

THE THREAT FROM THE SEA. THE KINGDOM OF NAPLES
BETWEEN PIRACY, WARFARE AND STATEHOOD IN A *TRACTATUS*
BY GIOVAN FRANCESCO DE PONTE

*LA MINACCIA DAL MARE. IL REGNO DI NAPOLI TRA PIRATERIA,
GUERRA E COSTRUZIONE DELLO 'SPAZIO' STATALE
IN UN TRACTATUS DI GIOVAN FRANCESCO DE PONTE*

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Abstract english: The paper focuses on the topic of the impact of piracy on the institutional framework in the Kingdom of Naples during the Modern Age (XVIth–XVIIth centuries). Many historians agree that the continuous Ottoman–Barbaresque raids on the coast of Southern Italy played a key role in the conditions of fragility and weakness of the South and its progressive marginalization from the economic and productive networks of early modern Europe. Consequently, the paper first analyzes the reason for military weakness of the Kingdom of Naples, and then it examines the effect of defensive vulnerability on the political-constitutional field through a Juridical culture’s paradigmatic text: the *Tractatus de potestate Proregis et Collaterali Consilii et regimine Regni* by Giovan Francesco De Ponte. In hindsight, the evaluation of the strategies of the government during the Spanish viceroyalty shows how the strong alliance between the Spanish Monarchy and the lawyers-administrators (the noble of robes) was a formidable legitimizing machine for the monarchy, but it also leads to the nobility progressively moving away from its traditional role of government and military defense. The final result of this compromise was to deprive the Kingdom of the only means that they had that could effectively counter attack the maritime dominance of the Ottoman-Barabresque pirates and feed a growing sense of insecurity which deeply scarred the fragile political balances of the southern Monarchy.

Keywords: Piracy; Privateering; Kingdom of Naples; Adriatic Sea; Freedom of the seas.

Abstract italiano: Il contributo s’incentra sul tema dell’impatto della pirateria sull’assetto socio-istituzionale del Regno di Napoli in Età Moderna (XVI-XVII secc.). Numerosi storici sono concordi nell’affermare che le continue scorrerie ottomano-barbaresche sulle coste del Sud Italia rappresentarono nel lungo periodo uno dei fattori chiave della debolez-

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za e della fragilità del Mezzogiorno e della sua progressiva marginalizzazione dai circuiti economici e produttivi dell'Europa moderna. Attraverso questa prospettiva d'indagine, il contributo in primo luogo prova ad analizzare le ragioni della vulnerabilità sul piano militare del Regno di Napoli, per poi passare ad esaminarne i risvolti sul piano politico-costituzionale attraverso un testo chiave della cultura giuridica napoletana: il *Tractatus de potestate Proregis et Collaterali Consilii et regimine Regni* di Giovan Francesco De Ponte. Sottotraccia, l'esame delle strategie di governo adottate durante il vicereame spagnolo dimostra come la strettissima alleanza tra i governanti spagnoli e il ceto di ministeriale di formazione giuridica costituì una formidabile macchina di legittimazione per la monarchia, ma comportò anche il progressivo allontanamento della nobiltà da ogni funzione di governo e di difesa militare. Il risultato di tale compromesso fu quello di privare di fatto il Regno dell'unica componente in grado di contrastare efficacemente il predominio assunto sui mari dai pirati barbareschi e di alimentare una conflittualità latente destinata a segnare nel profondo i fragili equilibri politici della monarchia meridionale.

Parole chiave: Pirateria; Guerra di corsa; Regno di Napoli; Mare Adriatico; Libertà dei mari.

All'armi, all'armi/
la campana sona/
li turchi son calati alla marina/
chi n'ha le scarpe rutte, si lle sola/
nun ha paura di pigliar spine/

To arms, to arms/
the bell is ringing/
the Turks have landed/
he who has broken shoes, fix them/
don't be worried about getting splinters/

These are the words of an old Calabrese folk song that tell the story of one of the most primitive and aggressive emotions of mankind: fear. In fact it was an ancestral fear, an all-encompassing fear that made up the daily life of the people of the coastal region of the south of Italy, who were continually attacked by pirates¹.

Contemporary stories – not always reliable, but full of striking detail – represent a rich source to get back that collective feeling of anxiety that all the popula-

¹ The following contribution is an elaboration and modification of the report given at Strathclyde University of Glasgow during the Conference held from June 24 to 26, 2019, entitled *The Problem of Piracy. An interdisciplinary Conference on Plunder by the Sea across the Word from the Ancient to the Modern*. I am grateful to all the participants, in particular David Wilson, Mark Chadwich and Nathan Kwan for their helpful and stimulating suggestions. At the present, it is not possible to provide a complete biographical outline of piracy in the Mediterranean in the Modern Age, as well as on the compelling phenome-

tion got when they caught sight of the “Turks”. As told by the Dominican Serafino Razzi, in Francavilla on the Adriatic coast in 1576, it was enough to simply see two unknown ships to throw the population into such a panic that they, collected «the most precious things» together, «abandoned the city and ran to the cities nearby, sending the women first, from the coast to the top of the mountains»².

The people’s fear was justified. The fear of being captured and sold into slavery in one of the many North African markets was more than a probability. In 1620, the residents of Manfredonia knew only too well when, after a pirate raid more than two hundred men were dragged to Barbary. Reports of the events say that the attackers slaughtered the people «bashing the young children’s heads against walls and hanging the old women from the door frames». After looting and destroying «many houses in the city»³, the barbaric crew took to the seas leaving behind a trail of death and destruction.

Apart from this and many other episodes taken from contemporary sources, trying to understand this collective sentiment means looking at the structure of the Kingdom of Naples in the early modern age, from the unarmed borders of a helpless pawn in the Mediterranean chess game⁴. From the early decades of the sixteenth century, the political and military changes have had serious impact on the maritime areas. On one hand, the Ottoman empire who after conquering Egypt and Syria extended its control to the North African rulers, on the other hand the Spanish Empire, that after the epic *Reconquista*, had tried to seize a series of transport hubs on the African coast. The result was a conflict that apart from its political and ideological aspects, marked the domination of two empires, both influenced by outside interests (the Middle East and Persia for the Ottoman Empire, the New World and the Atlantic for Spain) but in the Mediterranean they found the source and the limit of their power⁵.

The stages of the battle are all too well-known to be remembered here, moreover they constitute the thematic topics on which Fernand Braudel built his classic works of modern historical writing, like *Le Méditerranée et le monde méditerranéen à l’époque de Philippe II*⁶. It is enough to highlight that the seizing of Algiers in 1515 marked the rise of the brothers Aruc and Kayr ed Din (called Barbarossa). This last one in particular, declared he was loyal to the Sultan Selim

non linked to slavery currently practiced between the shores of *Mare Nostrum*. Among the numerous works with a general background: Benassar –Benassar, 1989; Blackburn 1997; Bono, 1997; Bono 1999; Colley, 2002; Davis, 2003; Marmon 1999; Jaspert–Kolditz, 2013. In a legal-historical perspective, see, recently Messinetti, 2020.

² Razzi, 1968, p. 63; see also Mafrici 1996, p.64.

³ Biblioteca della Società Napoletana di Storia Patria, ms. XXVIII B 11, *Relatione della presa di Manfredonia*, f.68. On the pillaging in the cities of Puglia: Panareo, 1952, p. 28; as well as Mafrici, p. 65.

⁴ Ajello, 1992.

⁵ Mascilli Migliorini, 2009, p. 76.

⁶ Seminal study edited for the first time in France in 1949, the works of Fernand Braudel

I, and he was nominated *Beylerbey*, showing that he was a courageous military leader and a shrewd politician, he organized from his outposts on the North African coast a methodical rapid war in the Mediterranean that kept the navy of the Catholic Monarchy and their allies under constant control. The situation for the Spanish became even more critical after 1532, when Barbarossa, to answer to the seizure of the Corone of Morea in the Aegean sea by Andrea Doria (passed suddenly from the French to the Iberians), was nominated Kapudan Pascià, that is Admiral in Chief of the Ottoman fleet. At the head of an imposing fleet, Barbarossa plundered the coasts of southern Italy up to the mouth of the Tiber River and the fleeting success reported by Carlo V with the capture of Tunisi in 1535 was of no use⁷. The defeat that the Imperial army suffered in Prèvesa in 1538, showed the superiority of the Ottoman-Barbaresque navy that seemed to be undefeated, so much so that for three decades, until the battle of Lepanto, the European blockade was not able to organize a meaningful response⁸. Concealed and only seemingly hidden from the harshness of the conflict between the two opposing forces on the Mediterranean emerged the role of France, ally of the Ottoman Empire and had more interest than ever in maintaining their leading role that affected the Italian Peninsula and the Kingdom of Naples in particular. The invasion of the Kingdom in 1528 by the troops controlled by Oddette de Foix, count of Lautrec, on one side marked the end of military campaigns and on the other hand, it was not the last effort for the French side to gain control of the south⁹. The combined pressure applied by France and the Ottoman-Barbary threat made it difficult to defend the Kingdom from outside enemies and became one of the main problems for the Habsburg Court. In retrospect, this is an impor-

establishes, as known, one of the most mentioned and discussed reference points within the historical debate. The epitome of the story of the Mediterranean that links together political events, social and economic figures, and natural environment has raised an undisputed point by encouraging the comparison between information and studies that are a close comparison to the theories of the great French historian. Among the many works that discussed Bruadel's paradigm within the framework of the Mediterranean Studies: Matvejević, 1999; D. Abulafia, 2003; J.J. Norwich, 2006. *A Corrupted Sea. Study of Mediterranean History*, edited by P. Hordern and N. Purcell, 2006, deserves a separate mention. The work reintroduced the ideal of Braudel on the substantial unity of the Mediterranean world focusing the attention on the connection between the diverse prominent regions in the area launching a new season of studies. From this perspective Marino, 2002; Harris, 2005.

⁷ Casanova, 2009, p. 83.

⁸ Casanova 2009, p. 84. The analytical examination of the events that are of interest to the Mediterranean basin in the sixteenth century and the relationship between the 'thalamocracy' of Constantinople the North African regencies and the Spanish world, among the numerous contributions: Wolf, 1979; Maravall, 1984 [1979]; Motta 1998; Mantran, 1999 [1989]; Inalcik –D. Quataert, 1994; Glete, 2000; Suraiya Farouqi, 2008.

⁹ On the basic opportunities of the Franco-Hispanic conflict for control of the South of

tant sign that epitomizes the political significance that the Spanish presence had on the Neapolitan Viceroyalty in Modern Age: Don Pedro de Toledo¹⁰.

In particular, one must examine two aspects of the complex Toledan policy, two political options that had long-term consequences on the Social-Institutional framework of the Kingdom of Naples. In the first place, the detailed organization of a defense system to protect the coasts by responding to precise strategic guidelines: passive defense. Instead of arming a navy fleet of vast proportions, the Spanish government moved towards creating complicated military posts and fortresses stationed in strategic points of the Kingdom¹¹. As is known, this choice, was closely tied to another political aspect 'Viceré di ferro' (Iron Viceroy): dispossession of the subjects of the Kingdom from the focal points and taking away their decision-making power, culminated in the expulsion of the aristocracy in 1542 – or as was said of the rulers of 'cappa corta' – (short robes) of the Consiglio Collaterale, the highest governing body of the Kingdom¹².

Aurelio Cernigliaro¹³ brought to attention that the Toledo choice had an impact on the attempt to reorganize the institutional and judicial structures exceeding the assets inherited from the previous event. Already Charles V in an Instruction sent to Naples in 1518 pointed out the necessity to overcome the pockets of resistance and the move towards feudality and aristocracy and rationalize government structures with experienced and trusted personnel. At the same time, the Neapolitan nobility had an ambiguous role with Spain during those frantic days in 1528, as did the strong pro-France party that recruited numerous aristocratic supporters.

The events that took place a few years later in the frenzied scene of the kingdom only confirmed that Habsburg's fears were far from unfounded. In fact the drawings of one of the major feudal lords of the kingdom were symbolic – Ferrante Sanseverino – to overthrow the Spanish government with the help of the French and the Ottoman fleet¹⁴, as well as the conspiring plots of Pietro Carafa (advocate of one of the oldest Neapolitan families, ascended to the Papal throne as Paul IV) that lead a battle without quarter against the Spanish in southern Italy¹⁵.

It is in fact because of mistrust, suspicion or as said at the time, the *inconfienza* with which Spain looked at the Neapolitan nobility it went on to become the

Italian peninsula: Hernando Sánchez, 2001; Galasso –Hernando Sánchez, 2004

¹⁰ For an updated analysis of the bibliographic guidelines on Toledan politics: Hernando Sánchez, 1994; Sánchez García, 2016.

¹¹ Russo, 1989; Brunetti, 2006, pp. 295-306.

¹² Pilati, 1994, p. 244 n.13; Ajello, 1999, pp. 45-46.

¹³ Cernigliaro, 1983, pp. 267-268. On The specific characteristics of the political plans of the Marquis of Villafranca, see Cernigliaro, 1988, in part. pp. 3-212.

¹⁴ De Frede 1977; Pilati, 2015.

¹⁵ On the subject of the 'Carafesca War' and the role of Carlo Carafa in the unscrupulous

symbol of a very long and persistent recurrence in the politics of the Viceroyalty. Naples became even more a chancery law, bureaucratic metropolis, where a leading role was assumed by the legal-bureaucratic class, but at the same time it was privy of the know-how of any martial, war-like element and found the nobility to be its first and foremost connection¹⁶.

With regard to the lawyer administrator – also known as ‘togati’ – one must make it clear how they played a leading role during the political controversy in the Kingdom of Naples of the Ancient Regime. The historiographers not only analyzed the characteristics of the public figures (of which the legal component was fundamental) but also the level of independence with respect to the monarchy as well as from the other rival powers on the political scene¹⁷. Although it is important not to confuse this professional group as a social group – almost as if it were a surrogate for the middle class – undoubtedly it was among their ranks that the most important people came to be recruited so that a legal tradition was developed in order to better understand the State as a public entity and to defend civil dominance against the exorbitant ecclesiastical demands¹⁸. Naturally, to emphasize their role in the cultivation of the implementation of the modern state does not mean that they could physically assume the responsibility of defending the coasts of the Kingdom, traditionally entrusted to the nobility.

The impact of the defensive plan of the fragile frontiers of the kingdom made themselves heard. Without a doubt, many studies have shown¹⁹, that to arm a competitive fleet to fight the Barbary and Ottoman Empire threat on the seas, would have brought to the bloodless coffers of the Spanish Empire an unsustainable financial obligation, especially since the Catholic Monarch was simultaneously engaged with war on a planetary level. Under these circumstances, a naval rearmament would have been possible only on the condition that only noble swordsmen with financial resources and the necessary skills to reach the goal would be involved. However, on this front the suspected Pro-French sympathies that the better part of the Neapolitan nobility had, built an insurmountable barrier between the aristocracy and the government of Spain. The outcome in

politics assumed under Pope Paul IV: Proserpi, 1976; Santarelli, 2006.

¹⁶ R. Ajello, 1999; Del Bagno 2019.

¹⁷ Mousnier, 1970; Ajello, 1976; Del Bagno, 1993; Miletti, 1995.

¹⁸ Luongo 2001; Luongo 2018.

¹⁹ Among the numerous works that investigated the state and inconsistency of the fleet serving the Spanish Empire as well as the complex strategic plans to hold together the immense structure of the Spanish dominion, the classic opera by Parker, 1998. Significant is also the use of an interpretation that influenced the progressive interdependence and integral domains of the crown within the intricate connection of the Spanish Imperial system, so as to analyze the complex mechanisms that were at the origins of the military strategy of the Habsburg Empire. For a more in-depth discussion on the complex strategic military plans of the Iberian Empire, C. Riley, 1977; Rizzo, 2007. Anatra –Mele –Murgia –Serrelli, 2008; Pacini, 2013.

the face of the Barbary threat was to present a defensive tactic by organizing a passive, wait and see strategy, articulated in a cumbersome defensive scheme on the coast that excluded by its nature every opportunity to bring the battle to the open seas²⁰. The unresolved crisis escaped the protagonist's themselves. The papers stored in the General Archive of Simancas are a precious source to understand the knowledge of their compatriots in regards to the military vulnerability of the kingdom.

The Adriatic and Apulian fronts in particular exposed to the pirate attacks were the most tangible example of the fact that the coastal areas were defended leaving other areas without any defenses and open to raids. This meant that it was easy for the pirates to attack them. It gives further testimony to the effectiveness of a defensive system and for this reason the northern coast of Apulia was the topic of a paper sent in 1544 from the guard captain of the Fort of Gallipoli (located at the extreme eastern edge of the coastline) after the pirate attack carried out on the coast of Vieste on the Gargano. As the Captain tells, the pirate ships had stopped on the coast of the Adriatic, but decided not to attack the coast because it was adequately defended. The attackers, under the command of Captain Dragut, started to travel north to a part of the coast that did not have any defenses and attacked the city. According to the report, it was easy for the pirates to attack places lacking in arms much easier than attacking defensive garrisons that would have been able to organize an adequate defense²¹.

Beyond the Turkish plans of attack and the strategy that was proposed, in the state of defense that the coastal areas of the South was in, it is possible to read about it in a report sent to Madrid by Ferdinando Loffredo, Marquis of Treviso who in 1566 did not fail to condemn the shortcomings of the defense system. The castle of Manfredonia, essential for its strategic position because «in times of fortune they sail through those seas and carry a large quantity of goods to bring throughout the kingdom and other parts of Italy» it represented an inadequate fortress for its defensive needs. Although it presided over Apulia «this land is very weak and the castle was the worst and could not be defended even for one day»²². As well, the castle of Barletta «that has the same importance as the one mentioned by Manfredonia»²³ even if it had been under recent attacks was made up of a «very small» garrison while the marina of Trani which «had a port that if it were free could hold up to sixty closed galleys as if it was a locked door on all

²⁰ Ajello, 1994.

²¹ Archivo General de Simancas (cited hereafter as AGS), Fondos de Instituciones de Antiguo Regimen, Estado, Nápoles, Legajo 1035, f. 60. On this point see also Mafrici, 1996, pp. 61-62

²² AGS, Fondos des Instituciones de Antiguo Regimen, Estado, Nápoles, Legajo 1046, f. 227.

²³ AGS, Fondos des Instituciones de Antiguo Regimen, Estado, Nápoles, Legajo 1046, f. 227.

the coast, very unprotected and weak so much so that in case of a battle it could not defend itself for more than two hours»²⁴

Again in 1566, in comparison with the “warnings from the east” that foretold a Saracen raid on the northern coast of Apulia, the viceroy admitted in a disheartening voice that «there are no people left in places that can be defended.... As well We cannot defend all the places on the coast», hoping at the same time that the pirate ships would head more south: «I hope that the pirate fleet will go to Bari or Otranto where they could suffer many damages» where if there had been several military strongholds the attacks from the enemies could have been repelled²⁵.

As remembered, to modify and overcome the vulnerability of the coast it was necessary to reverse the defensive strategy, arming a capable fleet to successively counterattack the Barbary pressure. A very clear study of this period was shown in 1554 by Giulio Cesare Caracciolo. He represents one of the Neapolitan nobility most in the public eye, moderate and anything but inclined toward the Pro-French excesses. The report condemned the absolute subordination of the weak defenses of the kingdom in regards to the Barbary threat. At the same time, Caracciolo did not limit himself to a simple conclusion, but showed a detailed strategy including the necessary expenses to build a war fleet. One point that cannot be disregarded by the Neapolitan nobility, that the business of fitting-out a fleet would see the nobility of the kingdom in a leading position, that even if they could not give the necessary funds according to the Venetian naval design, at least they could offer their competence in recruitment and management of the ships²⁶.

The distrust among the social classes and the danger forewarned by the Spanish Court to strengthen the alliance like that of the nobility ready to side with the French was a stumbling block, so that Caracciolo’s plan would become an obsolete report. In hindsight, only Don Giovanni of Austria expressed an interest in the plan to rearm the kingdom after the victorious battle of Lepanto. But only the battle fought in the Ionian sea marked a fundamental part of the defense of the Viceroy.

The truce between the Catholic Monarch and the Ottoman Empire became always more stable and the attention that the two powers reserved for the opportunities outside the Mediterranean basin, left the problem of the vulnerability

²⁴ AGS, Fundos des Instituciones de Antiguo Regimen, Estado, Nápoles, Legajo 1046, f. 227. On this report see: Coniglio, 1987, I, pp. 301-303.

²⁵ AGS, Fundos de Instituciones de Antiguo Regimen, Estado, Nápoles, Legajo 1055, f. 165. On the defensive strategy of Adriatic Coasts and this dispatch, see Mafrić 1996, pp. 62-63

²⁶ The discourse of Giulio Cesare Caracciolo was published followed by notes and a detailed commentary by Ajello, 1999 pp. 263-384. On the recruiting and equipment of the fleets during the Early Modern Era, see: Aymard, 1974, pp. 71-90; Candiani, 2006.

of the south confined to the bottom of the list of the political agenda of Spain. As Fernand Braudel summarized, 'political piracy' was at an end after Lepanto and a less conspicuous but not less harmful episode began for the kingdom of Naples. It dealt with the breakup of the Barbary initiative into a myriad of pirate initiatives, a more moderate fight, but continuous and uninterrupted where the protagonists – wrote Braudel – like "wild animals" went «game hunting in proportion to their ambitions» and their actions were more similar to «that of a miserable robbery»²⁷.

It was just this endless string aimed at characterizing everyday life of the people of the kingdom that fed "the siege of fear", but above all, it contributed over time to the highlights that signaled the marginal economic growth and the particular political structure of Southern Italy. Raffaele Ajello, who is responsible for having emphasized the close ties with the disarmament of the kingdom and the social and institutional inconsistencies of Southern Italy summed up the question underlining how the disastrous aristocratic defeat created other fatal event which it turn had a fatal result. First – according to the author–the Spanish hostility towards the Neapolitan aristocrats firmly contributed to this imbalance. The Neapolitan society while living in the Mediterranean under very tense conditions gradually saw how the martial component became unnerving and downhearted and the society eventually became passive and inert in the face of constant war. The substantial disarmament of the nobility even more morally ideological than material subjected to the bureaucratic class prevented the restructuring of the martial and knightly situation towards new useful forms of contemporary society²⁸.

Lacking a shared project and a sufficiently large social base to deal with the complex problems opened up by its fragile defenses, in the kingdom it would have been the lawyers who would make themselves heard about the delicate topic of the pirate raids in the waters of Southern Italy. It is worth emphasizing that it was the voice of those who imagined themselves as custodians of a priestly knowledge, with a wealth of conceivably refined skills, far from tangible problems. It was an undertaking that could possibly put a permanent mark on the social and institutional reality of the Viceroyalty with a theoretical discussion that if on one hand there was the treatment to be legally reserved for the enemy represented by the pirate, and on the other hand a meaningful contrast, was the role reserved for friend within the legislation, thus defining model citizens, legal assets, the position of the southern monarchy on an international level²⁹

Naturally, it would be a mistake to try to find among the actions of the lawyers of the kingdom of Naples in the modern age, articulate and direct word-

²⁷ Braudel 1976, p. 1232. On this point, see also Mafrici 1996, 25.

²⁸ Ajello, 1994, p. 140.

²⁹ Scholarship have highlighted the fundamental role of the inclusion and exclusion process and 'friend-enemy' combination in the formation of the modern state. Within this

ing between the structure of the government and social relationships. The legal language was based on a technique that concealed the openly political issues to favour rhetorical methods based on alleged, neutral choices as described by the general consent, social relationships and the nature of things. Nonetheless, in certain contexts when the legal society (academic, judicial, bureaucratic) was called upon, they would have specific government strategies and political guidelines to determine how to cope with the aspects of piracy in the waters of the realm³⁰.

Symbolic is the case of Giovan Francesco De Ponte, one of the most renowned and influential lawyers of the ancient Neapolitan regime who dedicated himself to the close examination of the problems created by the Ottoman-Barbary threat, the title of his XI most renowned work and widely quoted in the following *Tractatus de Potestate Proregis, Collateralis Consilii et regimine Regni*³¹.

In fact it is very important to note that the Neapolitan lawyer, the fundamental characteristic of the structure of the monarchy could not be exempt from tackling an issue not only as has been seen, represented a key point of the entire structure of the social and political relationships, but generally it was part of a debate on a European scale that, following the fundamental functions assumed by businesses along the ocean route, the view taken on the subject of pirates and the war assume a courageous role on the organizational system and the control of the relationship among the different states to give effect to their actions and hope to guarantee mutual recognition from the general community to the political community.

As known, the credit goes to Alberico Gentili for having developed the idea of piracy being an important reference point from a legal point of view³². In his *De*

slow and laborious journey, a key role to determine the policies that were to be implemented in regards to the enemy was taken on by the legal society. A widespread misconception is inclined to think of the law as a means to regulate social relationships that is limited to changing the values that are made in other cultural areas. Actually, the law has an effective creativity that is much greater because in outlining a defined imaginary society, it contributes to creating the same values that it intends to protect. In this way, the definition of 'enemy', contributes to the course of action of the legal system. As Pietro Costa clarified (Costa, 2009), the law is not limited to considering the idea of 'enemy' (internal or external), but rather using the law to allow it to take shape, give it an identity, use the most means for its prosecution. On the use of paradigm of 'enemy' in the discourse about piracy, see: Thompson, 1994; Grewe, 2000, pp. 304-312; Ruschi, 2009; Bonafé, 2011.

³⁰ Luongo, 2008a; Luongo, 2008b.

³¹ Johannes Franciscus De Ponte (1541-1616) *De potestate Proregis, Collateralis consilii, et Regni regimine tractatus*, Neapoli, 1611, tit. XI, *De triremibus coeterisque navibus aut navigiis, quae in cursu destinantur*, pp.520-532. On a bio-bibliographical profile of De Ponte, see: Comparato, 1974, pp. 260-273; Zotta, 1987, Luongo 2011, pp. 706-708.

³² The bibliography on the lawyer of San Giensio (1552-1608), is understandably quite

iure belli the Italian lawyer reintroduced the classic definition of a pirate given by Cicero as common enemy of all³³. This notation, if true, was embedded in an established tradition, even in the works of Gentili was outlined with great precision because it showed the appearance of the pirate as a public enemy referring to the raids and the sea pillaging as an act against *ius gentium*³⁴. Certainly the Gentilian way of thinking had more than one ambiguous description both in relation to the things done by the Barbary regime on the Mediterranean coast and to the general problem in relation to the legal procedure to be adopted and the relationship between states between acts of piracy (illegal) and acts of privateering (commonly accepted and practiced by all political entities in the Modern Age)³⁵. However, Gentili's main point relative to the idea of the pirate as a common enemy and as a person excluded from civil society would be depicted in the words of a modern scholar – David Hallen Rozen – defined the “piractical paradigm” that represents a theoretical framework to combine efforts made from the individual European legal systems to fight and repress the pirate phenomenon³⁶.

In any case, it is important to note that like Giovan Francesco De Ponte in his *Tractatus* firmly sees the figure of the Mediterranean pirate as the enemy. The Turkish galleys that sailed the waters close to the Kingdom's coast were protagonists of many acts of war to warrant the raiders the name ‘enemy’ that involved the Southern Monarchy in a continued campaign of the struggling public, notwithstanding the formal truce declared between the Spanish and the Ottoman, in defense of Christianity and the integrity of the *Realm*. With a complex network of quotes which have among them the most cited *auctoritates* of *ius commune*,

vast. In addition to the recent printing of the ‘*editio princeps*’ of *De iure belli* with introduction by D. Quaglioni, translation by P. Nencini, review by G. Marchetto and C. Zendri, 2008, that reminds to a widespread bibliography, see: Atti, 1988; Atti, 1991; Atti, 1995; Atti, 1998; Atti, 1999; Atti, 2000; Atti, 2003; Atti, 2006; Atti, 2008; Atti, 2009; Atti, Atti, 2010; Atti, 2012; Atti, 2014; Ilari, 1981, Panizza 1981, Panizza 2002, Wijffels, 1999; De Benedictis 1999 Quaglioni, 2000; Kingsbury, 2001; Birocchi 2009; Lacchè, 2009; Quaglioni –Zancarini, 2010; Quaglioni, 2010, Ferronato –Bianchin 2011; Quaglioni, 2013, Minnucci 2013; Fedele, 2017; Colavecchia 2018.

³³ Cicero, *De officiis*, III 107-108: «nam pirata non est ex perduellium numero definitus, sed communis hostis omnium; cum hoc nec fides debet nec ius iurandum esse commune», see: Alberico Gentili, (1552-1608), *Il diritto di Guerra. (De iure belli libri III, 1598)*, 2008, I, 4, p. 32.

³⁴ Simpson, 2007, pp. 219–30.

³⁵ On the problem of the mobile boundary between piracy and privateering, see Ruschi, 2003.

³⁶ Heller-Roazen, 2009, Eklöf Amirell 2019, p. 31.

like those of Bartolus of Sassoferrato³⁷, Bartolomeo of Saliceto³⁸, Felino Sandei³⁹, it was De Ponte that would introduce the reader to a discipline that would legitimize the subjects of the kingdom to carry out hostile acts against the infidels like those of their subjects to the allies, with the right to capture enemy ships. However, the thing that mattered most was clearly seeing the atrocious character of the pirates through their deeds, even in the absence of a formal declaration of war adopted by the Kingdom, it legitimized a *perpetuum bellum publicum* according to the discussions between theologians and lawyers⁴⁰.

What now needs to be highlighted, is that the reasoning of De Ponte even though tinged with universalistic tones and hostile and confessional ideology in regards to the activities of the Barbary regime, was not an indiscriminate war and least of all a military campaign launched by all the states against the threat of piracy according to Alberico Gentili that had derived a universal right to fight, pursue and punish piracy.

The rest, beyond the profitable idea that influenced the image of the enemy, the two authors had very different perspectives on the repression of piracy. Apart from the obvious historiographical debate on the role of jurist from the Marche in long and laboured itinerary for the secularization of international law⁴¹, Gentili demanded a fight without boundaries against the pirates on the basis of their exploits and the violence of their acts excluding them from civil society justifying their every act of force to neutralize the threat and to ensure a peaceful existence among the people. Instead, in the distance was the reasoning reserved for declaring permanent war against the Ottoman Empire. Contrary to the biased confessionals – *silete theologi in munere alieno*—the Turks in fact represented the enemy not because of their religious diversity, but because of their innate way of acting, they threatened, conspired and robbed without mercy⁴². On the other hand, Da Ponte had an opinion of the pirate as an unconditional adaptation of an infidel clinging to the connection between a lawful tradition that legitimized the permanent state of war in honour of the ideological and religious hostilities against enemies of faith⁴³. It is certainly not a coincidence that the Neapolitan lawyer together with the reasons for the *bellum piraticum*, tried to implement a *mise en forme* of the conflict in the Mediterranean waters that was in accord-

³⁷ Bartolus a Saxoferrato (1313-1357), *In secundum Digesti Novi Commentaria* [...], Venetiis 1615, f. 215v (D. 49, tit.: *De captivis et postiliminio*, lex: *Si quid bello*, 2).

³⁸ Barholomeus a Salyceto († 1411), *In octavum Codicis libum Commentaria* [...] Venetiis, 1586, f. 163v (C. 8, 50 [51], tit.: *De postiliminio*, lex: *Ab hostibus*).

³⁹ Felinus Sandeus (1444-1503), *In Decretalium librum quintum Commentaria* [...], Basileae 1567, co. 1108 (5, 7: tit.: *De haereticis*, cap.13: *Excommunicamus*, n. 3).

⁴⁰ Hubrect, 1961; Russell, 1975; Johnson 1981; Cassi 2003; Quaglioni 2004.

⁴¹ Nuzzo, 2009.

⁴² Cassi, 2012, p. 187.

⁴³ Haggemacher, 1983, p. 242.

ance with the well-established plans of *bellum iustum* legitimate warfare typical of canon law (*auctoritas superioris, iusta causa, recta intentio*)⁴⁴. There was no doubt that in the case of *bellum publicum* declared against the Ottoman vessels there was the approval of a higher authority, just as could not be denied the existence of a *iusta causa* as well as legitimate behavior even if *diffidatio* an act which, according to the law of war would give way to hostilities, in force *in re ipsa* against the infidels.⁴⁵ All this confirmed, according to De Ponte, the specific title of *hostes publici* reserved for the Turkish crews with the correlative right to capture Ottoman vessels for the fleet of the southern monarchy. After all, continued De Ponte, the right of the Neapolitan vessels to proceed against the Ottoman and Barbarian ships was a deeply established principle of the government of the southern monarchy. Beyond the competence and the judicial authority in the matter of maritime travel reserved for the Great Admiral, which had been widely discussed by Tapia in his *Ius Regni*⁴⁶, the right to proceed in the capture of property belonging to the enemy had been the subject of a *decisio* referred to and commented on by Tommaso Grammatico⁴⁷. As the Neapolitan lawyer argued, the right to capture not only vessels that belonged to the subjects of the Sultan, but extended as well to the vessels and subjects of those who were enemies of Christianity, as confirmed in two *consilia* written by Giovanni Antonio Lanario⁴⁸ and by De Ponte himself⁴⁹ about the sinking of a vessel off the coast of Ostuni that had been led by some Jewish merchants. In short, as Giovan Battista de Toro, would have commented, called upon to write down the *Tractatus* of De Ponte, the pirate was a double enemy not only because he besieged the seas with plundering and raids, but because he was also an infidel⁵⁰; as such, this demonstrated a radical sense of hostility towards who –as Covarruvias had written⁵¹, promptly made use of by De Toro –with their behaviour was acting against the law of nature and «*ipsius naturalis appetitus inclinationem*».

⁴⁴ On this topic, in addition to Russel, 1975; Johnson, 1981; Haggemacher 1983; see also: Chenu, 1958; La paix, 1961; Keen 1965; Contamine, 1980; Contamine, 1998; Garcia Fitz 2003; Chittolini, 2007; Quaglioni 2007; Cassi, 2009.

⁴⁵ Johannes Franciscus De Ponte, *De potestate Proregis* [...], p. 527.

⁴⁶ Carolus Tapia (1565-1644), *Ius Regni Neapolitani* [...], Neapoli 1605, II, rub. 31.

⁴⁷ *Decisiones Sacri Regii Consilii neapolitani per Thomam Grammaticum* [...], Venetiis, 1588, dec. 71, pp. 438-444.

⁴⁸ Johannes Antonius Lanarius (1540-1590), *Consilia sive iuris responsa* [...], Venetiis, 1598, II, n. 84, ff. 150v-155r.

⁴⁹ Johannes Franciscus De Ponte, *Consilia sive iuris responsa*, [...], Venetiis 1595, I, n.93, ff.228r-229r.

⁵⁰ Johannes Baptista De Thoro (1574-1655), *Additiones seu adnotationes utilissimae ad [...]* *Tractatum de potestate proregis eiusq. Collateralis Consilii* [...] *Io Francisci De Ponte* [...] *a Io. Baptista de Thoro*, Neapoli, 1621, ad tit. XI, *De Triremibus*, p. 199.

⁵¹ Diego Covarruvias (1512-1577), *Regulae Peccatum. De Regulis iuris, Libro Sexto, Relectio*, Genevae, 1724, II, 10, n.4, p. 644.

In hindsight, the reasonings of the Neapolitan lawyer is closely linked to another matter that in his discussions is overwhelming and adheres to the opposition with the Republic of Venice about the alleged claim from 'La Serenissima' to consider the Adriatic sea as closed sea, that is subject to only one jurisdiction prohibiting access to armed vessels flying a foreign flag and imposing custom duties and anchoring rights to merchant ships that surpassed the imaginary coastline that connected Otranto to Valon⁵².

Here it is impossible to dwell on specific people involved in a longstanding dispute that unleashed a real 'ink war'⁵³ between Neapolitan and Venetian lawyers and saw among others, engaged in a bitter political diplomatic conflict, together with de Ponte writers like Juan Batista Valenzuela, Orazio d'Afelro and on the venetian side such writers of caliber like Angelo Matteacci, Giulio Pace, without mentioning the stance taken by Paolo Sarpi in favour of the naval empire of 'La Serenissima'⁵⁴.

The recent historiography clearly outlined the very tight relationship that legally linked piracy to the freedom of the seas, highlighting how piracy represented both a cause and an effect of legal regulation of the seas arranged by states in the modern age. A reason to determine the needs for each maritime power, to establish control over navigation routes; the result being that the same control aroused a reaction from its adversaries and the financing of the current war in the name of the freedom of the seas⁵⁵.

In the case of Venice, the presumption to consider the Adriatic as a closed, restricted private sea had deep seated roots in the past and dated back to the anti-pirate repression exerted by the Venetian Republic of the Middle Ages. As Paolo Sarpi pointed out in the second decade of the 17th century, the dominion of the seas that had been originally free, were gradually bought by Venice by the public authorities of the seas that became more efficient in repressing piracy, an undertaking that had cost Venice «every year the bloodshed of many of its citizens and the loss of many of its treasures»⁵⁶. Exactly for the reason that the sea was owned by the people and because there was no objection from Venice in the repression of the pirate raids it had been decided by the law of prescription, a Sovereign right that was put into practice in the Adriatic Sea, considered to all

⁵² Tenenti, 1999; Pezzolo, 2018.

⁵³ The political diplomatic conflict that also culminated in a broad jurisdictional dispute was written about by Pietro Giannone in his *Istoria Civile del Regno di Napoli (Civil History of the Kingdom of Naples)* v. 3, 1. XIII, chap. 1. p. 216-243, 1865[1725]; and retraced with a wealth of topics in another edited version entitled *Intorno al dominio del Mare Adriatico (Around the dominion of the Adriatic sea)*, 1824, [1755], pp. 502-548, see also Paliaga 2014, that furnishes an extensive bibliography of the operas written in the *dispute*.

⁵⁴ Cessi, 1953; Scovazzi, 2007, Descendre, 2007.

⁵⁵ Cassi, 2004, p. 141 Cassi, 2007, p. 36.

⁵⁶ Paolo Sarpi (1552-1623), *Dominio del mar Adriatico della Serenissima Repubblica di Venezia*, Helmstat [Venezia] 1750, pp. 327-368, p. 328.

intents and purposes subject to the authority of Venice.⁵⁷

On the other hand, De Ponte systematically countered the arguments of the Venetian side. His reasoning was based on a well-known passage by Baldus de Ubaldis⁵⁸ that declared that the sea belonged to everyone, whereas on the contrary the right of ownership could not be of anyone, and finally the jurisdiction that belonged to the Emperor – *dominus omnium*–. On the basis of this definition, Da Ponte affirmed that the claim boasted by the Venetians should be classified as nothing more than an illegitimate usurpation. Excluded on the natural law that the Venetian Republic could have acquired the *dominium* on the sea as a result of possession brought about by the repression of piracy, at most the power claimed by Venice could have been a privilege granted by the Emperor. Nevertheless, the possibility that Venetian power could be founded on an imperial concession had to be categorically excluded, both for the lack of a privilege that is specifically attributed to the Venetian Republic the *iurisdictio* in the Adriatic Sea, and even if it were to be considered in existence, it could not have had any effect on the *Regnum*. In fact, if as Bartolomeo Cipolla had claimed the dominion of the Adriatic Sea was the result of special imperial permission originating from the fact that the regulations of the Venetian Republic had been set up by praxis as an order *superiorem non recognoscens*⁵⁹, this issue could not in any way adversely affect the opposing claims by the Neapolitans. In hindsight, De Ponte concluded in a contradictory argument, a hypothetical imperial concession could not have had an effect on the kingdom in any way because it too was an autonomous order that was completely independent from imperial authority and also *superiorem non recognoscens*, because any imperial permission could not have weakened the possessions of the Church to which – as was known – the *Regnum* was linked to by a feudal bond⁶⁰. The true character of usurpation vaunted by the Venetian Republic on the Adriatic Sea would have been continued by another barrister who was involved in the controversy around the reasoning for supporting the *Regnum*: Juan Baptista Valenzuela Velazquez. In one of his *consilia*⁶¹ he discussed at length his reasonings beginning with a well-known thesis of Bartolus of Sassoferrato who had identified the limit of power on the seas of the coastal regions within one hundred miles⁶². This limit was based on projections in the sea of the

⁵⁷ Ivi, p. 360.

⁵⁸ Baldus de Ubaldis (1327-1400), *In primam Digesti Veteris partem Commentaria* [...], Venetiis, 1599, f. 462, (D. 1.8.2 tit.: *De divisione rerum, lex: Quaendam*).

⁵⁹ Bartholomaeus Caepolla (1420-1475), *Tractatus II de servitutibus tam urbanorum quam rusticorum*, caput XXVI, *De mari*, n.10-12, pp. 423-424. See, Mazzacane, 1980; Zennari, 2007.

⁶⁰ On this fundamental topic, see among the many studies: Calasso, 1957.

⁶¹ Johannes Baptista Valenzuela Velazquez (1574-1645), *Consilia sive responsa* [...] Neapoli, 1618, n. 100, pp. 781-794.

⁶² Bartolus a Saxoferrato, *In primam Digesti Veteris partem Commentaria*, Venetiis, 1615, f. 151v, (D. 5.1.9. tit.: *De iudiciis, lex: Insulae Italiae*). On this position of Bartolus, see:

powers exercised on actual territory, in the opinion of Valenzuela also applied to the situation in the Adriatic, resulting in, continued the author that Venice could have boasted *iurisdictio* on the sea adjacent to its coasts. This power could not be extended beyond the limit cited above, under penalty of the detriment of the other coastal states such as the Kingdom of Naples, the Duchy of Urbino or the territories that were under the domain of the Church. On the other hand, historical experience had demonstrated that the Neapolitan ships had had for some time peaceful access to the Adriatic marine area, without the Venetian authorities being able to make any claims.

There is no need to follow Valenzuela in his discussions that from this point on, delves into a series of examples looking to show through historical enlightenment, the peaceful possession of the Adriatic Sea by the royal vessels. It would be more appropriate to mention that the writings of the Neapolitan juridical culture against piracy should be read as a tremendous loyalty towards the ambitious and adventurous politics of the Viceroy Duke of Ossuna in Sicily (1612-1616) and then in Naples (1616-1620) that tried to fight on one hand against the Ottoman-Barbary presence in the Mediterranean and on the other hand to strengthen the *Catholic Monarchy* in Italy, leading a trying political-military ploy against Venice looking for a response by penetrating the armada in the Adriatic as well as with the help given to Austria in the conflict against the Republic of Venice and with the protection given to the Uskoks Croatian population devoted to piracy in the Adriatic.

In regards to the politics of Ossuna there are contrasting historiographical points of view⁶³. Without a doubt, he was weighed down by his urgent and unscrupulous need to fight the Saracen whose continued pillaging presence in the Adriatic jeopardized the continual naval supply of the apulian grain to Naples. This situation created enormous risks for the Viceroy authorities that were called upon to deal with the ancestral problems of the capital of the Kingdom, always quite exposed because of overcrowding and a large number of urbanized plebeians with the risk of rebellion in the absence of a supply of grain. However, the fact remains that the policies carried out by Ossuna in the absence of a large naval rearmament plan would prove to be totally futile, a display of force devoid of adequate means to solve the problem, viewed upon badly by the governor of Madrid and the disastrous results in terms of the losses left by Ossuna in the coffers of the state, at least as written in the reports prepared at the syndicate visit at the end of the

Viceroy's mandate⁶⁴.

We will have to wait for the reflections of the one of the most lucid lawyers of the second seventeenth century, Francesco D'Andrea, to find the newfound

Marchetti 2001; Cassi, 2004; Cassi, 2007.

⁶³ Linde De Castro, 2005, Sánchez García, 2011.

⁶⁴ Coniglio 1955, pp. 42-70; Coniglio, 1967, pp. 192-206; De Rubertiis, 1956.

knowledge against the structural problem of the military weakness of the kingdom and its effects from a social and economic point of view⁶⁵. The writings of Contegna⁶⁶, as well as the considerations done in the Enlightenment would have strongly demanded the rearmament of the fleet and the navy as an essential development for the kingdom⁶⁷. In the climate of the new 'national' dynasty that brought to an end the period of the viceroy, a new generation of intellectuals was trying to deal with the problem of a renewed ancestral spirit of the privateering raids and the regional military fragility of the maritime border. The kingdom was getting ready to write a new and different chapter of its worldly relationship with the Mediterranean.

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⁶⁵ Ajello, 1980; Ascione, 1994.

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