

AN 'OLD' US AND A 'NEW' THEM. *INTRODUZIONE ENCICLOPEDICA
ALLO STUDIO DEL DIRITTO* BY G. D. ROMAGNOSI

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Abstract: Gian Domenico Romagnosi's contribution to the restructuring of legal studies in Italy - a reform unfurled through plans and bills, namely the *Piano di istruzione legale* and *Progetto di Regolamento degli Studi Legali* and, from a legislative point of view, through the formation of the *Regolamento per gli studi Pratici Legali* as well as the creation of three Postgraduate Schools - culminating in the drafting of an unpublished textbook entitled *Introduzione enciclopedica allo studio del diritto*. his work still strove to collect and explain knowledge: as such, it was a sort of manifestation of the goals he had alluded to ten years earlier in *Studio preparatorio alla Facoltà Politico Legale*. His *Introduzione* was meant to be just that: 'introductory tool' that could embrace the whole of legal knowledge, so that the elderly Professor could take stock of his educational ambitions and disseminate the epistemological views that he identified with in the new institutional climate. Romagnosi came to this subject matter late in life, having left behind the various forms of individualistic radicalism that had typified the revolutionary era and his *encyclopedia* seems to be an appropriate way to summarize his life's work.

Keywords: Romagnosi, *Introduzione enciclopedica allo studio del diritto*, Legal Education Plan, Schools of law, Faculty of law, Universities

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1. *New courses and new goals for legal studies.*

Years ago, as part of the various initiatives organized by the Commission for the History of the Legal Profession, I examined Gian Domenico Romagnosi's contribution to the restructuring of legal studies in Italy¹. This reform unfurled through plans and bills, namely the *Piano di istruzione legale* (Legal Education Plan) and *Progetto di Regolamento degli Studi Legali* (Project for the Regulation of Legal Studies). From a legislative point of view, these efforts would lead to the formation of the *Regolamento per gli studi Pratici Legali* (Regulations for Practical Legal Studies), as well as the creation of three Postgraduate Schools².

In order to complete this analysis of Romagnosi's teachings, I think that it would be interesting to cover some new ground and delve into his unpublished textbook entitled *Introduzione enciclopedica allo studio del diritto* (*Encyclopedic Introduction to the Study of Law*)³. One of his later

¹ See S. Parini Vincenti, *Ad auxilium vocatus, Studi sul «praticantato» da Napoleone alla Legge professionale del 1874: l'esperienza normativa*, and *Studi sul «praticantato» in età moderna. Romagnosi e la Scuola di eloquenza pratica legale (1808-1817)*, both in *Avvocati e avvocatura nell'Italia dell'Ottocento*, Bologna 2009, pp. 29-125 and pp. 127-199, particularly ntt. 24, 34, 39 (*Appendice documentaria*).

² This was an intense commitment on the part of Romagnosi. Having already been a professor at Parma and Pavia, he wanted to create a curriculum for aspiring law practitioners of law: his efforts to do so began with *Progetto di Regolamento degli studi politico-legali*, (in 198 artt.), written in 1807 but published with the incorrect date of 1803, together with *Principi fondamentali di diritto amministrativo, aggiuntovi il Saggio filosofico sull'istruzione pubblica legale*, which was never implemented by the government (*Opere di G. D. Romagnosi*, Milano, 1846, A. de Giorgi (ed.), VII, II, pp. 1189-1229 (hereafter referred to as EDG); and continued with *Rapporto sul regolamento per gli studi pratici legali*, which was based on two decrees, one issued on 15 November 1808 entitled *Decreto riguardante il piano di istruzione generale* (the original can be found in the State Archives of Milan (Archivio di Stato di Milano, hereafter referred to as ASMi), Collection *Studi*, m.p., folder 684) and the other on 15 April 1809 entitled simply *Decreto ministeriale*. These decrees established the three Special Postgraduate Schools of *Alta Legislazione Civile e Criminale nei rapporti con l'amministrazione pubblica* (High Civil and Criminal Legislation as related to Public Administration, which was headed by Romagnosi), *Diritto Pubblico e Commerciale* (Public and Commercial Law, headed by Professor Franco Salfi), and *Eloquenza Pratica Legale* (Practical Legal Oratory, headed by Angelo Anelli).

³ Fabio Luzzatto offered what he described in his own words as 'the very first overview' of the unpublished textbook (*Introduzione enciclopedica allo studio del diritto nel di G. D.*

works, it was written after Romagnosi had been able to avoid trial for *high treason* and was left with no choice but to resort to teaching in private – a situation that would not last for long, however⁴.

Romagnosi's textbook took shape under circumstances that were much different than those surrounding his *Saggio filosofico sull'istruzione pubblica legale* (Philosophical Treatise on Public Legal Education)⁵. Indeed, it was after 1817, and the experience of instituting postgraduate schools had since been abandoned (having already been first discouraged and then definitively shelved by the Austrians)⁶.

Romagnosi, in «*Rivista di diritto privato*», 5 (1935), nn. 3-4, pp. 189-216 and Id., *Intorno ad un'opera inedita di Romagnosi* in «*Rivista internazionale di filosofia politica e sociale 'Il Romagnosi'*», 1 (1935), pp. 433-436). In a short piece, Luzzatto highlighted the «overwhelming endurance of [Romagnosi's] principles and his unwillingness to give in or concede when it came to truths, no matter how unfavorable or difficult they may have been to the regime». Indeed, Luzzatto pointed out that while Romagnosi's textbook may have only been a marginal part of his career – seeing as how the maestro was already widely acclaimed for many other, better-known works – it was nonetheless worth studying, as it attested to the moral strength and coherence of his ideological path at a crucial moment in his life.

⁴ It is a well-known fact that Austrian police officers arrested Romagnosi on 26 May 1821 while he was giving Carlo Cattaneo a lesson. The charge brought against him was *misprision of treason*. It was only the beginning of an ordeal that would see him spend six terrible months in prison on the island of San Michele before he was eventually acquitted and released. Despite the acquittal, he was definitively banned from both public and private teaching, as he was considered an «individual who professes principles that are contrary to the education of youth» (F. Luzzatto, *Gian Domenico Romagnosi. Il processo del 1821*, extract from «*Scuola Positiva. Rivista di diritto e procedura penale*», n. s., 15 (1935), 7-8).

⁵ We are far removed from the 'eloquent jurists' that were Romagnosi in his *aureo Saggio* and the much-lauded Girolamo Poggi (F. Colao, *Avvocati del Risorgimento nella Toscana della Restaurazione*, Bologna 2006, p.79, but even before in L. Mannori, *Uno Stato per Romagnosi*, II, *La scoperta del Diritto Amministrativo*, Milano 1987, p.18, nt. 29).

⁶ Romagnosi meticulously reported to the general director of Public Education, Giuseppe Scopoli, on the status of the *Scuole Speciali* (Special Schools) and on the work carried out by the professors there, as shown in their frequent correspondence between November of 1814 and December of 1816. For this reason, we know that the lessons had already been moved to Brera by the end of 1814, due to Romagnosi's own failing health (file 13340/5450 *Del professore Romagnosi per la traslocazione in Brera del locale delle Scuole Speciali*: Romagnosi to Scopoli, 15 December 1814); that the

Nonetheless, his work still strove to collect and explain knowledge: as such, it was a sort of manifestation of the goals he had alluded to ten years earlier in *Studio preparatorio alla Facoltà Politico Legale* (Preliminary Study for the Faculty of Law and Political Science), a text that he held as a fundamental part of his plan to restructure Italian legal studies⁷. His *Introduzione* was meant to be just that: an ‘introductory tool’ that could illustrate “the intellectual laws and natural principles of the just”; that could embrace the whole of legal knowledge, so that the elderly Professor could take stock of his educational ambitions and disseminate the epistemological views that he identified with in the new institutional climate ushered in by the Concert of Europe⁸.

It is common knowledge that in the aftermath of the Congress of Vienna, the education of state bureaucrats became a priority in the science of government: officials were to be properly educated in the ways of

School of Public and Commercial Law had not been active since the Austrians arrived (Romagnosi to Scopoli, 9 February 1815); and that the curricula for the year 1816 were dedicated to an explanation of *Regio Diritto* (Royal Law) in the School of High Legislation and *civile processura austriaca* (Austrian criminal procedure) in the School of Practical Legal Oratory (Romagnosi to Scopoli, 15 September 1816). The year-end balance sheet for 1816 and the budget for 1817 – which Romagnosi was requested to provide with dispatch n. 3012 – attest to a general state of abandonment: «there is nothing left to do [...] because everything has been reduced to the caretaker’s salary» (Romagnosi to Scopoli, 26 October 1816). Everything in ASMi, Fondo *Studi*, m.p., folder 181.

⁷ For a detailed account of *Progetto di Regolamento degli studi politico-legali* see: G.D. Romagnosi. *Lettere edite e inedite*, collected and annotated by S. Fermi, with a preface by A. Solmi, Milano, 1935, n. 76, pp. 116-117; F. Gentile, *Il progetto di Regolamento degli Studi Politico-Legali di G.D. Romagnosi*, in *L’Educazione Giuridica*, II, *Profili storici*, Perugia, 1979, pp. 430-453; Mannori, *Uno Stato per Romagnosi*, II, [nt. 5], pp. 17-19; M. G. di Renzo Villata, *Giandomenico Romagnosi e la pratica del diritto: riflessioni sparse* during the academic conference entitled: *Sapere accademico e pratica legale tra Antico Regime ed unificazione nazionale (XVIII-XX secolo)*, (Genova: 7-8 November 2008), V. Piergiorgio (ed.), Genova 2009, pp. 289-351. Printed version in EDG [nt.1], VII, II, pp. 1189-1229 and in Piatti’s *Opere del professore G.D. Romagnosi*, IV, Firenze 1832, pp. 267-318. See also, ASMi, Fondo *Studi*, m.p., folder 684.

⁸ We can also find the following in Romagnosi’s *Introduzione*: «I will immerse you in the world in order to understand the true, complete and impassioned elements of the doctrine», sheet 16.

administration⁹, namely as concerned the fulfillment of tasks, respect for order and adherence to protocol.

Napoleonic policy had opened up universities to a wider community¹⁰ and introduced the value of praxis¹¹: but the Austrian government cut all ties to that approach once public education fell under their control. In fact, they reorganized education¹² and gave rise to a society that revolved

⁹ For a general discussion of the issue: M. Meriggi, *Aspetti dell'impiego di concetto in Lombardia (1816-1848)*; C. Mozzarelli, *Il modello del pubblico funzionario nella Lombardia austriaca*, both in *L'educazione giuridica*, IV, *Il pubblico funzionario: modelli storico comparativi*, II, Perugia 1981, pp. 331- 361 e pp. 439-459; M. G. di Renzo Villata, *La formazione del giurista in Italia e l'influenza culturale europea tra Sette e Ottocento. Il caso della Lombardia*, in *Formare il Giurista esperienze nell'area lombarda tra Sette e Ottocento*, Milano 2004, pp. 1-105; M. R. Di Simone, *Percorsi del diritto tra Austria e Italia, secoli 17-20*, Milano 2006, pp. 71-98; F. Rossi, *Il cattivo funzionario. Fra responsabilità penale, amministrativa e disciplinare del Regno Lombardo-Veneto*, Milano 2013.

¹⁰ On this subject, see: M. Sarfatti Larson, *The rise of professionalism: a sociological analysis*, Berkeley, 1977; W. Tousijn, *Tra Stato e mercato: le libere professioni in Italia in una prospettiva storico evolutiva*, in *Le libere professioni in Italia*, Bologna, 1987, W. Tousijn (ed.), pp. 13-44; A. Ferraresi, *Formazione professionale civile e militare tra Repubblica e Regno d'Italia. Il caso di Pavia*, in *La formazione del primo Stato italiano e Milano capitale 1802-1814*, International Conference (Milano: 13-16 November 2002), Milano 2006, pp. 733-832, particularly pp. 795-796, and finally S.Parini Vincenti, *Ad auxilium vocatus*. [nt.1], pp. 62-74.

¹¹ L. Mannori, *I ruoli dell'intellettuale nell'Italia napoleonica*, in *Istituzioni e cultura in età napoleonica*, E. Brambilla, C. Capra, A. Scotti (ed.), Milano 2008, pp. 159-183, particularly pp. 160-162.

¹² Following the Napoleonic era, there was an initial and sudden transformation of the university system in 1816 (*Sovrana Risoluzione 7 dicembre 1816*, in ASMI, *Studi m.p.* folder 942). In accordance with the instructions issued in 1817 for the coming academic year, a new system was to be adopted that was the same as the one in place at the Empire's other universities (*Istruzioni per l'attuazione degli studi dell'I. R. Università di Pavia, pel giorno 15 ottobre 1817, giusta le nuove prescrizioni di S.M.I.R.A.*); however, the *Regolamento generale* (General regulations) would not be issued until 8 April 1825, and the restructuring process concluded in 1830 (for the relative texts, see *Statuti e ordinamenti dell'Università di Pavia dal 1361 al 1859*, Pavia 1925, pp. 325-330 and pp. 331-348; more details in M. G. di Renzo Villata, *Tra Vienna, Milano e Pavia: un piano per un'università «dall'antico lustro assai decaduta» (1753-1773)*, in *Gli statuti universitari: tradizione dei testi e valenze politiche. Dall'originarietà degli Studi Generali all'autonomia delle Università (sec.XII-XXI)*, Messina, 14-17 aprile 2004, Bologna, 2007, pp. 507-546).

around a sense of duty¹³. In short, the regime change presented a series of challenges regarding how knowledge was to be organized; how the best individual talents could be attracted to – and have success in – legal studies; and how legal studies could become the foundation for building a sound bureaucracy made up of capable *Beamten* who were loyal to the cause.

One only had to look outside of France to realize that the tools were actually already in place. Indeed, it would not be until 1840 that the first introductory course commenced in Paris, «sous le titre plus convenable d'Introduction générale à l'étude du Droit»¹⁴.

On the other hand, the German territories had already been moving in this direction for a long time. In terms of didactics, it suffices to mention Johan Stephan Pütter's *Neuer Versuch einer Juristischen Encyclopädie und*

¹³ There was a boom in didactic material offered by post-Napoleonic European countries that aimed to show their citizens – often in elementary terms – what their duties toward society and the state were: *Doveri dei sudditi verso il loro monarca*, Milano, I.R. stamperia, 1825, in Asmi, *Presidenza di governo*, folder 93, file 17- *geheim*, as previously cited in Rossi, *Il cattivo funzionario* [nt. 9], p. 54; R. Angeli, *I doveri de' cittadini verso la patria e degli impegati municipali etc... ad istruzione ed uso dei medesimi impegati*, Roma 1824.

¹⁴ More specifically, the Minister de Salvandy had already been pushing for its establishment since 1838, and the circular letter entitled *Circolare 808* of 29 June 1840 (*Moniteur* 30 juin 1840) provided for the creation *d'une chaire d'Encyclopédie à la Faculté de Droit de Paris*, which was entrusted to De Barsac «pour objet de donner à l'étudiant qui débute une notion précise générale et élémentaire de la jurisprudence». Though it had changed in light of the experience in Germany, the introductory course in France for the *L'École du Droit* was nonetheless different than the course of *Encyclopädie der Rechtswissenschaft*: «La chaire récemment créée à Paris est une chaire d'encyclopédie et non de méthodologie [...] en Allemagne le professeur est complètement libre dans son allure didactique mais il ne peut être question de méthodologie en France où le matières à enseigner et l'ordre sont réglés par des lois» (P.L.A. Eschbach, *De l'utilité d'un cours d'encyclopédie du droit*, in *Revue de la législation et de jurisprudence*, XVI, juillet-décembre, (1842), pp. 257-263, particularly p. 260, n. 1. By the same author, see also *Cours d'introduction générale à l'étude du droit, ou, Manuel d'encyclopédie juridique*, Paris, 1846², in which we find the first citation (*Avant-propos*, V) and the complete transcription of the ministerial circular that appeared in the *Moniteur*). For a full exegesis of law studies in France, cfr. E. Lermnier, *Introduction général à l'Histoire du droit*, Bruxelles 1830, particularly *Préface* pp. XIV-XVI.

Méthodologie: when it was published in 1757¹⁵, it marked the first time that a specific nomenclature had been coined for an introductory course of an ‘encyclopedic’ nature. It was to be introduced into academies in order to facilitate an understanding of positive law («als Instrument zum Verständnis des positiven Rechts»)¹⁶, as teaching of the subject had been lacking up to that point.

This introductory approach, or «εγκύκλιος παιδεία»¹⁷, would soon be crossing borders thanks to the publication of a series of notable compendia¹⁸ on the subject. Admittedly, the content of each publication

¹⁵ The reference is to *Entwurf einer juristischen Encyclopädie nebst etlichen Zugaben von der Politik, von Land- und Stadtgesetzen, von brauchbaren juristischen Büchern*, published in Göttingen in 1757 and reprinted in the same city under the title *Neuer Versuch einer Juristischen Encyclopädie und Methodologie* in 1767 (although Hámza – *infra* – traces it to 1769, p. 150, nt. 50), in which Pütter (1725-1807) returned to themes that he had already discussed in his inaugural lecture for the year 1748 (*Programma de necessaria in academiis tractanda rei iudicariae imperiae scientiae*, Göttingen 1748, as referred to by W. Ebel, *Der Göttinger Professor Johann Stephan Pütter aus Iserlohn*, Göttingen 1975, p. 62). The two editions presented new developments in the subject-matter: the first starts with a description of general concepts, followed by the correct way to arrange and treat the individual disciplines; the second (which is being referred to here) explains the purposes of those disciplines. For more on the subject, see: H. Monhaupt, *Recht, Natur Geschichte als Argument, Quelle und Autorität in deutschen Rechtszyklopädien des 18. und frühen 19. Jahrhunderts*, in *Recht zwischen Natur und Geschichte*, Symposium: 24-26 Nov. 1994, Frankfurt am Main 1997, pp. 73-102, particularly pp. 80-85; G. Valera, *Dalla scienza generale alla enciclopedia: l'enciclopedia giuridica tedesca nella seconda metà del Settecento*, in *Enciclopedia e sapere scientifico. Il diritto e le scienze sociali nell'Enciclopedia giuridica italiana*, A. Mazzacane, P. Schiera (ed.), Bologna 1990, p. 68, nt. 4 and pp. 70-71; G. Hámza, *Comparative law and antiquity within the framework of legal humanism and natural law in Fundamina: A Journal of Legal History*, XVI (2010), pp. 142-152, particularly pp. 149-151.

¹⁶ Pütter, *Neuer Versuch einer Juristischen Encyclopädie*, p. 70, § 122. See Monhaupt, *Recht, Natur Geschichte als Argument*, [nt. 15], p. 82.

¹⁷ This definition comes directly from Quintilian (*Institutiones oratoriae libri XII*, Milano 1997, lib. I, Cap. X, p. 118). On the other hand, a few examples of its use in textbooks can be found in: Eschbach, *Manuel d'encyclopédie juridique*, Avant-propos, II, nt.7 and *De l'utilité d'un cours d'encyclopédie du droit* [nt.14], 258, nt.7; but also in Den Tex, *Encyclopaediae Jurisprudentiae*, § 7., pp. 8-9 and Stöckhardt, *Juristische Propaedeutik oder Vorschule der Rechtswissenschaft*, Einleitung pp. 2-3, nt. 1.

¹⁸ From Pütter onwards, the German territories would witness the publication of a series of

varied a fair amount in these early stages, but the aim of each was clearly stated in the title¹⁹. Thus, Pütter's course was able to expand beyond the German legal sciences to the Netherlands and Russia²⁰, and by the beginning of the following century, it would come to be recognized as part of university curricula in Vienna and Berlin.

Indeed, August Böckh, who was a professor at the University of Heidelberg and author of *Encyklopädie und Methodologie der philologischen Wissenschaften*, was involved with a comprehensive course

textbooks that would only continue to strengthen this 'encyclopedic' debate. To cite but a few examples: A. F. Schott, *Entwurf einer juristischen Encyclopädie und Methodologie, zum Gebrauch akademischer Vorlesungen*, Leipzig 1772 (again in Monhaupt, *Recht, Natur Geschichte als Argument*, pp. 85-90 and Hámza, *Comparative law and antiquity*, pp. 151-152, cfr. for both [nt. 15]); J.F. Gildemeister, *Juristische Encyclopädie und Methodologie*, Duisburg 1783 (J. Schröder, *Wissenschaftstheorie und Lehre der "praktischen Jurisprudenz" auf deutschen Universitäten an der Wende zum. 19 Jahrhundert, Frankfurt am Main 1979*, pp. XX, 51-52, 112-113; Monhaupt, *Recht, Natur Geschichte als Argument*, p. 91); K.Sal. Zachariae, *Grundlinien einer wissenschaftlichen juristischen Encyclopädie*, Leipzig 1795 (G. Valera, *Profili giuridici della felicità*, in C. Vetter (ed.) *La felicità è un'idea nuova in Europa. Contributo al lessico della rivoluzione francese*, I, Trieste 2005, pp. 80-100), and continuing up until *Juristische Encyclopädie, auch zum Gebrauche bei akademischen Vorlesungen* di N. N. Falck, Kiel 1825² (again in Monhaupt, *Recht, Natur Geschichte als Argument*, p. 101) and the pamphlet *brevis sed ingeniosus* according to Den Tex (*supra*, §14, p. 18) by G.F. Puchta, *Encyclopädie als Einleitung zu Institutionen-Vorlesungen*, Leipzig und Berlin 1825 (as referred to by W. Hastie, *Outlines of the science of jurisprudence. An introduction to the systematic study of law*, Edinburgh 1887, pp. 12-132).

¹⁹ «in which the concept of an encyclopedia played an important role, and in which the *Begriff der Rechtswissenschaft*, sometimes mentioned in the title, was given prominence» » (G. Valera in *Dalla scienza generale alla enciclopedia* [nt. 15], pp 67-118).

²⁰ The encyclopedia was made into a European science in the wake of Leibniz's *Nova Methodus*, which is unanimously considered the starting point for «le projets d'ouvrages synthétiques indispensables à le science du Droit», and the path can be traced as follows: in Belgium *l'Encyclopédie du droit* (Bruxelles 1843²) by A. Roussel (1809-1875); in Holland *l'Encyclopaediae Jurisprudentiae* (Amstelodami 1839) by C. Anne den Tex (1795-1854), which among these works was the only one written in Latin, and in Russia, the *Juristische Propaedeutik oder Vorschule der Rechtswissenschaft, zunächst für die Kaiserliche Rechtsschule zu St. Petersburg* (Leipzig 1843²) by H. R. Stöckhardt (1802-1848), which outlines a comparative framework based on the previous works. On the peculiar situation in Russia, cfr. also M. Silnizki, *Geschichte des gelehrten Rechts in Russland: jurisprudentija an den Universitäten des Russischen Reiches 1700-1835*, Frankfurt am Main 1997.

during the *Sommersemester* in Brandenburg in 1811²¹; meanwhile, the *Encyclopaedische-methodische Einleitung in der juristisch-politisch Studium* by Albert von Hess was already making its way around the Austrian capital as early as 1810²².

The Imperial-Royal Universities of Lombardy-Venetia also proceeded along the same lines: they established a core course that the *Istruzione pel giorno 15 ottobre 1817*²³ purposely called *Introduzione enciclopedica*

²¹ August Böckh, who studied at Halle with Wolff, taught courses without interruption from 1809 to 1865 (26, to be precise). His ‘encyclopedic’ lessons tended to argue for a philosophical view of history that went beyond the mere ‘mimesis’ of events, so as to affirm the essential scientific contribution made by historical studies and their utility in numerous cultural contexts, not least of which the field of law. As valuable as his lessons were, they would only be published posthumously by his student E. Bratuscheck in 1877, in Leipzig, under the title *Encyklopädie und Methodologie der philologischen Wissenschaften*. The same types from 1866 were used for the republication of a second edition by R. Klusmann (ed.), while a partial translation was more recently carried out with *La filologia come scienza storica: enciclopedia e metodologia delle scienze filologiche*, A. Garzya (ed.), Napoli 1987. For an overview, cfr. V. Lau, *Erzählen und Verstehen: historische Perspektiven der Hermeneutik*, Würzburg 1999, § 4.2.2., pp. 395-399 and S. Caianiello, *Scienza e tempo alle origini dello storicismo tedesco*, Napoli 2005, pp. 238 and ss.

²² News of the arrival of the successful textbook by A. von Hess – which in Italian was entitled *Introduzione enciclopedico-metodologica allo studio politico-legale* di A. de Hess (translated by G. Brambilla, Pavia 1820) – was disseminated by the *Biblioteca italiana o sia Giornale di letteratura, scienza ed arti*, XXI (1821), gennaio-marzo, p. 68, nt. 3. The work was meant for the universities and high schools of the German Hereditary Lands under the Austrian monarchy, and indeed it is of some importance for the subject at hand. It complied with the directives issued by Zeiller in 1808, as well as with the imperial education plan of 1810, and it reproduced the syllabus of the public course taught by Mr. Egger, Counselor of the Government and professor at Vienna. Cfr. S. Parini Vincenti, *L’educazione del giurista: l’abbandono di un’arte per la conquista di una scienza, ovvero L’Introduzione enciclopedica alla Facoltà Politico Legale*, in *Formare il Giurista* [nt. 9], pp. 365-401.

²³ The exact title of the course at the University of Pavia was *Introduzione generale allo studio politico legale, diritto naturale e pubblico, diritto criminale* (General introduction to political and legal studies, natural and public law, criminal law), whereas the textbooks that were being used – usually written by those who held the professorships of the courses themselves – separated the *Introduzione enciclopedica allo studio politico-legale* (Encyclopedic introduction to political and legal studies) from the other branches of study

(Encyclopedic Introduction). The evocation of an ‘encyclopedic’ approach was an indicative choice²⁴, as the course’s systematic structure not only helped establish the theoretical foundations of jurisprudence as a science, but also set it apart from other branches of knowledge by defining its aims and its general principles²⁵.

The indefatigable Romagnosi was not to be excluded from the spirit of the times, as he too put together an unpublished textbook on the subject²⁶ for the students enrolled at his private school, and which can be dated to some time between 1818 and 1821²⁷.

Let us now take a closer look at that work.

2. *Introduzione enciclopedica allo studio del diritto.*

First and foremost, it must be stated that this was an unfinished work. Romagnosi’s manuscript is made up of just over sixty pages, which were neither reviewed nor corrected. What’s more, it is contained in two different folders numbered 25 n. 6 and 25 n. 7, which is only further evidence of the fact that much work had been left undone.

The first bundle – number 6 – contains a draft of the text with a title, and was probably a provisional outline for his lessons. Each sheet was used

to be covered. For these other subjects, reference was made directly to the text by F. von Zeiller (*Das Natürliche Privatrecht* Vienna, 1808).

²⁴ S. Torre, *L’«introduzione enciclopedica alle scienze giuridiche»: parabola di un insegnamento*, in A. Mazzacane, C. Vano, (ed.), *Università e professioni giuridiche in Europa nell’età liberale*, Napoli 1994, pp. 151-192; P. Beneduce, *L’ordine dell’esposizione. Introduzione alla giurisprudenza e regole dell’enciclopedismo in Italia nel secondo Ottocento*, pp. 126-132 and F. Treggiari, *Enciclopedia e ‘ricerca positiva’*, both in *Enciclopedia e sapere scientifico* [nt. 15], pp. 119-161 and pp. 163-203.

²⁵ P. Cappellini, *Systema iuris*, Milano 1984, I, pp. 176 and ss.

²⁶ *Introduzione enciclopedica allo studio del diritto*, (hereafter referred to as *Introduzione enciclopedica*), Biblioteca A. May Bergamo, olim, Collection Beolchi, Romagnosi, *Scritti varii*, A, I, folders numbered 25 n. 6 and 25 n. 7, ora MMB 444, manuscript donated to the library by the Camozzi Vertova family in November 1899, with Romagnosi’s lessons on civil law.

²⁷ Dating was determined by referring to the first Italian edition of *Das Natürliche Privatrecht* by Zeiller (*Il diritto privato naturale*, Milan 1818) as the earliest possible date (*dies a quo*), with the latest possible date (*dies ad quem*) being the end of Romagnosi’s public teaching career following the ban laid upon him in 1821 (F. Luzzatto, *Gian Domenico Romagnosi. Il processo del 1821* [nt. 4]).

in its entirety (full-page) going from sheet 1 (the title of the work) to sheet 32. In addition to a general, introductory part, there are also sections dedicated to *Diritto privato naturale* (*Private natural law*) (8 sheets) and *Diritti Classificativi* (*Classificatory rights*) (4 sheets), before moving on to *Convenzioni* (*Agreements*) (6 sheets) and concluding with *Acquisto di beni per causa di morte* (*Inheritance of property from the deceased*).

The second bundle – number 7 – is more similar to an outline of a core course to be offered in a university setting. At first glance, it comes off as a work in progress: just half of each page was written on, and often only the front side of the sheet was used, while the margins are filled with notes, second thoughts, additions and digressions. Yet the subject matter is meatier, the content is more substantial and the titles he used are more far-reaching: such is the case with the sections on *Convenzioni* (*Agreements*) and *Acquisto di beni per causa di morte* (*Inheritance of property from the deceased*) (sheets 1-22), *Contratti* (*Contracts*) (after several blank pages, this section starts up again on sheet 33), *Diritti e doveri di famiglia* (*Rights and duties of the family*), and *Dominio reale* (*Dominium*) (sheet 80), which concludes Romagnosi's writing.

In terms of content, given the circumstances under which the work was carried out, one would have expected a relatively discreet 'lesson' that shied away from proclamations of momentous change in the teaching of law in general, let alone in the specific case of Romagnosi's own educational program²⁸. All the more so considering the straightforward approach taken by the author and the didactic style he chose in drafting his work, which took the form of a back-and-forth dialogue between master and pupil.

On the contrary, however, Romagnosi's *Introduzione* stood out from the mass of comprehensive ('encyclopedic') treatises that had been called for by the Austrian leadership in order to educate students of the newly-restructured Faculty of Law and Political Science. His clearly-defined program went beyond simply pointing out the correct approach to political and legal studies: it revealed the elderly Maestro's still-burning desire to once again take up the reins of the methodological debate surrounding

²⁸ See Luzzatto, *Introduzione enciclopedica allo studio del diritto nel di G. D. Romagnosi* [nt.3], pp. 190 and 216.

education, which had begun many years before under Napoleon.

The textbook's distribution was limited to the cramped confines of a private school, and Romagnosi faced physical, political and economic difficulties. Yet despite these impediments, his work was able to address the key issues that needed to be dealt with – legal definitions first and foremost, but also the aim and definition of each branch of law – in support of the philosophical development of a new legal system. What's more, his textbook also examined how to organize the individual components of such a system, and how to trace those components back to the general principles of private law, which could not exist without a society to define it.

Romagnosi also picked up on the basic criterion laid out by encyclopedists in the eighteenth century who had examined the relationship between natural and positive law, the organization of legal relationships within a state system, and the connections between history and philosophy; however, he did not cite any of the works heretofore mentioned, except for that of Zeiller, who was the subject of a university exam that students were expected to take.

The opening pages anticipate the need for a well-balanced and uniform reconstruction of legal science; they also lay out «what the *Introduzione* contains»²⁹.

Namely:

the exposition of all the branches of legal doctrines that may be needed to manage public affairs [...] the branches into which these doctrines may be divided [...] (³⁰ how many scientific branches rational doctrine can in turn be divided into [...])³¹

Yet Romagnosi was not content with offering simply an overview of the subject. He had a much more ambitious goal for the course: to lay the

²⁹ *Introduzione enciclopedia alla Studio del Diritto*, sheet 7.

³⁰ «the law of nations, internal public law and civil law», *Ibidem*.

³¹ «politics», which in turn is divided into diplomacy, internal public administration, fiscal policy and ecclesiastical law.

ethical and moral groundwork for the education of all «specialists working in the various branches that make up the tree of legal sciences»³².

The philosophical nature of Romagnosi's work is immediately apparent. In order to assign a role to the individual in a political community, one must start from none other than the method of deductive reasoning that is taught to the young, inexperienced minds of students. For this reason, simply learning by rote cannot be the end goal of education; on the contrary, the student must assimilate a few great principles that confer control «of justice to legal science [...] and utility to Politics [...]»³³. Indeed,

The functions of a welfare state serve the immediate purpose of [...] protecting and improving individuals [...] it follows that the Government's work comes down to EDUCATION on a large scale in order to promote [the] CIVILIZATION [of its society]³⁴.

On the other hand, an individual's purpose is brought out through his role within civil society (*Diritto come facoltà utile - Law as a useful power*, sheet 11v), which is no longer a place where individual subjectivities clash, but rather a community whose progress depends on the contributions of all of its members.

Romagnosi sought to distance himself from Zeiller's *social* vision (sheet 12), which envisaged a community of «self-sufficient and independent people»; quite the opposite, Romagnosi called for «a mutual union of individuals» (sheet 12), a society made up of equals in which any exercise of freedom that is not connected to public goals would be in vain³⁵.

³² Cited in Mannori, *L'itinerario di un moderato. Libertà e pubblica opinione nel pensiero romagnosiano*, [nt.7], p. 189.

³³ *Introduzione enciclopedica alla Studio del Diritto*, sheet 7.

³⁴ G. D. Romagnosi, *Lettere a Giovanni Valeri sull'ordinamento della scienza della cosa pubblica, che servono da prolegomeni all'introduzione allo studio del diritto pubblico*, in EDG, III, p. I, *Oggetto proprio delle Genti e dei Governi tutti, Incivilimento*, pp. 3-54, particularly p. 45.

³⁵ L. Lacchè, *La nazione dei giuristi. Il canone eclettico, tra politica e cultura giuridica: spunti per una riflessione sull'esperienza italiana della Restaurazione*, in *Diritto, cultura*

Individuals must not use their freedom arbitrarily. On the contrary, they must use it for the common good – in other words, they must use it for ethical purposes³⁶.

Indeed, society and the state together represent a place which valorizes the individual – a place where a person's intelligence is only improved through the community, with the firm belief that the individual will never evolve in his short lifetime, but only *en masse* and over the course of centuries. Thus, it is only in society that the citizen can rise up and attain fulfillment³⁷.

With these basic premises set forth at the outset, the middle pages of *Introduzione* delve into *Private natural law*, to which Romagnosi assigns a threefold role that he defines as «attributive», «directive» and «tutelary»³⁸, based on the actual needs of individuals³⁹.

A *categorical imperative* requires «that citizens be given what is due to them as per natural law»⁴⁰: but times have changed, the community's make-up has become more complex, and emerging groups have requested that new prerogatives be recognized. Under these circumstances, the sovereign power is thus tasked with defining the rights of all, and if necessary, changing the rights of individuals in the process. In any case, Romagnosi refuses to provide an abstract catalogue of individual rights⁴¹.

giuridica e riforme nell'età di Maria Luigia, F. Micolo, G. Baggio, E. Fregoso (ed.), Parma 2011, pp. 263-307, particularly p. 284.

³⁶ «The exercise of a useful power in accordance with the rational and moral order» (G.D. Romagnosi, *Assunto primo della scienza del diritto naturale*, in EDG, III, parte I, pp. 553-686, particularly p. 604, XVII).

³⁷ The civilizing process is diachronic in nature, developing over generations and only within the realm of society. This is a clear reference to *Introduzione allo studio del diritto pubblico universale* (in EDG, III, p. I, pp. 57-491).

³⁸ *Introduzione enciclopedica alla Studio del Diritto*, sheets 7v and 8.

³⁹ Romagnosi discussed this theme in *Perfezionamento politico-morale delle civili società. Articolo I, Osservazioni sui rapporti necessari di ordine del perfezionamento morale e politico delle nazioni* in Id., *Introduzione allo studio del diritto pubblico universale* [nt.37], particularly §§ 427-429, pp. 475-480.

⁴⁰ *Introduzione enciclopedica alla Studio del Diritto*, sheet 8r.

⁴¹ Assuming that the following is true: "It is the law that attributes certain fundamental

Romagnosi's detailed and well-founded analysis thus allowed him to develop an arsenal of arguments that could help him reformulate the meaning of *ius naturae*⁴², which he would then use as a tool to explain the value of private law⁴³.

Although some rights are inalienable by nature – such as the right to freedom – the actual attribution of such rights can only take place if the statutory legislation provides for it.

It was no accident that Romagnosi repeatedly expressed this concept: «laws have a direct effect on the needs of each individual». All positive laws must be interpreted and understood in the light of the philosophical postulates that preceded them, while also taking the history of nations and the auxiliary branches of knowledge into consideration⁴⁴, as it is the constant integration of these factors that allows the legal scholar – be it a judge, lawyer or palatine – to fully grasp and express the *ratio* of said laws.

The importance of *Introduzione allo studio del diritto* is thus clear – it serves as the introduction to a discipline, but it is also a discipline to study in itself. It is both the starting point and the end goal of a university education that successfully comes full circle. Indeed, it is none other than a *sittliche Staat* that must be created: on paper, at least, it was the same *Rechtsstaat* (Constitutional state) that Romagnosi had always sought to describe.

Romagnosi revealed the moral depth that lies behind the doctrinal framework of his manuscript by reassessing how a person – as an individual in general, but even more so as a jurist – serves society.

It is certainly no easy task, and it cannot be completed by mechanistically carrying out formal, incumbent duties; on the contrary, it translates to any legal activity that 'the moral man' performs, from serving in public office to reaching private agreements with others⁴⁵.

rights to individuals, and it then establishes the rules for managing and safeguarding [said rights]» (*Introduzione enciclopedia alla Studio del Diritto*, sheet 8).

⁴² *Introduzione allo studio del diritto pubblico universale* [nt.37], pp. 473-474, §§ 425-426.

⁴³ G.D. Romagnosi, *Assunto primo della scienza del diritto naturale*, [nt.36], particularly XVI, *Della più vera e distinta nozione del Diritto naturale*, pp. 600-601.

⁴⁴ *Introduzione enciclopedia alla Studio del Diritto*, sheet 7r.

⁴⁵ «With politics I mean the art of moving and directing the actions and interests of connected peoples [...] as a mechanic distinguishes the straight line along which he wants

Presented as such, the objective of positive law is to fulfill an ethical obligation that guarantees public happiness, to the benefit of all.

The inevitable classification of right and wrong is the great book that provides us with knowledge of the natural laws of reason. [...]. The sum of these laws tells us which deeds must be put into practice and which must be avoided, and why [...]. This is exactly what morality is⁴⁶.

3. *Pure didactics or an ethical science?*

So what was the goal of Romagnosi's textbook? With 'his' *legal encyclopedia*, Romagnosi sought to refute any separation of the individual from the community, and he resolved to show the *cupida legum iuventus* not only what law was like in action, but also how it had been shaped over the centuries. This reference to the history of law was essential⁴⁷ to grasping the true needs of the nation and understanding the immanent reason underlying those needs⁴⁸. Romagnosi's aspirations would find their best expression in the program created by the *Amministrazione centrale per le Facoltà legali* (Central Administration for Departments of Legal Studies), which called for statutory provisions to be neither arbitrary nor mechanically reproduced from memory, but rather to be rooted in consciousness, thus becoming logical and moral conviction, which is the fundamental core of a jurist's intellectual endowment.

For all these reasons, Romagnosi's contribution cannot be ignored. While it may be true that the manuscript, like others of its ilk, provided an overview of all legal doctrines as well as the various parts of law to be

a certain object to travel from an impulsive force, and from the way in which he controls that force. So the philosopher distinguishes the science of law from that of politics. The science of law perfectly resembles that straight line to travel; that of politics resembles the impulse to be applied» (*Introduzione enciclopedia alla Studio del Diritto*, sheet 7v).

⁴⁶ *Introduzione enciclopedia alla Studio del Diritto*, sheet 13r.

⁴⁷ His timeline divided the history of law into four fundamental periods, going from ancient China (551 B.C.) to the contemporary age (*Introduzione enciclopedia alla Studio del Diritto*, sheets 16 and ss.).

⁴⁸ Romagnosi went so far as to dedicate a paragraph to the need to "reconstruct the chain of history": *Della storia del diritti ed osservazioni critiche secondo lo Zeiller, Introduzione enciclopedia alla Studio del Diritto*, sheet 17.

studied, it is also true that the way it approached these themes was much more complex.

His work is noteworthy for its original structure: starting with the opening lines, it traced out a difficult path that the modern encyclopedia would have to complete from then onwards if it was to achieve its own independence as a science. That may be another story⁴⁹, but it is true that Romagnosi had something more in mind than a mechanistic presentation of the various legal disciplines when he thought of his encyclopedic endeavor. As clearly evidenced by the writings in his textbook, he theorized about a ‘science among sciences’ that rested on solid philosophical foundations, and that was built up methodically and organized on a historical basis, in order to provide students with an understanding of law in its entirety.

Thus, these unpublished pages provide a personal history of the author’s introductory course. The variety of registers displayed in the language Romagnosi used is only further testament to the link between methodology and philosophy, which he ably interweaved to lay the groundwork for the education of a new generation of jurists. In addition, he was also able to promote a vision of natural law as «science, law and the power to act in society»⁵⁰.

Romagnosi came to this subject matter late in life, having left behind the various forms of individualistic radicalism that had typified the revolutionary era; thus, he did not delve into it as much as other fields.

⁴⁹ As far as the encyclopedia as a discipline was concerned, the aporia that was its definition would remain unresolved in the years to follow, as it hovered somewhere between a merely ‘introductory’ subject and an actual science. Because of its proximity to subjects such as the history of law and philosophy, it was difficult to place within teaching programs. For more details see the works of Torre, Beneduce, Treggiari, and A. Fiori, *Gli insegnamenti storico-giuridici alla Sapienza negli ultimi decenni del XIX secolo*, in *Historia et jus*, 1(2013), paper 10. Full documentation of the life and work of Francesco Filomusi Guelfi in I. Birocchi, A. D’Angelis, *Francesco Filomusi Guelfi enciclopedista convinto con considerazioni sull’inedita “Enciclopedia giuridica”*, in M. Ascheri, G. Colli, P. Maffei (eds.), *Manoscritti, editoria e biblioteche dal medioevo all’età contemporanea*, Roma 2006, I, pp. 97-134 and I. Birocchi, *F. Filomusi Guelfi*, in *Dizionario Biografico dei Giuristi Italiani*, Bologna 2013, I, pp. 863-865.

⁵⁰ *Progetto di Regolamento* (Section II, art. 41), [nt.2] particularly p. 1198. For more details see also *Introduzione enciclopedica*, sheet 12.

Nevertheless, his 'encyclopedia' seems to be an appropriate way to summarize his life's work.