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Crossing Temporal Boundaries. Lodovico Antonio Muratori's Notetaking Practice and the Material Circulation of the Thinking on Law between the 16th and 18th Centuries

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Crossing Temporal Boundaries. Lodovico Antonio Muratori's Notetaking Practice and the Material Circulation of the Thinking on Law between the 16th and 18th Centuries*

Manuela Bragagnolo**

1. Materiality and the legal historian's toolkit

Materiality has recently become part of the toolkit of legal historians. Indeed, more and more attention has been given to the implications of the so-called «material turn» for the study and writing of legal history, from different points of view¹.

For instance, the «filing approach» focused upon the role of «paperwork» in the law-making process. While studies like Cornelia Vismann's *Files* (2000) have explored the relationship between law and the technology of writing,² works on bureaucracy, starting from Latour's *Making of Law* (2002), offered what has been called an «ethnographic» account on law's materiality.³ The consensus about the central role of materiality went hand in hand with the need to restore the «visibility» of the documents: the need to look «at» the documents rather than looking «through» them⁴ and to stress their constitutive role, especially when it comes to

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¹ For a general overview of the recent legal historiographical perspectives on law and materiality, see T. Johnson, *Legal History and The Material Turn*, in M.D. Dubber and C. Tomlins (eds.), *The Oxford Handbook of Legal History*, Oxford, Oxford University Press, 2018 (<http://dx.doi.org/10.1093/oxford-hb/9780198794356.013.27>).

² C. Vismann, *Files. Law and Media Technology*, translated by G. Winthrop-Young, Stanford, Stanford University Press, 2008 (first edition *Akten: Medientechnik und Recht*, S. Fischer Verlag, Frankfurt am Main, 2000).

³ B. Latour, *La fabrique du droit: Une ethnographie du Conseil d'État*, Paris, La Découverte, 2002.

⁴ B. Kafka, *Paperwork: the state of the discipline*, «Book History», 12 (2009), pp. 340-353: 341.

bureaucratic reality.⁵ Documents started to be seen as «mediators» that transform, translate, distort and modify the meaning they are supposed to convey.⁶

This interplay between form and content has been largely studied by book historians as well. They have been stressing the need to understand how the specific form of the material object that transmits a text to its readers – the book – produced a certain meaning in a defined community of interpretation.⁷ This claim has recently been integrated into legal historical methodology.⁸ Particular attention has been paid to legal literacy and the diffusion of law books, most of all in the early modern period, following Antonio Manuel Hespanha's idea of writing a history of «written legal communication».⁹

This article offers another way in which materiality can be used as a tool for doing legal history. It focuses on the interdependence between handwritten notebooks and the thinking on law. Both the renewed interest in working methods and (more generally) the number of studies on notetaking practices have grown in recent years. This expansion in the different branches of intellectual history is connected to the development of this approach in the history of science, which stressed the interdependence of ideas with the social and material context of their formation.¹⁰ For instance, while notebooks have long been studied (primarily in the context of literary studies) by scholars practicing genetic criticism, historians of science approached notebooks from the perspective of «historical epistemology» in order

⁵ For an anthropological and social perspective on bureaucratic documents, see M. S. Hull, *Documents and Bureaucracy*, «Annual Review of Anthropology» 41 (2012), pp. 251-267. For a recent perspective on legal files, see M. Armond Dias Paes, *Legal Files and Empire: Form and Materiality of the Benguela District Court Documents*, «Administrative», 4 (2019), pp. 53-70.

⁶ B. Latour, *Reassembling the Social. An Introduction to Actor-Network-Theory*, Oxford, Oxford University Press, 2005, p. 39; M. S. Hull, *Documents and Bureaucracy*, cit., p. 253.

⁷ R. Chartier, *Forms and Meanings: Texts, Performances, and Audiences from Codex to Computer*, Philadelphia, University of Pennsylvania Press, 1995.

⁸ See in particular A. M. Hespanha, *Form and content in early modern legal books. Bridging the gap between material bibliography and the history of legal thought*, Rg 12 (2008), pp. 12-50 (<http://dx.doi.org/10.12946/rg12/012-050>).

⁹ A. M. Hespanha, *Form and content in early modern legal books. Bridging the gap between material bibliography and the history of legal thought*, cit., p. 39. See also D. Osler, *Text and Technology*, «Rechtshistorisches Journal», 14 (1995), pp. 309-331; L. Beck Varela, *The Diffusion of Law Books in Early Modern Europe: A Methodological Approach*, in M. Meccarelli, M. J. Solla Sastre (eds.), *Spatial and Temporal Dimensions for Legal History*, Global Perspectives on Legal History 6, Max Planck Institute for European Legal History, Frankfurt am Main, 2016, pp. 195-239; E. Fiocchi Malaspina, *L'eterno ritorno del Droit des gens di Emer de Vattel (secc. XVIII-XIX), L'impatto sulla cultura giuridica in prospettiva globale*, Global Perspectives on Legal History 8, Max Planck Institute for European Legal History, Frankfurt am Main, 2017; M. Korpiola (ed.), *Legal literacy in premodern European societies*, Palgrave Macmillan, 2019. For the Ibero-American world, see T. Duve, *Pragmatic Normative Literature and the Production of Normative Knowledge in the Early Modern Empires (16th-17th Centuries)*, in T. Duve, O. Danwerth (eds.), *Knowledge of the Pragmatici. Legal and Moral Theological Literature and the Formation of Early Modern Ibero-America*, Max Planck Studies in Global Legal History of the Iberian Worlds, Leiden-Boston, Brill, 2020, pp. 1-39.

¹⁰ See in particular A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, New Heaven & London, Yale University Press, 2010; on the importance of studying working methods, see *Ibid.*, p. 7.

to better understand the context in which the discoveries of the «heroes of science» were made.¹¹ These sources enabled them to examine the intellectual paths and categories that led them to these discoveries. Moreover, studying how the «heroes of science» took notes is also considered a fundamental part of the history of the scientific reading practice, and it allows us to gain access to the dialogue between the reader and the book.¹²

In this article, I argue that these sources could be of particular use for legal history as well. Legal history can be seen as a «long process of diachronic intertextuality»,¹³ books being the most important tool for the jurists' practice and thoughts. In particular, I explore the notetaking and excerpting practices of one of the leading figures of the cultural, political and religious life of the first half of the Italian *Settecento*, Lodovico Antonio Muratori (1672-1750), showing how this practice had an impact on the production of Italian 18th-century legal thinking.¹⁴ Taking notes and excerpting from books and especially (as we will see later on) from manuscripts was not a neutral act, but implied complex intellectual activities that transformed and fed the notetaker's ideas. In particular, looking at Muratori's handbooks and taking into account the material context of their production sheds new light on an underestimated intellectual branch; one rooted in 16th-century debates that nourished, like a karst river, the legal thinking of Italian Enlightenment. In this way, the analysis of the materiality of Muratori's notebooks allows us to trace the path of these ideas as they crossed spatial and, above all, temporal boundaries, thus assessing the importance of manuscript circulation across the centuries for the formation and diffusion of 18th-century legal thought.

¹¹ See in particular J. Renn and P. Damerow, *The Hanging Chain: A Forgotten «Discovery» Buried in Galileo's Notes on Motion*, in F. L. Holmes, J. Renn and H.-J. Rheinberger (eds.), *Reworking the Bench. Research Notes in History of Science*, Kluwer Academic Publisher, 2003, pp. 1-24.

¹² Cfr. L. Daston, *Taking Note(s)*, «Isis», Vol. 95, No. 3 (September 2004), pp. 443-448.

¹³ On «legal history as a process of diachronic intertextuality», see T. Duve, *Pragmatic Normative Literature and the Production of Normative Knowledge in the Early Modern Empires (16th-17th Centuries)*, cit., pp. 4-9.

¹⁴ The bibliography on Muratori and the different fields of knowledge in which he wrote is extremely broad. For further biographical information, see G. Imbruglia, *Muratori, Ludovico Antonio*, in *Dizionario Biografico degli Italiani*, Roma, Istituto dell'Enciclopedia Italiana, 77, 2012, pp. 443-452; P. Vismara, *Lodovico Antonio Muratori (1672-1750). Enlightenment in a Tridentine Mode*, in J. D. Burson, U. Lehner (eds.), *Enlightenment and Catholicism in Europe, a Translational History*, University of Notre Dame Press, Notre Dame (Indiana), 2014, pp. 249-268, which includes an updated bibliography. On Muratori's legal thinking, see I. Birocchi, *Muratori, Lodovico Antonio* in *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, Bologna, Il Mulino, 2010, I, pp. 1397-1400; E. Tavilla, *Ludovico Antonio Muratori*, in P. Cappellini, P. Costa, M. Fioravanti e B. Sordi (eds.), *Enciclopedia Italiana di Scienze, Lettere ed Arti. Il contributo italiano alla storia del pensiero*, Ottava appendice, *Diritto*, Roma, Treccani, 2012, pp. 237-240.

2. «Artificial» and «External» memory: *Arte excerpendi* in theory

The first part of *Riflessioni sopra il buon gusto* appeared in Venice in 1708. Muratori, under the pseudonym of Lamindo Pritanio, gave expression to an articulated programme of cultural reformation that followed the principle of the good taste («buon gusto») and aimed at the advancement of all sciences and arts.¹⁵ Good taste basically consisted in «knowing and judging what was faulty, imperfect or mediocre» in sciences and arts, so as to avoid it in pursuit of the best and most perfect:¹⁶ the good and truth had to be the ultimate aim of all scientific studies, and scholars had to identify and make use of all the means at their disposal to reach these two goals.¹⁷ The analysis of the cognitive processes of knowing and learning was the starting point of Muratori's reformation programme. According to the Augustinian tradition, memory together with will and intellect, was one of the three main powers of the soul: in other words, it was one of the three virtues that those who wanted to devote themselves to the arts and sciences required or needed to improve upon.¹⁸

Dealing with «methods and instruments» for learning and teaching, Muratori stressed that order and the connection between things were of great help for learning and memorisation.¹⁹ But two things in particular were of vital «aid» to natural memory: artificial memory and *arte excerpendi*.

Scholars have underlined Muratori's critical attitude towards the Ciceronian tradition of «artificial memory», in which memorisation depended on the rise of senses through the evocation of images placed in imagined architectures.²⁰ In Muratori's eyes, this art, widespread in modern times, could be of a certain use on more than one occasion. Nevertheless, one should not be *enchanted* by those who praised that art more than necessary: it was in fact of little use for those who had a weak memory, and in the end its application had been limited to those instances in which one needed to recite an oration or poem by heart.²¹

¹⁵ The first edition of *Buon Gusto* appeared in 1708 (Venice, Pavino: here *Buon Gusto*, I) and included only the first part of the work. The second edition, in which the second part was printed, appeared in 1715 (Colone, but Naples, Benedetto Marco Renaud, here *Buon Gusto*, II). On Muratori's reformation programme and the important dialogue between Lamindo Pritanio and the Venetian Bernardo Trevisan, see A. B. Calapaj, *I rapporti tra Lamindo Pritanio e Bernardo Trevisan*, in *Accademie e cultura. Aspetti storici tra Sei e Settecento*, Atti del convegno internazionale di studi muratoriani, Modena, 1972, Firenze, Olschki, 1979, pp. 73-94. See also F. M. Crasta, *L'eloquenza dei fatti. Filosofia erudizione e scienza della natura nel Settecento veneto*, Napoli, Bibliopolis, 2007, pp. 306-313.

¹⁶ *Buon Gusto*, I, Venezia, Pavino, 1708, Ch. II, p. 13.

¹⁷ *Buon Gusto*, I, Ch. III, p. 24 «Adunque il vero ed essenzial fine de gli studj ha da essere questo apprendere il Vero e il Buono». *Buon Gusto*, I, Ch. IV, p. 40.

¹⁸ *Buon Gusto*, I, Ch. II, p. 17.

¹⁹ *Buon Gusto*, I, Ch. VII, pp. 115-116.

²⁰ F. M. Crasta, *Forme e funzioni della mente: il caso della memoria fra Muratori e Conti*, in A. Loche e M. Lussu (eds.), *Saggi di filosofia e storia della filosofia, Scritti dedicati a Maria Teresa Marcialis*, Milano, Angeli, 2012, pp. 53-72: 60; A. Cevolini, *Storing Expansions: Openness and Closure in Secondary Memories*, in Id. (ed.), *Forgetting Machines: Knowledge Management Evolution in Early Modern Europe*, Leiden, Brill, 2016, pp. 155-187: 165.

²¹ *Buon Gusto*, I, ch. VIII, pp. 134-135.

In this clear albeit moderated criticism against the Ciceronian tradition of artificial memory, it is possible to find the traces of the Cartesian and Baconian attitude against the «magicians of memory».²² Actually, it is probably not difficult to see in Muratori's pages the presence of the tradition that, as Paolo Rossi and Francis Yates have shown, linked Ramus, Bacon and Descartes in the complex relationship between the criticism towards artificial memory and the rise of the new scientific method, where the question of «memory aids», detached from the Ciceronian tradition and based on a rational order, was crucial.²³

In this context, the critique lodged against artificial memory, shared by several scholars and pedagogues from the 16th century on, went hand in hand with the renewed attention to the practice of writing commonplace books, considered a «subsidiary memory».²⁴ It is not surprising, then, that Muratori's critical attitude against the Ciceronian «artificial memory» is followed by praise of the second aid to memory identified in *Buon Gusto*: «entrusting to paper», to a «stable external memory», all thoughts, reasons of things or other people's writings that we wanted to recall, but due to the caducity of the natural, internal memory, it was not possible to remember.

Naming it «art of choosing and noting down» («arte di trassegnare e notare»), or *Arte excerptendi*, Muratori was referring to the long-lasting art of reading and excerpting.²⁵ This «notebook culture» flourished particularly from the 16th century on, becoming one of the first topics of modern pedagogy.²⁶ Together with the rise of an increasingly critical attitude against artificial memory, many scholars and pedagogues advocated notetaking, which was depicted as the best aid to memory.²⁷ This particular attention to notetaking went hand in hand with the concern for and development of consistent criteria by means of which excerpt notebooks could become durable tools that allowed scholars to temporarily forget but then

²² This criticism can be directly linked to what Muratori says in the last chapter, where he expressly follows Bacon in his polemic attitude against Raimundus Lullus and the lullism. *Buon Gusto*, I, Ch. XII, p. 221. On Bacon's and Descartes' criticism against lullian art and, in general, against the magicians of memory, see P. Rossi, *Clavis Universalis. El arte de la memoria y la logica combinatoria de Lullo a Leibniz*, traduzione de Ester Cohen, Mexico, Fondo de Cultura Economica, 1989 (1st. ed. 1983), in particular pp. 133-136; P. Rossi, *Francesco Bacone. Dalla magia alla scienza*, Bologna, Il Mulino, 2004 (1st ed 1956), p. 189.

²³ P. Rossi, *Francesco Bacone. Dalla magia alla scienza*, Bologna, Il Mulino, 2004 (1st ed 1956), pp. 363-414; P. Rossi, *Clavis Universalis. El arte de la memoria y la logica combinatoria de Lullo a Leibniz*, cit., pp. 128-161; F. A. Yates, *L'arte della memoria*, Torino, Einaudi, 1993 (1st ed. 1966), pp. 342-362. On the general critical attitude towards artificial memory, that several scholars and pedagogues shared, see A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, cit., p. 76.

²⁴ See A. Cevolini, *De arte excerptendi. Imparare a dimenticare nella modernità*, Firenze, Olschki, 2006, in particular p. 65.

²⁵ *Buon Gusto*, I, ch. VIII, pp. 138-139.

²⁶ A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, cit., pp. 62-116; A. Blair, *The Rise of Note-Taking in Early Modern Europe*, «Intellectual History Review», 2003, pp. 303-316; A. Cevolini, *De arte excerptendi. Imparare a dimenticare nella modernità*, Firenze, Olschki, 2006, in particular pp. 63-75.

²⁷ On the note-taking practice as an aid to memory, see in particular A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, pp. 75-80.

quickly retrieve information.²⁸ That meant that these notebooks were conceived as a long-term repository for ideas and material.

At the time when Muratori wrote the *Buon Gusto*, several handbooks on how to compile good excerpts had been printed, suggesting different devices and techniques for managing abundant notes.²⁹ Alphabetising the excerpts, keeping different notebooks for different kinds of notes (for instance, quotations, historical examples and bibliographical references), or indexing each notebook, were some of the techniques mentioned.³⁰ The two most famous notetaking manuals were Jeremias Drexel's *Aurifodina* (1638) and Vincent Placcius' *De Arte excerpendi* (1689).³¹ Muratori very likely had these two texts in mind when emphasising the importance of knowing how to record excerpts in notebooks (‹zibaldoni›) in order to easily recover the information when one needed it. He not only uses the term «ars excerpendi» in his book, but both titles are also mentioned in his own notebooks.³²

Nevertheless, it was not only a matter of how to manage and write scholarly information in notebooks (*notare*). The most important part was related to the choice (*trascegliere*) of what should be excerpted, especially when the notetaking practice was then beneficial to the publication of texts. Thus, it is probably fair to say that Muratori clearly added his voice to the chorus of those who between 16th and 17th centuries complained about the literary genre Ann Blair calls «reference books», that is, a literary genre that heavily relied on notes and excerpts³³. Actually, in Muratori's eyes, these books, with some variation of «theater», «library», and «polyanthea» in their titles (*Teatri, Biblioteche, Poliantee*), provided collections of excerpts and summaries, offering several topics detached one from the other, chaos being their method.³⁴ Pliny the Elder's aphorism that «there is no book so bad that some good cannot be gotten from it», which was repeatedly used by Renaissance compilers to support their proclivity for large-scale collecting, was the object of Muratori's sarcastic denigration.³⁵ It goes without saying, then, that books like Zwinger's *Theatrum humanae vitae* were only useful to those who weren't learned but wanted to appear so. Muratori was concerned with the distinction between true learning and the appearance of learning. The latter settles for turbid brooks, thereby sparing itself the effort of finding the sources.³⁶

²⁸ A. Cevolini, *De arte excerpendi. Imparare a dimenticare nella modernità*, cit., in particular p. 77.

²⁹ A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, cit., pp. 85-93.

³⁰ This was, for instance, what Jeremias Drexel suggested in his *Aurifodina* (1638). Cfr. A. Blair and P. Stallybrass, *Mediating Information 1450-1800*, in Clifford Siskin and William B. Warner (eds.), *This is Enlightenment*, Chicago, Chicago University Press, 1939-1963.

³¹ *Buon Gusto*, I, ch. VIII, p. 138.

³² Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, Filza II, fasc. 11 d, c. 9r: «P. Hieremias Drexelius Aurifodinam scripsit, seu de arte excerpendi lib. Opt./Vinc. Placii A, 1689. Librum emisit de arte excerpendi».

³³ A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, cit., pp. 251-256.

³⁴ *Buon Gusto*, I, ch. VIII, p. 141.

³⁵ *Buon Gusto*, I, ch. VIII, p. 144. On the importance of Pliny's principle for Renaissance compilers, see A. Blair, *Revisiting Renaissance Encyclopedism*, in J. König and G. Woolf (eds.), *Encyclopedism from Antiquity to the Renaissance*, Cambridge, Cambridge University Press, pp. 377-397.

³⁶ *Buon Gusto*, I, ch. VIII, p. 144.

Hence, Muratori's cultural reformation rejected a model based on the accumulation of knowledge and proposed a paradigm in which the careful selection of sources was much more important. Searching for and having access to sources as a clear sign for true learning was a fundamental rule also for writing and publishing. In Muratori's mind, true scholars should choose, collect and put in good order only those rare arguments, questions and things which were difficult to find and useful to know. He felt that preference should be given to information not already contained in other books and that quoting authorities purely to be ostentatious should be avoided.³⁷

Therefore, as we have seen in *Buon Gusto*, Muratori expressed the importance of *arte excerpenti*, elaborating some criteria to be followed when choosing the pieces to be excerpted and copied into the notebooks, especially if these handwritten notes represented the first step in the composition and publication of books. He did not remain, however, just on the theoretical level of programmatic plans. The notetaking practice, widespread and theorised amongst 17th-century scholars, became a fundamental component of his working method. Looking at his notebooks is like opening the door of the reformer's lab. The note-filled pages allow us to see both the books and manuscripts that he consulted and how he carefully chose the passages to be transcribed. These notes served as constant source for his thoughts and ideas, and they were particularly useful when he was sitting at his desk composing and writing his works, even several decades after an entry had been made. In most cases, Muratori felt no need to expressly quote the (often manuscript) sources: a quick reference, to be read between the lines, was sufficient. As we will later see, these notebooks allow us to look behind the scenes of these short summarisations, thus making it possible to read between the lines, also when we look at his legal writings about the law.

3. *Arte excerpenti* in practice: looking at Muratori's Notebooks

Today, Muratori's notebooks are preserved at the Estense University Library in Modena. His personal archive, *Archivio Muratoriano*, is composed of ninety voluminous folders (*filze*), each of them organised into several files (*fascicoli*).³⁸ The state acquired these documents in 1902 from Muratori's last heir, Alessandro. But it was his great-nephew, Pier Paolo, who organised Muratori's papers between 1858 and 1859.³⁹ Preserving both his manuscripts and huge body of correspondence, the archive clearly shows Muratori's interest in carefully keeping all his papers, not just the manuscripts of his major works. The second and third folders of the *Ar-*

³⁷ *Buon Gusto*, I, ch. VIII, pp. 147-148.

³⁸ Archivio Muratoriano is today partially consultable online: http://www.internetculturale.it/it/41/collezioni-digitali/26196/archivio-lodovico-antonio-muratori_-carteggi-e-documenti.

³⁹ Pier Paolo also promoted the preparation of the printed catalogue. *Archivio Muratoriano, preceduto da una lettera inedita di Lodovico Antonio Muratori intorno al metodo de' suoi studi*, per cura di L. V. Modena, Zanichelli, 1872.

chivio (*Filza II* and *Filza III*) contain notes of different kinds. In some cases, we can read, for instance, about personal episodes and experiences, or memories from his life while at the Este court; in other cases, we find anecdotes, poems, sentences or expenses statements connected with the publication of his works. The bulk of his notes, however, are concerned with printed books and manuscripts; here we find general references to bibliographical data and proper excerpts.

If we want to understand how Muratori's notebooks work, we first of all have to ask ourselves where and how did Muratori take his notes. To address these questions, we need to recognise that note taking was related to the practice of circulating and borrowing manuscripts within the Republic of letters. Moreover, it is quite useful to think about the libraries Muratori had access to as a librarian.⁴⁰ As we will later see, the Ambrosiana library in Milan, where he served as a young «dottore» between 1695 and 1700, is particularly important in this regard.⁴¹ After having left Milan in 1700, he later landed in the library of the Duke of Modena, becoming the duke's librarian.

Moreover, it is probably useful to ask ourselves what kind of information did he select and which criteria did he use for organise them in his notebooks. While noting down the only bibliographical information, he usually took note of the author and the title (rarely of the publication year). Instead, when he excerpted from books (or manuscripts), he took care to record the either the page number or at least the chapter from which he took the excerpts. In the case of the manuscripts preserved at the Ambrosiana library, he also added the information about the placement of the manuscript on the bookshelves (the ancient call number). He likely had access to this information by looking directly on the shelves or consulting the ancient manuscript catalogues, which were compiled to provide scholars access to the rich collection since the foundation of the library by Federico Borromeo and its opening to the public.⁴²

The placement of the manuscript on the shelves was also one of the criteria under which Muratori organised his notebooks. In fact, some of the notebooks belonging to the years he spent in Milan show entries organised according to the increasing call number of books and manuscripts on the library bookshelves.⁴³ Of course, this was not the only criterion. While in some cases the logic was probably related to what Muratori was studying at a specific time, in

⁴⁰ On the librarian as a mediator in the Republic of letters see M. Rosa, *Un «médiateur» dans la République des Lettres: le bibliothécaire*, in *Commercium litterarium, 1600-1750. La communication dans la République des Lettres*, publié par H. Bots, F. Waquet/*Forms of communication in the Republic of Letters*, ed. by H. Bots, F. Waquet, Amsterdam & Maarssen, APA-Holland University Press, 1993, pp. 81-99.

⁴¹ On the importance of Muratori's work as a «dottore» for the intellectual life of the library between the 17th and 18th centuries and on the research conducted by the young scholar between 1695 and 1700, see F. Buzzi, *Il Collegio dei Dottori e gli studi dell'Ambrosiana nel Settecento* in *Storia dell'Ambrosiana. Il Settecento*, Milano, Cariplo, 2000, pp. 55-111: 55-70.

⁴² The bibliography on the Ambrosiana library is quite substantial. On the library and its functioning between its foundation by Federico Borromeo and Muratori's time, see at least *Storia dell'Ambrosiana. Il Seicento*, cit.

⁴³ Cfr. Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fasc. 5.

the majority of the cases, the entries are in alphabetical order and the pages are organised by the use of capital letters at the top of the page that served as a heading.⁴⁴

The different formats of the notebooks can probably be explained when considering his practice of notetaking. The bibliographical data is mainly contained in the small notebooks, *in quarto* or *in dodicesimo*, on occasion featuring bindings with rigid covers, which were easier to carry around than the bigger notebooks. Muratori usually used unbound single sheets, folded once and ordered one after another to record the excerpts. These notebooks likely corresponded to different phases of the erudite work; indeed, it is possible to find references to the same work in different notebooks. For instance, it is not uncommon to find in one notebook the excerpts of a book (printed or manuscript) and the corresponding bibliographical information recorded in other notebooks.

Finally, we have to ask ourselves how and when did Muratori use the excerpts he copied from his notebooks. Of course, the practice of reading and excerpting was not a neutral act. In addition to copying passages down on paper, one first of all had to select (and often abbreviate) the passages, which meant directly engaging in dialogue with the text.⁴⁵ This practice eventually came to shape Muratori's thoughts and writings, even several decades after having composed his notes. This held true for all the fields of his scholarly production: from the cultural reformation programme to his work as a biographer; from his literary studies to his activity as the dauphin's preceptor to his political thought. It is thus no surprise that his legal thinking also exhibits this dynamic and that the analysis of his notes enables one to clearly understand something that was only briefly mentioned in the printed books.

Muratori likely started to compile the core part of his notebooks in the last six months he spent at the Ambrosiana in Milan, before returning to Modena. While he certainly excerpted from books, he was primarily focused on manuscripts at that point in time. Indeed, as we can read in his autobiographic letter to Giovanni Artico, Count of Porcia, he spent this time giving «a last look at the manuscripts, and in collecting [...] many and various information concerning authors and history».⁴⁶ While filling these notebooks, likely driven by what can be defined as an early 18th-century «infolust»,⁴⁷ he was driven by the idea of writing a work

⁴⁴ Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fasc. 6; or filza III, fasc. 4.

⁴⁵ This is quite clear if we look at his notes on Locke's *Essay concerning human understanding*. From the text that he read in 1726, in Pierre Coste's French translation, he did not simply copy some selected passages; instead, he directly translated large excerpts into Italian vernacular, adding some critical observations to them which he integrated a few years later in chapters 7 and 23 of his *Filosofia Morale* (1735). Muratori's excerpts on Locke are preserved in Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. II, Fasc. I, g, cc. 1r-14v. Cfr. L. Vischi, *Archivio Muratoriano*, cit., p. 62. They were partially published by A. Vecchi, *La critica del Muratori al Locke*, «Divus Thomas», LIV (1951), pp. 213-222. For Muratori's use of his excerpts in *Filosofia Morale* (1735), see M. Bragagnolo, *Lodovico Antonio Muratori e l'eredità del Cinquecento nell'Europa del XVIII secolo*, Firenze, Olschki, 2017, pp. 83; 87-91.

⁴⁶ «dare una nuova rivista ai manoscritti dell'Ambrosiana e raccoglierne [...] molte e varie notizie di autori e di storia». L. A. Muratori, *Lettera all'illustrissimo signore Giovanni Artico conte di Porcia intorno al metodo seguito ne' suoi studi*, in *Dal Muratori al Cesarotti*, t. 1, *Opere di Lodovico Antonio Muratori*, edited by G. Falco et F. Forti, Verona, Ricciardi, 1964, pp. 6-38, in particular p. 21.

⁴⁷ Cfr. A. Blair, *Too much to know. Managing Scholarly Information before the Modern Age*, cit., p. 6.

entitled «Bibliothecarius», which he never wrote. Nevertheless, he used these notes to compose his many other books, thus reviving outside the walls of the library the ideas that had been judiciously preserved for more than a century on the shelves.

Muratori's particular interest for the manuscripts of the Ambrosiana library was perfectly in line with the «*trascogliere*» principle he posited in *Buon Gusto*. In reality, the manuscripts were the spearhead of the precious collection: from the moment of his arrival in Milan, Muratori considered them treasures to be discovered and published.⁴⁸ By that time the manuscripts had been bound together into volumes and distributed between two rooms. One group was placed, together with the printed books, in what was known as the Reading Room (today's *Sala Federiciana*), where the large-format volumes were arranged on the elegant shelves in the lower part, while the smaller ones, *in quarto*, were located in the upper gallery. Part of the collection was then kept in the Manuscripts Room, where, starting in the 1670s, all the codices in the library began to be transferred.

While excerpting and taking notes from the manuscripts of the Ambrosiana, it is worth mentioning that Muratori also registered the shelf mark in his notebooks. Well, crossing referencing this information with the ancient catalogues of the library, these notes allow us today to «locate» Muratori at work in these rooms.⁴⁹ And speaking of location, it was precisely in the Manuscript Room that he found a handwritten legal treatise that caught his attention. The young Muratori had recently finished his legal studies in Modena, and even at this age, his early works clearly demonstrated a special interest in reforming legal studies.⁵⁰ Thus, it should come as no surprise that this manuscript dated back to the 16th century.

⁴⁸ M. Panizza, *La crescita della Biblioteca dopo la morte del cardinale Federico*, in *Storia dell'Ambrosiana. Il Seicento*, cit., pp. 219-252: 251. On Muratori's tireless activity of finding and publishing important Ambrosiana manuscripts, namely the *Anecdota Latina* and *Graeca*, both during and after his five-year stay in Milan, see F. Buzzi, *Il Collegio dei Dottori e gli studi dell'Ambrosiana nel Settecento*, cit. pp. 61-70.

⁴⁹ The ancient catalogues of the Ambrosiana library (BAMi, Z 34 inf, Z 35 inf, Z 36 inf, Z 54 inf, Z 61 inf e Z 62 inf) permit us even today to imagine the physical location of the manuscripts in the library at the time when all the manuscripts were preserved in the Reading Room (Sala di Lettura). Other catalogues (BAMi, I 131-134) list the manuscripts that were then moved to the Manuscript Room at the end of the 17th century. Cfr. Cesare Pasini, *Antichi cataloghi manoscritti dei codici della Biblioteca Ambrosiana*, «Aevum», 69 (1995), pp. 665-695. On the ancient library catalogues compiled to make the collection usable to early modern scholars, see as well Angelo Paredi, Massimo Rodella, *Le raccolte manoscritte e i primi fondi librari*, in *Storia dell'Ambrosiana. Il Seicento*, Milano, Cariplo, 1992, pp. 45-88; M. Rodella, *Fondazione e organizzazione della Biblioteca*, in *Storia dell'Ambrosiana. Il Seicento*, cit., pp. 121-147.

⁵⁰ On Muratori's legal training, see B. Donati, *La laurea in leggi di L. A. Muratori*, Modena, Università degli Studi, 1925. Archivio Muratoriano preserves Muratori's notes on Justinian's *Institutions* (Modena, Biblioteca Universitaria Estense, Archivio Muratoriano, f. I, fasc. 11, cc. 1r-155v), on which, see M. Bragagnolo, *Lodovico Antonio Muratori e l'eredità del Cinquecento nell'Europa del XVIII secolo*, cit., pp. 1-4.

4. In the Reformer's Lab: Material Circulation of Thinking on Law

Before moving to the handwritten legal treatise, a few words should be said about Muratori's particular interest and use of 16th-century manuscript sources. Recovering the cultural excellence of the Italian Renaissance, from which «the other provinces of Europe drew the true taste of science», was indeed one of the important calls that he made on the Italian scholarly community, from his early works on.⁵¹ On several occasions throughout his life, he expressed his preference for authors and texts of the Italian Renaissance, especially for those Italian authors who had been silenced by the counter-reformation zeal but eventually went on to impact European culture between the 17th and 18th centuries, attracting the attention of the leading figures of the «Republique of letters», such as Gabriel Naudé and Pierre Bayle.⁵² Alongside the celebrated scholars connected to the intellectual (and often heterodox) tradition of the city of Modena, Muratori's attention was also drawn to several Catholic authors who had preferred not to publish their writings. Hence, his desired cultural reform advocated the conscious recovery of a, so to speak, underground Counter-Reformation, the results of which would emerge intermittently in the early part of the 18th century. As we can imagine, Muratori devoted a great deal of attention to the handwritten and lesser-known traces left by these authors, which he carefully transcribed in his notebooks.

On the one hand, publishing was the first way to give new voice to the authors silenced in the 16th century; on the other, these authors, texts and ideas were one of the main targets of Muratori's notetaking practices, which, as was previously mentioned, largely nurtured his works.⁵³ For instance, the excerpts he took in 1703 from a manuscript of the unfinished *Lives of the celebrated citizens of Modena*, (*Vite de' modenesi illustri*) composed by the jurist Francesco

⁵¹ L. Pritanio [L. A. Muratori], *Primi disegni della Repubblica letteraria d'Italia*, in *Buon Gusto*, II [non numbered pages]: «Allora fu, che dalla nostra Italia di nuovo succiarono l'altre province d'Europa il vero sapor delle scienze». On Muratori's «first drawings» of his cultural reformation program, that circulated in 1704, see A. Vecchi, *La nuova accademia letteraria d'Italia*, in *Accademie e cultura. Aspetti storici tra Sei e Settecento*, Firenze, Olschki, 1979, pp. 38-70.

⁵² On Gabriel Naudé and his interest in Renaissance encyclopedism, philosophy, heretics and manuscript culture, see at least L. Bianchi, *Rinascimento e libertinismo. Studi su Gabriel Naudé*, Napoli, Bibliopolis, 1996; G. Canziani, *Les Philosophes de la Renaissance italienne dans le Dictionnaire historique et critique de Pierre Bayle*, in *Critique, savoir et érudition à la veille des Lumières. Le «Dictionnaire historique et critique» de Pierre Bayle (1647-1706)*, H. Bost (ed.), Amsterdam et Maarssen, APA-Holland University Press, 1998, pp. 143-164; 243; G. Marcocci, *Pierre Bayle e la storiografia confessionale. Gli eretici italiani del Cinquecento nel Dictionnaire Historique et Critique*, in *L'Europa religiosa in Pierre Bayle*, a cura di M. Rosa, «Rivista di Storia e Letteratura Religiosa», XLIII, 2007, pp. 599-624.

⁵³ Muratori planned and promoted several editorial enterprises, all of which involved the editions of 16th-century sources, such as Sigonio's *Opera Omnia* (1732-1737); Castelvetro's *Opere varie Critiche* (1727). Other projects, like the one related to the edition of Onofrio Panvinio's works, were never realised. Muratori's great engagement in publishing the treasures of the past, which also covered the Middle Ages, is clearly visible in his participation in the edition of 25 volumes of *Rerum Italicarum Scriptores*, Mediolani, ex typographia Societatis Palatinae, 1723-1751.

Forciroli between 1586 and 1622,⁵⁴ were particularly important in his work as a biographer of both Lodovico Castelvetro (which appeared in 1727) and Carlo Sigonio (1732). These biographies allowed him to present a different image of 16th-century Italy – one that pulled no punches when it came to inquisitorial repression and was attentive to the deformation excesses that characterised confessional historiography.⁵⁵ Likewise, he primarily made use of the excerpts taken prior to 1700 in Milan from *Avvertimenti Morali* (moral maxims and reflections) by Cesare Speciano in the chapter of his *Filosofia Morale* (1735) dedicated to the political virtue of prudence.⁵⁶ The handwritten copy of the *Avvertimenti* that he used belonged to Giberto Borromeo's own collection. And it was with the cardinal's permission that he selected a few moral maxims, and transcribed them with several abbreviations.⁵⁷ Meeting a specific request by the cardinal, he kept them for his own use, for a long time. It was only at the very last moment, when *Filosofia Morale* was already in press, that he decided to add his «selection» (*scelta*) as an appendix. He was apparently in such a rush that he sent the editor the original abbreviated excerpts taken down in Milan, without having the time to make a copy for himself.⁵⁸ This is most likely the reason why I was unable to find these excerpts in Muratori's notebooks and amongst his papers.

The fact that Muratori's notebooks reveal the importance of this Italian Renaissance manuscript culture also in the elaboration of his legal thinking comes as no surprise. What is worth noting, however, is the relevance of this culture in the elaboration of ideas traditionally considered to be his most advanced legal thought. Drawing on manuscripts that were particularly daring for the period in which they were written, Muratori developed, in particular, his criticism of law in his treatise *On the defects of law* (*Dei difetti della giurisprudenza*) (1742), which aroused strong reactions within the 18th-century legal community. Somewhat

⁵⁴ Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fascicoli 12 c), 12a). Cfr. F. Forciroli, *Vite dei modenesi illustri*, S. Cavicchioli (ed.), G. Mancini (trans.), Modena, Aedes Muratoriana, 2007.

⁵⁵ Muratori's excerpts of Forciroli's own transcription from different sources related to Castelvetro's and Sigonio's lives are respectively in Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fascicoli 12 c), cc. 1r-8r; 10v; 11v-13v. On Muratori's use of Forciroli's manuscript in the biography of Lodovico Castelvetro and Carlo Sigonio, see M. Bragagnolo, *Lodovico Antonio Muratori e l'eredità del Cinquecento nell'Europa del XVIII secolo*, cit., pp. 49-78. See also M. Bragagnolo, *Il serbatoio della critica. Muratori e i manoscritti del Cinquecento tra storia, politica e religione*, in *Lodovico Antonio Muratori: religione e politica nel Settecento*, cit., pp. 71-82.

⁵⁶ On Speciano, see Massimo Carlo Giannini, *Speciano, Cesare*, in *Dizionario Biografico degli Italiani*, Roma, Istituto dell'Enciclopedia Italiana, n. 93, 2018. Cfr. C. Speciano, *Propositioni christiane et civili subalterne a Dio con le quali s'intende et pratica le cose politiche senza offendere la propria coscienza*, in Paolo Carta, *Ricordi Politici*, Trento, Dipartimento di Scienze giuridiche, Quaderni del dipartimento, 2003, pp. 99-362 (Vicenza, Ronzani, 2018). On Muratori's use of Speciano's *Avvertimenti* in his *Filosofia Morale* (1735), see M. Bragagnolo, *Lodovico Antonio Muratori e l'eredità del Cinquecento nell'Europa del XVIII secolo*, Firenze, Olschki, 2017, pp. 99-113.

⁵⁷ L. A. Muratori, *Al lettore*, in *Scelta d'alcuni Avvertimenti morali sinora inediti di monsignor Cesare Speciano già vescovo di Cremona*, in *Morale*, pp. I-XXX.

⁵⁸ L. A. Muratori to G. F. Muselli in Verona, Modena, March 14th, 1735, in P. G. Nonis, *Introduzione*, in L. A. Muratori, *La filosofia morale ed altri scritti etici inediti ed editi*, ed. by P. G. Nonis, Roma, Edizioni Paoline, 1964, pp. 182-183.

surprised, lawyers like Francesco Rapolla fought the «critical and sceptical» element they found in Muratori's work. This criticism was considered an expression of the desire to detach what was in their eyes a «sacred zone» of legal tradition from the past.⁵⁹ And precisely for this reason, Muratori was long considered a «forerunner» when it came to ideas inextricably connected with the Italian Legal Enlightenment.⁶⁰

The legal thinking present in Muratori's *Dei difetti della giurisprudenza* was largely inspired by the handwritten treatise preserved in the Manuscript Room at the Ambrosiana entitled *Contra la sofistica disciplina de' giureconsulti*. The author, Giovanni Ingegneri, was a Venetian jurist and Bishop of Capodistria from 1576 until his death in 1600. The text was never printed and probably only had a limited manuscript circulation.

The Ambrosiana still possesses the copy used by Muratori, which he considered to be the manuscript plan of the treatise.⁶¹ This particular copy only contained a detailed table of contents and the first seven chapters of a vast three-book work. This was the extent of what the Bishop of Capodistria completed within his lifetime, and Angelo Ingegneri, his nephew, tried everything he could to publish it upon his uncle's death, yet without success.⁶² The manuscript used by Muratori came from the collection of the famous bibliophile Gian Vincenzo Pinelli, who was originally from Naples but later settled in Padua.⁶³ Giovanni Ingegneri, who studied law in Padua and took an active part in academic life there between 1570 and 1572, probably belonged to Pinelli's intellectual circle.⁶⁴

At the beginning of the 18th century, especially within Muratori's scholarly network, Ingegneri was by no means an unknown figure: we find him mentioned in some handwritten notes about Venetian families written by Apostolo Zeno,⁶⁵ and Giusto Fontanini recalls

⁵⁹ On the debate that Muratori's treatise generated amongst contemporary jurists, see F. Venturi, *Settecento riformatore I. Da Muratori a Beccaria*, Torino, Einaudi, 1969, pp. 168-177: 171; I. Birocchi, *Alla ricerca dell'ordine*, Torino, Giappichelli, 2002, pp. 368-375.

⁶⁰ Cfr. C. Pecorella, *Studi sul Settecento giuridico*, I, L. A. Muratori e i difetti della giurisprudenza, Milano, Giuffrè, 1964, pp. 23, 28, 118. This definition has been discussed by I. Birocchi, *Alla ricerca dell'ordine*, cit., p. 359.

⁶¹ Milano, Biblioteca Ambrosiana, S 86 sup. Cfr. A. Rivolta, *Catalogo dei codici pinelliani dell'Ambrosiana*, Milano, Tipografia pontificia arcivescovile S. Giuseppe, 1933, p. 160; P. O. Kristeller, *Iter Italicum*, I, London, The Warburg Institute, 1977, p. 313.

⁶² Angelo's letters, addressed primarily to the Duke of Urbino's secretary, show that from 1600 to 1608 he repeatedly tried to obtain financial support for the publication of his uncle's treatise – without success. He also sent some excerpts from the texts to the duke in order for him to understand the importance of the work. Cfr. G. Baldassarri, *Angelo Ingegneri. Itinerario di un uomo di lettere*, Vicenza, Accademia Olimpica, 2013, Appendice I, n. 50, pp. 127-128; n. 55, pp. 133-134; n. 60, pp. 145-146; n. 63, pp. 150-152; 64, p. 153; n. 66, pp. 155-156; 67, pp. 156-157; 69, pp. 160-162; n. 75, pp. 164-165.

⁶³ On Pinelli and his library, see at least A. M. Rauegi, *Gian Vincenzo Pinelli e la sua biblioteca*, Genève, Droz, 2018.

⁶⁴ For some first notes on Giovanni Ingegneri's biography, see M. Bragagnolo, *Tra diritto e fisiognomica. Prime ricerche per la biografia di Giovanni Ingegneri (†1600)*, «Quaderni per la storia dell'Università di Padova», 49 (2016), pp. 163-178.

⁶⁵ Venezia, Biblioteca Nazionale Marciana, IT. VII 351 (8385), c. 60v: «*Appunti genealogici e biografici di alcune famiglie venete*».

Giovanni's role in the publication of the Tasso's *Gerusalemme Liberata*, alongside Angelo.⁶⁶ A «Giurisconsultus celebris», Ingegneri was known at the time as the author of a treatise on physiognomy, printed posthumously and anonymously by Angelo in 1606.⁶⁷

Traces of Ingegneri's manuscript are present in three different notebooks. In two cases, Muratori recorded only the bibliographical data, including of course the shelf mark. In a small, portable handbook, containing a «copious index of works and manuscripts of the Ambrosiana», a line is dedicated to «Liber contra sophisticam Dialecticam iurisperitorum, Joannis Ingenierii episcopo di Capo d'Istria. F. 387».⁶⁸ A similar note is also found in a larger notebook made up of individual sheets.⁶⁹ In both cases, Muratori added a note indicating that the book had to be seen in its entirety («liber omnino videndus»). This remark – the need to see the entire text – does not make it clear whether Muratori was referring to the fact that the copy preserved at the Ambrosiana was incomplete, or whether this note, likely written while checking a catalogue or a list at the library, was a reminder of sorts to see the actual text.

Nonetheless, we can say for sure that, at a certain point, Muratori saw the copy preserved in this room. In fact, as a third notebook reveals, he also transcribed ample excerpts from the work. This notebook contains mainly geographical entries organised alphabetically. The excerpts are located under the letter C, which very likely stood for Capodistria, the Ingegneri's bishoprics.⁷⁰

When Muratori discovered the treatise amongst the other treasures of the Ambrosiana, he immediately grasped its interest but also its great originality. But what did Muratori excerpt from the manuscript and how did he go about doing it? If we look at Muratori's excerpts, we can easily see that they are written in very thick handwriting, which is distinguishable from that of the other entries. Where one excerpt ends and the next begins is easily identifiable, thanks to the special graphic signs that Muratori always positioned in the very place

⁶⁶ *L'Aminta di Torquato Tasso. Difeso e illustrato da Giusto Fontanini*, in Roma, nella Stamperia del Zenobi e del Placho, 1700, p. 201.

⁶⁷ F. Ughelli, *Italia sacra, sive de episcopis Italiae et insularum adiacentium*, Tomus Quintus, Romae, Sumptibus Blasii Deuersin & Zenobij Masotti, Typis Vitalis Mascardi, 1653, t. V., p. 363. Cfr. [G. Ingegneri], *Fisionomia Naturale*, Napoli, Carlino, 1606. Cfr. M. Bragagnolo, *Fisionomica, astrologia e medicina al tempo di Della Porta. La Fisionomia Naturale di Giovanni Ingegneri (1606)*, «Bruniana & Campanelliana», n° 22/1 (2016), pp. 97-104.

⁶⁸ Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fasc. 3, c. 12v. The manuscript has been described by L. Vischi, *Archivio muratoriano*, cit., p. 64.

⁶⁹ Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. II, fasc. 12 (b), c. 1r. Cfr. L. Vischi, *Archivio muratoriano*, cit., p. 6: «Joannis Ingenierii episcopi Justinopolitani (Capo d'Istria) celebris Jurisconsulti contra sophisticam Jurisperitorum dialecticam, [...] F. 387 in B. Mss».

⁷⁰ Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, f. III, fasc. 6, cc. 7v-9v. Cfr. L. Vischi, *Archivio muratoriano*, cit., p. 66. Cfr. M. Bragagnolo, *Tra le carte di Muratori. Gli estratti del trattato Contra la sofistica disciplina de' giureconsulti di Giovanni Ingegneri († 1600) e il dibattito sui «difetti della giurisprudenza»*, «Muratoriana», 2014, pp. 57-70, which includes the integral transcription of Muratori's excerpts. See also M. Bragagnolo, *Lodovico Antonio Muratori e l'eredità del Cinquecento nell'Europa del XVIII secolo*, cit. pp. 121-150.

in which he stopped excerpting from one section of the text and proceeded to the next one. This was his usual way of excerpting. By comparing Muratori's transcription with the copy in the Ambrosiana collection, we see that Muratori made very precise interventions to the text by via some changes. These modifications allow us to appreciate the attention he paid while reading and transcribing the text as well as selecting and highlighting the parts he considered most interesting.

As I mentioned before, the Ambrosiana codex featured a detailed index of the three books, followed both by an introduction and the first seven chapters of the first book. In a first step, Muratori selected only a few parts of the introduction and the chapters contained in their entirety in the manuscript, inserting them directly in the index. He also omitted the chapter numbers and the three-book structure, thus transforming the index into a sort of reasoned list of topics. Moreover, although most of the chapter titles are reported in their entirety, he either partially or completely omitted the transcription of some of them. In some cases, he probably intended to avoid repetitions (by eliminating some words) and to summarise or merge several titles into one, in an attempt to improve the readability. In other cases, he chose to omit entire titles, perhaps because they were considered excessively radical or because they were outside his sphere of interests.

Even though in general the selection was an essential part of the excerpting process, in this case, the exclusion of parts of the text should come as no surprise at all. It would probably have been difficult, even for him, to transcribe the manuscripts preserved at the Ambrosiana in their entirety. Bitterly disappointed, he recalled in a letter to Apostolo Zeno that the manuscripts were weighed down by the «precise order» of the founder, Federico Borromeo, and «that no manuscript should be copied, except for a few fragments»: a «copied book», they said, «[was] no longer in the library».⁷¹

If Muratori discovered and took notes of Ingegneri's treatise around 1700, the first printed use of his notes appeared in the second part of the *Buon Gusto* (1715), where he further developed the reformation plan exposed in the first part of the work. Here, in the sections dedicated to the reformation of legal knowledge, Ingegneri's thoughts, which he wrote in Venice in the latter part of the 16th century, are presented as leading ideas for resolving the critical situation of legal studies on the Italian peninsula at the beginning of the 18th century. In this way, Ingegneri's text, written more than one hundred years earlier, entered the contemporary debate, thereby triggering animated reactions by legal scholars.⁷²

Both in the *Buon Gusto* and in his correspondence, Muratori underlines the need to follow the path laid out by the Bishop of Capodistria to remedy the defects of the law. He aimed

⁷¹ Muratori to Apostolo Zeno, Milano, 20 May 1699, in L. A. Muratori, *Carteggi con Zacagni ... Zurlini*, Edizione Nazionale del Carteggio di L. A. Muratori, ed. by A. Burlini Calapaj, Firenze, Olschki, 1975, pp. 213-214: «che non si lasci copiar verun manoscritto, se non qualche frammento».

⁷² *Buon Gusto*, II, p. 153. See also the correspondence between Muratori and Agostino Pantò in 1722, namely Pantò's letter of April 28th, 1722 (C. Pecorella, *Studi sul settecento giuridico, L. A. Muratori e i difetti della giurisprudenza*, Milano, Giuffrè, 1964, pp. 187-189) and Muratori's reply of 10 July 1722 (Muratori, *Epistolario*, Modena, Società Tipografica Modenese, 1903, t. 6, n° 2104, pp. 2272-2274).

to reintegrate law into the scholarly disciplines, and in this respect, he largely praised the method proposed by the Venetian jurist. This method consisted above all in identifying and classifying all the defects of the law, both in the compilation of law (Justinian's *Corpus Juris*) and in its use. It's clear that Muratori considered the bishop's ideas perfectly suited or even written for his own times («spezialmente a' tempi nostri»). Nevertheless, he also stressed the severity («eccessivo rigore») of Ingegneri's criticisms to law.⁷³

A close inspection of the manuscript and Muratori's excerpts suffices to recognise the extreme level of criticism Ingegneri lodges against ancient Roman law, not to mention his contempt for the modern jurist's practice of interpreting Justinian's *Corpus Juris*, which he refers to as a «sophistic discipline» («disciplina sofistica»). The evident intensity of the anti-Romanism and anti-Tribonianism that we find Ingegneri's pages was nothing new at that time, and it reveals an attentive reading of Gallican and Calvinist jurists (namely François Hotman), whose ideas, thanks to the book market, were largely developed in Venice.⁷⁴ What is actually quite surprising (and which Muratori likely found surprising as well) is the radical solution that a bishop on the Italian peninsula proposed following this criticism. Indeed, Ingegneri's proposal was based on the need to completely eliminate the jurists' practice of interpretation and commentary of the *Corpus Juris* around which, at the time both Ingegneri and Muratori

were writing, the entire system of common law was built. In the bishop's eyes, only two things were needed to rule a state: the general law, which had to be simple and clearly understandable by simple people, and the magistrate's prudence. The latter had to appeal to his «arbitrium» in order to apply the general law to the specificity of the particular case.⁷⁵ The revolutionary nature of Ingegneri's proposal can be probably better understood if we situate it within the Venetian legal and institutional tradition, which shared many points in common with the French jurists' thought. Venice had chosen to reject the method linked to the *ius commune* system, which was based on the interpretation of Roman law, thus forbidding jurists any creative role.⁷⁶

Despite the ferocity of his criticism, we can clearly see that Ingegneri's method, which consisted in identifying and classifying all the defects of the law, closely adhered to Muratori's own ideal of good taste. Quite naturally, this method became the leitmotif of a treatise

⁷³ *Buon Gusto*, II, p. 153. See also the correspondence between Muratori and Agostino Pantò in 1722, namely Pantò's letter of 28 April 1722 (C. Pecorella, *Studi sul settecento giuridico*, cit., pp. 187-189) and Muratori's reply of 10 July 1722 (Muratori, *Epistolario*, Modena, Società Tipografica Modenese, 1903, t. 6, n° 2104, pp. 2272-2274).

⁷⁴ On Anti-bartolism and Anti-tribonianism in the legal thinking of Calvinist jurists, and on the religious and political implication of their thinking on law, see at least D. Maffei, *Gli inizi dell'umanesimo giuridico*, Milano, Giuffrè, 1972; D. Kelley, *François Hotman. A Revolutionary's Ordeal*, Princeton, Princeton University Press, 1973; V. Piano Mortari, *Cinquecento giuridico francese. Lineamenti generali*, Napoli, Liguori, 1990; P.-A. Mellet, *Une sophisterie de chaffoureur: histoire des institutions et enseignement du droit chez Hotman*, in S. Georget (ed.), *Bourges à la Renaissance. Hommes de lettres, hommes de lois*, actes du colloque de Bourges (juin 2009), Paris, Klincksieck, 2011, p. 225-241.

⁷⁵ Milano, Biblioteca Ambrosiana, S. 86 sup., c. 14v.

⁷⁶ On Venetian legal tradition, see G. Cozzi, *Repubblica di Venezia e stati italiani. Politica e giustizia dal secolo XVI al secolo XVIII*, Torino, Einaudi, 1982, p. 220.

published more than four decades later, *Dei difetti della giurisprudenza* (1742), which focused precisely on the defects of jurisprudence. Here, Muratori softened the more radical aspects of Ingegneri's work, adopting a moderate attitude towards the interpretative tradition that characterised many Italian humanist jurists.⁷⁷ While legal interpretation was still necessary, he acknowledged that its shortcomings needed to be remedied. Nevertheless, some of the most advanced elements of his famous work, which heavily influenced the next generation of Italian reformers, can be directly linked to a reading of Ingegneri's text. Indeed, it is easy to recognise in Muratori's pages some of the same condemnations formulated by the Bishop of Capodistria: the ferocious criticism of both ancient Roman law and above all Ulpian's definition of jurisprudence (which opens the treatise), the observation of the reduction of jurisprudence to the jurists' «opinion», and an awareness for the danger jurists who had become legislators posed for the authority of the prince.⁷⁸

5. Concluding remarks

This moment, however, almost certainly did not mark the end of this story. It is well known that Muratori's ideas, drawn largely from a reworking of Ingegneri's treatise, were carefully examined by the Italian reformers in the second half of the century, particularly within the Accademia dei Pugni in Milan.⁷⁹ At the heart of the legal reflection developed by the members of this academy, based on the new requirement to completely re-establish the legal system on rational laws, was the criticism against Justinian's laws and the «old jurisprudence», as well as the problem of legal interpretation. It is known that Pietro Verri, while expressing a repulsion for legal interpretation, nevertheless attributed to the judge the function of the executor of the letter of the law.⁸⁰ The criticisms of Justinian's compilation and the strong claim regarding the central role of the law in the legal reform programme were also taken up by Pietro's younger brother, Alessandro. Even more well-known is Cesare Beccaria's strong condemnation of Justinian's *Corpus* and its interpretative tradition. His *On Crime and Punish-*

⁷⁷ Cfr. I. Birocchi, *Mos gallicus e mos italicus*, in *Enciclopedia Italiana di Scienze, Lettere ed Arti. Il contributo italiano alla storia del pensiero*, Ottava appendice, *Diritto*, P. Cappellini, P. Costa, M. Fioravanti and B. Sordi (eds.), Roma, Istituto dell'Enciclopedia Italiana, 2012, pp. 94-101.

⁷⁸ L. A. Muratori, *Dei difetti della giurisprudenza*, Venezia, Pasquali, 1742, pp. 1, 15, 45, 23, 52; Cfr. Modena, Biblioteca Estense Universitaria, Archivio Muratoriano, filza III, fasc. 6, cc. 7v-9v.

⁷⁹ On the political thinking of the Italian Enlightenment, especially on the Lombard enlightenment, see at least G. Francioni, *Gli illuministi e lo stato. I modelli politici fra utopia e riforma*, Pavia, Ibis, 2012, pp. 153-162.

⁸⁰ This is particularly clear in the *Orazione panegirica sulla giurisprudenza milanese* (1763) and in the article *Sulla interpretazione delle leggi*, published in the journal *Il Caffè* (1764-1766) by Pietro Verri. See *Il Caffè. 1764-1766*, ed. by G. Francioni et S. Romagnoli, Torino, Bollati Boringhieri, 1993.

ment (Dei delitti e delle pene) (1764) goes so far as to define this as the «residue of the most barbarous centuries».⁸¹

Is it possible that this savage criticism of the legal tradition was directly inspired by a reading of Ingegneri's treatise? It is difficult to say, but not impossible. It is entirely possible that the treatise was known within certain circles, especially the one Verris moved within; after all, the manuscript was then – just as it is now – preserved at the Ambrosiana Library in Milan.⁸² However, if we want to think about the impact of Ingengeri's thoughts on the Italian Enlightenment, a more indirect reading, somehow filtered through Muratori's *Dei difetti della giurisprudenza*, is much more likely.

Nevertheless, by analysing Muratori's working method, namely his notetaking practice, I hope to have shown the importance of Italian Renaissance manuscript culture in the formation of Muratori's legal thinking. In particular, I hope to have shown, following the material written traces of a specific case study, how legal ideas crossed temporal boundaries, and thus shed new light on their contribution to the formation of 18th-century legal thought. Therefore, this material circulation of legal ideas, which can be discerned by examining Muratori's notebooks, suggests the need to continue thinking about the roots of the Italian Enlightenment and using new questions to enrich the topic of the relationship of the Enlightenment with the past.

⁸¹ C. Beccaria, *Dei delitti e delle pene*, ed. by F. Venturi, Torino, Einaudi, 1994, p. 3 (*A chi legge*).

⁸² At present, attention has only been paid to the traces left by the protagonists of the Italian Enlightenment amongst the manuscript collection of the Ambrosiana rather than to the possible interest of the Italian reformers for the material preserved at the Ambrosiana. Cfr. C. Capra, *Il Gruppo del Caffè nelle carte dell'Ambrosiana*, in *Tra i fondi dell'Ambrosiana. Manoscritti italiani antichi e moderni* (Milano, 15-18 maggio 2007), M. Ballarini, G. Barbarisi, C. Berra, G. Frasso (eds.), t. II, Milano, Cisalpino, 2008, pp. 717-727.