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Muratori, Lodovico Antonio

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Introduction

Lodovico Antonio Muratori was born in Vignola (Italy), a town of the Estense Duchy, in 1672. M. graduated in Philosophy and Canon and Civil Law (*utroque iure*) in Modena, at that time capital of the Duchy, where he undertook while still young the study of paleography and diplomatics, under the direction of the Benedictine monk Benedetto Bacchini. After being ordained priest, in 1685, he was appointed *Dottore* [Doctor] at the Biblioteca Ambrosiana in Milan, where he came into contact with the noble family of Borromeo. In 1700, M. came back to Modena as he was called upon to lead and reorganize the library of the Duke Rinaldo I. In the city, where he stayed almost permanently until the end of his life (he died in 1750), he conducted his priestly ministry in the parish of *Santa Maria della Pomposa* and he carried out his indefatigable work of historian and erudite, whose results were gathered in the works *Rerum italicarum scriptores* (1723–1738), *Antiquitates italicae Medii Aevi* (1738–1742), and *Annali d'Italia* [Annals of Italy] (1744–1749). Inspired by an encyclopedic attitude as well as a flair of polemics (as proved by the controversy with the cardinal Angelo Maria Querini concerning the reduction in the number of catholic holy days), he addressed issues relating to poetry, linguistics, and ecclesiastic history. His writings testify not only a quite remarkable knowledge of the past but also his efforts to renovate the methodology of historical research, in which the philological analysis of texts and sources is matched with an ethical and religious impulse. For those reasons, contemporary historiography has recognized M. as one of the leading figures of the Italian and even the European political and religious culture of the first half of the eighteenth century so that this period is often called the *età muratoriana* [the Age of Muratori] (Rosa 1969; Rosa and Al Kalak 2018).

The Need for Legal Reform

The strong commitment of M. in the field of justice dates back to 1726, when he wrote *De Codice Carolino*, a letter in Latin addressed to the Emperor Charles VI. In this missive –which was never sent to Vienna and remained unpublished until the mid-thirties of the twentieth century –M. claimed the necessity to introduce a collection of laws compiled by a commission of wise men designated by territorial princes. The task of the commission was to solve in an authoritative way the most controversial juridical issues, taking into account the local statues as

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well. Nevertheless, the attempt failed because of the death of the sovereign. At that moment, M. shifted to the pope as his main interlocutor. Indeed, the work *I difetti della giurisprudenza* [*The Defects of Jurisprudence*], printed in Venice in 1742, was dedicated to Benedetto XIV (born Prospero Lambertini), who according to M. should have led the reform movement of the judicial system of the other States of the Italian peninsula. The purpose of *I difetti* was twofold. On the one hand, to identify the fallacies which plagued the civil jurisprudence, as the sphere of criminal law was excluded from the discussion. On the other hand, to propose, wherever possible, remedies able "to depurate and to free it [the jurisprudence] from its many defects, make it better looking, and more useful to the Public" (Muratori 2001, p. 11). The dedication was particularly revealing because, before becoming pope, Prospero Lambertini had tried to simplify the post-Tridentine legislation at the diocesan level, taking inspiration from the values of temperance and equity. When he was elected pope in 1740, he appointed M. to be part of reform commissions on ecclesiastic affairs. Nevertheless, the most important inspiration for *I difetti* derived from two treatises. The first influent source, recently detected at the Muratori Archive, is the *Contra la sofistica disciplina de' giureconsulti* [*Against the Sophistical Discipline of Jurisconsults*] composed by the bishop of Capodistria Giovanni Ingegneri at the end of the seventeenth century. Impressed by the sharp criticism expressed by Ingegneri to the Roman legal tradition, responsible for having corrupted the Code of Justinian, M. transcribed extensive sections of the manuscript, kept by the Biblioteca Ambrosiana (Bragagnolo 2014). Another source, continuously cited in all chapters of *I difetti*, is the *Dottor volgare* [Vulgar Doctor] (Rome 1673) of the cardinal Giovanni Battista De Luca, eminent jurist and collaborator of the pope Innocent XI. In this text, De Luca recognized the principal flaws of the modern juridical culture in the excess of interpretations and in the dramatic contrast between the legal thought and the judicial practice. M. shared these ideas and adapted them to the changed context in which he lived.

The Jurisprudence as Science

In *I difetti*, the jurisprudence is intended as the knowledge or cognition of right and wrong, in direct disagreement with Ulpian's definition, according to which law is the "science of human and divine things" (*divinarum atque humanarum rerum notitia*). M. do not hesitate to stigmatize Ulpian's statement as an "outcrying story" (Muratori 2001, p. 1), because it is too extensive and ambitious. In M.'s encyclopedia of knowledge, the law occupies a very important place, although different and inferior as compared to that of the theologian speculation, from which the mundane order depends. The starting point of M.'s argument is the idea that there are three categories of men who exercise their authority on the government of the world. Firstly, the theologians, who concentrate on human soul and determine which actions can eventually lead to eternal bliss or damnation, and which ones are indifferent to its fate. Secondly, the physicians, who take care of human body, teaching to keep it sound and providing to heal it in the event of sickness. Finally, the experts in law, who deal with the "wealth" of men in the civil causes and with their "lives" in the case of specific crimes that belong to the criminal sphere. In all these fields, the most severe danger is represented by the diffusion of "infinite discords and disapprovals" due to the "opinion," defined the "great queen of the world" (Muratori 2001, p. 6). Nevertheless, between the first two categories and the third one there is a substantial difference. For theologians and physicians, the resolution of controversies between conflicting opinions is only desirable, but it is not negative per se. On the contrary, the comparison between different views on medical practice can help to solve an uncertain subject, as the origin and the development of a disease. The same is true for theology. According to M., popes and councils have avoided to interfere in professions of faith because religious beliefs cannot be condemned without clear and rational justifications. For law, instead, the resolution of disagreements is necessary in order to avoid a "highest prejudice" against the administration of justice itself and the government of public affairs.

Indeed, the persistence of these conflicts fosters the proliferation of the "defects" of jurisprudence, which endangers its status of "science," and above all undermines the stability of the civil order. In the framework of such a negative anthropology, according to which human beings are naturally disposed towards evil, M. states that without the proper functioning of justice, the world would become "a wood, a chaos of iniquity, tyrannies, murders, and dissensions" (Muratori 2016, p. 50). As a result, the supreme task of law is to reduce the harmful effects arising from the conflicts which lacerate civil society. Otherwise, there would be the serious risk to fall once more in a violent Hobbesian state of nature.

The Defects of Jurisprudence and Their Remedies

M. distinguishes two categories of defects from which the juridical system suffers: the internal and the external defects. In their turn, the internal defects are divided into four groups. First, the lack of clarity in the law, which in many cases prevents the reader from appreciating the original purpose of lawmakers. If the rules are unclear and ambiguous, lawyers and jurists have the opportunity to cavil "every word, syllable, comma and full stop" (Muratori 2001, p. 11). Second, the existence of a number of potentially infinite cases, which cannot be provided by laws in detail. Even if a rule was written as clearly and precisely as possible, the decisions of judges should take into account a set of circumstances which cannot be identified a priori. Third, the difficulty in interpreting the intentions of the authors of contracts and testaments because these documents are often written by notaries in a twisted and cumbersome way. Finally, and it is a point on which M. deeply concentrates, one must consider the decisions of judges (the "heads," as they are defined), unduly influenced by "weaknesses" and "whims" (Muratori, pp. 13–16). At times, judges are influenced by the opinions and the oratory abilities of the lawyers; other times they decided the right and the wrong even before the start of the trial and no subject could persuade them of the contrary. In order to limit the discretionary power of judges, attention should be given to the skills and the virtues that are required in this profession. For M., the ideal judge is expected to possess fear of God, love of truth, "indifference," i.e., ability to avoid the "passions of the heart," knowledge of the law, and capacity to change his own decisions, when necessary. Moreover, the judge must have a "discerning mind" able to gain an in-depth understanding of the questions, to assess the reliability of witnesses, and to unravel complex situations. The guiding principle of his actions should be always the devotion to God and the common good of *res publica*. As the internal defects are in most cases incorrigible, they make the justice "a lotto, a biribissi, a hazard" (Muratori 2001, p. 18). As a result, its status of science succumbs to the tyranny of opinion. The most relevant of the external defects of jurisprudence, actually the only one that M. quotes as such, is represented by the excessive spread of glosses, treaties, and commentaries on the *Corpus iuris civilis*. From the eleventh century on, with the school of glossators of Bologna, these interpretations have accompanied or even in many cases replaced the *auctoritas* of law. By establishing restrictions and exceptions, these texts have generated conflicting verdicts and opinions: the jurisprudence has thereby become "more difficult, complicated, and thorny" and the judgments "more uncertain and doubtful." According to a vegetable metaphor, the "garden" of the Code of Justinian not only filled up with "thorns and brambles" but it also turned into "an over dense wood," where it is easy to lose the sense of orientation and to get lost. To counteract the effects of this situation, M. does not wish for a mere reintroduction of the Code of Justinian. For M., the Code should not be regarded neither as a "masterpiece of nature and art" nor as "a book fallen out of the sky" nor as "the most perfect model of human jurisprudence that can be imagined" (Muratori 2001, p. 31, 66). Although this collection is undoubtedly "nobler and more excellent" than the Lombard, Salic, and Burgundy law, it comprises unclear rules and even redundant and anachronistic sections. Instead of diminishing or avoiding controversies,

the *Corpus* has provided material to increase the number of quarrels; rather than shortening the duration of trials, it has contributed to lengthen them out of proportions. For M., the only practicable solution is to arrange a collection of laws which should be based on the principles of rationalization and simplification and whose model is represented by the Constitutions published by the King of Sardinia and Duke of Savoy Viktor Amadeus II in 1723 and revised in 1729.

The Justice and the Public Felicity

Concerning the role and on the reform of justice, M. insists in a more concise way in its last published work, the political treatise *Della pubblica felicità* [*On Public Happiness*] (Lucca 1749), which is part of the rich tradition of the *speculum principis* of the Modern Age. Here M. suggests a comprehensive program of reforms, which include all fields of human knowledge and productive activities, from agriculture to commerce, from literature to medicine, and from the composition of the army to the collection of duties by the State. The ninth and the tenth chapters are specifically dedicated to justice and law. The antiquary takes as object of its rebuke the limits of the law of his time, focusing on the interpretations produced by jurisconsults of XI and XII centuries, along with the lack of discernment, impartiality, and experience of judges. In addition to quoting once more the initiative of Viktor Amadeus II, M. mentions as an example of reform of the justice the constitution on fidei-commissum and birthrights issued by the Grand Duke of Tuscany Francis I in 1747. M. emphasizes two aspects. On the one hand, as already stated in *I difetti*, he establishes a direct relationship between the birth of the law and the institution of the private property, since the laws result from the need to settle disputes that have arisen from the division between "what is mine and what is yours" (Muratori 2016, p. 50). On the other hand, M. underlines that the exercise of justice should contribute to guarantee what he calls the "public happiness." The justice is a necessary condition for the tranquility of soul and body that the prince must promote among his subjects, by preventing the outbreak of unrests, mending the conflicts and safeguarding the life, the honor, and the wealth of each of them. In particular, compared to *I difetti*, M. broaden his discourse also to the customary and criminal law, by invoking the clemency and magnanimity of the prince as a practice of government and as a useful instrument for the achievement of the obedience and the respect of the subjects. It is essential that the prince punish with severity "those who violate the public order with qualified robberies, cool head homicides, murders, forgeries, etc." (Muratori 2016, p. 65), but at the same time it is equally important that he shows himself "indulgent and merciful" towards those who act impulsively or without malice. The virtues of moderation and prudence should accompany the government of prince (Continisio 1999), as well as the activity of the judge. In any case, for M. as the prince is the supreme administrator of the justice, he is subject to the laws.

Conclusion

In sum, it can be stated that, as a merely human activity, justice cannot be completely amended: as M. states in *Della pubblica felicità*, almost with resignation, "perhaps no efficient manner to free this important faculty [the justice] from many uncertainties and from many expenses which occurred because of the disputes [. . .] will never be found" (Muratori 2016, p. 53). The measures advocated by M. himself could help to improve the status of jurisprudence, but they could not make it perfect. In the end, the partiality of the law is strictly bound to the limits of the human reason and nature, incapable of clearly distinguishing the right and the wrong, although they are "innate ideas" fixed by God in the human soul and "universal rules" recognizable by every "honest and intelligent person" (Muratori 2001, pp. 41–42). The problem lies in the divide that exists between the reason and the experience, as M. makes clear with a set of examples which he lists in the sixth chapter of *I difetti*. Giving help to the poor people is a praiseworthy action, but

could become an illegal act, if perpetrated for a dishonest end. Moreover, taking the life of a man is a criminal action, but if the homicide is committed to safeguard his own safety is no longer a serious offense. In the same way, according to M., neither the princes who sentence to death the evildoers of their states nor the executioners who have the task to carry out these sentences commit a crime. The difficulty is to properly assess the situations in which, because of the human weakness, the true, the good, and the certain are replaced by the questionable and the doubtful. As can be seen, we are still far from the demands formulated by Cesare Beccaria in *Dei delitti e delle pene* [On Crimes and Punishments] (Livorno 1764; cf. Venturi 1972). Nevertheless, the need for the reform of law promoted by M. will have a determining influence on the European political experience of the so-called "Enlighted despotism."

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