

VIS UNITA FORTIOR (1842).
FRANCESCO RESTELLI AND THE DEBATE
OVER COMPANIES IN LOMBARDY

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Abstract: In Lombardy during the Restoration era the legal science tends to concentrate on the codes' content and to be influenced by the French one. This inclination is even stronger in the field of commercial law as the Austrians had decided not to abrogate the *Code de commerce* in the Kingdom of Lombardy-Venetia. Against this background, it is remarkable that in 1842 the Istituto Lombardo chooses a theme for its "premio scientifico biennale" that spurs the competitors to deal with company law with a critical approach. Among the submitted entries, Francesco Restelli's one is the most interesting: he drew up a veritable alternative to title III, book I of the Commercial Code.

Keywords: Companies; Commercial law; Commercial code; Istituto Lombardo; kingdom of Lombardy-Venetia

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1. *Introduction: The Code de commerce in Austrian Lombardy.*

The Austrians broke with the well-established tradition of preserving uniformity in their domains when they issued the *Sovrana Risoluzione* (Sovereign Resolution) of 23 December 1816. By doing so, they chose to maintain the Napoleonic commercial code in the Italian territories¹, though not in its entirety: bankruptcy, commercial litigation procedure and maritime law would be partially regulated by the Habsburg empire².

This peculiar situation led to the atypical development of both the doctrine itself and the way that the law governing ‘commercial acts’³ was actually enforced in the region. Scholars and experts were working with

¹ A. Padoa Schioppa, *La codificazione commercialistica nell'Italia preunitaria*, in *Saggi di storia del diritto commerciale*, Milano 1992, pp. 142-143, Italian version of the first part of *Italien, Handelsrecht*, in *Handbuch der Quellen und Literatur der neuen europäischen Privatrechtsgeschichte*, H. Coing (ed.), III/3, München 1986, pp. 3209-3233. On the origin and content of the *Code de commerce*, see A. Padoa Schioppa, *Napoleone e il «code de commerce»*, in *Studi in onore di Cesare Grassetti*, Milano 1982, II, pp. 3152-3187, in *Diritto e potere nella storia europea*, Atti del quarto Congresso internazionale della Società italiana di storia del diritto, Firenze 1982, pp. 1041-1067, and in *Saggi di storia* (1), pp. 89-112; Id., *Codificazione e legislazione commercialistica in Francia (1778-1915)*, in *Saggi di storia* (1), pp. 63-79, Italian version of *Frankreich, Handelsrecht*, in *Handbuch der Quellen und Literatur*, pp. 1041-1067; F. Galgano, *Lex mercatoria. Storia del diritto commerciale*, Bologna 1993, pp. 79-84; see also the papers in *Livre du bicentenaire du Code de commerce*, Paris 2007; in *Qu'en est-il du Code de Commerce 200 ans après? États des lieux et projections. Actes du colloque des 27 et 28 octobre 2007*, C. Saint Alary Houin (ed.), Toulouse 2009.

² Austrian commercial law was based on decrees issued by Maria Theresa and Joseph II. For a short but effective summary in Italian of the decrees, see A. di Saint Joseph, *Concordanza fra i codici di commercio stranieri ed il Codice di commercio francese, prima traduzione italiana*, Venezia 1855, parte II, pp. 11-26. See also J. M. Zimmerl, *Alphabetisches Handbuch zur Kenntniß der Handlung und Wechselgeschäfte*, Vienna 1805 and I. Sonnleithner, *Lehrbuch des Österreichischen Handels- und Wechselrechtes verbunden mit den gesetzlichen Vorschriften über die gewöhnlichsten Rechtsverhältnisse der Handelsleute*, Graz 1820.

³ *Cod. comm.*, art. 1, and Padoa Schioppa, *Codificazione e legislazione* (1), p. 69. The passage from a subjective to an objective approach towards commercial law is described in depth in L. Berlinguer, *Sui progetti di codice di Commercio del Regno d'Italia (1807-1808). Considerazioni su un inedito di D. A. Azuni*, Milano 1970, pp. 17-45; in Galgano, *Lex mercatoria* (1), pp. 102-111; in U. Santarelli, *Mercanti e società tra mercanti*, Torino 1998, pp. 17-26.

different regulations than those in use in the Austrian state apparatus, and which were in force in France⁴: as such, they were essentially forced to resort to French doctrine and jurisprudence, and tended to conform thereto as a result.

In general, Lombard legal science of the Restoration era tended to focus on the content of codes⁵, in addition to being subject to French influence⁶. Thus, any interpretations of commercial law were bound to be

⁴ In Liguria there was a similar situation: the *Code de commerce* was in force, even though it had been abolished in the other regions of the Kingdom of Sardinia (G.S. Pene Vidari, *Ricerche sulla giurisdizione commerciale negli Stati sabaudi*, in «Bollettino storico-bibliografico subalpino», 76 (1978), pp. 435-566; Id., *Cenni sulla codificazione commerciale sabauda*, in *Studi in memoria di Mario Abate*, Torino 1986, pp. 693-704; L. Sinisi, *Giustizia e giurisprudenza nell'Italia preunitaria. Il Senato di Genova*, Milano 2002, pp. 329-353). The *Code de commerce* was also in force in Tuscany, and the original regulations in the Kingdom of the Two Sicilies and in the Papal States derived from it. Thus, all over Italy French doctrine and jurisprudence were important. For an overall framework, see Padoa Schioppa, *La codificazione commercialistica* (1), pp. 143-154. Unlike the other states, in the Duchy of Parma commercial law was included in the civil code. See E. Fregoso, *Il codice di commercio nel Ducato di Parma, perduto o nascosto? Aspetti del diritto commerciale parmense. 1820-1847*, in *Diritto, cultura giuridica e riforme nell'età di Maria Luigia*. Atti del convegno-Parma 14 e 15 dicembre 2007, F. Micolo, G. Baggio, E. Fregoso (ed.), Parma 2011, pp. 199-220.

⁵ After all, the following passage could be found in the most important pro-government journal: «when a Kingdom is given a code by its Sovereign, jurists have to focus on the content of the code». See «Biblioteca Italiana ossia Giornale di letteratura scienze ed arti», 17 (gennaio 1820), p. 78. On the journal, see A. Luzio, *La «Biblioteca Italiana» e il governo austriaco*, in «Rivista storica del Risorgimento italiano», I (1986), 7-8, pp. 650-711; G. Bezzola, *La voce del dominio: Biblioteca Italiana e Gazzetta di Milano*, in *Il tramonto di un regno. Il Lombardo-Veneto dalla Restaurazione al Risorgimento (1814-1859)*, Milano 1988, pp. 173-237; F. Danelon, *La «Biblioteca Italiana»: una rivista di regime dell'Italia della Restaurazione*, in «Il Tartarello», 19 (1995), 1-2, pp. 19-32.

⁶ On both aspects, see M.R. di Simone, *L'introduzione del Codice civile austriaco in Italia. Aspetti e momenti*, in *Scintillae iuris. Studi in memoria di Gino Gorla*, II, Milano 1994, pp. 1015-1038, revised version in Ead., *Percorsi del diritto tra Austria e Italia (secoli XVII-XX)*, Milano 2006, pp. 167-177; E. D'Amico, *Agostino Reale e la civilistica lombarda nell'età della Restaurazione* in *Studi di storia del diritto*, II, Milano 1999, pp. 773-778 e 806-818; A. Cavanna, *Influenze francesi e continuità di aperture europee nella cultura giuridica dell'Italia dell'Ottocento*, in *Cristianità ed Europa, miscellanea in onore di Luigi Prosdocimi*, C. Alzati (ed.), Roma 2000, pp. 329-354, also in *Studi di storia del diritto*, III, Milano 2001,

conservative⁷: they were meant to be useful for those who worked with the code on a daily basis, by collecting and interpreting the norms in force and constantly referring to French doctrine⁸ and jurisprudence⁹. In Veneto there was a similar attitude¹⁰. What few exceptions there were to this

pp. 719-753 and in Id., *Scritti (1968-2002)*, II, Napoli 2007, pp. 1185-1218; R. Ferrante, *Un ruolo per l'interprete: la scienza giuridica italiana tra Code Napoléon e ABGB*, in *L'ABGB e la codificazione asburgica in Italia e in Europa*, P. Caroni e E. Dezza (ed.), Padova 2006, pp. 349-360, also in *Forum Historiae iuris* (<http://www.forhistiur.de/zitat/0601ferrante.htm>), pp. 9-17, and revised version in R. Ferrante, *Codificazione e cultura giuridica*, Torino 2011², pp. 139-154. For an overview of the entire Italian peninsula, see P. Grossi, *Scienza giuridica italiana. Un profilo storico 1860-1950*, Milano 2000, pp. 1-12; in L. Moscati, *Italienische Reise. Savigny e la scienza giuridica della Restaurazione*, Roma 2000, pp. 64-69; in U. Petronio, *Influenza del diritto francese in Italia dopo la promulgazione del Code Civil*, in *Dialettica tra legislatore e interprete. Dai codici francesi ai codici dell'Italia unita*, L. Moscati (ed.), Napoli 2013, pp. 152-174.

⁷ See also G. Acerbi, *Le società per azioni all'unità d'Italia. I censimenti del 1865 e del 1866*, Milano 2011, p. 24.

⁸ Mainly Locré's *L'Esprit du Code de commerce* and Pothier's treatises, usually through an Italian translation. On the French authors, see J.-L. Halperin, *Locré Jean-Guillaume*, and J.-L. Thireau, *Pothier Robert-Joseph*, in *Dictionnaire historique des juristes français XII^e-XX^e siècle*, P. Arabeyre, J.-L. Halpérin, J. Krynen (ed.), Paris 2007, p. 514 e pp. 636-638; on the Italian version of their books, see M.T. Napoli, *La cultura giuridica europea in Italia*, II, *Repertorio delle opere tradotte nel secolo XIX*, Napoli 1986, pp. 23, 33, 63-64. Furthermore, Pardessus' *Trattato del contratto e delle lettere di cambio, dei biglietti all'ordine e degli altri effetti di commercio giusta i principj dei vigenti codici* was published in Milan in 1811 and widely read. Between 1843 and 1847 many monographs from French jurists specialized in commercial law were printed in neighboring Veneto: Pardessus, De Villeneuve, Massé, Saint-Joseph, Delangle, Sébiré and Carteret.

⁹ Both the French *recueil* and *Giurisprudenza Pratica secondo la legislazione austriaca attivata nel Regno Lombardo-Veneto ossia collezione di decisioni, sentenze e decreti in materia civile commerciale criminale e di diritto pubblico*, G.F. Zini (ed.) were used by Milanese jurists to read French jurisprudence. In 1831, Giovanni Francesco Zini started to include French sentences passed by the *Tribunaux de commerce* in his *Giurisprudenza Pratica*.

¹⁰ See M. Costi, *Il codice di commercio di terra, ossia il libro primo del Codice di commercio di terra e di mare pel Regno d'Italia ora Regno Lombardo-Veneto comentato*, Venezia 1841; F. Foramiti, *Enciclopedia legale, ovvero lessico ragionato di gius naturale, civile, canonico, mercantile-cambiarario-marittimo, feudale, penale, pubblico-interno e delle genti*, 4, Venezia 1838, pp. 2109-2112; V. Guazzo, *Enciclopedia degli affari, ossia Guida universale per la cognizione e conformazione di qualunque atto, e per lo sviluppo di qualsiasi affare tanto tra privati, come avanti qualunque Autorità od ufficio*, 9, Padova

approach were so theoretical in nature that they provided no basis from which to analyze existing regulations in a constructive manner.

The first works on the subject to appear in print were related to two selection processes for the professorship of Mercantile Law at the University of Pavia¹¹: Adeodato Ressi published *Breve esposizione di alcuni principi del diritto mercantile* (Brief description of some principles of mercantile law)¹², which was an academic account that limited itself to the subject of exchanges; and Agostino Reale published *Del diritto commerciale e marittimo secondo le leggi austriache ed italiane nella parte in cui queste sono mantenute in vigore* (On commercial and maritime law according to the Austrian and Italian laws currently in force), which was clearly written for practical purposes¹³.

In 1822 the professorship was awarded to Antonio Volpi, a young graduate who had no published works to his name. He was, however, a loyal subject who relied on regulatory texts and his own notes to teach;

1853, pp. 106-125, spec. pp. 109-124. G. D'Angelo's monograph, *Delle società di commercio. Commento del titolo III libro I del Codice di commercio*, Venezia 1847, a translation with comments on Alphonse Delangle's work.

¹¹ Adeodato Ressi won the selection process in 1818, but in 1821 he was arrested for seditious activities. Agostino Reale won the new selection process in 1822, but he renounced in order to teach civil law. A. Andreoni e P. Demuru, *La Facoltà politico legale dell'Università di Pavia nella Restaurazione (1815-1848). Docenti e studenti*, Bologna 1999, pp. 51-52 e 124-131. On the University of Pavia during the Restoration era, see also I. Ciprandi, *L'università di Pavia nell'età della Restaurazione*, in *Problemi scolastici ed educativi nella Lombardia di primo Ottocento*, II, *L'istruzione superiore*, Milano 1978; L. Musselli, *La Facoltà di giurisprudenza nell'Ottocento*, in *Storia di Pavia. L'età moderna e contemporanea*, V, Milano 2000, pp. 445-473; E. D'Amico, *La facoltà giuridica pavese dalla riforma francese all'Unità*, in *Per una storia dell'Università di Pavia*, G. Guderzo (ed.), estratto da *ASUI*, 7 (2003), pp. 107-122; V. Belloni, *La Facoltà politico-legale*, in *Almum studium Papiense. L'università di Pavia dal medioevo al XXI secolo*, II, Milano 2014, in press.

¹² A. Ressi, *Breve esposizione di alcuni principi del diritto mercantile*, Pavia 1818. For more details on Ressi's academic career, see Andreoni e Demuru, *La Facoltà politico legale* (11), pp. 125-128; for a general overview, see A. Monti, *Ressi, Adeodato*, in *DBGI*, II, p. 1672.

¹³ Cf. A. Reale, *Del diritto commerciale e marittimo secondo le leggi austriache ed italiane nella parte in cui queste sono mantenute in vigore*, Pavia 1822. On Reale's academic career, see D'Amico, *Agostino Reale e la civilistica lombarda* (6), pp. 773-818; Ead., *Reale, Agostino*, in *DBGI*, II, p. 1663.

he would not make any significant contributions to the study of commercial law¹⁴.

Almost twenty years would pass before another three publications appeared in Milan in the early 1840s. One was written by the eclectic and prolific G.A. Castelli and entitled *Manuale del codice di commercio con note* (Textbook on the commercial code with notes), while the other two were by Antonio Ascona – author and translator¹⁵ of various books – and entitled *Manuale del codice di commercio nelle parti conservate in vigore dalla legislazione austriaca* (Textbook on the parts of the commercial code that have been maintained in force by Austrian legislation) and *Manuale teorico pratico per ogni sorta di società secondo le leggi civili, commerciali e politiche* (Theoretical and practical textbook for every kind of company according to civil, commercial and political laws). These works covered different topics in different ways; nonetheless, whether they were organized by subject matter or adhered to the classification system established by the code, they did not stray far from the features listed above¹⁶. This was not the case, however, for an interesting four-volume work by the private teacher Vincenzo Barnaba Zambelli, published between 1845 and 1850 under the title *Proposta analitica di un insegnamento sul diritto commerciale, sul diritto di credito e sul diritto marittimo privato, pubblico e internazionale degli stati* (Analytical proposal for teaching commercial law, credit law and private, public and international maritime law of nations). Zambelli's work provided a wide-ranging analysis of commercial law as a whole, while offering several points of comparison, including some references to the text that is the focus of the present article¹⁷. He would be awarded the chair in mercantile law at the University of Padua in 1847¹⁸.

¹⁴ Andreoni e Demuru, *La Facoltà politico legale* (11), pp. 128-131.

¹⁵ Napoli, *La cultura giuridica* (8), pp. 25-25, 31, 36-37.

¹⁶ K.J.A. Mittermaier, in *Dello stato attuale della scienza del diritto commerciale in Italia*, (trad. di G. Tomasoni), in *Giornale di giurisprudenza pratica*, 1.23 (1946), p. 366, says that the two authors wrote commentaries on the commercial code, not research monographs.

¹⁷ V.B. Zambelli, *Proposta analitica di un insegnamento sul diritto commerciale, sul diritto di credito e sul diritto marittimo privato, pubblico e internazionale degli stati*, II, Milano 1846, p. 120.

¹⁸ See V. Belloni, *Gli studi privati politico-legali nella Lombardia della restaurazione (1814-*

The court documents and legal advice of lawyers at the time also featured similar characteristics: they continued to adhere to French doctrine and jurisprudence, as was the case during the Napoleonic era, when their lines of legal argumentation had been based on the code's provisions¹⁹.

Thus, Lombard commercial doctrine of the Restoration era was not able to support the region's economic development, as it was a science that lacked constructive solutions. Indeed, the Lombard economy had begun to evolve sooner than the rest of the Italian peninsula, and it would require intense scrutiny from the 1830s onward, especially as concerned company law²⁰.

At the same time, it cannot be ignored that even as far back as the 1820s, the educated bourgeoisie began paying close attention to the related industrialization process that was taking place in that period: it was interpreted as a strange form of 'associationism', and above all they were concerned with its repercussions for public prosperity²¹.

1859), in «Annali di Storia delle Università italiane», 13 (2009), pp. 352-353 and G. Berti, *L'università di Padova dal 1814 al 1850*, Padova 2011, p. 155.

¹⁹ V. Belloni, *L'avvocatura lombarda nell'età della Restaurazione. Un ceto in assoluto declino?*, Milano 2012, pp. 173-180.

²⁰ A. Carera, *I limiti del tentato decollo dopo il ritorno degli austriaci*, in *Dal Settecento all'unità politica*, in *Storia dell'industria lombarda*, S. Zaninelli (ed.), Milano 1988, pp. 201-248; E. Borruso, *L'industrializzazione del «milanese» (1836-1899)*, in *Studi di storia dell'industria «milanese» (1836-1983)*, Milano 1996, pp. 9-44; R. Pichler, *L'economia lombarda e l'Austria. Politica commerciale e sviluppo industriale (1815-1859)*, Milano 2001, pp. 35 e ss.; V. Castronovo, *Storia economica d'Italia. Dall'Ottocento ai giorni nostri*, Torino 2013², pp. 3-20.

²¹ During the nineteenth century – not only in the Kingdom of Lombardy-Venetia, but all over Italy – it was very common to use the concept of 'association' in reference to economic activities. For Milan, see: M. Meriggi, *Il Regno Lombardo-Veneto*, in *Storia d'Italia*, G. Galasso (ed.), 18.2, Torino 1987, now in *La grande storia di Milano*, IV, Torino 2010, pp. 246-248; Id., *Milano borghese. Circoli ed élites nell'Ottocento*, Venezia 1992, pp. 93-103. For a general overview, see: *Elites e associazioni nell'Italia dell'Ottocento*, A.M. Banti e M. Meriggi (ed.), n. monografico di «Quaderni storici», 77, fasc. 2 (1991); A. Sciumè, *Organizzare l'economia. Le Camere di Commercio nell'Italia contemporanea fra diritto commerciale e diritto amministrativo*, Brescia 2000, p. 45; M. Augello e M.E.L. Guidi, *Da dotti a economisti. Associazioni, accademie, e affermazione della scienza*

2. *The contest announced by the Istituto Lombardo Accademia di Scienze e Lettere in 1842.*

Given the situation described above, the initiative taken by the Istituto Lombardo²² in May of 1842 was that much more commendable. The academics decided that the scientific award – presented every two years²³ – was to address the following questions: *What is the influence of industrial and commercial associations on public prosperity, and what would be the most adequate ways to protect those associations?* Contestants were thus encouraged to reflect on the relationship between industrialization and progress in order to provide an appropriate answer to the first question, as well as to undertake a critical analysis of the section *Delle società* (On companies) in the Commercial Code²⁴ in order to offer a comprehensive response to the second; it is the latter that is the focus of the present article²⁵.

The initiative's innovative potential was significant in itself, but it truly took on added value when the efforts of the young participants turned into

economica nell'Italia dell'Ottocento, in *Associazionismo economico e diffusione dell'economia politica nell'Italia dell'Ottocento*, Milano 2000, pp. XXI-XCI.

²² On what in English we could call “The Lombard Institute, Academy of Sciences and Letters”, see F. Della Peruta, *Cultura e organizzazione del sapere nella Lombardia dell'Ottocento. L'Istituto Lombardo di scienze e lettere dalla fondazione all'unità*, in *L'Istituto Lombardo-Accademia di Scienze e Lettere (secoli XIX-XX), Storia istituzionale*, I, A. Robbiati Bianchi (ed.), Milano 2007, pp. 162-302. On the jurists in the Istituto Lombardo, see A. Padoa Schioppa e E. D'Amico, *Giuristi e diritto nell'Istituto Lombardo dell'Ottocento*, in *L'Istituto lombardo (22), Storia della Classe di Scienze Morali*, III, M. Vitale, G. Orlandi e A. Robbiati Bianchi (ed.), Milano 2009, pp. 439-466; A. Santangelo Cordani, *Le retoriche dei penalisti a cavallo dell'unità nazionale. Le letture dell'Istituto lombardo Accademia di scienze e lettere*, Milano 2011, pp. 23-29.

²³ More details on the rules and terms of the scientific awards presented by the Istituto Lombardo can be found in Della Peruta, *Cultura e organizzazione* (22), pp. 302-392. The author stresses the importance of the scientific awards for the Istituto's good reputation. The original copies of the documents concerning the scientific award are held at the Archivio dell'Istituto Lombardo, fondo *Concorsi biennali scientifici 1842-1844*.

²⁴ *Cod. comm.*, libro I, titolo III. Cf. *supra* nt. 1.

²⁵ On the economic and political aspects, see C. Rotondi, “*Rendere facili le verità utili*”. *Dalla società patriottica all'Istituto Lombardo (1776-1859)*, in *Associazionismo economico* (21), pp. 55-60.

concrete proposals for lawmakers, which is exactly what happened with the winning entries.

The rules of the contest provided for a sole winner who, in addition to receiving a cash prize, would have the honor of seeing his work published in the Academy's journal²⁶, «Giornale dell'I.R. Istituto lombardo di scienze, lettere ed arti e Biblioteca italiana» (Journal of the Imperial-Royal Lombard Institute of Sciences, Letters and Arts and Italian Library)²⁷. Nonetheless, the selection committee, headed by Professor Andrea Zambelli²⁸, decided to give honorable mention to two other works and publish them as well²⁹.

The selection committee's report was succinct yet meaty, and it revealed that all of the contestants had examined the subject of companies³⁰

²⁶ The selection committee had to give an opinion on every entry received, without mentioning the author, before choosing the winner. In 1842 they received nine entries. Cf. *GIL e BI*, 9 (1844), pp. 44-50.

²⁷ In 1838 the Istituto was entrusted with the continuation of the «Biblioteca Italiana» (*supra* nt. 5). See Della Peruta, *Cultura e organizzazione* (22), pp. 375-383.

²⁸ He taught *Scienze politiche austriache, spiegazione del Codice penale sulle gravi trasgressioni di polizia e di Procedura giudiziaria nelle liti e fuori* (Austrian political science, explanation of the Criminal Code regarding serious contraventions and Judicial Proceedings during and outside of litigation); see Andreoni e Demuru, *La Facoltà politico legale* (11), pp. 139-143 and V. Belloni, *Andrea Zambelli*, in *Almum studium Papiense* (11), in press. On his political history papers, which mainly focused on Machiavelli's thought, see G. Procacci, *Machiavelli nella cultura europea dell'età moderna*, Roma-Bari 1995, pp. 393-398; L. Mitarotondo, *Religioni e politica in Andrea Zambelli: un capitolo del machiavellismo nella cultura lombarda pre-unitaria*, in *Storia e politica*, n.s. 3, n. 1 (2011), pp. 102-120. Paolo De Capitani, Carlo Londonio, Giuseppe Solari and Luigi De Cristoforis were the other members of the selection committee.

²⁹ *GIL e BI*, 10 (1845), p. 9. I. Lucchini republished them in «Rivista delle società», 14 (1969), pp. 913-936 (Broglia); pp. 1281-1337 (Restelli); 15 (1970), pp. 682-729 (Gargano and Valerio). He deeply believes in the importance of this contest, as he considers it the first time that the educated Milanese became aware of the juridical, economic and welfare problems related with economic associationism. See Lucchini, *Introduzione*, in «Rivista delle società», 14 (1969), p. 911.

³⁰ The present article, in its original form, utilizes nineteenth-century terms to describe these companies. For this reason, the English version has adopted nineteenth-century English terms as well, basing itself primarily on *The Law of Italy Relating to Concessions, Railways & Tramways, Expropriation & Companies* by Charles Woodward Wallis, published in 1830. As such, the following terminology shall be employed: the term "anonymous company" (*società*

from different angles: some focused on corporate governance, others on protective measures, and still others on the dangers inherent in the structure of anonymous companies, or on the best measures to put in place in order to protect investors without excessively stifling the economy³¹, which was one of the most intensely-debated issues in all of Europe.

In addition to Francesco Restelli's winning entry entitled *Vis unita fortior*, the two entries that were given honorable mention – *Canto l'armi pietose, Nel mezzo del cammin di nostra vita* (I sing the sacred armies, Midway upon the journey of our life) by Emilio Broglio and *L'industrie, comme toutes les puissances nouvelles, demande non à être supprimée, mais à être réglée et organisée* (Industry, like all new powers, need not be suppressed, but rather regulated and organized) by Turin natives Francesco Gargano and Giuseppe Valerio – also stood out from the rest, due to the quality of their analysis and the merits of their proposals³².

Broglio, who would go on to become a minister of the Kingdom of Italy³³, focused on the concept of *laissez-faire*³⁴. In prose that was both

anonima) shall be considered synonymous with today's "joint-stock company" (*società per azioni*), and the two terms shall be used interchangeably; the term "limited-joint-stock company simple" (*società in accomandita semplice*), shall refer to a company that more or less corresponds to today's "limited partnership", and which, in the words of Charles Woodward Wallis (1830), "is constituted by one or more Partners jointly and severally responsible, and one or more private Capitalists who are distinguished as Dormant Members with Limited Liability"; the term "limited-joint-stock companies divided by shares" (*società in accomandita divisa per azioni*) shall be used to refer to a company that more or less corresponds to what is today known as a "partnership limited by shares"; and the term "partnership under a collective name" (*società in nome collettivo*) shall be used to refer to a company that more or less corresponds to what is today known as a "general partnership".

³¹ *GIL e BI*, 9 (1844), pp. 45-50. For an evaluation of Zambelli's economic theory, see Della Peruta, *Cultura e organizzazione* (22), pp. 320-323.

³² Della Peruta, in *Cultura e organizzazione* (22), pp. 320-321, praises the three papers for the way they approach the matter under discussion. Acerbi, in *Le società per azioni* (7), pp. 23-25, undermines their importance in relation to the evolution of the local economy, especially the attempt of creating an anonymous company to build the Venice-Milan railway in 1837.

³³ Emilio Broglio was an important participant in the Risorgimento, and in 1848 he went into exile in Torino, where he taught Political Economy at the university. After Italian

lively and sharp, he set out guidelines for the lawmakers of the future, and his analysis dealt directly with company law, which he saw as essential to the country's economic development. He provided a more in-depth line of reasoning than that typically employed by his contemporaries:

when it comes to associations, public authorities must limit themselves to dispensing justice and ensuring parity of intelligence [...] 1. By promoting good [...] education in order that the greatest number of citizens may, through association, gain the greatest possible advantage from their own businesses; 2. By enabling individuals to know unequivocally the legal and economic status of associations with which they intend to deal³⁵.

Emilio Broglio's main target was the regulation of anonymous companies. Indeed, articles 29 to 37 of the Code placed limits on raising the substantial amount of capital needed to set up big businesses; and article 37 went so far as to call for government authorization³⁶ to do so, which lawmakers in Continental Europe hoped would allow them to better control limited liability companies by preventing any abuse of public trust.

unification he was an active member of the right-wing party, and he held the role of minister three times: first of Public Works, then of Education, and finally of Agriculture and Trade. See N. Raponi, *Broglio, Emilio*, in *DBI*, 14 (1972), pp. 434-437.

³⁴ *GIL e BI*, 12 (1845), pp. 62-78. The manuscript is held in the Archivio dell'Istituto Lombardo, fondo *Concorsi biennali scientifici 1842-1844*, foglio di cop. n. 520.

³⁵ *GIL e BI*, 12 (1845), p. 66.

³⁶ *GIL e BI*, 12 (1845), p. 69. Broglio criticized all the articles related to anonymous companies, but article 37 was the most criticized. Lucchini believes that this is the reason why it was hard to obtain the *Imprimatur* for the paper. See Lucchini, *Introduzione*, in «Rivista delle società», 14 (1969), p. 914. On censorship, see F. Bertoliatti, *La censura nel Lombardo-Veneto (1814-1848)*, in «Archivio storico per la Svizzera italiana», 14 (1939), pp. 23-114 e 15 (1940), pp. 45-67; G. Formenti, *L'ufficio di censura di Milano durante la Restaurazione. L'organizzazione, le competenze e gli uomini (1814-1848)*, in «Storia in Lombardia», 10, 1 (1991), pp. 3-30; G. Berti, *Censura e circolazione delle idee nel Veneto della Restaurazione*, Venezia 1989. For an overview of the Italian peninsula before unification, see M.I. Palazzolo, *I libri, il trono, l'altare. La censura nell'Italia della Restaurazione*, Milano 2003, pp. 15-44; and the papers in D.M. Bruni, *Potere e circolazione delle idee. Stampa, accademie e censura nel Risorgimento italiano*, Milano 2007, especially G. Albergoni, *La censura in Lombardia durante la Restaurazione. Alcune riflessioni su un problema aperto*, pp. 213-236.

Despite the fact that this form of control severely limited the development of anonymous companies for entrepreneurs – in addition to not preventing fraud and encouraging the misuse of limited-joint-stock companies divided by shares in order to avoid government authorization – there were no published works in the kingdom that considered abolishing it³⁷. What's more, the French would only begin to voice their dissent in the early 1840s, with regulatory action still more than twenty years off³⁸. Thus, it is impossible to ignore just how ahead of his time Broglio was in taking the stance that he did. As far as Italy was concerned, legislative reform would only come about with the Mancini code, even though there had long been support for change³⁹.

³⁷ *Supra* pp. 4 and 5. In 1846, Vincenzo Barnaba Zambelli argued strongly in favor of government authorization. Cf. Zambelli, *Proposta analitica di un insegnamento* (17), pp. 143-144.

³⁸ A. Lefebvre Teillard, *La société anonyme au XIX^e siècle. Du Code de commerce à la loi de 1867 histoire d'un instrument juridique de développement capitaliste*, Paris 1985, pp. 21-105 e 419-448; Ead., *L'industrialisation et le droit. Le développement des sociétés par actions en France au XIX*, in *Studien zur Einwirkung der Industrialisierung auf das Recht*, H. Coing (ed.), Berlin 1991, pp. 51-77; P. Didier, *Le capital social et la protection des créanciers sociaux*, in *Livre du bicentenaire* (1), pp. 202-207; J.-P. Alline, *Le développement du droit commercial en dehors du Code et l'influence des droits étrangers 1807-1925*, in *Qu'en est-il du Code* (1), pp. 77-87. Due to the strict regulation, many entrepreneurs created limited-joint-stock companies divided by shares, instead of anonymous companies. J. Hilaire, *Le Règne et la spéculation. Les sociétés en commandite depuis le Code de commerce*, in *La société en commandite entre son passé et son avenir*, Paris 1983, pp. 19-62, a shorter version in Id., *Le Droit. Les affaires et L'Histoire*, Paris 1995, pp. 159-218.

³⁹ See P. Ungari, *Profilo storico del diritto delle anonime in Italia*, Roma 1974, pp. 51-59; A. Padoa Schioppa, *Disciplina legislativa e progetti di riforma delle società per azioni in Italia (1862-1942)*, in *Studien zur Einwirkung* (38), pp. 79-98, also in *Saggi di storia* (1), pp. 207-216; Id., *Omologazione delle s.p.a. nell'Italia post-unitaria: il ruolo del notaio*, in «Rivista di Storia del Diritto Italiano», LXXXV (2012), pp. 109-128; Id., *La normativa sulle società per azioni: proposte e riforme, un concerto a più voci (1882-1942)*, in *La società per azioni*, A. Padoa Schioppa e P. Marchetti (ed.), Roma-Bari 2011, pp. 7-15; Acerbi, *Le società per azioni* (7), pp. 33-56. During the Napoleonic era there had been some bills which proposed doing away with government authorization for anonymous companies, but one of the partners had to be a general partner. See A. Padoa Schioppa, *Le società commerciali nei progetti di codificazione del Regno italico (1806-1807)*, in *La formazione storica del diritto moderno in Europa*, Firenze 1977, pp. 1015-1039, also in *Saggi di storia* (1), pp. 130-135; *I progetti del Codice di*

Emilio Broglio made sure to address the unique and successful development of companies in Great Britain⁴⁰, and he described the system with such an abundance of detail that the selection committee was moved to commend him for it, despite not fully supporting such *laissez-faire* theories⁴¹.

The author maintained that the regulation of anonymous companies needed to be less restrictive, and in this regard, he highlighted how flawed the French system had become:

The impediments to the foundation of anonymous companies necessarily lead speculators to that bastard and dangerous form of limited-joint-stock companies divided by shares⁴².

Gargano and Valerio, two authors from Piedmont who were adamant champions of radical leftist theories⁴³, took a completely different approach. They adopted a more systematic structure, subdividing the work under headings; the exposition of their ideas was more deliberate and didactic; and the content was more wide-ranging and detailed, not to mention different in its substance on the whole. The one conviction they had in common with Broglio was that anonymous companies were the best way to encourage industrialization⁴⁴. More than anything else, the selection committee

commercio del Regno italiano: 1806-1808, Milano 1999, A. Sciumè (ed.), pp. 117-129 for the bill of 1806, pp. 465-474 for the bill of 1808. For an overview of these bills, see Berlinguer, *Sui progetti di codice di Commercio* (3), pp. 7-74; A. Sciumè, *I tentativi per la codificazione del diritto commerciale nel Regno Italiano (1806-1808)*, Milano 1982. For the origin and content of the code of 1882, see A. Padoa Schioppa, *La genesi del codice di commercio del 1882*, in *1882-1892, Cento anni dal codice di commercio* (Atti del Convegno internazionale di studi, Taormina 4-6 novembre 1982), Milano 1982, pp. 1-51, also in *Saggi di storia* (1), pp. 157-203

⁴⁰ He was fascinated by the development of the East India Company. See *GIL e BI*, 12 (1845), pp. 45-47. On the East India Company, see Gialdrone, *East India Company. Una storia giuridica (1600-1708)*, Bologna 2011.

⁴¹ *GIL e BI*, 9 (1844), p. 47.

⁴² *GIL e BI*, 12 (1845), pp. 71-72 and *supra* nt. 38.

⁴³ Both Gargano and Valerio took part in the Risorgimento and wrote in Lorenzo Valerio's journals. The Senator Valerio Lorenzo was Giuseppe's brother. See Lucchini, *Introduzione*, in «Rivista delle società», 15 (1970), pp. 683-684.

⁴⁴ *GIL e BI*, 12 (1845), pp. 79-152, pp. 116-152. The manuscript, preserved in the Archivio dell'Istituto Lombardo, fondo *Concorsi biennali scientifici 1842-1844*, Foglio di cop. n. 518, is slightly different than the printed version.

appreciated the methodical approach and thoroughness of the entry; its members, however, were nonetheless quite suspicious of the new proposals⁴⁵.

The authors' main focus was on anonymous companies and limited-joint-stock companies simple, the latter of which being the most common type of company structure used by family-run businesses in Lombardy (both for practical reasons and because at the time there was widespread hostility towards joint-stock companies⁴⁶). Above all, they concentrated on the problems associated with the structure of these companies, such as market rigging, poor management of capital and the fact that it was impossible for the working class to take part.

There were some interesting suggestions put forward in response to the above-mentioned flaws, such as the idea of distributing dividends among workers⁴⁷, or establishing a collaboration between the public and private sectors for public utility companies⁴⁸; other recommendations, though worthy of attention because they reveal the authors' line of reasoning, tended towards the naive. To cite but two examples, the authors proposed establishing a maximum share price in order to permit broad-based shareholding⁴⁹, as well as putting into place an evaluation process for the creation of anonymous companies that would rigorously respect specific criteria set forth in a general regulation⁵⁰, thereby replacing the need for government authorization. The latter proposal was harshly criticized by the selection committee⁵¹.

By comparing the authors' proposals with the selection committee's opinions thereof, it becomes clear that when it came to involving the lower

⁴⁵ *GIL e BI*, 9 (1844), p. 48.

⁴⁶ Carera, *I limiti del tentato decollo* (20), p. 236 and Acerbi, *Le società per azioni* (7), pp. 15-16. Carlo Cattaneo criticized the negative attitude towards joint-stock companies in C. Cattaneo, *Alcune ricerche sul Progetto di un Monte delle Sete*, in *Scritti sulla Lombardia*, A. Quadrio Curzio e A. Moiola (ed.), II, Milano 1969, pp. 285-286.

⁴⁷ *GIL e BI*, 12 (1845), p. 130.

⁴⁸ *GIL e BI*, 12 (1845), pp. 143-151.

⁴⁹ *GIL e BI*, 12 (1845), p. 133.

⁵⁰ *GIL e BI*, 12 (1845), p. 134.

⁵¹ *GIL e BI*, 9 (1844), p. 48.

social classes in the industrialization process, there were irreconcilable differences between the exponents of radical leftist thought and the more conservative approach preferred by most of the Istituto's members⁵². On the other hand, more common ground was found on the subject of state intervention in the economy.

Overall, Francesco Gargano and Giuseppe Valerio's entry was thorough and well-structured, yet there is no doubt that it was missing the verve and insight that characterized Emilio Broglio's writing.

Despite their differences, both works offered a constructive, proactive approach that other Restoration-era Lombard jurists simply did not demonstrate. Indeed, the latter tended to limit themselves to commenting on coded regulations, and relied on French doctrine and jurisprudence when doing so.

It is the author's opinion that such an approach was just as much a credit to the Istituto as it was to the contestants themselves: by holding the contest, it provided a chance to address the law regarding nascent industrial associations from a new perspective.

3. *Vis unita fortior*: the winning entry.

Francesco Restelli's work deserves even more attention. One of the leading figures in Milanese society during the second half of the century, he did not limit himself to commenting, criticizing or making proposals to lawmakers in a conversational tone; on the contrary, he drew up a veritable alternative to title III, book I of the Commercial Code⁵³.

In the first part of his work, Restelli expanded upon the economic, moral and political issues related to the industrialization of Lombardy. In the second part, he focused on the proper instruments to put in place in order to protect commercial and industrial associations, and in so doing he made a useful distinction between direct and indirect means. Indirect means included savings banks and commercial banks, the customs regime and all other regulations that indirectly affected trade, such as financial

⁵² The selection committee severely criticized the suggestion to share the profit with workers and to make it easier for small investors to invest. *GIL e BI*, 9 (1844), p. 48.

⁵³ *GIL e BI*, 11 (1845), pp. 59-199, pp. 132-147. The manuscript is held in the Archivio dell'Istituto Lombardo, fondo *Concorsi biennali scientifici 1842-1844*, foglio di cop. n. 519.

legislation, bankruptcy legislation and court procedure⁵⁴; direct means were State aid to public utility companies and company law⁵⁵.

What raised Restelli's writing above the rest of the entries was the precision with which he tackled company law, and the selection committee at the Istituto Lombardo saw it the same way⁵⁶. This was not surprising, considering that Restelli was a young lawyer who, in the years to come, would demonstrate his solid legal skills on more than one occasion. Indeed, the Istituto itself would entrust him with several tasks internally⁵⁷, and he would also work for government institutions. After Italian unification, he would thrice serve as a member of the commissions in charge of drawing up the country's Civil Code, which saw him fight for a form of family law that based family ties on love and respect, rather than on subservience⁵⁸.

Francesco Restelli aimed to develop a version of company law that was able to better protect partners and third parties without impeding trade. In addition, he wanted to eliminate those uncertainties brought about by gaps or ambiguous wording in the legislation, which only served to fuel controversy and slow down the business world⁵⁹.

Content aside, the very structure of the work was a notable attempt at providing even greater clarity on the subject. The chapter entitled *Delle società commerciali* (On companies) was subdivided into six sections: the first three dealt with partnerships under a collective name, limited-joint-stock companies simple and anonymous companies respectively; the

⁵⁴ *GIL e BI*, 11 (1845), pp. 105-127.

⁵⁵ *GIL e BI*, 11 (1845), pp. 127-196.

⁵⁶ *GIL e BI*, 9 (1844), p. 49.

⁵⁷ In 1847 he was asked to examine Francesco Alecchi's *Regolamento sulle contravvenzioni boschive* and to prepare two proposals to reform law studies at the University of Pavia; in 1857 he was asked to write a paper on intellectual property law for the Brussels conference.

⁵⁸ On the Milanese lawyer, who played a leading role in the revolution of 1848 and then became senator of the Italian Kingdom, see A. Monti, *Un italiano: Francesco Restelli 1814-1890*, Milano 1933, and V. Belloni, *Avvocati della Milano austriaca ed edificazione del nuovo stato*, in «Rassegna forense. Rivista trimestrale del Consiglio Nazionale Forense», 44, n.1 (2011), pp. 201-214; Ead., *Francesco Restelli*, in *Avvocati che fecero l'Italia*, S. Borsacchi e G.S. Pene Vidari (ed.), Bologna 2011, pp. 214-226.

⁵⁹ *GIL e BI*, 11 (1845), pp. 133-134.

fourth section contained «provisions referring to limited-joint-stock companies simple and anonymous companies»; the fifth contained «provisions referring to partnerships under a collective name, limited-joint-stock companies simple and anonymous companies »; and the sixth dealt with partnerships for non-commercial purposes⁶⁰. For the most part, the articles set forth in sections IV and V had not been previously covered by the Commercial Code's provisions.

In addition, it is clear from the wording used by Restelli in the first article of his proposal that he wanted to increase the general understanding of the system. Indeed, while article 19 of the Napoleonic Code limited itself to providing a list of the types of companies allowed, Restelli went further and described the purposes of those companies. Drawing on article 1 of the Code⁶¹, the lawyer defined a company as «a contract through which two or more people agree to unite in order to conduct commercial acts, by making a joint contribution with the aim of sharing in any profits that might result»⁶². Although there are no sources that attest to Restelli's influence on the various commissions that helped draft the Commercial Code of 1882, he was a sitting member of parliament at the time; thus, it seems appropriate to note that the association between 'commercial acts' and companies would come up again on that occasion⁶³.

The young lawyer strove for certainty: to that end, even his description of the powers of a dormant member with limited liability went into more detail than the Code, as the «uncertainty» around this role «creates harmful variations in jurisprudence and in the doctrine»⁶⁴. Likewise, he also specified the tasks that directors were to fulfill in

⁶⁰ *GIL e BI*, 11 (1845), pp. 134-148.

⁶¹ See *supra* nt. 3.

⁶² *GIL e BI*, 11 (1845), p. 134 e *Cod. comm.*, art. 19.

⁶³ *Codice di commercio del Regno d'Italia*, Milano 1882, art. 76. For a comparison between the two codes, see U. Santarelli, *Società commerciali, credito e mercatura*, in «Rivista di diritto civile», 36, n.5 (1990), pp. 610-611, also in *Id.*, *Ubi societas ibi ius. Scritti di storia del diritto*, II, A. Landi (ed.), Torino 2010, pp. 561-576; *Id.*, *Di certe aporie (passate presenti e future) del sistema societario*, in A. Ennio Cortese, III, D. Maffei, I. Birocchi, M. Caravale, E. Conte, U. Petronio (ed.), Roma 2001, pp. 204-209.

⁶⁴ *GIL e BI*, 11 (1845), pp. 136, par. 12, and 156-160; *Cod. comm.* artt. 24-28.

anonymous companies⁶⁵. Furthermore, Restelli focused much attention on the ways of calling a shareholders' meeting, especially when there were many shareholders to convene (the code of 1882 would also revisit this issue)⁶⁶, as well as on the definition of capital stock⁶⁷.

In particular, the challenge lay in the regulation of limited-joint-stock companies simple and anonymous companies, where it was important to find the right balance between protecting partners and third parties on the one hand, and not impeding the economy on the other. Nonetheless, Restelli had faith in his contemporaries, so much so that he stated the following:

Up to a short time ago one did not have to go to much trouble to find shareholders; but now public opinion has changed. Not only were shareholders injured, they were also insulted; and now, if you want to find them, you need to show them something serious⁶⁸.

The jurist had an optimistic view of potential investors' awareness, and this allowed him to put forward some interesting proposals. For example, Restelli chose not to include government authorization for limited-joint-stock companies divided by shares – though Italian unification-era legislators would eventually require it in 1865⁶⁹ in reaction to the *fièvre de commandites*⁷⁰ – and he counterbalanced that by calling for partners⁷¹ to contribute at least one tenth of the company's capital⁷². In order to offer additional protection to shareholders, those

⁶⁵ The power of directors would increase in the decades that followed, to the detriment of the shareholders' power. Restelli was conservative when it came to this matter. Cf. *GIL e BI*, 11 (1845), p. 138, par. 24; *Cod. comm.* artt. 31-32.

⁶⁶ *GIL e BI*, 11 (1845), pp. 139-140 e 177-178. See Ungari, *Profilo storico* (39), pp. 67-68; Padoa Schioppa, *Disciplina legislativa* (39), pp. 211 e 220-222.

⁶⁷ *GIL e BI*, 11 (1845), pp. 140 e 180-182.

⁶⁸ *GIL e BI*, 11 (1845), p. 153.

⁶⁹ See Ungari, *Profilo storico* (38), p. 51; Padoa Schioppa, *Disciplina legislativa* (39), pp. 209-210.

⁷⁰ *Supra* nota 38.

⁷¹ The "partners" (*accomandatari*) referred to here correspond to what today are known as "general partners".

⁷² *GIL e BI*, 11 (1845), pp. 136, par. 14, e 152-153.

same partners could be served with a court injunction if there was unanimous agreement on the part of the dormant members with limited liability that they did not possess the necessary attributes to fulfill their task⁷³. The same reasoning lay behind the obligation to notify the Chamber of Commerce⁷⁴ of the company's most important activities, which established the presumption of law that third-party contractors were to be aware thereof⁷⁵, as well as the obligation to draft an annual financial report in order to avoid the presumption of malice in the event of bankruptcy⁷⁶.

While Restelli indeed had some faith in investors' abilities, it was not enough to lead him to abolish government authorization for anonymous companies. From this point of view, his approach was less innovative than that of Emilio Broglio. On the contrary, the young lawyer, moved by the need to protect third parties and minority shareholders, called for the company's founders to be held liable for the full implementation of the articles of association while awaiting government approval; the use of court-appointed experts to oversee in-kind contributions; restrictions on articles of association that allow new shares to be issued⁷⁷; and a ban on selling and trading warrants⁷⁸.

Restelli concluded his project with some articles on partnerships for non-commercial purposes and an appendix that addresses criminal issues, though he recognized that these subjects do not fall under company law.

He decided to include some provisions on partnerships for non-commercial purposes because he was convinced that both the form and content of the code's articles on the matter were inadequate⁷⁹.

On the other hand, criminal law was seen as an instrument that the government could use to provide investors with proper protection from

⁷³ *GIL e BI*, 11 (1845), pp. 137 e 161-163.

⁷⁴ On the limited role of the Chamber of Commerce in Lombardy, see Sciumè, *Organizzare l'economia* (21), pp. 42-52.

⁷⁵ *GIL e BI*, 11 (1845), pp. 141 e 150-151.

⁷⁶ *GIL e BI*, 11 (1845), pp. 144-145 e 186-187.

⁷⁷ *GIL e BI*, 11 (1845), pp. 138 e 163-169.

⁷⁸ *GIL e BI*, 11 (1845), pp. 139 e 174-176.

⁷⁹ *GIL e BI*, 11 (1845), pp. 147-148 e 193-194.

administrators and managers, without interfering too much in the running of the business. In that regard, Restelli proposed that any partners who withdrew their stake wholly or in part before their contract expired, or who manipulated inventories and financial statements⁸⁰, would be charged with fraud⁸¹.

Although there is no evidence that Restelli had actual knowledge of how companies functioned on a daily basis, he can be said to have successfully reached his objective from a scientific point of view, given the premises that he laid out at the beginning of his work. The project was well-devised and presented a more orderly and effective structure than that of the laws in force at the time, which, together with some additional definitions provided by Restelli, had a significant effect on the legal certainty of company law. Furthermore, there were several interesting proposals for improving the balance between protecting citizens on the one hand, and respecting the dynamism of the business world on the other.

This was a commendable result in itself, but it took on even more significance because of the context in which Restelli was writing: indeed, any jurists who may have occasionally dealt with company law limited themselves to describing the code in force while relying on French doctrine and jurisprudence.

Thus, Restelli achieved his objective of putting forward a valid proposal for a new regulation of companies, in addition to the immediate objective of winning the contest. Nonetheless, there is still the impression that Restelli's efforts did not actually fulfill his true goal: to help draft a better commercial code for his State. And given Restelli's commitment to the liberation of Milan in the years to come, followed by his active role in national politics, there is little doubt that the State he had in mind was not the Kingdom of Lombardy-Venetia, but Italy.

⁸⁰ The same rule applied to the directors of anonymous companies.

⁸¹ *GIL e BI*, 11 (1845), pp. 148-148 e 195-196 and *Codice dei delitti e delle gravi trasgressioni politiche*, Milano 1815, parte I, sez. I, §§ 176-184. On the development of business criminal law, see R. Ferrante, *Il diritto penale dell'economia nell'età dei codici. Dall'illuminismo giuridico ai "nuovi reati"*, in *Itinerari in comune. Ricerche di storia del diritto per Vito Piergiovanni*, Milano 2011, pp. 63-114.

4. *Conclusions.*

The winning entries in the Istituto's contest were undoubtedly unique and significant in Lombardy at the time. In addition to demonstrating remarkable depth from a cultural and legal point of view, they also took a critical approach to the codified laws in force, which was much different from the standard practice of jurists in the Kingdom.

While the two writers from Turin, Gargano and Valerio, produced a work that stood out due to its systematic structure and its detailed reconstruction of the existing legal framework, Emilio Broglio and Francesco Restelli both showed more adeptness at understanding the needs of an economy that was preparing to deal with a period of great change. Though they differed in the insight they provided, their approach allowed them to address their recommendations directly to legislators, and they took their ideas further than any of their contemporaries had gone. For example, Broglio proposed the abolishment of government authorization for anonymous companies⁸², while Restelli came up with a legitimate and practicable proposal to reform company law, suggesting that the concept of 'commercial acts' be associated with the definition of companies. What's more, he recommended curbing the proliferation of limited-joint-stock companies simple by introducing more instruments to control partners, rather than resorting to the extreme measure of government authorization; and he called for stricter regulation of the ways to convene shareholders' meetings, which the Mancini code would also address⁸³.

Thus, Broglio seemed more inclined towards complete deregulation, while Restelli was more cautious. Nonetheless, both of their works offered interesting ideas worthy of reflection.

There is no denying that the works of greatest merit were written by two jurists who possessed unique personal talents: indeed, they would be among the very few Lombards to hold prestigious political roles in unified Italy. Nonetheless, doubts remain as to whether the lack of other works of such caliber in Lombardy was only attributable to inadequate education on

⁸² Cf. *supra* nt. 36 and the text referred to therein.

⁸³ Cf. *supra* § 3.

the subject⁸⁴. Indeed, it is likely that a significant role was played by the restrictions on freedom of expression which had been put in place by the Austrians in their authoritarian regime. Furthermore, there was absolutely no motivation to express one's opinion in any case⁸⁵: why would anyone undertake such a laborious and complex task when there was the risk that the censorship office⁸⁶ would not authorize its publication, and even if it did, when there was no chance that the government would take the proposals into consideration?

LIST OF ABBREVIATIONS

- ASUI*: *Annali di storia delle università italiane*
Cod. comm.: *Codice di commercio di terra e di mare pel Regno d'Italia*, Milano, 1808
DBGI: *Dizionario Biografico dei Giuristi Italiani (secoli XII-XX)*
DBI: *Dizionario Biografico degli Italiani*
GIL e BI: *Giornale dell'I.R. Istituto Lombardo di scienze, lettere ed arti e Biblioteca Italiana*

⁸⁴ In general, the lessons held at the University of Pavia lacked originality, and commercial law lessons were worse than the others, due to Antonio Volpi's incompetence. See *supra* nt. 11 and 14.

⁸⁵ Similar considerations, with reference to practicing law within the same framework, can be found in Belloni, *Avvocati della Milano* (58), pp. 232-234.

⁸⁶ *Supra* nt. 36.