen as the initial trailblazing text on the difficult path to the introduction of modern natural law theory in Italy’s cultural and confessional environment. Almici was all but unknown when his article appeared in the authoritative journal edited by the abbot Angelo Calogerà, a learned man of science. In running with this eulogy

11 Ibid., xix–xx.

12 See specifically Daniele Concina, *Della religione rivelata contro gli ateisti, deisti, materialisti, indifferentisti* (Venezia: Presso Simone Occhi, 1754), but examples are legion. On Concina, see Antonella Barzazi, *Gli affanni dell'erudizione: Studi e organizzazione culturale degli ordini religiosi a Venezia tra Sei e Settecento* (Venezia: Istituto Veneto di Scienze, Lettere ed Arti, 2004); Ignaz Schwarz, *Institutiones juris universalis, naturae et gentium, ad normam moralistarum nostri temporis, maxime protestantium Hugonis Grotii, Puffendorffii, Thomasii, Vitriarii, Heineccii aliorumque ex recentissimis adornatae et ad crisis revocatis eorum principiis, primum fusiore, tum succinctiore methodo pro Studio Academico, praesertim catholico accommodatae*, 2 vols (Augustae: sumptibus Francisci Antonii Strötter, typis Antonii Maximiliani Heiss, Typographi Catholici, 1743); Anselm Desing, *Diatribae circa methodum Wolffianam, in philosophia practica universali, hoc est in principiis juris naturae statuendis adhibitam, quam non esse methodum, nec esse scientificam, ostenditur* (Pedeponti, vulgo Stadt am Hof bey Regensburg: sumptibus Joannis Gastl, Bibliopolae, 1752).

13 Giambattista Almici, ‘Saggio sopra la Ragione umana, o sia la Natural Legge, contro i disapprovatori d’un tale studio’, *Raccolta d’opuscoli scientifici e filologici* 44 (1750): 141–212. The journal was edited by Angelo Calogerà from 1728 to 1754. It ran to fifty-one volumes and was published in Venice by Simone Occhi.

of natural law, Calogerà let pass some vehemently accusatory language. This was, after all, consistent with his cultural programme, which made it a priority to foster cultural renewal. The journal served as a forum through which new debates and projects could flourish.<sup>14</sup>

From the outset, the article takes issue with the short-sightedness of those who ensconce themselves in traditional models that have become sterile, and Almici cites John Locke's recommendation of Grotius and Pufendorf as foundational reading for young men as soon as they are able to assimilate them.<sup>15</sup> These were useful and indeed essential readings, ready to be brought to a wider readership, with whom they could spark fresh debates. Protestant publishing was making its way into the Catholic universities of the Habsburg lands, insofar as this was considered politically useful, and in the new faculties established in Pavia, in Austrian Lombardy, even the theology course was to include a study of Protestant thinkers and 'pagan' ones,<sup>16</sup> regardless of the fact that the ecclesiastical authorities in Rome did not take kindly to such a development in the curriculum.

In a renewed *querelle* couched in terms of philosophy and natural law, Almici confidently listed the modern thinkers whose philosophy surpassed that of the ancients, paying little regard to the prohibitions which censorship, both ecclesiastical and secular, placed on Protestant authors and their books: Hugo Grotius, Samuel Pufendorf, Richard Cumberland, Jean Barbeyrac, William Wollaston, Johann Gottlieb Heineccius and others were all intro-

14 On Calogerà's cultural profile, see Barzazi, *Gli affanni dell'erudizione* and Scipione Maffei, *Le lettere di Scipione Maffei ad Angelo Calogerà*, ed. Antonio Fallico, Corrado Viola and Fabio Forner (Verona: Cierre Grafica, 2016).

15 Almici, 'Saggio sopra la Ragione umana', 200. See John Locke, *Some Thoughts concerning Education* (1693), ed. John W. Yolton and Jean S. Yolton (Oxford: Clarendon Press, 1989), 239, § 186: 'When he has pretty well digested Tully's *Offices*, it may be seasonable to set him upon Grotius *de Jure Belli & Pacis*, or which I think, is the better of the two, Pufendorf *de Jure naturali & Gentium*; wherein he will be instructed in the natural Rights of Men, and the Original and Foundations of Society, and the Duties resulting from thence'. An education in politics, Locke comments elsewhere, requires a reading of his *Two Treatises of Government* (1690), among other works: 'To these one may adde Puffendorfe *De Officio Hominis et civis*, and *De Jure Naturali et Gentium*, which last, is the best book of that kind'. Quoted from 'Some Thoughts concerning Reading and Study for a Gentleman' (or: 'Mr. Locke's extempore Advice &c.') (1703), in Locke, *Some Thoughts concerning Education*, 319–327, at 322.

16 See Chapter 3 of the present volume, by Elisabetta Fiocchi Malaspina, and Chapter 4, by Gabriella Silvestrini. See also Marco Bernuzzi, *La Facoltà teologica dell'Università di Pavia nel periodo delle riforme (1767–1797)* (Milano: Istituto Editoriale Cisalpino–La Goliardica, 1982), 84, n. 94.

duced by Almici, it is worth noting, as ‘ours’,<sup>17</sup> which implies that they were regarded by him as part of a shared cultural and scientific space. Almici’s admiration for these thinkers, coupled with his open-mindedness, led him to suggest a compromise that would make it possible to proceed with intellectual debate despite the confessional barrier: the philosophical and the confessional spheres had to be kept separate. Almici condenses all his arguments in this regard into the rhetorical question: Are we perhaps to rid ourselves of Aristotle and Plato because of their ‘misguided, impious, and untenable notions’,<sup>18</sup> or, in short, because of their convictions as pagans? Similar questions had been floating around for some time, to be sure, but had never been given an unqualified ‘no’ in response.<sup>19</sup>

Once all the ‘errors’ of the Protestant philosophers have been pointed out and censured, Almici comments, it will be possible to extract much benefit from their works. The article closes with a comment that is more provocative than liberal in tone, being aimed at young men who should set out on a course of study based on a syllabus of solid readings. Let them ignore those who want to keep them away ‘from such a fecund and valuable study’, and let them apply themselves to such readings ‘with full vim and vigour’.<sup>20</sup> Almici was gearing up for a proper culture war, advocating Protestant natural law and calling for a renewal of Italian culture at large. A new opportunity came his way when a fellow countryman, the theologian Carlo Polini, published *De juris divini et naturalis origine*, which sought to discredit rationalism and which reaffirmed Scripture rather than natural law as foundational.<sup>21</sup> Polini’s was not just *any* book; the pope himself had promoted it in response to a new and feared cultural movement. Almici’s fastidious and no less bellicose review of the work reflects the dogged aversion that writings on natural law still attracted, and it speaks to what was at stake.<sup>22</sup> It is in this context that Almici undertook the

17 Almici, ‘Saggio sopra la Ragione umana’, 199.

18 *Ibid.*, 207.

19 As early as 1714, for example, Ludovico Antonio Muratori, writing under the protection of a pseudonym, had asked that question publicly in the preface to his *De ingeniorum moderatione*: ‘At mihi impia quidem haereticorum dogmata perpetuo displiceant; sed numquam displiceat veritas vel in haereticorum ore. Numquid enim quaecumque ab heterodoxis dicuntur, ea omnia continuo pro falsis ac impiis habenda?’ Lamindi Pritanii [Ludovico Antonio Muratori], *De ingeniorum moderatione in religionis negotio* (Lutetiae Parisiorum: apud Carolum Robustel, 1714), ‘Praefatio’.

20 Almici, ‘Saggio sopra la Ragione umana’, 209.

21 Carlo Polini, *De juris divini et naturalis origine* (Brixiae: Jacobus Turlinus, 1750).

22 [Giambattista Almici], letter of 2 August 1756, Brescia, in *Memorie per servire all’istoria letteraria* (Venezia: Pietro Valvasense, 1756), vol. 8, part II, 42–48 and 49–52 (text in Latin).

translation of Pufendorf's *De iure naturae et gentium* into vernacular Italian, from one of the editions with Barbeyrac's commentary.

The original manuscript of the translation has been lost. It is therefore impossible for us to assess the impact of the censors, who granted Almici a placet with the proviso that he corrects the contents of the text; nor is it possible to gauge the extent to which Almici in fact had qualms of a confessional nature. What we do know is that on multiple occasions in the published translation, Pufendorf's text gets doctored to grave effect. Even so, some of the core features of Pufendorf's thought are firmly kept in place, starting from the rationalistic approach he takes in developing a conception of society and of man and his representation of the state. The break from Scholasticism is clear-cut. Almici's engagement with Pufendorf and Barbeyrac is to the point and tightly woven, complete with numerous footnotes that often draw inspiration or are derived from Emer de Vattel's quite recent *Droit des gens*.<sup>23</sup>

Almici's makeover of the text met with criticism from knowledgeable and exacting readers, such as Clemente Baroni Cavalcabò, who was based in Italian-speaking Tyrol, under the Habsburg monarchy, and devoted himself to the study of natural law. As he saw it, this was 'among the most important' subjects of study, yet it was quite neglected in Italy, whose culture was prone to 'losing itself in minutiae'.<sup>24</sup> Baroni Cavalcabò, however, decided not

23 On Almici as a reader of Vattel, see Elisabetta Fiocchi Malaspina, *L'eterno ritorno del Droit des gens di Emer de Vattel (secc. XVIII–XIX): L'impatto della cultura giuridica in prospettiva globale* (Frankfurt am Main: Max Planck Institute for European Legal History, 2017), 55–57.

24 Clemente Baroni Cavalcabò, letter to Amedeo Svajer, 5 February 1763, quoted in Serena Luzzi, 'Percorsi secolarizzati nell'Italia del Settecento, tra diritto naturale ed etica scozzese', in *Illuminismo e protestantesimo*, ed. Giulia Cantarutti and Stefano Ferrari (Milano: FrancoAngeli, 2010), 149–170, at 152. There is to date no full consideration of Clemente Baroni Cavalcabò (1726–1796), or at least none that accounts for the depth of his inquiries into natural law, but see Stefania Stoffella, 'Il diritto naturale nella corrispondenza e negli scritti di Giovanni Battista Graser e di Clemente Baroni Cavalcabò', in *Aufklärung cattolica ed età delle Riforme: Giovanni Battista Graser nella cultura europea del Settecento*, ed. Serena Luzzi (Rovereto: Accademia Roveretana degli Agiati, 2004), 191–206. But see also Riccarda Suitner, 'Introduzione', in Clemente Baroni Cavalcabò, *L'impotenza del demonio di trasportare a talento per l'aria da un luogo all'altro i corpi umani dimostrata da Clemente Baroni delli Marchesi Cavalcabò accademico di Rovereto, dove anche si dimostra l'impossibilità di volare con artificio umano* (Rovereto, 1753, repr. Bologna: Forni, 2013); Riccarda Suitner, 'The powerlessness of the devil. Scientific knowledge and demonology in Clemente Baroni Cavalcabò (1726–96)', in *Knowledge and Profanation: Transgressing the Boundaries of Religion in Ancient and Premodern Scholarship* (Leiden: Brill, 2019), 330–356; Christian Zendri, 'Clemente Baroni Cavalcabò e la stregoneria' and Antonio Trampus, 'Religione e superstizione: Gianrinaldo Carli, Clemente Baroni

to take an active role. Prudence advised him against publishing his own writings devoted to natural law and to Grotius and Hobbes, both of whom he held in high esteem. His role in giving currency to the themes of natural law therefore remained by and large confined to the private spaces of correspondence and the meetings held in the Accademia roveretana degli Agiati, a progressive society devoted to promoting cultural mediation, with an interest in Germanic culture (a pursuit facilitated by a familiarity with the German language, with which the rest of the Italian peninsula was much less conversant), and the activities of which were guided by a supra-confessional principle.<sup>25</sup> From this academy the journals in Venice and Florence would receive news and reviews of books published in German (but not in Latin). It was at one of the meetings of the academy that Baroni Cavalcabò read a dissertation devoted to Grotius, mounting an argument in favour of the validity of his *etsi Deus non daretur* (as if God did not exist).<sup>26</sup>

It is no surprise that Almicì's translation was not to Baroni's liking. Baroni was so upset by the remaking of Pufendorf's original, by the 'admixture' (*mescolanza*) and the edits the text underwent in Almicì's hands, that he cancelled his order and refused to buy the subsequent volumes.<sup>27</sup> More than that, for once setting aside his usual caution, he publicly responded with an article objecting to what, in his view, was the wrong interpretation that Almicì gave to Pufendorf's position on the right of resistance. Baroni criticizes the erroneous logical path whereby the right to resistance is upheld on the one

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Cavalcabò e il tramonto del dibattito su magia e stregoneria in Italia', in *Gli illuministi e i demoni. La disputa su magia e stregoneria dal Trentino all'Europa*, ed. Riccarda Suintner (Roma: Edizioni di Storia e Letteratura, 2019), 127–143, 23–36.

- 25 Stefano Ferrari, 'L'Accademia roveretana degli Agiati e la cultura di lingua tedesca (1750–1795)', in *La cultura tedesca in Italia 1750–1850*, ed. Alberto Destro and Paola Maria Filippi (Bologna: Patron, 1995), 217–276.
- 26 The text, which remained unpublished, was read in public at a meeting of the Accademia roveretana degli Agiati held in 1755. In a letter to a friend who was a priest, Baroni Cavalcabò underscored that the issue was sensitive (*delicato*) and 'apt to elicit scandal', and with conviction he explained that 'man can know natural law and is duty-bound to observe it even without assuming the existence of God'. Clemente Baroni Cavalcabò, letter to Giovanni Battista Graser, Sacco/Rovereto, 23 August 1755, quoted in Stoffella, 'Il diritto naturale nella corrispondenza', 195, 198–199 (the original reads: 'L'uomo può conoscere la legge naturale e ha l'obbligo d'osservarla anche senza supporre l'esistenza di Dio').
- 27 Giuseppe Valeriano Vannetti, letter to Giambattista Chiamonti, Rovereto, 5 April 1758, in *Discorrere per lettera: Carteggio Giuseppe Valeriano Vannetti–Giambattista Chiamonti (1755–1764)*, ed. Liliana de Venuto (Trento: Civis, 2007), 244.



hand and the obligation to comply with a sanction is upheld on the other.<sup>28</sup> In his learned article, Grotius, Hobbes and Pufendorf are depicted as ‘heroes of civil science’ (*eroi della scienza civile*) and repeatedly mentioned as authoritative masters.<sup>29</sup> The debate sparked by Almici’s translation, in which he himself often took part,<sup>30</sup> once more offers evidence of a public readership interested in the issues raised by natural law and ready to weigh in by contributing to academic-literary periodicals, which at the time served as the main tool for communicating ideas and moving the cultural conversation forward.

If Almici’s objective was to give currency to Pufendorf’s work, the ensuing debates and publishing initiatives crowned it with success. Indeed, a few years later, in 1761, Pufendorf’s compendium of the work, *De officio hominis et civis* (1673), was published in an Italian translation based on Barbeyrac’s French edition.<sup>31</sup> The translator, Michele Grandi (1718–1786), was a clergyman in Padua who held a degree in law. Explicit in his intent to preserve a line of continuity with Almici’s translation of Pufendorf’s *De iure naturae et gentium*, as well as with Barbeyrac’s earlier (1707) translation of its compendium, Grandi offered his work to readers who had not yet had a chance to read the unabridged work (*Opera grande*) or who might not be fluent in French.<sup>32</sup> Even so, Grandi strayed away from Almici’s style and promised a complete and undoctored equivalent of Barbeyrac’s edition, considering that readers were asking to engage with ‘these celebrated writers’ views’ as they had been published. Here, then, was evidence of a pool of readers large enough not to be neglected, and they not only took an interest in the classics of Protestant natural law but also wanted to access these texts in versions as close as possible to the original. True to that

28 The dispute was over the proper interpretation of Pufendorf’s *De iure naturae et gentium*, vol. 8, iii, § 1. On Baroni’s criticism, see Stefania Stoffella, ‘Il diritto di resistenza nel Settecento italiano. Documenti per la storia della traduzione del *De iure naturae et gentium* di Pufendorf’, *Laboratoire italien: Politique et société* 2 (2001): 173–199.

29 [Clemente Baroni Cavalcabò], Rovereto, 10 October 1757, in *Memorie per servire all’istoria letteraria* (Venezia: Pietro Valvasense, 1757), vol. 10, 313–328. Even though the article is anonymous, Almici knew its authorship, as can be gathered from the fact that in his reply a direct reference is made to Baroni.

30 [Giambattista Almici], letter of 13 January 1759, Brescia, in *Nuove Memorie per servire all’istoria letteraria* (Venezia: Silvestro Marsini, 1759), vol. 1, 123–133.

31 Samuel Pufendorf, *I doveri dell’uomo e del cittadino: Tali che a lui dalla legge naturale sono prescritti, dalla versione francese di Giovanni Barbeyrac tradotti, e con molte aggiunte corretti, ed illustrati da Michele Grandi accademico di Udine* (Venezia: Francesco Pitteri, vols 1 and 2 1761, vol. 3 1767). The translator, Michele Grandi, tells us that his translation reflects the work he did comparing several earlier translations: see ‘Avvertimento sopra questa traduzione italiana’, x and n. 3.

32 *Ibid.*, x–xi.

idea, Grandi took care to place his own extensive commentary in notes set apart from Pufendorf's text, which could thus be appreciated in its integrity. Here, too, it is impossible for us to gain a proper sense of the effect that censorship might have had on the notes, but we can observe that, even with all the confessional safeguards packed into the text, Grandi did on the whole adhere to Pufendorf's system. It is no accident that he insisted on bringing young people into the conversation; it was the more recent generations who formed the ideal audience for the translation<sup>33</sup> as a contribution to a much-anticipated renewal.

## 2 Bogeymen and Witches, or: Moving toward a Catholic System

In the landscape of the Italian debate surrounding natural law, it took much toil for any Catholic alternative to emerge. An initial important effort in this direction came in 1764, with a book published in Venice by the Dominican friar Bonifazio Finetti. An earlier version of it had been so battered by his superiors in the monastic order that its publication was prohibited.<sup>34</sup> Finetti was anything but subversive in his intentions. What he wanted to do was to provide a counterweight to the worrisome spread and encroachment of Protestant works on natural law,<sup>35</sup> while the 'good' books grounded in sound doctrine were rare or non-existent. It was no longer enough to lament the sorry situation and spread blame for it; it was necessary to provide at once a book on natural law cast in a Catholic mould, something that had yet to be seen in Italy.<sup>36</sup> In his dedication to Maria Theresa, of whom he was a subject, Finetti claimed (rightfully) a historical first for himself, having preceded anyone else in Italy in putting out a work capable of offering an updated overview of nat-

33 Ibid., xiii.

34 Giovanni Francesco [Bonifazio] Finetti, *De principiis juris naturae et gentium adversus Hobbesium, Pufendorfium, Thomasium, Wolfium et alios*, 2 vols (Venetiis: apud Thomam Bettinelli, 1764). On Finetti (1705–1782), see Barzazi, *Gli affanni dell'erudizione*, 249–253; Silvano Cavazza, 'Finetti, Bonifazio', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana Treccani, 1997), vol. 48, 40–42. See also Chapter 2 of the present volume, by Alberto Clerici.

35 '[...] accuratiusque dici posse crediderim, libros quidem malos immane nimiam in copiam excrevisse; at bonorum numerum multo minorem adhuc esset; ut idcirco aut de illis minuendis, aut de istis augendis hodie laborandum videatur [...]'. Finetti, *De principiis juris naturae et gentium*, vol. 1, 'Praefatio', xi.

36 Ibid., xii.

ural law.<sup>37</sup> Despite Finetti's stated principle, however, his translation was not meant to reach a broad audience, considering it was written in Latin. The book is the outcome of a difficult compromise, attempting as it did to 'at once reject and accept'<sup>38</sup> Germanic natural law and to set Scholastic doctrine within a coherent framework – or, in short, to adopt the solid Protestant model. The book was a compromise even in relation to the expectations of the Dominican order, which (as mentioned) had rejected (and thus censored) the original manuscript and imposed a substantial revision of it. In a sort of critical anthology, Finetti brought together the finest minds of modern natural law: Hobbes, Pufendorf, Thomasius, Wolff – all quoted in the book – as well as Grotius, Selden, Barbeyrac, Buddeus, Burlamaqui and Heineccius. Their works are presented and discussed following the template of the Scholastic tradition and under the strictures of a confessional framework. Finetti's confessional circumspection was targeted by a reader who was anything but charitable to him, Carlantonio Pilati, who would soon champion a wide-ranging reform project in Italy. At the time, Pilati was teaching law in Trento, the capital of an ecclesiastical principality in the Alps, an area where the Italian world interfaced with the Germanic one.<sup>39</sup>

Before we get to Pilati himself, it is worth considering his assessment of Finetti's work. In a letter to Finetti, Pilati recognizes his merits – being up to date on the subject matter – but takes a negative view of the work itself, on account of the apologetic aim by which it is informed.<sup>40</sup> The Italians, Pilati commented, are 'extraordinarily wary' of natural law and moral science, recoiling from them like children do 'from bogeymen and witches'.<sup>41</sup> Italian books with all their biases were worthless. The reason why Italian culture was slow to catch up lay entirely in its resistance to Protestant culture, and this delay was

37 Ibid., ii, 'Mariae Theresiae Augustae': 'profecto cum opus istuc sit in hoc genere primum, quod ex Italia prodeat'.

38 Merio Scattola, 'Protestantesimo e diritto naturale cattolico nel XVIII secolo', in *Illuminismo e protestantesimo*, ed. Giulia Cantarutti and Stefano Ferrari (Milano: FrancoAngeli, 2010), 131–148, at 139, which is a good source on the development of a Catholic system of natural law in the nineteenth century. See also Chapter 10 in the present volume, by Francesca Iurlaro.

39 On the Italian reformer, see note 47, below.

40 Carlantonio Pilati wrote two letters to Giovanni Bonifazio Finetti, the first dated 16 July and the second 30 September 1766. The letters are published in Giovanni Francesco [Giovanni Bonifazio] Finetti, *Apologia del genere umano accusato d'essere stato una volta bestia*, 3 vols (Venezia: Vincenzo Radici, 1768), vol. 1, xxxviii, xxxix–xliii.

41 Carlantonio Pilati to Giovanni Giacomo Cresseri, February 1763. See Luzzi, 'Percorsi secularizzati nell'Italia del Settecento', 152.

especially dire and manifest when it came to the study of natural law. Finetti had therefore not broken the taboo. But would Pilati do so?

Pilati himself devoted two works to natural law that signal an entirely different orientation and argumentative style. He used his sharp quill to call for an intellectual rejuvenation through which to dismantle and finally break free from the dominant system of thought, which had been shaped by confessional concerns and was an expression of a clerical power that needed to be limited.

The occasion for this call to action was the publication in 1765 of a textbook on traditional natural law by a doctor of theology, under the name Giovanni di Dio, whose real name was Francesco Staidel, a Franciscan friar, also from Trento.<sup>42</sup> Pilati unleashed a cutting satire against Staidel and his book<sup>43</sup> because of its charge of heresy against Protestant natural lawyers without reflecting on their merits.<sup>44</sup> And in fact the arguments Staidel puts forward against natural law are incoherent; as Pilati comments, any author, no matter how pagan or heretic, could do better.<sup>45</sup> Staidel's performance was nothing but a dogmatic provocation.

### 3 Natural Law Does Not Exist: What Then?

Of all the conceptions of natural law to come out of Italy in the early 1760s, perhaps none was more confessionally unbecoming and radical than the one put forward by Carlantonio Pilati, intent as he was on overcoming the taboo and the accompanying impasse that was holding back the development of philosophy all along the peninsula.

On several occasions Pilati can be seen to have had little patience with confessional strictures because they could so heavily impair the quality of

42 Joanne de Deo Staidelio (1732–1777), *Lex naturæ propugnata* (Tridenti: ex typographia episcopali Monauniana, 1765).

43 Lapi Coraliti [Carlantonio Pilati], *Judicium de duobus P. Joannis De Deo Staidelii Libris, quorum alter lex naturalis propugnata, alter Enchiridium theologiae inscriptus est* (Lugani: typis Agnelli, 1766).

44 Ibid. A few examples: 'Nonne Grotius, Cumberlandius, Pufendorfius, Cudworthius, Wollastonius, alique ad manus erant, ex quibus optima potuisses pro lege naturali tuenda argumenta sumere? Aut si haereticos odis', 8; 'Itaque fidem mihi in hoc, quod dicam, adhibeas, velim: Purus putus Theologus non est idoneus ad Jus naturae ita ut oportet, tractandum', 18; 'possunt te Grotius, Pufendorfius, Barbeiracius, Heineccius, quos tu viros ludibrio habere soles, multo meliora docere', 32.

45 Ibid., 'Ego malle auctor esse cuicumque, ut de iis rebus, quae ad hominum officia pertinent, quemlibet potius Auctorem paganum, aut haereticum, quam opera tua, Staidelji, consuleret', 32.

philosophical reflection in Italy. An enterprising character, not too compunctious, and in fact irreverent, he was willing to resort to the shrewdest means to remove obstacles preventing him from fulfilling his needs and interests.<sup>46</sup> Thus, in pursuit of his interest in the Protestant world, he declared himself ready to convert. This was a lie but it allowed Pilati to closely observe the Protestant world. With his lies, and thanks to his bilingualism (he had studied in Salzburg), he spent a semester in Helmstedt (Lower Saxony) in 1761 in the capacity of *Privatdozent*. As we will see, this was in many respects a turning point in his life. Central to his writings was the need to reshape the relation between church and state and, more to the point, to secularize politics and culture in Italy. His work of greatest acclaim in this vein was *Di una riforma d'Italia*, published in Chur (Canton of Grisons) in 1767. This lays out a sweeping programme for an urgent modernization that would even earn the praise of Voltaire.<sup>47</sup> It was necessary to change the Italian outlook, imbued as it was with specious values, and to free that culture of its clerical and confessional shackles. In *Di una riforma d'Italia*, Catholic and Protestant authors and titles take turns and any confessional force is neutered. The style is aggressive and so is the anticlericalism by which it is informed. Among other things, Pilati went so far as to advocate an across-the-board policy of tolerance.

We should not be surprised, then, that Pilati was also the author of a work in which natural law is treated from a provocative perspective that had no precedent in Italian culture: *L'esistenza della legge naturale impugnata e sostenuta* (The existence of natural law, challenged and sustained), published in Italian in Venice in 1764 and then in German in 1767.<sup>48</sup> Its title is misleading, for the author's actual intent was not to weigh the pros and cons of natural law but

46 See Serena Luzzi, 'Pilati, Carlantonio', in *Dizionario Biografico degli Italiani* (Rome: Istituto dell'Enciclopedia Italiana Treccani, 2015), vol. 83, 660–663.

47 Carlantonio Pilati, *Di una riforma d'Italia ossia dei mezzi di riformare i più cattivi costumi, e le più perniciose leggi d'Italia*, ed. Serena Luzzi (Roma: Edizioni di Storia e Letteratura, 2018). The work was translated into French in two separate editions, both dated 1769 (Amsterdam: Marc-Michel Rey; Rimini [Paris]: F.lli Albertini [false date]), and subsequently also into German, in 1775 (Zürich: Orell, Gessner, Füssli & Comp.). See Serena Luzzi, 'Der exportierte Antiklerikalismus: Europäische Stationen eines italienischen Reformprojekts im 18. Jahrhundert', in *Italien in Europa: Die Zirkulation der Ideen im Zeitalter der Aufklärung*, ed. Frank Jung and Thomas Kroll (Paderborn: Fink, 2014), 161–184. In general about secularization, see Irene Gaddo and Edoardo Tortarolo, *Secolarizzazione e modernità. Un quadro storico* (Roma: Carocci, 2017).

48 Carlantonio Pilati, *L'esistenza della legge naturale impugnata e sostenuta* (Venezia: Antonio Zatta, 1764). The work is organized as two parts, the first (1–106) laying out the arguments against the existence of natural law, the second (107–196) surveying the ones for its existence. On this book, see Luzzi, 'Percorsi secolarizzati nell'Italia del Settecento'.

outright to deny its existence. It was the prospect of censorship and the prodding of friends that persuaded him to add a second, contrarian part to his book that camouflaged his real thinking through this rhetorical illusion: the camouflage made it possible to publish the work in Venice without having to use a false place of publication.<sup>49</sup> He thus chose this two-headed structure for the book in order to ward off any doubt about his orthodoxy and thus keep up appearances (for Pilati had by this time turned deist). But to no avail: the book was placed on the *Index Librorum Prohibitorum*, precisely on account of its Janus-faced organization and its ready recourse to heretical authors. It is worth mentioning, in this connection, that the decree of condemnation betrays the Roman censors' ignorance of the philosophical sources and ideas referenced in the text.<sup>50</sup> But the arguments presented in the book were problematic even for Wilhelm Heinrich Winning, the Protestant pastor in Chur who translated it into German and who had forged a bond of friendship with the author.<sup>51</sup> Indeed, there was no doubt in Winning's mind about the existence of natural laws.

To demonstrate the non-existence of natural law was definitely a challenge. How had Pilati arrived at such a conviction? What were his models? It is not difficult to see the influence of Michel de Montaigne's *Essais*, and in particular his 'Apology for Raymond Sebond' and 'Of Cannibals'.<sup>52</sup> It is against the background of these famous texts that Pilati takes up anew the problem of cultural variety across human societies. The next step was to call into question the purported existence of a natural law of universal validity, thus taking issue with Barbeyrac, who on several occasions in translating Pufendorf challenged Montaigne's position in this regard.<sup>53</sup> However, Pilati's anti-universalism ended up rejecting the very idea of natural law. 'This pur-

49 Venetian authorities had given permission to print the manuscript if it falsely indicated Lucca as its place of publication. See Bravetti and Granzotto, *False date*, 191 (no. 524, 22 December 1763).

50 Luzzi, 'Percorsi secolarizzati nell'Italia del Settecento', 166.

51 Wilhelm Heinrich Winning, 'Vorrede des Uebersetzers', in *Des Herrn Pilati bestrittene und verfochtene Wirklichkeit des natürlichen Gesetzes, aus dem Italiaenischen übersetzt, und mit einer Vorrede begleitet von Wilhelm Heinrich Winning* (Lindau: Jacob Otto, 1767).

52 Michel de Montaigne, *Essais*, editio princeps (Bordeaux: S. Millanges, 1580), vol. 2, ch. 12 ('Apology'); vol. 1, ch. 31 [misnumbered in the book as trentième] ('Of Cannibals'). On the debate on human diversity, see Daniel Carey, *Locke, Shaftesbury, and Hutcheson: Contesting Diversity in the Enlightenment and Beyond* (Cambridge: Cambridge University Press, 2006), 44–45, 49–50.

53 See, for example, Jean Barbeyrac, 'Préface du Traducteur', in Pufendorf, *Le droit de la nature*, vol. 1, i–xcii, at xiv–xv. Cf. Carey, *Locke, Shaftesbury, and Hutcheson*, 67–68.

ported natural law', he comments in his work on the existence – or, rather, the *non-existence* – of natural law, 'is pure fiction' – 'a fantasy'; 'it does not exist'; it is 'a fanciful notion conceived by subtle but vain ratiocinators'.<sup>54</sup> The theme of the weakness of reason runs through the entire book.<sup>55</sup> Even so, Pilati does not follow Montaigne all the way to scepticism, but rather finds a positive solution in the moral sense theory developed by the Scottish philosopher Francis Hutcheson: universality can be ascribed only to the natural instinct.<sup>56</sup> It is worth pointing out that in *Lesistenza della legge naturale* the connection made with Scottish philosophy is not entirely clear, considering that, in an effort to avoid censorship, the original text was tampered with in such a way that its argumentative coherence is broken up, and the author's position is thus made ambiguous and elusive. Suffice it to note that the book closes with an eccentric eulogy to Thomas Aquinas (and implicitly to Scholasticism) – and nothing could be further from Pilati's thinking.<sup>57</sup>

The conceptual framing in which his thinking is actually set can instead be garnered from a quick and apparently marginal comment he makes whose key terms are *moral sentiment* (*sentimento morale*) and *instinct* (*istinto*), and from the note to that comment, in which Pilati makes reference to Hutcheson and his *Inquiry into the Original of Our Ideas of Beauty and Virtue*.<sup>58</sup> That this is not to be accounted as a piece of marginalia squeezed in as an afterthought is borne out by Pilati's subsequent correspondence and writings, from which we learn, on the contrary, that this passage is what survives of an entire framework of thought in which the author's anti-rationalist convictions combine with Hutcheson's philosophical system. Among the readers of Pilati's book there was one who did not fail to notice that the author was familiar with 'works that in Italy were perhaps little known',<sup>59</sup> and among these were certainly the works of Hutcheson. In the early 1760s, when Pilati published his book, Hutcheson's philosophy does not seem to have had much recognition in Italy. To be sure, Cesare Beccaria was a reader of Hutcheson, whose work he

54 Pilati, *Lesistenza della legge naturale*, 6, 17, 27, 44, 76, 94 (the original reads: 'un ghiribizzo di sottili, ma vani raziocinatori').

55 Ibid., 6, 8–10, 12, 14–16, 17, 24, 44.

56 Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996), 63–84; Carey, *Locke, Shaftesbury, and Hutcheson*, 150–199.

57 Pilati, *Lesistenza della legge naturale*, 196.

58 Ibid., 128 and note b.

59 Giuseppe Valeriano Vannetti, letter to Giambattista Chiaramonti, Rovereto, 19 May 1764, in *Discorrere per lettera*, 599.

studied in French translation,<sup>60</sup> but we can only speculate as to the full significance of this fact, for we are missing a systematic study of the state of affairs at the time. As for Pilati, his encounter with moral sense philosophy took place during the months he spent in 1761 in Lower Saxony at the Protestant University of Helmstedt, as mentioned above. Pilati could reap the benefits of a cultural process of broad scope that in Germany fostered the reception of English works in the Germanic lands through their translations and through their reviews in academic journals.

In Helmstedt, Pilati was keeping an eye on Francophone journals that offered an up-to-date overview of Anglophone culture for those unacquainted with English, and in particular he was reading the *Bibliothèque britannique*, which is mentioned in his work.<sup>61</sup> But Pilati's appreciation of Hutcheson's *Inquiry* comes from other, more direct sources, too; indeed, from Lower Saxony he came back not only with the complete *Bibliothèque britannique* but also with a German translation of the *Inquiry*,<sup>62</sup> giving us further evidence of his interest in philosophical systems which had been developed on the other side of the Channel and which he had hitherto been unaware of. Instinct is the decisive alternative in support of an anti-rationalistic and radically relativistic *Weltanschauung* that Pilati would never veer away from – a conception we find expressly stated in his works. It ought to be underscored here that Hutcheson himself does not deny the existence of natural law,<sup>63</sup> as Pilati seems to interpret him, if we are to judge by the logical connections made in the text. It

60 See Cesare Beccaria, *Des délits et des peines / Dei delitti e delle pene*, ed. Philippe Audégeron (Lyon: ENS Editions, 2009), 307–308, 328, 226, 423; cf. Philippe Audégeron, *La philosophie de Beccaria: Savoir punir, savoir écrire, savoir produire* (Paris: Librairie Philosophique J. Vrin, 2010), 203; Maria Francesca Turchetti, 'Libri e "nuove idee". Appunti sulla biblioteca illuministica di Cesare Beccaria', *Archivio storico lombardo* 139 (2013): 183–236.

61 See Pilati, *L'esistenza della legge naturale*, 24. Cf. *Bibliothèque britannique, ou Histoire des ouvrages des savans de la Grande-Bretagne* (A La Haye: Pierre de Hondt, 1733–1747). A complete collection of the *Bibliothèque britannique* is held at the Biblioteca Comunale in Trento, one of the few libraries in Italy with a copy of this journal. It is quite plausible that the collection was part of Pilati's library. Pilati could have bought it when he was in Helmstedt. On the journal, see Hans Bots, 'Pierre de Hondt, éditeur de la *Bibliothèque britannique* (1733–1743), et ses soucis à propos de la qualité de ce journal', in *Studies in de achttiende eeuw voor Uta Janssens*, ed. Franciscus Korsten and Jos Blom (Nijmegen: Katholieke Universiteit Nijmegen, Afdeling Engelse Taal en Cultuur, 2002), 39–54.

62 Francis Hutcheson, *Untersuchung unsrer Begriffe von Schönheit und Tugend*, in *zwo Abhandlungen [...] aus dem Englischen übersetzt*, [trans. Johann Heinrich Merck] (Frankfurt und Leipzig: in der Fleischerischen Buchhandlung, 1762). Pilati's copy is held in Trento at the Biblioteca Ufficio Beni Archivistici Librari e Archivio Provinciale, *Fondo Thun*.

63 Haakonssen, *Natural Law and Moral Philosophy*, 63–84.



is also worth noting that Pilati's adherence to moral sense philosophy does not come with any probing scrutiny of Hutcheson's more problematic axioms, first among these the universality of the moral sense and the origins of the dramatic cultural diversity that exists among human groups.<sup>64</sup>

A combination of censorship and self-censorship thus stifled the potential of Pilati's *Lesistenza della legge naturale*, in such a way that the principles of moral sense philosophy, still little known south of the Alps, would be hampered in finding their place in the Italian context. It is no surprise, then, that Pilati should have disowned his first work, choosing to instead point to his later writings, where his moral system is expounded with greater clarity and regains the coherence it had lost.

#### 4 Natural Law, the Big Cheat, or: A Searing Indictment by an African Student

Pilati's conception of natural law is expounded without dissimulation in his later *Ragionamenti intorno alla legge naturale e civile* (Discussions on natural and civil law), printed in 1766,<sup>65</sup> two years after his *Lesistenza*. The question of the universality of instinct and the anti-rationalist polemic are present from the outset, in the first of the book's three Discussions, which Pilati dedicates to his friend Dietrich Lichtenstein, Bürgermeister of Helmstedt.<sup>66</sup> That Discussion reveals itself to be all the more significant if we consider how firmly rooted in natural law the thinking and culture were at the University of Helmstedt, and how difficult it had been for moral sense philosophy to gain any influence in the Lutheran environment, in part owing to the optimistic

64 See Carey, 'The Dilemma of Diversity', in Carey, *Locke, Shaftesbury, and Hutcheson*, 172–184.

65 See Carlantonio Pilati, 'Della legge naturale' ('Of natural law'), in Carlantonio Pilati, *Ragionamenti intorno alla legge naturale e civile* (Venezia: Antonio Zatta, 1766), 25–43.

66 Pilati, *Ragionamenti*, 3–24; 'Carolus Antonius Pilatus Joachimo Theodoro Lichtensteinio Serenissimo Brunsvicensium Duci A Consiliis S.P.D'. On Pilati's experience as a teacher in Helmstedt and the cultural context, see Serena Luzzi, 'Fehler und Vorzüge der deutschen Universitäten: Ansichten eines italienischen Privatdozent in Helmstedt (1761)', *Braunschweigisches Jahrbuch für Landesgeschichte* 99 (2018): 185–201. Lichtenstein had a copy of Pilati's *Ragionamenti*, but it remains unknown if he offered a reply. See the catalogue of Lichtenstein's library, sold at a public sale after his death: *Verzeichniß einer Sammlung von juristischen, historischen und theologischen Büchern des sel. Herrn Hofrath Lichtensteins ... zu Helmstädt in dem Lichtensteinischen Hause an die Meistbietenden öffentlich verkauft werden soll* (1775), 99, no. 467, 'Ragionamenti intorno alla legge naturale et civile di C. A. Pilati, in Venez. 766 br. pp'.

anthropology by which that philosophy is underpinned.<sup>67</sup> In *Ragionamenti*, Lichtenstein is invited by Pilati to engage with him on this philosophical alternative fleshed out in the book and to give a forthright assessment of it.<sup>68</sup>

Pilati's *Ragionamenti* in effect rejected the foundations of natural law: natural law is a chimera, as Montaigne and others taught; reason was uncertain and hesitant, but the moral sense autonomous, as Hutcheson argued.<sup>69</sup>

The position Pilati stakes out against modern natural law is expressed in scathing tones through the voice of a young African student in Europe, scornful of the philosophical principles that have been imparted to him, and resentful of the prejudices that qualify non-European peoples as 'barbarous'.<sup>70</sup> Pilati

67 Jens Bruning, *Innovation in Forschung und Lehre: Die Philosophische Fakultät der Universität Helmstedt in der Frühaufklärung 1680–1740* (Wiesbaden: Harrassowitz, 2012); Jennifer Willenberg, *Distribution und Übersetzung englischen Schrifttums im Deutschland des 18. Jahrhunderts* (München: Saur, 2008); Fania Oz-Salzberger, *Translating the Enlightenment: Scottish Civic Discourse in Eighteenth-Century Germany* (Oxford: Oxford University Press, 1995), 77–85.

68 Pilati, *Ragionamenti*, 15–16: 'Quum igitur et Ratio fallax, impotens, dubia, incertaque plerumque sit, et hominum, ut et gentium opiniones variae sint, atque discordes, et Lex Revelata a plerisque vel ignoretur, vel impie despiciatur, nulla jam alia Legum Naturalium cognoscendarum via, atque ratio, quae quidem tam certa, quam communis omnium hominum sit, superesse potest, quam Instinctus ille naturali, quem omnes homines eodem modo sentiunt, et per quem non modo Legem aliquam Naturae existere generatim cognoscimus, verum etiam praecipua, atque summa ejus Principia deprehendimus [...]. Haec ego ad te, Lichtensteine, perscribere volui, non quo tibi praescriberem quid deinceps in Jure Naturae sequaris, sed quo sententiam explorarem hac de re tuam. Nam aut meum amplecteris judicium, si probaveris, aut tuo stabis, et mecum illud communicabis, si aliud quoddam est tuum'.

69 In a section headed 'Moral Sense Not from Reflection', Hutcheson argues that, 'Notwithstanding the mighty Reason we boast of above other Animals, its Processes are too slow, too full of doubt and hesitation, to serve us in every Exigency'. Francis Hutcheson, *Inquiry into the Original of Our Ideas of Beauty and Virtue in Two Treatises*, 2nd edition (London: J. Darby et al., 1726), treatise II, section VII, 271.

70 Pilati, 'Della legge naturale', in *Ragionamenti*, 25–43. Pilati writes: 'I was there [in London] when these men began to impart to him the first lesson on Natural Law [...] and then proceeded to drill into his head the idea that unflinching means lies in the Natural Reason which is common to all men' (ibid., 26). The Italian original reads: 'Io fui presente [a Londra], quando costoro presero a dargli la prima lezione sopra la Legge Naturale [...] e poi passarono a fargli concepire che la naturale ed a tutti gli uomini comune Ragione è quel mezzo sicuro'. Shortly thereafter, he refers to 'Entire Nations that you call barbarous' (ibid., 29; the original reads 'Intere Nazioni che voi chiamate barbare'). This part of the book was translated into German by Wilhelm Heinrich Winning, who had previously translated Pilati's *Esistenza della legge naturale*: Carlantonio Pilati, *Gedanken eines Afrikaners über das Gesetz der Natur: Als ein Anhang zu dem Werke des Herrn Pilati von der Wirklichkeit des natürlichen Gesetzes, aus dem Wälschen übersetzt von W. H. W.* (Zürich und Chur: Orell, Gessner, Walser und Compagnie, 1767).

is not taking issue with any theory in particular, nor is he drawing a distinction between Catholics and Protestants or between ancient and modern traditions; rather, his attack is aimed at all the 'schools' and books that the 'learned men of Europe' have brought into being in addressing the question of natural law.<sup>71</sup> Rationalist philosophers, the African student says, are 'big liars' and 'frauds', whose principles he rejects out of hand as 'inventions', 'eccentricities', 'pipe dreams', 'falsehood'.<sup>72</sup>

The argumentative scheme is still modelled on the one hand on Montaigne – with regard to relativism – and on the other hand on Hutcheson – regarding the idea of a universal innate morality. There is no contradiction, according to Pilati: the universality of moral sense is accompanied by the relativism of reason.<sup>73</sup>

The gulf and hierarchy between 'savages' and the civilized cease to be, no matter the latitude. The purportedly barbarous non-Europeans share the same ethical norms with the Europeans, and under the same standards pursue the good and condemn what is morally bad. Do the European travellers' accounts depict peoples committed to merciless cruelty? These reports are false, the African student declares, as did Hutcheson before him.<sup>74</sup>

Even if Hutcheson is not mentioned in these pages, Pilati's dependence on the Scottish philosopher is evident as the *Inquiry* clearly provided Pilati with both the lexicon and the concepts.<sup>75</sup> Thus we have 'istinto naturale' (where the *Inquiry* has 'natural Instinct'); 'istinto che ci rende umani, giusti, misericordiosi, benevoli, amici l'uno dell'altro' ('benevolent universal Instinct'); 'sentimento morale' ('moral Sentiment'); 'sentimento interiore' ('internal sense'); 'passioni' ('passions', 'violent passions', 'affections'); 'amore' or 'affetto naturale' toward our fellow beings ('love', 'natural affection'), 'costituzione naturale' ('Constitution of Human Nature', 'Constitution of Nature').

The worst of the natural lawyers' failures was their inability to recognize instinct as the prime mover of moral actions – 'a folly'<sup>76</sup> that made them woefully inadequate to the task of accounting for the variety of human customs.

71 Pilati, *Ragionamenti*, 30, 33.

72 Ibid., 27–28, 31, 36.

73 Ibid., 37; and, in the same vein: 'Reason, that is, the Intellect, differs and varies with the diversity of nations, time periods, climates, and the heads of men'. The original reads: 'La ragione, ossia l'Intelletto, è diverso, e vario secondo la diversità delle nazioni, de' tempi, de' climi, e delle teste degli uomini'.

74 Ibid., 29, 31; Hutcheson, *Inquiry*, treatise II, section IV, 'Travellers Accounts of Barbarous Customs', 202–204; Carey, *Locke, Shaftesbury, and Hutcheson*, 172–192.

75 Pilati, *Ragionamenti*, 30–31, 33–37, 39–43.

76 Ibid., 37.

There follows a breakdown of the whole theoretical construction, including its natural laws.<sup>77</sup> However, Pilati's polemical stance does leave room for ambiguity, because at one point, after vehemently denying the existence of natural law, he appears to concede that it does in fact exist. For, he speculates, if we were to introspect, we would find just the scarcest trace of a natural law ('pochissime tracce di quella legge')<sup>78</sup> – and this implicit admission turns *explicit* when he asserts that 'the first principles of natural law come from instinct' ('i primi principii della Legge naturale vengono dallo Istinto').<sup>79</sup> Although his vocabulary is not patterned after Hutcheson's *Inquiry* here, it is very likely that his derivation of natural law from instinct comes from a close reading of that work.<sup>80</sup>

Hutcheson's *Inquiry* seems even to inform what is perhaps the most delicate passage in *Ragionamenti*, where Pilati reprises the argument that our morality is independent of religion.<sup>81</sup> In Pilati's version, the argument is that it is possible and even necessary to proceed independently of revealed truth, and that the moral principle by which we are all bound is that of instinct.<sup>82</sup> This is a crucial point that we find reiterated in the *Giornale letterario*, a literary journal which Pilati founded in 1768 in Chur,<sup>83</sup> and through which he intended

77 Ibid. 38: 'It is either the case that [reason] is uniform in everyone or the Law which you call natural and common to the whole of humankind does not obligate everyone'. The original reads: 'O ella [la ragione] deve essere uniforme in tutti, o la Legge, che voi chiamate naturale, e comune di tutto il genere umano, non obbliga tutti'. And, in the same vein, at p. 37: 'Reason, that is, the Intellect, differs and varies with the diversity of nations, time periods, climates, and the heads of men'. The original reads: 'La ragione, ossia l'Intelletto, è diverso, e vario secondo la diversità delle nazioni, de' tempi, de' climi, e delle teste degli uomini'.

78 Ibid., 27.

79 Ibid., 39.

80 On Hutcheson's conception of the moral sense as the foundation of natural law, see Haakonssen, *Natural Law and Moral Philosophy*, 77–78.

81 Hutcheson, *Inquiry*, treatise II, section I: 'Our Moral Sense Not Founded on Religion', 128.

82 Pilati, *Ragionamenti*, 42–43: 'The African was unacquainted with Revelation, but he was right to say that the Natural Instinct is in this regard the true and proper teacher of man. [...] The conclusion of this reasoning is that when it is desirable or even necessary to proceed independently of Revelation, there remains only one other principle by which to know and find Natural Law, and that is the Natural Instinct alone, namely, the moral sense'. The Italian original reads: 'L'Affricano, che non conosceva la Rivelazione, disse però bene, che l'Istinto naturale è in questo punto il vero, e proprio istruttore dell'uomo. [...] La Conclusione di questo ragionamento si è che quando si voglia o si debba prescindere dalla Rivelazione, allora niun altro principio per conoscere e rintracciare la Legge naturale rimane, che il solo naturale Istinto, ossia sentimento morale'.

83 Only five volumes of the journal were published. *Giornale letterario* [ed. Carlantonio Pilati] (A Coira: Stampatore Walser e Comp., 1768).

to keep Italian readers abreast of developments in international publishing. The occasion for setting out a different point of view was offered by the recent publication in Yverdon of Jean-Jacques Burlamaqui's *Principes du droit de la nature et des gens* in an edition annotated by the professor and publisher Fortunato Bartolomeo de Felice.<sup>84</sup> Burlamaqui's works were known in Italy, but they were not easy to get hold of. The first translations of his *Principes* did not appear until 1780, in Venice, and then in Siena in 1781/1782. In 1772 in Florence a similar initiative was prohibited for political reasons.<sup>85</sup>

Writing from Chur, Pilati expressed his disagreement with both Burlamaqui and de Felice.<sup>86</sup> Burlamaqui did recognize a universal moral instinct inherent in human nature, but he understood this instinct to be dependent on reason; and de Felice, worse still, argued that it is impossible to reason independently of God's will.<sup>87</sup> In direct contrast to that view, Pilati reiterated the need for the question of natural law to be considered independently of revelation, insisting on the universality of instinct and on its primacy over reason, relative to which it retained its own autonomy.

Pilati's adherence to moral sense philosophy is also present in his best-known work, *Di una riforma d'Italia*. This is only a matter of passing reference, but it is always with a view to delegitimizing natural law theory relative to moral sense theory, from which he will never depart.<sup>88</sup>

84 Jean-Jacques Burlamaqui, *Les Principes du droit de la nature et des gens [...], avec la suite du droit de la nature qui n'avait point encore paru: Le tout considérablement augmenté par M. le Professeur de Felice*, 8 vols (Yverdon, 1766–1768). On the Yverdon edition, see Gabriella Silvestrini, 'Tra Burlamaqui e Beccaria: Il diritto di vita e di morte nel modello giusnaturalistico di Fortunato Bartolomeo de Felice', in *Fortunato Bartolomeo de Felice: Un intellettuale cosmopolita nell'Europa dei Lumi*, ed. Stefano Ferrari (Milano: FrancoAngeli, 2016), 53–80, at 53–62.

85 See Sandro Landi, *Il governo delle opinioni: Censura e formazione del consenso nella Toscana del Settecento* (Bologna: Il Mulino, 2000), 254–256, 284–286; and Fiocchi Malaspina, *L'eterno ritorno del Droit des gens di Emer de Vattel*, 59–60. The translator of the Venice edition, based on the editio princeps, is Benedetto Crispi (Venezia: Giovanni Gatti, 1780); the Tuscan translation is based on the version edited by de Felice (Siena: Luigi e Benedetto Bindi, 1780–1782).

86 Carlantonio Pilati, review of *Les principes du droit de la nature et des gens*, by Jean-Jacques Burlamaqui, *Giornale letterario* 2 (1768): 64–74; see esp. 68–72.

87 On de Felice in this regard, see Edoardo Tortarolo, 'Dimorfismo imperfetto: Secolarizzazione e cristianesimo', in *Fortunato Bartolomeo de Felice. Un intellettuale cosmopolita nell'Europa dei Lumi*, ed. Stefano Ferrari (Milano: FrancoAngeli, 2016), 35–51.

88 Pilati, *Di una riforma d'Italia*: 'Our Natural Lawyers', Pilati comments, 'have sold us a bill of goods', 291; The Italian original reads: 'I nostri Scrittori del Diritto Naturale ci hanno venduto lucciole per lanterne'.

## 5 The Difficult Path of Natural Law in Eighteenth-Century Italy

Modern doctrines of natural law are known to have been circulating in Italy as early as the late seventeenth century. However, it was only within the closed confines of libraries and universities that they could be dissected and debated. And even here the discussion was confined to a selection of topics.

Half a century later, a new cultural climate took shape that approached natural law with fresh priorities – with a willingness to reflect on its underlying assumptions and moral principles – and in arenas of discussion and exchange that were more open. In the mid-eighteenth century, there was a widespread perception among scholars in Italy that, culturally, the peninsula had fallen behind Europe – a gap, they reasoned, owing to the historical resistance to take up the seminal works of Protestant natural law. Various and significant initiatives testifying to the changes underway in Italy came in particular from Venice and from the borderlands between the Italian and German worlds.

As we have seen, an important role is to be attributed to Giambattista Almici, the first author to provide an Italian translation of Pufendorf's *De iure naturae et gentium*, using Barbeyrac's annotated edition. Almici was conspicuously the driving force behind the revitalization programme that sought to break free of confessional strictures, and at whose core lay the study of the masters of Protestant natural law.

To be sure, this revived interest was hindered in its progress, and even muffled, by confessional concerns coupled with the conditioning of the censorship brought to bear by both church and state, but the new scene was nonetheless lively.

In effect, the debate on natural law in many respects mirrored the difficult secularization process that marked the eighteenth century in Italy. This was a process in large part sustained by elites seeking to limit the inordinate power of the church and to advance political cultures not informed by religious or confessional values. The interest in Protestant natural law that visibly took hold in the mid-eighteenth century is therefore an important part of a broader push for secularization that was at least attempted. For much of the Italian peninsula's Catholic culture this was an unacceptable risk; for most people, the trusted texts remained those of the Scholastics.

No authoritative, compelling reply to Protestant doctrines had come out of Italy. An implicit admission of this came, as we have seen, from a religious thinker, Giovanni Bonifacio Finetti, whose book provided a survey of natural law. It was certainly not an answer to the problem (and it was also subjected to heavy censorship), but it did provide materials for new solutions in a process that would take a full century to run its course, attesting to the challenges the

Catholic world was facing in its effort to grapple with transalpine natural law and its underlying principles.

This cultural renaissance also spurred others on to make radical proposals unlike anything that had appeared hitherto in Italy, our example being the initiative of Carlantonio Pilati, the jurist from Trento who had the advantage of being familiar with the Germanic world. His deist position is fully coherent with his aggressive plan to secularize Italy as it was in 1760. It is no accident, then, that he should have been among the first outspoken critics to denounce the delay with which natural law in Italy could become even a subject of reasoned discussion.

Nevertheless, Pilati was dissatisfied also with natural law and went so far as to deny its existence, unreservedly embracing Francis Hutcheson's moral sense philosophy. Pilati discovered the Scottish philosopher during the few months he spent at the Protestant University of Helmstedt, in Lower Saxony – an encounter made possible by the fact that much literature from the other side of the Channel was conveyed to the Continent by being translated and reviewed. Pilati himself, then, benefited from cultural mediation and himself took on a similar role through his own work.

From the mid-eighteenth century, there began to circulate translations, articles and discussions in academic journals, as well as essays that sometimes entertained radical ideas of natural law, but at the same time all of them offered alternatives to the classics of modern natural law. This activity set in motion a process of significant renewal. This rejuvenating force, however, came up against the resistance of confessional, cultural and political forces pushing in the opposite direction. It was in this polarity that transalpine natural law had to make its long way through Italy.

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