

The Chair of International Law and Pasquale Stanislao Mancini's Lectures in Turin

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Pasquale Stanislao Mancini,
deputy, exile, minister, he had a most important role
in all the great battles which were fought to give us a homeland.¹



1 The Turin Faculty of Law

From the eighteenth century, the law faculty of the University of Turin was the 'privileged training institution of the Savoy elites'.² Shortly after the signing of the Peace of Utrecht (1713), the university of the capital of the new kingdom was reformed by a series of measures implemented in 1720, 1723 and 1729. The aim of Victor Amadeus II, the King of Sardinia, was to give the state control over every aspect of education, in particular 'preparing fully trained public officials and loyal subjects'.³ Several noteworthy intellectuals, such as the Sicilian Francesco d'Aguirre, and Bernardo Andrea Lama and Mario Agostino

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- 1 Giuseppe Zanardelli, *In memoria di Pasquale Stanislao Mancini* (Napoli: Tipografia Melfi e Joele, 1911), 43. I extend my thanks to the editors of the present volume, Gabriella Silvestrini and Elisabetta Fiocchi Malaspina, for having invited me to take part in this research project on the history of the chairs of international law in Italy during the modern age, and for their observations, which have greatly improved the following pages. My deepest thanks also go to Italo Birocchi, Guido Franzinetti, Gian Savino Pene Vidari, Antonio Trampus and Adriano Viarengo, who read the first draft of this chapter.
 - 2 Donatella Balani, *Toghe di Stato. La facoltà giuridica dell'Università di Torino e le professioni nel Piemonte del Settecento* (Torino: Deputazione Subalpina di Storia Patria, 1996), x. On this period of reform, see Guido Quazza, *Le riforme in Piemonte nella prima metà del Settecento* (Cavallermaggiore: Gribaudo, 1992), 393–398.
 - 3 Balani, *Toghe di Stato*, 2.

Campiani from Rome, were very active in those years of reform.⁴ However, this renewal process was partly hindered by the conclusion of an agreement between the government of Turin and the Roman Curia in 1727, an event that prompted the reformist intellectuals to leave the Savoy capital.⁵

Nevertheless, some of the proposals put forward by d'Aguirre⁶ found their way, through the 'Costituzioni di Sua Maestà per l'Università di Torino' (1729), into the legislation of the Kingdom of Sardinia, which, among other things, removed secondary school teaching from the control of religious orders. These legal provisions also had the objective of allowing a closer watch on the education of the citizens, instilling in them respect for authority (royal and religious) and, at the same time, forging deep bonds of loyalty to the Savoy monarchy.

Without any intention of weakening religious orthodoxy, which continued to be seen as an *instrumentum regni* to support the government, the management of schools of every kind and level passed to the State, in the person of the Magistrate of the Reform, a most sensitive position for which personages of great importance were always chosen.⁷

The University of Turin was in a poor state: the increasing scarcity of financial resources allocated to teaching had brought about the departure of its most renowned teachers, and no control was exercised on the activities of the professors and the students. The appeals made by d'Aguirre and Scipione Maffei⁸ for teaching staff to receive regular remuneration met with some success, progress being made with the *Regio biglietto* of 3 April 1738, which

4 See Giuseppe Ricuperati, 'L'Università di Torino e le polemiche contro i professori in una relazione di parte curialista del 1731', *Bollettino storico-bibliografico subalpino* 64:1 (1966): 341–374; idem, 'Bernardo Andrea Lama professore e storiografo nel Piemonte di Vittorio Amedeo II', *Bollettino storico-bibliografico subalpino* 66(1–2) (1968): 11–101; and idem, 'Campiani, Mario Agostino', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 1974), vol. 17, 530–533.

5 On the effects of the 1727 concordat, see Maria Teresa Silvestrini, *La politica della religione. Il governo ecclesiastico nello Stato sabaudo del XVIII secolo* (Firenze: Olschki, 1997), 89–102.

6 See Regina Lupi, *Francesco D'Aguirre. Riforme e resistenze nell'Italia del primo settecento* (Firenze: Centro Editoriale Toscano, 2011); Dino Carpanetto and Giuseppe Ricuperati, *L'Italia del settecento* (1st edition 1986; Roma: Laterza, 2008), 181–183. Geoffrey Symcox, *Victor Amadeus II: Absolutism in the Savoyard State 1675–1730* (Berkeley, CA: University of California Press, 1983) remains a worthwhile resource.

7 See Alessandra Bourlot, *Il Magistrato della Riforma dell'Università di Torino nel Settecento* (MA diss., Università degli Studi di Torino, 1991–1992).

8 In 1718 Scipione Maffei had sent to the government of Turin his *Parere sul migliore ordinamento della Regia Università di Torino alla Sua Maestà Vittorio Amedeo II*, about which, see Balani, *Toghe di Stato*, 23, n. 47. More generally on Maffei see: *Scipione Maffei nell'Europa del Settecento*, ed. Gianpaolo Romagnani (Verona: Cierre, 1998); Gianpaolo Romagnani, 'Maffei, Scipione', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana,

established 'a single system of pay, divided into salary bands',⁹ which largely remained in force throughout the eighteenth century.

Despite its various difficulties, the period of reform enabled the university to establish better working principles, with the institution structured into four faculties (theology, law, medicine and, from 1721, surgery) with a total of twenty teachers. The selection of professors was left to the Magistrate of the Reform, who drew up a shortlist of candidates, one of whom would be appointed by the sovereign. The faculty of law was organised into five chairs: two professorships of civil law, one of canon law and two of institutional law (civil and canonical, established in 1731).

The reforms left the law faculty somewhat smaller, despite a number of suggestions made by d'Aguirre, who had proposed the foundation of a chair of 'de jure naturali, gentium et civili'.¹⁰ None of his proposals were accepted, least of all that calling for the establishment of teaching in public law, which was considered too thorny a subject. The situation would remain largely unchanged until the end of the century, and the new charters of 1772 merely confirmed the previous ones. The course curricula were left unchanged, giving the impression that, in contrast to the innovations that were being introduced in other universities in the Italian peninsula, stagnation prevailed in Turin. Among the examples of innovations that could be cited it is worth mentioning the creation of the chair of natural law and the law of nations established on a permanent basis by the University of Pisa in 1738 and that of public law created in Modena in 1767.¹¹ An attempt was made in the early 1730s to establish a chair in *jus gentium* in Turin, but this was thwarted by strong opposition from the Curialist faction, essentially because they feared that such teaching might call into question the prince's authority in fiscal matters.¹²

In fact, the '*jus naturale et gentium*' was never introduced in the university, although it was conceded that the fundamental principles of this science

2006), vol. 67, 256–263; and Paolo Ulvioni, *Riformar il mondo. Il pensiero civile di Scipione Maffei*, with a new edition of the 'Consiglio Politico' (Alessandria: Edizioni dell'Orso, 2008).

9 Cf. Balani, *Toghe di Stato*, 24.

10 Francesco D'Aguirre, *Della fondazione e ristabilimento degli studi generali in Torino*, ed. Municipio di Salemi (Palermo: Tip. Giannitrapani, 1901), book II, chs 3 and 4. The plan had been presented in 1717. The course of studies required four years for the bachelor's degree; five for the master's degree; and six for entry into the College of Teachers.

11 See Danilo Marrara, 'Pompeo Neri e la cattedra pisana di "diritto pubblico" nel XVIII secolo', *Rivista di storia del diritto italiano* 59 (1986): 173–202. On the case of Modena, see Carlo Guido Mor, *Storia dell'Università di Modena* (Modena: STEM, 1963), 91 ff., 160 ff.; and Chapter 1 of the present volume, by Emanuele Salerno.

12 See Giuseppe Ricuperati, 'L'Università di Torino e le polemiche contro i professori'

would become part of the curricula of philosophical disciplines,¹³ and it was therefore dealt with by teachers of moral philosophy, such as Michele Casati and Sigismondo Gerdil, both of whom were of an anti-Enlightenment persuasion.¹⁴

Later, between 1792 and 1798, the university was closed, and then in the Napoleonic era it was reformed several times, while in the early years of the Empire the Faculty of Law saw the number of its students increase significantly.¹⁵ After the first liberal uprisings, the university was partially reopened following a closure that lasted from 1821 to 1823, albeit under the rigid control of the Piedmontese government.¹⁶ From that point on it lived in a 'state of mediocrity'¹⁷ until the winds of change that began to blow in the early 1830s; in 1832, the famous French mathematician Augustin-Louis Cauchy was called to the chair of sublime physics (but in fact mathematical physics in general) in the Faculty of Sciences.¹⁸ Of greater pertinence to our discussion, however, was the speech delivered in the Senate by Federigo Sclopis in 1844, in which he underlined the need to improve the teaching of law.¹⁹ The king, Charles Albert, was convinced that the kingdom's bureaucratic-administrative cadres should be educated in the Faculty of Law and initiated a reform plan aimed at updating the subjects and methods of teaching, relying on people of great prestige and experience. For this reason, in 1844 he appointed Cesare Alfieri di Sostegno, a member of the Council of State since its establishment in 1837,

13 Balani, *Toghe di Stato*, 61.

14 On these academics, see Pietro Stella, 'Casati, Michele', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 1978), vol. 21, 262–265; Roberto Valabrega, *Un anti-illuminista dalla cattedra alla porpora: Giacinto Sigismondo Gerdil professore, precettore a corte e cardinale* (Torino: Deputazione Subalpina di Storia Patria, 2004).

15 For some notes on the Piedmontese university in this period, see Giampaolo Romagnani, 'L'età napoleonica', in *L'Università di Torino. Profilo storico e istituzionale*, ed. Francesco Traniello (Torino: Pluriverso, 1993), 28–32, at 31.

16 See Narciso Nada, 'La Restaurazione', in *L'Università di Torino*, 34–39, at 37.

17 Ida Ferrero, *Innovazione nella facoltà giuridica torinese. Didattica e docenti di metà Ottocento* (Torino: Deputazione Subalpina di Storia Patria, 2018), 7.

18 See Paola Dealbertis, 'I manoscritti di Augustin Cauchy dell'Archivio Faà di Bruno', in *Francesco Faà di Bruno. Ricerca scientifica, insegnamento e divulgazione*, ed. Livia Giacardi (Torino: Deputazione Subalpina di Storia Patria, 2004), 627–638.

19 See Federigo Sclopis, *Dello studio e dell'applicazione delle leggi. Discorso detto dianzi all'eccellentissimo R. Senato di Piemonte nella solenne apertura dell'anno giuridico il dì 16 di novembre 1844* (Torino: Bocca, 1845), 33. Gian Savino Pene Vidari, 'Sclopis, Federigo', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2018), vol. 91, 575–578.

as Magistrate for the Reform.²⁰ Evidence of this royal support for reform was shortly after seen in the establishment of chairs of mechanics and mechanical chemistry on the eve of the establishment of the Faculty of Physical and Mathematical Sciences in 1848 and, above all, through the *Regio biglietto* of 6 December 1845, of the Faculty of Political Economy. This subject had previously been introduced during the period of French rule and was confirmed in 1817 but abolished after the uprisings of 1821.²¹ The Neapolitan economist Antonio Scialoja,²² who was very close to Pasquale Stanislao Mancini, was appointed head of this faculty to lead the teaching of the subject. Mancini followed closely Scialoja's incorporation into Savoy society, writing both to Sclopis himself²³ and, especially, to Carlo Ilarione Petitti di Roreto: 'tell me *frankly* what impact he [Scialoja] has had on the *chair* and in private *society*, I am hoping for good news'.²⁴

Scialoja's lessons, which began in January 1846,²⁵ were a great success, being warmly received by the public and often attended by many subalpine intellectuals, such as Cesare Balbo,²⁶ Cesare Alfieri, Count Camillo Benso di Cavour,²⁷

20 See Maria Teresa Pichetto, 'Cesare Alfieri di Sostegno e le riforme politiche e sociali nel Piemonte Carloalbertino', in *Alfieri di Sostegno tra Torino e Firenze*, ed. Cristina Vernizzi (Torino: Museo Nazionale del Risorgimento Italiano, 1997), 31–56. See also Simonetta Polenghi, *La politica universitaria italiana nell'età della Destra storica (1848–1876)* (Brescia: La Scuola, 1993), 17, 19, 31, 68, 70–72.

21 See Gian Savino Pene Vidari, 'Prospettive e contributi della facoltà giuridica per l'Unità', in *Dall'università di Torino all'Italia unita. Contributi dei docenti al Risorgimento e all'Unità*, ed. Clara Silvia Roero (Torino: Deputazione Subalpina di Storia Patria, 2013), 1–58, at 2.

22 Cf. Domenicantonio Fausto, 'Scialoja, Antonio', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2018), vol. 91, 526–530.

23 Cf. Archivio Accademia delle Scienze di Torino (AAST), Turin, Italy, Fondo Carteggi, 26985, Pasquale Stanislao Mancini to Federico Sclopis, Naples, 2 April 1846.

24 Archivio Museo Nazionale del Risorgimento di Torino (AMNRI), Turin, Italy, Archivi Storici, Fondo Petitti, 1080 (typed copy of n. 761), Pasquale Stanislao Mancini to Carlo Ilarione Petitti di Roreto, Naples, 15 May 1846.

25 See Gian Savino Pene Vidari, 'Considerazioni sul contributo degli esuli risorgimentali al rinnovamento della facoltà giuridica torinese', *Rivista di storia del diritto italiano*, 76 (2003): 1–26, at 3. This useful article considers the beginnings of the supplementary legal course. See also Ester de Fort, *Esuli e migranti nel Regno sardo. Per una storia sociale e politica del Risorgimento* (Roma: Carocci; Torino: Istituto per la storia del Risorgimento italiano, Comitato di Torino, 2022), 185–186.

26 On Cesare Balbo, see *Cesare Balbo alle origini del cattolicesimo liberale*, ed. Gabriele De Rosa and Francesco Traniello (Roma: Laterza, 1996).

27 See Adriano Viarengo, *Cavour* (Roma: Salerno, 2010), to which I refer the reader for a bibliography; Camillo Cavour, *Tutti gli scritti*, 4 vols, collected and edited by Carlo Pischetta and Giuseppe Talamo, with an introductory note by Pierangelo Gentile (Torino: Centro Studi Piemontesi, 2016, anastatic reprint of the original 1976 edition).

Ilarione Petitti²⁸ and Quintino Sella, who wrote enthusiastic accounts of the course delivered by the Neapolitan economist.²⁹

Other professors already working for the university welcomed these signs of renewal. For example, Felice Merlo, a professor of the institutions of civil law, also spoke about natural law, explaining it in his lessons alongside the ideas of Vico, according to whom the *jus naturae* meant ‘working in conformity with what one recognizes as true’.³⁰ Merlo’s thinking had been influenced by his friend Vincenzo Gioberti, and Merlo began to promote ‘Gioberti’s “true theory of natural law”’, according to which ‘man’s perception of the world and of himself is that of a continuous creation’.³¹ At the root of these concepts was the belief that, on the one hand, man accepted the idea of the existence of a supreme and absolute legislator and, on the other, with the use of reason was able to deduce general legal rules, inferring from them more specific ones that would form the ‘actually applicable positive law’.³²

Another academic open to the renewal of legal studies was Pietro Luigi Albini, who in 1839 wrote *Saggio analitico sul diritto e sulla scienza e istruzione politico legale* (Analytical Essay on Law and on the Science of and Education in Politics and Law),³³ in which he attempted to provide a broad general picture of all areas of jurisprudence.

The emphasis placed on renewal was fully grasped by Cesare Alfieri di Sostegno, who set up a Senate commission to draw up a plan for the reorganization of legal studies, and it was no coincidence that this included, among others: Federico Sclopis and Giuseppe Siccardi (presidents), Felice Merlo (member) and Albini (secretary).³⁴ The most important novelty of the

28 See Pasquale Stanislao Mancini, ‘Notizia della vita e degli studi di Carlo Ilarione Petitti’, in Carlo Ilarione Petitti di Roreto, *Del giuoco del lotto considerato ne’ suoi effetti morali, politici ed economici: opera postuma* (Torino: Stamperia reale, 1853), v–xix; Manfredi Alberti, ‘Petitti, Carlo Ilarione’, in *Dizionario Biografico degli Italiani* (Roma: Istituto dell’Enciclopedia Italiana, 2015), vol. 82, 659–662.

29 See Umberto Levra, ‘Sella, Quintino’, in *Dizionario Biografico degli Italiani* (Roma: Istituto dell’Enciclopedia Italiana, 2018), vol. 91, 809–814. Like Scialoja’s lessons, Mancini’s lessons were also attended by illustrious people like Giovanni Nepomuceno Nuytz and Terenzio Mamiani; see Eloisa Mura, *Mancini in cattedra. Le lezioni torinesi di diritto internazionale del 1850–51 e 1851–52* (Pisa: ETS, 2018), 12, 197.

30 As Ferrero’s writes in *Innovazione nella facoltà giuridica torinese*, 17.

31 *Ibid.*, 18.

32 *Ibid.*, 19.

33 Published in Vigevano by Pietro Vitali e Comp. in 1839. On Albini, see Ferrero, *Innovazione nella facoltà giuridica tironese*, 148 ff.

34 See Claudia Storti Storchi, *Ricerche sulla condizione giuridica dello straniero in Italia: dal tardo diritto comune all’età preunitaria. Aspetti civilistici* (Milano: Giuffrè, 1989), the section entitled ‘Le lezioni napoletane e torinesi del Mancini e l’istituzione della cattedra di diritto internazionale nel Regno di Sardegna’, in particular at 302, n. 63.

reform was the creation of a two-year finishing course of law that was open to graduate students whose ambition was to teach or join the College of Doctors of the Faculty of Law.³⁵

Emboldened by royal support, Cesare Alfieri was able to create numerous chairs: the teaching of public and international law was assigned in 1847 to Felice Merlo, but he could teach only the inaugural lecture course as he took on numerous political commitments in 1848, first the vice-presidency of the Senate, subsequently a ministerial post, and then the office of prime minister.³⁶

However, in this period international law was not yet a subject in its own right but was taught as part of public law. In 1849 the course 'Public Constitutional and Institutional Law' was assigned to L. Amedeo Melegari, who, however, ended up limiting his focus to the exegesis of the articles of the constitution.³⁷ The subjects were split up only in 1850, with the creation of a professorship for Pasquale Stanislao Mancini, who began teaching on 22 January 1851. Thus the University of Turin became the first in Italy to offer a course in international law separate from those of internal and external public law.³⁸ It is therefore time to concentrate our attention on Mancini.

2 The Turin Chair of Pasquale Stanislao Mancini

As we have seen, Mancini had for some time been in correspondence with several subalpine intellectuals, whom he had met during the congresses of

35 See Paola Di Iorio, *Ricerche su Pasquale Stanislao Mancini a Torino* (PhD diss., Università di Torino, 1992–1993), 33 ff. From 1850 to 1856 the subjects included in the law course were: Constitutional Law (Melegari), External International Public Law and Private International Law (Mancini), Rational Principles of Law (Albini) and Political Economy (Ferrara). These were special chairs because they belonged to the finishing course rather than to the normal one. On Melegari, see Gian Savino Pene Vidari, 'Ideali e realismo, insegnamento e pratica giuridica: Luigi Amedeo Melegari', in *Lavorando al cantiere del 'Dizionario biografico dei giuristi italiani (XII–XX sec.)'*, ed. Maria Gigliola di Renzo Villata (Milano: Giuffrè, 2013), 275–323.

36 The course was called 'Principi razionali del Diritto, Diritto Pubblico e Diritto Internazionale'. See Gian Savino Pene Vidari, 'Merlo, Felice', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2009), vol. 73, 718–721.

37 See Pene Vidari, 'Considerazioni sul contributo degli esuli', 7.

38 See Elisa Mongiano, 'Pasquale Stanislao Mancini. Nazionalità e diritto internazionale all'Università di Torino', *Rivista Italiana per le scienze giuridiche* 4 (2013): 363–377, at 365. See also Eloisa Mura, 'Aperture nazionali e nuovo regolamento degli studi all'indomani del Quarantotto', in *La Facoltà di Giurisprudenza dell'Università di Cagliari*, ed. Italo Birocchi (Pisa: ETS, 2018), 325–358, at 330 ff.

scientists in which he had taken part in Naples (1845) and Genoa (1846)³⁹ or with whom he had made contact when working as a journalist. For a long time he had corresponded in particular with Federico Sclopis, but the Turinese archives also preserve his letters to Ilarione Petitti, Carlo Ignazio Giulio, Pier Dionigi Pinelli, Domenico Carutti and Domenico Berti, all of them prominent figures in Turin.⁴⁰ Thanks to such acquaintances and to his fame as a juriconsult, he was able to create an important space for himself in the society of intellectuals and political figures in Savoy, giving rise in its capital to a lively salon frequented by both exiles and Piedmontese politicians.⁴¹

A complex figure who has not yet been the subject of an academic biography,⁴² Mancini, despite having a wide-ranging curiosity that had led him to study music, literature and translation, remained essentially a juriconsult steeped in Enlightenment culture.⁴³ Despite some valuable reconstruction of

39 Nine congresses of Italian scientists were held between 1839 and 1847. Maria Pia Casalena, *Per lo Stato, per la Nazione. I congressi degli scienziati in Francia e in Italia (1830–1914)* (Roma: Carocci, 2007); ead., 'In Europa e ritorno. I congressi degli scienziati italiani tra modelli europei e via nazionale', *Mélanges de l'École française de Rome* 130(2) (2018): 273–283; in the same special issue entitled *La fabrique transnationale de la 'science nationale' en Italie (1839–fin des années 1920)*, see also Vincent Genin, 'Pasquale S. Mancini: du laboratoire juridique national à la Fabrique du droit international (1866–1869)': 323–332.

40 The most conspicuous correspondence is that with Sclopis, preserved in AAST, a series of 35 missives from July 1842 to 1876. See for example letter 26988, undated, in which Mancini congratulated himself on the establishment of the Commission presided over by Sclopis, which improved the position of the University of Turin at a time when in Italy 'legal studies especially are in a deplorable position'. Letters sent to the other correspondents mentioned are preserved in AMNRIT, while the library Biblioteca di Storia e Cultura del Piemonte 'Giuseppe Grosso' holds the letters that Mancini wrote to Giulio.

41 This Turinese period has been widely studied. See Luigi Firpo, 'Gli anni torinesi', in *Pasquale Stanislao Mancini. L'uomo, lo studioso, il politico*, ed. Ortensio Zecchino and Giovanni Spadolini (Napoli: Guida, 1991), 139–156, and, in the same volume, Rosanna Giannandrè, 'Mancini e l'ambiente degli esuli napoletani a Torino', 157–176; Elisa Mongiano, 'Gli anni torinesi', in *Per una rilettura di Mancini. Saggi sul diritto del Risorgimento*, ed. Italo Birocchi (Pisa: ETS, 2018), 121–158; and Umberto Levra, 'L'esilio torinese di Pasquale Stanislao Mancini', in *Per la Costruzione dell'identità nazionale. Francesco De Sanctis e Pasquale Stanislao Mancini dalla provincia meridionale all'Europa*, ed. Renata De Lorenzo (Soveria Mannelli: Rubettino, 2020), 31–59.

42 Italo Birocchi, 'Presentazione', in *Per una rilettura di Mancini*, 11–17, at 11.

43 The Enlightenment culture resurfaced in Mancini through suggestions he took from Giambattista Vico and Pietro Giannone. In fact, he often claimed to feel 'Neapolitan and Giannonian'; see Lorenzo Frugiuole, *La Sinistra e i cattolici. Pasquale Stanislao Mancini giurisdizionalista anticlericale* (Milano: Vita e Pensiero, 1985), 11. On Mancini as a student of Giannone, see Pietro Giannone, *L'affaire Giannone face à l'Europe. Vie de Pietro*

his biography there is a lack of in-depth study of his internationalist thinking, and so it is possible only to highlight some of the most significant moments of his life here,⁴⁴ before examining the first two university courses that he taught in Turin in order to ascertain which sources he used to support his arguments.

Born in 1817 in Castel Baronia, in the province of Avellino, Mancini was educated in the seminary of Ariano Irpino and the Salvatore lycée in Naples, before he went on to obtain his degree in law, also in Naples, in 1835, the year of his first appearance in court.

His debut on the political scene was made in the tumultuous period of 1848 in Naples, specifically during the events of 15 May 1848, when the Bourbon army fought on the streets of Naples against insurgents who had erected barricades in defence of the Chamber that had been elected but not allowed to meet. This prohibition was a gesture that Mancini, himself a supporter of the protest signed by sixty-six deputies, called 'an act of blind and incorrigible despotism'.⁴⁵ This was a crucial moment in the history of the Italian south because it was in that very year that the 'monarchy–nation relationship' was traumatically torn apart.⁴⁶

Giannone, Profession de foi et Abjuration, a selection of texts translated, annotated and commented by Gisela Schlüter and Giuseppe Ricuperati (Paris: Honoré Champion, 2019), 33 ff., but see also the observations on the influence of Cesare Beccaria and Gaetano Filangieri on Mancini by Enrica Di Ciommo, *La nazione possibile. Mezzogiorno e questione nazionale nel 1848* (Milano: FrancoAngeli, 1993), 105.

- 44 See the entry 'Mancini, Pasquale Stanislao', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2007), vol. 78, 537–547. See also Bartolomeo De Rinaldis, *Su la vita e le opere di Pasquale Stanislao Mancini* (Napoli: Stabilimento tipografico dell'Unione, 1876), which, despite providing a narrative with a somewhat hagiographic tone, contains certain biographical information of considerable interest. The bibliography on Mancini is very extensive; see at least *Pasquale Stanislao Mancini. L'uomo, lo studioso, il politico*, ed. Ortensio Zecchino and Giovanni Spadolini (Napoli: Guida, 1991); Eloisa Mura, *All'ombra di Mancini. La disciplina internazionalistica in Italia ai suoi albori* (Pisa: ETS, 2017); and ead., *Mancini in cattedra*. The writings by his daughter Grazia Mancini Pierantoni (of which see 'Alcune Lettere di P. S. Mancini', *Nuova Antologia* (1900), 313–328) are somewhat biased, as has been noted by Gian Savino Pene Vidari, 'Prospettive e contributi della facoltà giuridica', 15, n. 62.
- 45 Pasquale Stanislao Mancini, *Due scritti politici*, ed. Augusto Pierantoni (Roma: Società editrice Dante Alighieri, 1899), xxix, where the full text of the protest written by Mancini is provided. The repression by the Bourbon government aroused indignation throughout Europe, in particular from William Gladstone, who, commenting on the events in Naples, wrote: 'This is the negation of Good erected into a System of Government', in William Ewart Gladstone, *Two Letters to the Earl of Aberdeen, on the State Prosecutions of the Neapolitan Government*, 3rd edition (London: John Murray, 1851), 6.
- 46 Di Ciommo, *La nazione possibile*, 321.

Once Ferdinand II issued the order to dissolve the Chamber on 13 March 1849, Mancini repeatedly came to the defence of the former deputies who had been subjected to persecution by the Bourbon monarchy.⁴⁷ He himself ran the risk of being arrested but, having been warned of his imminent capture, managed to board a French ship and reached safety in Genoa before finally seeking refuge in Turin, where he arrived on 5 October 1849.⁴⁸

According to Augusto Pierantoni,⁴⁹ in the first half of the nineteenth century three political factions were active on the Italian peninsula: the legitimists (conservatives), or those in favour of absolute governments; the reformists (liberals), supporters of freedom and independence; and the unitarian republicans (democrats or radicals), inspired by the ideas of Giuseppe Mazzini. Despite the fact that he had not given a systematic form to his political ideas, Mancini may be considered a reformist, insofar as he was the conveyor of a clear liberal project based on three points: secularism, legal rationalism and utility.⁵⁰ He was an exponent of the liberal group which maintained good relations with both moderate liberals and democratic liberals, as his cordial rapport with Lorenzo Valerio demonstrated.⁵¹

The Irpinian jurist soon entered the nerve centres of ministerial circles, being appointed during 1850 as a member of the commission established for the revision of civil and criminal legislation as well as that tasked with rationalizing judicial statistics. With the passing of the special 'law' of 1850 he was given a professorship in international law at the Faculty of Law, University of Turin. This moment is of particular relevance and merits closer examination.⁵²

47 In particular he defended Carlo Poerio, Pier Silvestro Leopardi and Giuseppe Massari; see Pasquale Stanislao Mancini, 'A' giureconsulti e Pubblicisti italiani' (1851), in idem, *Due scritti politici*, 1–102; Frugiuele, *La Sinistra e i cattolici*, 16.

48 All these events are described in great detail in the preface by Pierantoni in Mancini, *Due scritti politici*, xl ff. See also De Rinaldis, *Su la vita e le opere di Pasquale Stanislao Mancini*, 27 ff.; Viviana Mellone, *Napoli 1848. Il movimento radicale e la rivoluzione* (Milano: FrancoAngeli, 2017), 223 ff.

49 Pierantoni married Mancini's daughter Grazia Sofia in 1868; see Eloisa Mura, 'Pierantoni, Augusto Francesco', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2015), vol. 83, 291–294.

50 See Di Ciommo, *La nazione possibile*, 115; Federico Chabod, *Storia della politica estera italiana dal 1870 al 1896. Le premesse* (Bari: Laterza, 1951), 253.

51 See Adriano Viarengo, *Lorenzo Valerio. La terza via del Risorgimento, 1810–1865* (Roma: Carocci; Torino: Istituto per la storia del Risorgimento italiano, Comitato di Torino, 2019); idem, 'Valerio, Lorenzo', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2020), vol. 98, 23–26.

52 Gian Savino Pene Vidari, 'Un secolo e mezzo fa (22 gennaio 1851): la lezione torinese di Pasquale Stanislao Mancini sulla nazionalità', *Studi Piemontesi* 31(2) (2002): 273–285.

On 12 April 1850 the Minister of Public Instruction, Cristoforo Mameli, presented a bill to the Senate aimed at establishing a chair that would assist young men who wished to pursue a diplomatic career. The new subject would be called 'special instruction in consular and diplomatic science' and would expound 'the principles of the modern European law of nations',⁵³ focusing in particular on maritime law and the history of treaties. However, access to state diplomacy was almost exclusively in the hands of the aristocracy, which would not tolerate the idea that a degree in law could become a privileged qualification for diplomatic careers. Federico Sclopis realized that the project, if formulated that way, would have aroused strong opposition from the nobility. In a report to the Senate of 7 May 1850 he therefore presented a new plan which left aside allusions to a diplomatic career and proposed the creation of a new chair of external public and international private law.⁵⁴ After debate in the Senate and in the Chamber of Deputies, the plan was passed into law in November 1850.⁵⁵ But during the Senate debate there had been no lack of objections. In particular, Ermolao Asinari of San Marzano, deeming it not appropriate to give the Faculty of Law a new course, had asked for the provision to be postponed until 1851, when discussions would take place on 'a new formation of the law course and [...] a new coordination of its chairs'.⁵⁶ Mameli rejected the objections, underlining that the subjects (modern law of nations, maritime law in relation to public law, and history of treaties) that would be taught in the new course were 'useful and necessary in any form of government to almost all orders of citizens'.⁵⁷ The draft law was approved, with thirty-three votes in favour and fifteen opposed.

Mancini, whose notoriety had grown considerably after the publication, in 1841, of his exchange of letters with Terenzio Mamiani on the right to pun-

53 *Atti del Parlamento subalpino*, Sessione del 1850 dal 20 dicembre al 18 dicembre 1850 (IV Legislatura), collected and enhanced with notes and unpublished documents by Galletti Giuseppe and Trompeo Paolo (Torino: Tipografia Eredi Botta, 1863), 533.

54 Cf. *Ibid.*, 534.

55 The law can be read in *Raccolta degli atti del governo di sua Maestà il re di Sardegna*, vol. 18, *Dal 1° gennaio a tutto dicembre 1850, dal n.° 971 al 1125 bis* (Torino: Stamperia Reale, [1850]), 745–746.

56 *Atti del Parlamento subalpino*, 332. The chairs of the Faculty of Law had indeed increased from five (1846) to fourteen (1849); on the parliamentary debate, see Pene Vidari, 'Un secolo e mezzo fa (22 gennaio 1851)', 275–279; Emilia Morelli, *Tre profili. Benedetto XIV, Pasquale Stanislao Mancini, Pietro Roselli* (Roma: Edizioni dell'Ateneo, 1955), 67–70.

57 *Atti del Parlamento subalpino*, 333.

ish,⁵⁸ had begun to take an interest in international law in 1844, when he published his essay 'Esame di un'opera di diritto internazionale pubblicata da Nicola Rocco' (Examination of a Work of International Law Published by Nicola Rocco).⁵⁹ In 1839–1840, he had opened a private law school in Naples that became one of the best in the city,⁶⁰ and in 1847 he was appointed substitute in the chair in natural law at the University of Naples. The Bourbon government removed him from this chair on 5 December 1849 following his escape to Turin.⁶¹

Mancini made his debut in Turin with an inaugural lecture that particularly inflamed the audience, due to its references to freedom and the 'right to nationality'.⁶² The teaching of international law was part of the finishing course until the reform of 9 October 1856 which inserted the subject into the ordinary five-year course of the Faculty of Law, making it mandatory for students, who would take it for the whole of their final year.⁶³

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- 58 Terenzio Mamiani and Pasquale Stanislao Mancini, *Fondamenti della filosofia del diritto e singolarmente del diritto di punire. Lettere di Terenzio Mamiani e Pasquale Stanislao Mancini* (Livorno: Tipografia Vigo, 1875). Cf. Italo Birocchi, 'Pasquale Stanislao Mancini e la cultura giuridica del Risorgimento', in *Per una rilettura di Mancini*, 19–119, at 29–35.
- 59 'Esame di un'opera di diritto internazionale pubblicata da Nicola Rocco', *Continuazione delle Ore solitarie – Biblioteca di scienze morali, legislative ed economiche*, issue 1 (1844): 10–30. On this, see Erik Jayme, *Pasquale Stanislao Mancini. Internationales Privatrecht zwischen Risorgimento und praktischer Jurisprudenz* (Ebelsbach: Gremer, 1980). See also Yuko Nishitani, *Mancini und die Parteiautonomie im Internationalen Privatrecht: Eine Untersuchung auf der Grundlage der neu zutage gekommenen kollisionsrechtlichen Vorlesungen Mancinis* (Heidelberg: Universitätsverlag Winter, 2000).
- 60 De Rinaldis, *Su la vita e le opere di Pasquale Stanislao Mancini*, 18; Zanardelli, *In memoria di Pasquale Stanislao Mancini*, 71; Morelli, *Tre profili*, 55. On the private law school, see Aldo Mazzacane, 'Università e scuole private di diritto a Napoli nella prima metà dell'Ottocento', in *Università in Europa. Le istituzioni universitarie dal Medio Evo ai nostri giorni: strutture, organizzazione, funzionamento*, ed. Andrea Romano (Soveria Mannelli: Rubbettino, 1995), 549–575.
- 61 Frugiuole, *La Sinistra e i cattolici*, 14; 'Mancini, Pasquale Stanislao', in *Dizionario Biografico degli Italiani*, 540.
- 62 Pasquale Stanislao Mancini, *Della nazionalità come fondamento del diritto delle genti. Prelezione al corso di diritto internazionale e marittimo pronunciata nella R. Università di Torino [...] nel dì 22 gennaio 1851* (Torino: Eredi Botta, 1851), 41. Cf. Gian Savino Pene Vidari, 'La prolusione di Pasquale Stanislao Mancini sul principio di nazionalità (1851)', in *Retoriche dei giuristi e costituzione dell'identità nazionale*, ed. Giovanni Cazzetta (Bologna: Il Mulino, 2013), 117–134.
- 63 Cf. Di Iorio, *Ricerche su Pasquale Stanislao Mancini a Torino*, 43. More generally see *Constructing International Law: The Birth of a Discipline*, ed. Luigi Nuzzo and Miloš Vec (Frankfurt am Main: Klostermann, 2012); Luigi Nuzzo, 'La storia del diritto internazionale e le sfide del presente', *Quaderni fiorentini per la storia del pensiero giuridico moderno* 42 (2013): 683–701.

3 Some of the Sources for Mancini's Turin Lectures

The importance of Mancini's inaugural lecture has been emphasized many times.⁶⁴ On the very first pages of it he stated that 'nationality, as the rational basis of the law of nations',⁶⁵ would be the 'first and cardinal idea that will dominate my course',⁶⁶ and he went on to underline that the pioneers of the discipline were two Italians, Pierino Belli d'Alba and Alberico Gentili, but 'Grotius's great work obscured and dominated all the earlier ones'.⁶⁷

According to Mancini, in the previous century the doctrine of the law of nations had not made any great progress. Emer de Vattel, for example, had limited himself to 'making Wolff's doctrine French', offering 'a type of compendium' of it, one characterized by 'an overly superficial scientific levity' and by 'frequent oscillation and uncertainty in the application of principles'.⁶⁸ This brief quotation alone clearly demonstrates Mancini's negative view of Vattel, whose work he saw as a defective if not pejorative summary of Christian Wolff's complex ideas. More generally, however, these two thinkers 'did not go beyond Grotius's principle of a law concerning relations between states'.⁶⁹

64 See for example Federico Chabod, *Idea d'Europa e civiltà moderna. Sette saggi inediti*, ed. Marco Platania (Roma: Carocci, 2010), in particular the essay 'Nazione ed Europa nel pensiero e nell'azione politica di Mazzini', 151–170; Stuart Woolf, 'Reading Federico Chabod's Storia dell'idea d'Europa Half a Century Later', *Journal of Modern Italian Studies* 7:2 (2002): 269–292.

65 Di Iorio, *Ricerche su Pasquale Stanislao Mancini a Torino*, 11–12. The text of the *Prelezione* (prolusion, or prelection) to *Della nazionalità come fondamento del diritto delle genti* had been reworked by Mancini ahead of publication, because it takes up nearly seventy printed pages.

66 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 11. For an analysis of Mancini's thought on the concepts of nation and nationality, see Giuseppe Carle, 'Pasquale Stanislao Mancini e la teoria psicologica del sentimento nazionale', *La Geografia. Rivista di propaganda geografica* 5 (1917): 6–12, 50–56, 98–104; Floriana Colao, 'L'"idea di nazione" nei giuristi italiani tra Ottocento e Novecento', *Quaderni fiorentini per la storia del pensiero giuridico moderno* 30 (2001): 255–360; Luigi Nuzzo, 'Da Mazzini a Mancini: il principio di nazionalità tra politica e diritto', *Giornale di storia costituzionale* 14:2 (2007): 161–186; Alessandro Polsi, 'Nazione e cittadinanza. Pasquale Stanislao Mancini e i diritti civili degli stranieri', in *Cittadinanze nella storia dello Stato contemporaneo*, ed. Marcella Aglietti and Carmelo Calabrò (Milano: FrancoAngeli, 2017), 33–46; Carmine Pinto, *La guerra per il Mezzogiorno. Italiani, borbonici e briganti, 1860–1870* (Roma: Laterza, 2019), 14.

67 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 17. On Alberico Gentili, see Italo Birocchi, 'Il *De iure belli* e l'"invenzione" del diritto internazionale', in *Ius gentium ius communicationis ius belli: Alberico Gentili e gli orizzonti della modernità*, ed. Luigi Lacchè (Milano: Giuffrè, 2009), 101–138.

68 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 19.

69 Pene Vidari, 'Prospettive e contributi', 20.

After considering the constituent elements of the nation ('reason, race, language, customs, history, laws and religions')⁷⁰ and the concept of nationality (a 'collective expression of liberty', and a 'holy and divine thing, like liberty itself')⁷¹ Mancini concluded that when international law was born, the basic unit was the nation rather than the state, as Grotius and Vattel⁷² had argued. For them the law of nations coincided with the natural law of states, whereas for Mancini it coincided with the natural law of peoples.

In the first lecture of his first course Mancini took up some of the arguments that he had set out in his inaugural lecture by once again presenting Vattel as a 'summarizer' of Wolff and underlining that both continued to enjoy great fame 'despite the superficiality of their doctrines'.⁷³ He therefore agreed with Pellegrino Rossi when he claimed that international relations were still governed by empirical principles.⁷⁴ However, it should be noted that in the comparison between Wolff and Vattel the German is mentioned only seven times while the Swiss is cited more than twenty times, in eighteen lectures out of the sixty-seven.⁷⁵ It might almost be argued that Mancini examined Wolff's ideas through the filter of Vattel, through which he also considered other aspects of the doctrine.

It is therefore necessary to ascertain which parts of Vattel's *Droit des gens* influenced the reflections of the Irpinian jurist. If we consider together all the quotations of Vattel in Mancini's course we note that his examination focused primarily on book III of the *Droit*, 'De la guerre'.⁷⁶ In most cases

70 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 31.

71 Ibid., 41.

72 Ibid., 47.

73 Mura, *Mancini in cattedra*, 91; Emmanuelle Jouannet, *Emer de Vattel et l'émergence doctrinale du droit international classique* (Paris: Pedone, 1998), 10; ead., 'Les dualismes du droit des gens', in *Le droit international de Vattel vu du XXI^e siècle*, ed. Vincent Chetail and Peter Haggemacher (Leiden: M. Nijhoff, 2011), 133–150.

74 See Mura, *Mancini in cattedra*, p. 92, Pellegrino Rossi had also been mentioned in the *Prelezione*, 21. On the Tuscan intellectual and the related literature, see Luigi Lacché, 'Rossi, Pellegrino Luigi Edoardo', in *Dizionario Biografico degli Italiani* (Roma: Istituto dell'Enciclopedia Italiana, 2017), vol. 88, 696–702.

75 Among the authors most frequently cited by Mancini are: Hugo Grotius (fifty-one mentions); Henry Wheathon (nineteen); Samuel Pufendorf (fifteen); Georg Friedrich von Martens (thirteen); Montesquieu (twelve), of whom he does not appear to have a good impression, since in the *Prelezione*, at p. 51, he mentions the 'notorious book' by the Bordeaux magistrate; Friedrich Carl Savigny (eleven); Thomas Hobbes (ten); and Gian Domenico Romagnosi (ten). Surprisingly, Giambattista Vico is mentioned only four times.

76 See Emer de Vattel, *Le Droit des gens ou principes de la loi naturelle* (A Londres, s.n., 1758), vol. 2, book III, 'De la guerre', in particular the first seven chapters, which deal with topics

Mancini tended to present a doctrine set out by Grotius prior to considering how subsequent scholars took up or criticized the Dutch jurist's thesis and, as mentioned, only rarely did Mancini compare the theories of Wolff with those of Vattel. The Grotius–Pufendorf–Vattel line was more common than the Grotius–Wolff–Vattel one.⁷⁷ The impression gleaned from this is that the theories of the Swiss jurist were considered by Mancini to have been a continuation of Grotius's theses, although Vattel ultimately gave a distorted and therefore pejorative image of his doctrine.⁷⁸

The negative evaluation of Vattel's thought, albeit only with regard to Grotius and not to Wolff, was a consequence of the fact that Mancini was very critical of the concept of just war; furthermore, negotiations aimed at consolidating the theory of political equilibrium was a practice that he despised.

The 'deceptions of mendacious diplomacy'⁷⁹ had generated the perverse mechanism of the principle of equilibrium,⁸⁰ according to which changes in territory could not be tolerated, since the increase of one state's power would be detrimental to other states. The principle of equilibrium had the shortcoming of not taking into account that of aggregation⁸¹ and was configured only as a preventive measure based on suspicion and fear. Mancini's conclusion was clear: 'we will declare the principle of equilibrium unfair. Unjust because it is unfair to offend someone that I feared for some reason and to anticipate with a present injustice a future one'.⁸²

Another interesting example is the concept of just war, which Mancini rejected, deeming it an 'absurd, immoral and prideful theory'.⁸³ He dedicated four lessons to the argument,⁸⁴ beginning with the theories elaborated by

such as offensive war, just war and the concept of balance, the declaration of war, and finally the rights to form alliances or to declare neutrality.

77 On these authors, see Maria Rosa Di Simone, *Percorsi del diritto tra Austria e Italia (secoli XVII–XX)* (Milano: Giuffrè, 2006), 80 ff.; Grotius, *Pufendorf and the Natural Law Tradition*, ed. Knud Haakonssen (Dartmouth, Dartmouth Publishing, 1998); Knud Haakonssen, 'Enlightenment and the Ubiquity of Natural Law', *Jahrbuch der Österreichischen Gesellschaft zur Erforschung des 18. Jahrhunderts* 27 (2012): 45–57.

78 See Mura, *Mancini in cattedra*, 194, in which Mancini claimed that Vattel did not change 'a syllable of his [Grotius's] doctrine if not to make it worse'. For another example, see at 249.

79 Mura, *Mancini in cattedra*, 126.

80 Cf. Vattel, *Le Droit des gens*, 39 ff.

81 The principle of aggregation concerns the acquisition of a territory by a state. It could be, as Mancini had stated, just or unjust according to whether it happened to an already powerful state or a weak one; cf. Mura, *Mancini in cattedra*, 126.

82 Mura, *Mancini in cattedra*, 126.

83 *Ibid.*, 249.

84 *Ibid.*, 241–255.

Grotius.⁸⁵ Grotius distinguished between justificatory and exculpatory wars; he thought that defensive conflicts were always just, as were those fought to right a wrong or to punish an injury received, and he also attempted to limit punitive wars to the latter case.⁸⁶ Vattel largely agreed with Grotius's theory, but had drawn 'worse consequences, creating a horrendous and savage theory',⁸⁷ as he had highlighted the fact that the purpose of all wars was to punish an offence already received or believed to be imminent and, moreover, that the legitimate aim of war was revenge by means of an unforgettable example that would discourage other attacks.⁸⁸

In fact, in the aforementioned examples the polemical target was twofold, in that Mancini targeted the doctrine formulated by Vattel on the one hand, and the European political situation that came about after the Congress in Vienna on the other. While taking into account that this is a shorthand version of Mancini's lectures, and that, therefore, we are dealing with a text designed for oral rather than written dissemination,⁸⁹ the Irpinian jurist did not mince his words when expressing his opposition to the political system resulting from the agreements signed at the 1815 congress, whose overall result was defined as a 'germ of death'⁹⁰ or as an 'infamous'⁹¹ pact of alliance between conservative forces aimed at trampling on and mortifying the principle of nationality.

The protests raised by the Austrian government against an exiled teacher who aimed to inflame subalpine youth were therefore hardly surprising. Mancini had in fact said:

85 The presence of Grotius in Mancini's thought deserves to be analysed more closely. But see the still useful Antonio Droetto, *Pasquale Stanislao Mancini e la scuola italiana di diritto internazionale del secolo XIX* (Milano: Giuffrè, 1954); Gian Savino Pene Vidari, *Storia del diritto in età medievale e moderna* (Torino: Giappichelli, 2019), 238–243.

86 Cf. Mura, *Mancini in cattedra*, 249.

87 Ibid.

88 Ibid. On the concept of the enemy in Vattel, see Michel Senellart, 'La qualification de l'ennemi chez Emer de Vattel', *Astérixion* 2 (2004): 31–51; Gabriella Silvestrini, 'Justice, War and Inequality. The Unjust Aggressor and the Enemy of Human Race in Vattel's Theory of the Law of Nations', *Grotiana* 31 (2010): 44–68; Walter Rech, *Enemies of Mankind: Vattel's Theory of Collective Security* (Leiden: M. Nijhoff, 2013).

89 These shorthand lessons, however, are very important because they represent one of the rare testimonies of Mancini's full course; see Mura, *Mancini in cattedra*, 12. But see also Biblioteca Apostolica Vaticana, Rome, Italy, Fondo Patetta, Autografi e documenti, P. S. Mancini, 1856, which contains the texts of twenty-five lessons given by Mancini and transcribed by Di Iorio, *Ricerche su Pasquale Stanislao Mancini a Torino*, 135–431.

90 Mura, *Mancini in cattedra*, 177.

91 Ibid., 133.

Do you believe that pity for Lombardy is the unique cause of the grudges that the peoples of all Italy feel for Austria? Or is it the continuous interventions that it has made to extinguish in them every small spark of freedom? Not only in these, but in all civilized nations a badly simulated cry and a curse against the future could arise against the thugs and dispossessors of every bad and formless government.⁹²

4 By Way of Conclusion

From these brief notes it emerges how an important element of Mancini's thought, which came to the fore in the Turin lessons, was that of giving a new significance to the concept of the nation, thus counterbalancing the dominant theoretical importance that was attributed to the state. The prevalence of the concept of nation had meant that certain jurists, such as Vattel, had placed the concept of the state at the centre of their theoretical elaboration, a conceptual category also used to explain the formation of modern international law. Consequently, within these currents of thought, if the concept of the nation was defined, it appeared destined to be subordinated to that of the state and therefore in the terminological dialectic state–nation, the second was always put in the shade.⁹³

Both Mancini and Vattel⁹⁴ saw the state and the nation as two distinct concepts but, whereas for the Swiss jurist the first had precedence over the second, for the Irpinian jurisconsult the idea of the nation came before that of the state. That is, Mancini completely overturned Vattel's perspective and, demonstrating that the nation would end up resolving itself legally in the state, defuse the revolutionary implications of the notion of the state.

It seems that we can exclude any influence of Giuseppe Mazzini from this discussion, since the republican option that was central to the Genoese intellectual meant that he was ignored by the 'textual circuits of the nineteenth-century jurists'.⁹⁵ As Federico Chabod pointed out, one could ask of Mazzini 'neither a treatise on the nation, nor a clear and precise plan of how to build

92 Ibid., 142.

93 See Colao, 'L"idea di nazione"', 260.

94 In relation to this, see Frederick G. Whelan, 'Vattel's Doctrine of the State', *History of Political Thought* 9(1) (1988): 59–90; Ben Holland, 'The Moral Person of the State: Emer de Vattel and the Foundations of International Legal Order', *History of European Ideas* 37(4) (2011): 438–445.

95 Nuzzo, 'Da Mazzini a Mancini', 162.

[...] the United States of Europe. [...] But [...] for the nation, the ... theoretical, well-coordinated treatise, would be drafted by the jurist Pasquale Stanislao Mancini in 1851: not by Mazzini'.⁹⁶

However, at this point some further reflections are necessary, since the conceptions of state and nation in Vattel and Mancini are divergent. The Swiss jurist became a target of Mancini because the *Droit des gens* was one of the theoretical bases of the Congress of Vienna, having been guilty of raising the concept of equilibrium to the level of a political system. The popularity that Vattel enjoyed within the major European diplomatic missions had to be discredited, by demonstrating his theoretical fragility.

But the notion that the state took precedence over the nation was actually the result of an opportunistic and subsequent interpretation of Vattel's work. Indeed, if we read the *Préliminaires* of the *Droit des gens* carefully, nation and state appear to coincide,⁹⁷ but for Mancini this equivalence, which had descended upon the nineteenth-century political scene, was not acceptable but had to be strongly criticized, since accepting it would have meant endorsing the idea that existing states should not undergo territorial changes. For him it became fundamentally important to develop a more fluid, broader concept of the nation, which is why he preferred to speak of nationality.

According to him, the nation was like a family⁹⁸ whose members, however, finding themselves scattered across several states, felt the urgent need to join together in the name of a series of characteristics that made them similar.⁹⁹ Nationality, according to Mancini, had to be transformed from a right to a 'legal duty', thus making it possible to obtain 'unity of territory'.¹⁰⁰ Therefore, by decontextualizing the *Droit des gens* – as indeed his political adversaries also did – he used it as an ideological tool to refute the theses of those who denied the relevance of the modern principle of nationality.¹⁰¹

These positions held by Mancini would evolve once the territorial unity of the Italian peninsula had been achieved in 1870, and would change again when he held the post of foreign minister, from 1881 to 1885. Contrary to what he had argued, he did not hesitate to sign the Triple Alliance in 1882, even though this

96 Chabod, 'Nazione ed Europa nel pensiero e nell'azione politica di Mazzini', 162; as the editor Marco Platania has clarified, at p. 7, this essay can be dated to the 1940s or 1950s.

97 Vattel, *Le Droit des gens*, 3–4.

98 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 31.

99 Like origin, customs, language and above all social conscience, which are some distinctive features of nationality; see u = *ibid.*, 41.

100 *Ibid.*

101 Moreover, as Italo Birocchi has written (in his essay 'Pasquale Stanislao Mancini e la cultura giuridica del Risorgimento', 59), for Mancini: 'teaching law was also doing politics'.

involved the Austro-Hungarian Empire, which had been the polemical target of his first two university courses in Turin; nor did he hesitate to drag the young Italian state into an adventurous colonial policy.¹⁰²

Another point to emphasize is that Mancini's ideas had no utopian dimension.¹⁰³ His concept of nation was tied to a clear political objective pursued in his threefold role as a parliamentary deputy, teacher and lawyer: that of Italy's right to become a nation state. With the term 'nation', Mancini referred to a natural pre-state and pre-political society of men and to a right of peoples, whose binding elements were religion, race, language, traditions and laws, and above all the 'consciousness of nationality'.¹⁰⁴ These characteristics – which contributed to the creation of a profound 'commonality of law',¹⁰⁵ not to be found, for example, between individuals belonging to different nations – rendered superfluous the use of 'the artifices of a political pact or a social contract whose inevitable outcome was only a state subject with a strong authoritarian and oppressive purpose',¹⁰⁶ since, ultimately, the unity of a nation ran parallel with the unity of a state.¹⁰⁷

The concept of the nation therefore stands at the centre of Mancini's reflection, the essence of which is found in the consciousness of nationality, which is expressed in a 'moral unity of a common thought, of a predominant idea that makes a society what it is, because it is realized in it'.¹⁰⁸ It is this 'spiritual element' that animates nationalities. Thus, following the thread of Mancini's reflections, we arrive at a fuller definition of the concept of nationality: 'a natural society of men [...] conformed to a commonality of life and social conscience'.¹⁰⁹ It follows that the development of nationality becomes for men not a right, but a legal duty. The Italian jurist's conclusions are of great interest since he ends up equating nationality on an individual level with human free-

102 On the idea that the Mancini of the 1850s and 1860s was very different from that of the 1880s, see Birocchi, 'Pasquale Stanislao Mancini e la cultura giuridica del Risorgimento', 26, 93–98; as well as Francesco Ruffini, 'Nel primo centenario della nascita di Pasquale Stanislao Mancini: 17 marzo 1817', *Nuova Antologia* 188 (marzo-aprile 1917), i–xvi.

103 Nuzzo, 'Da Mazzini a Mancini', 165, but see also Birocchi, 'Pasquale Stanislao Mancini e la cultura giuridica del Risorgimento', in particular 56–60.

104 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 39.

105 *Ibid.*, 32.

106 Nuzzo, 'Da Mazzini a Mancini', 165; on this negative view of the contractual solution see also the penetrating observations of Colao, 'L'idea di nazione', 258 ff.

107 After unification, however, in the 1870s the facts of the matter changed as the nation was depicted as depending on the state; see Colao, 'L'idea di nazione', 260.

108 Mancini, *Della nazionalità come fondamento del diritto delle genti*, 39.

109 *Ibid.*, 41.

dom and, on a more general level, with the 'collective explication of freedom', it follows that nationality 'is as holy and divine a thing as freedom itself'.¹¹⁰

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¹¹⁰ Ibid.

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