Introduction

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The project from which this volume derives set out to map the teachings of natural law and the law of nations by following how chairs were established in Italy from the mid-eighteenth to the mid-nineteenth century. The aim was to reconstruct the cultural and political contexts where such chairs were created, teachers' profiles, as well as their education, their sources and textbooks. If we consider the history of the Italian peninsula and its plurality of states, each with its particular traits, along with the influences that several political systems had on academic education and on the teaching of natural law and the law of nations, the subject is obviously extensive. The research needed to be multidisciplinary, drawing on a wide range of traditions, some highly specialized, for instance the history of universities (and especially of their faculties of law and philosophy), the history of public law, the history of the Italian Enlightenment and its main figures, elements of political and church history, and history of the circulation of ideas.

From the beginning, it was clear that the questions on when and how chairs were established could not leave out the philosophical, political, legal and religious meaning of conveyed theories, as well as the question of what types of conflicts and quarrels were involved: tradition versus modernity, Protestantism versus Catholicism, states against states, states against churches. In an attempt to avoid preconceived ideas about these major themes, we focused on how individual authors and professors employed and transformed doctrines of early modern natural law. In a nutshell, the problems were to understand what 'modern Protestant natural law'[1] could mean from the viewpoint of those authors and professors, and to determine whether it is possible to trace an 'Italian path' to natural law, or to identify an Italian specificity to political thought and perhaps the Enlightenment in the region.

1 On the multifaced aspects and traditions of Protestant natural law see Knud Haakonssen, 'Protestant Natural Law Theory: A General Interpretation', in *New Essays on the History of Autonomy: A Collection Honoring J. B. Schneewind*, ed. Natalie Brender and Larry Krasnoff (Cambridge: Cambridge University Press, 2004), 92–109; Knud Haakonssen and Michael Seidler, 'Natural Law: Law, Rights, and Duties', in *A Companion to Intellectual History*, ed. Richard Whatmore and Brian Young (Chichester: Wiley-Blackwell, 2015), 377–400. See also: Simone Zurbuchen, 'Protestant Natural Law', in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer, 2020), 1–6.

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The first step of the research was to expand the timeframe, traditionally established from 1726, when the first chair of public law was established in Italy, in Pisa, to the early nineteenth century, when the supposed downfall of natural law made way for historicism and positivism.[2] The analysis of the Italian case, in fact, persuaded us to extend both the *a quo* and *ad quem* dates. The 'chronology of chairs' could not clearly provide the organizing criterion for our research, for three closely related reasons. First, as in other parts of Europe, the creation of chairs represents the peak of a process rooted in the second half of the seventeenth century. This process was not a case of passive reception by Italian authors of a modern and Protestant natural law from the other side of the Alps as opposed to an outmoded Catholic tradition. Moreover, well before becoming independent, the discipline of natural law and the law of nations was introduced within Italian faculties of law and philosophy through courses on Pandects, Justinian *Institutes* and moral philosophy, as it was elsewhere. Finally, as in Germany and other parts of the world, the creation of these chairs continued during the nineteenth century, although perhaps later than anywhere else, and an inescapable arrival point is Italian unification, with the introduction of international law in the universities of the new Kingdom of Italy, formed in 1861. From the first chapter, devoted to Pisa (Emanuele Salerno), to the last, dealing with Cagliari (Giuseppina De Giudici), the itinerary might be defined as a shift from natural law and the law of nations to international law.

In this wider chronological perspective, a second outcome emerges: the 1750s no longer represent the moment of highest diffusion and circulation of 'Protestant' natural law. If anything, we might see that decade as a turning point within a more complex and wider framework which cannot be reduced to just the one issue, the struggle between Protestant and Catholic natural law.[3] Certainly, the transition from the figure of Benedict XIV (1740–1758),

2 For an account of the early end of natural law see Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition*, trans. Daniela Gobetti (Chicago, IL: Chicago University Press, 1993). For a different approach and analysis, see the recent contribution of Knud Haakonssen, 'Early Modern Natural Law Theories', in *The Cambridge Companion to Natural Jurisprudence*, ed. George Duke and Robert P. George (Cambridge: Cambridge University Press, 2017), 76–102, at 99: 'One of the ironies of the success of Kant's polemical efforts is that it is only in recent scholarship that it has become quite clear that his own work in the philosophy of law extended the life of natural law as a genre and an academic discipline well into the nineteenth century, and hence beyond the scope of this chapter'.

3 As Walter Rech has argued, 'International Law as a Political Language, 1600–1859', in *A History of International Law in Italy*, ed. Giulio Bartolini (Oxford: Oxford University Press, 2020), 48–78, at 55: 'Protestant natural law did not firmly set foot in Italy until the mid-

the 'enlightened pope', to that of Clement XIII (1758–1769) can be considered a moment of 'crisis' and 'growing alienation of Catholicism and Enlightenment'.[4] But, given the multiplicity of contexts and actors, the 'great fear'[5] of Catholic culture in the face of Protestant modernity is only one of many issues and not a fundamental interpretative criterion.

The research overarchingly led to a third outcome, which consists of the possibility of the definite rejection, in the field of modern natural law, of the image of an Italy lagging behind the more advanced northern European countries. If, from the chronological point of view of the creation of chairs in the faculties of law, such delay is undeniable, the idea of Italy as a place where doctrines coming from abroad were either passively disseminated or harshly contested is long outdated. That biased image was fed by some European travellers like Edward Gibbon,[6] as well as by some spokespeople both from the Italian Enlightenment, and later, from the Risorgimento (see Chapter 2, by Alberto Clerici). Concerning modern natural law, this image collapses as soon as we focus on the innovative nature of the practices of assimilation and translation; on the way traditions are reprocessed and reinvented; on cultural, linguistic and legal transfers. The various political and cultural contexts of the

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eighteenth century, when it underpinned attempts at reform by enlightened despots across the peninsula'. On 'Catholic Enlightenment' see: Vincenzo Ferrone, 'Chiesa cattolica e modernità. La scoperta dei diritti dell'uomo dopo l'esperienza dei totalitarismi', in *Chiesa cattolica e modernità, Atti del convegno della Fondazione Michele Pellegrino*, ed. Franco Bolgiani, Vincenzo Ferrone and Francesco Margiotta Broglio (Bologna: Il mulino, 2004), 17–131; Patrizia Delpiano, *Church and Censorship in Eighteenth-Century Italy: Governing Reading in the Age of Enlightenment* (New York: Routledge, 2018). See the masterly studies of Franco Venturi, *Italy and the Enlightenment: Studies in a Cosmopolitan Century* (New York: New York University Press, 1972); idem, *Il Settecento riformatore*, vol. 5, *L'Italia dei lumi, 1764–1790* (Torino: Einaudi, 1987); Vincenzo Ferrone, *The Intellectual Roots of the Italian Enlightenment: Newtonian Science, Religion, and Politics in the Early Eighteenth Century* (Atlantic Highlands, NJ: Humanities Press International, 1995); idem, *The Enlightenment: History of an Idea* (Princeton: Princeton University Press, 2017). For a different perspective see *Law and the Christian Tradition in Italy: The Legacy of the Great Jurists*, ed. Orazio Condorelli and Rafael Domingo (London: Routledge, 2021).

4 See Mario Rosa, 'The Catholic *Aufklärung* in Italy', in *A Companion to the Catholic Enlightenment in Europe*, ed. Ulrich L. Lehner and Michael Printy (Leiden: Brill, 2010), 215–250, at 229–232.

5 Merio Scattola, 'Protestantesimo e diritto naturale cattolico nel XVIII secolo', in *Illuminismo e Protestantesimo* ed. Giulia Cantarutti and Stefano Ferrari (Milano: FrancoAngeli, 2010), 131–148, at 134.

6 As has been observed by Owen Chadwick, 'The Italian Enlightenment', in *The Enlightenment in National Context*, ed. Roy Porter and Mikulas Teich (Cambridge: Cambridge University Press, 1981), 90–105, at 91.

Italian states were part of a wider and dense network, wherein people and ideas circulated inside and outside Italy.

Due to the wider chronological perspective and the multiplicity of local contexts, this volume does not aim to give an all-encompassing picture, even in outline. More modestly, our intention is to suggest meaningful research itineraries, which can inspire future scientific developments. From a methodological viewpoint, two different, but closely intertwined, approaches were employed. First, we mapped several chairs throughout the Italian peninsula (Emanuele Salerno for Pisa, Alberto Clerici for La Sapienza in Rome, Elisabetta Fiocchi Malaspina for Pavia, Ivo Comparato for Perugia, Frédéric Ieva for Turin, Giuseppina De Giudici for Cagliari). The connection between law and politics, between curricula (often determined by governments) and teaching activities permitted us to highlight how this discipline was introduced and taught; what strategies professors adopted; the relationship between natural law and Roman law; how textbooks were selected and reinterpreted. The main sources were either manuscript lectures and notes in Italian university libraries or professors' published works.[7] Second, the analysis of how doctrines of natural law and the law of nations were interpreted and transformed has been fundamental to fully understand the different reasons for the introduction of this discipline in the colourful Italian political and cultural contexts.[8] Here, besides

7 Where no English version is cited, translations of these texts in the present volume are by the authors and/or by the translators of their contributions.

8 Much research has been done to trace the presence in Italy of the 'classics' of modern natural law and how they were received in Italy, mainly in the eighteenth century. Among the most important studies are: Diego Panizza, 'La traduzione italiana del "De iure naturae" di Pufendorf: giusnaturalismo moderno e cultura cattolica nel Settecento', *Studi Veneziani* 11 (1969): 483–528; Maurizio Bazzoli, 'Giambattista Almici e la diffusione di Pufendorf nel Settecento italiano', *Critica storica* 16 (1979): 3–100; Diego Quaglioni, 'Pufendorf in Italia. Appunti e notizie della prima diffusione della traduzione italiana del *De iure naturae et gentium*', *Il Pensiero Politico* 32 (1999): 23–250; Stefania Stoffella, 'Assolutismo e diritto naturale in Italia nel Settecento', *Annali dell'Istituto storico italo-germanico* 26 (2000): 137–175; ead., 'Il diritto di resistenza nel Settecento Italiano. Documenti per la storia della traduzione del De iure naturae et gentium di Pufendorf', *Magistrature et politique* 2 (2001): 173–199; Eugenio Garin, 'Appunti per una storia della fortuna di Hobbes nel Settecento italiano', *Rivista critica di storia della filosofia* 17(4) (2002): 514–527; *La recezione di Grozio a Napoli nel Settecento*, ed. Vittorio Conti (Firenze: Centro editoriale toscano, 2002); Philippe Audegean, 'Passions et liberté. Loi de nature et fondement du droit en Italie à l'époque de Beccaria', *Studi settecenteschi* 23 (2003): 197–278; Maria Rosa di Simone, 'L'influenza di Christian Wolff sul giusnaturalismo dell'area asburgica e italiana', in *Dal 'De Jure Naturae et gentium' di Samuel Pufendorf alla codificazione prussiana del 1794. Atti del convegno internazionale, Padova, 25–26 ottobre 2001*, ed. Marta Ferronato (Padova: Cedam, 2005), 221–268; Antonio Trampus, *Emer de Vattel and the Politics of Good Government: Constitutionalism, Small States and the International System* (Cham: Palgrave Macmillan, 2020).

textbooks, the objects of our research were critical comments and Italian translations of authors such as Pufendorf and Vattel (Serena Luzzi, Antonio Trampus), as well as the works of some internationally known Italian authors, such as the members of the Academy of Fists, Antonio Genovesi, Mario Pagano, Pasquale Stanislao Mancini and Luigi Taparelli d'Azeglio (Gabriella Silvestrini, Girolamo Imbruglia, Frédéric Ieva, Francesca Iurlaro). These two perspectives, namely the academic context and the wider cultural and political context, are tightly connected as the history of universities is inseparable from the theoretical contributions made to a shared European language, despite the heterogeneity of Italian contexts.

Part 1: Between Civil Law and the Law of Nature and Nations

The two opening chapters, devoted to Pisa and Rome, raise many questions for discussion. Salerno's essay inspects the Tuscan context, where the first Italian chair of public law was established in 1726. The renowned jurist and economist Pompeo Neri was appointed, though only for a short period. In 1738, a new chair of natural law and the law of nations was created. However, the discipline, in particular Grotius's works, had been present since the second half of the seventeenth century, becoming crucial in the early eighteenth century as a legal weapon to claim the ancient liberty of Florence against Imperial pretensions. Similarly, the conflict with the papacy, far from being a religious dispute, was a matter of territorial sovereignty in which natural law proved useful. A key figure within the academic environment is Giuseppe Averani (1662–1738), professor of civil law for more than forty years. The analysis of his works shows how the understanding of natural law and the law of nations is consistent with acknowledging the crucial role of Roman law. Yet, Averani carried out a methodological renewal emphasizing the primacy of principles and of theory over practice.

In his chapter, Alberto Clerici highlights the competition among Catholic educational institutions: the University, ruled by the pope, and the Jesuit College. The context is La Sapienza in Rome, where a formal chair of 'natural law, public law and the law of nations' was established in the Faculty of Law only in 1824. However, the actual teaching of natural law and the law of nations was introduced more than a century earlier, by Gian Vincenzo Gravina (1664–1718), in his courses on Roman law. Here the 'reception' led to a significant re-elaboration, and Gravina's work was well received by other European authors of the Enlightenment, such as Montesquieu and Gibbon. The link between Roman law and natural law was part of an attempt to explain the historical ori-

gin of laws, as well as to highlight the universal reason underlying them. While Gravina develops his view independently of Giambattista Vico, his successor to the chair of Pandects, Emmanuele Duni (1714–1781), explicitly resorted to the latter. Duni seems to have sought a 'third way' between Catholic natural law and Protestant natural law, combining natural law and history in an innovative way.[9]

The two following chapters are devoted to Lombardy and the chair of natural and public law established at the University of Pavia. Jean Baptiste Noël de Saint Clair was appointed in 1769 and served until 1796 and, as in previous cases, he initially included natural law and the law of nations in the teaching of Roman law, more precisely of Justinian *Institutes*. A natural law course would gradually emerge with the creation, at first, of a chair of public law and, eventually, of the previously mentioned chair of natural and public law. In the latter case, the competing actors were the Habsburg government and the local ruling class, represented by the Senate. The overall political context is also different from Rome; university reform was part of a wider plan aimed at reorganizing Lombardy's institutions. The first act was the centralization of educational institutions in the hands of the Habsburg government, which was determined to deprive the clergy of the education of the youth and, hence, of the ruling classes. As Elisabetta Fiocchi Malaspina points out, in the years before Saint Clair, Venanzio de Mays's presentation of and commentary on Justinian *Institutes* are imbued with references to natural law scholarship, both Catholic and Protestant (from Francisco Suárez to Hugo Grotius, from Samuel Pufendorf to Johann Gottlieb Heineccius). With the university reform and the official introduction of a chair in natural and public law at Pavia's Faculty of Law, the situation changed dramatically. The reform plan of legal studies from 1773, as well as Jean Baptiste Noël de Saint Clair's textbook manuscript, led to a redefinition of the hierarchical order of legal knowledge, of legal sources and of political power, which anticipates the broader institutional reforms in Lombardy.

In a complementary way, Gabriella Silvestrini focuses on the reorganization of studies in Lombardy in the light of the theories elaborated by the members of the Academy of Fists, who, together with their main collaborators, actively engaged in Habsburg reforms, against traditional local powers and

9 On the contrast between classical natural law and history, see Leo Strauss, *Natural Right and History* (Chicago, IL: University of Chicago Press, 1953); a first reconsideration of the historical dimension of modern natural law was in Alfred Dufour, *Droits de l'homme, droit naturel et histoire. Droit, individuel et pouvoir de l'Ecole du droit naturel à l'Ecole du droit historique* (Paris: Presses Universitaire de France, 1991).

knowledge. On the one hand, Beccaria's and the Verri brothers' theories appear to be a fully fledged philosophical foundation of the reform project. The core of their view, inspired by Francis Bacon and the *Encyclopédie*, was the unity of human knowledge deduced from first principles and human nature itself. On the other hand, the context of university reform allows us to understand better the intellectual intentions of the 'pugilists'. Far from being a rejection *in toto*, their criticism and appropriation of modern natural law theories were conceived as a rearticulation of the relationship between theory and practice, between philosophy, morality and law, to establish a new hierarchy of knowledge that could suit a new society aiming at the greatest happiness shared by the greatest number.

Part 2: Recoveries and Criticisms of Natural Law

The second part of the volume focuses on the circulation of ideas within two different areas of the Italian peninsula: the Kingdom of Naples and north-eastern Italy.

Girolamo Imbruglia's essay is devoted to Antonio Genovesi (1713–1769) and his school in Naples. Genovesi's teaching covers a wide spectrum, including natural law ethics and history, religion and government, economy and law. In his works, Genovesi dwelt upon education as an essential feature of citizens' growth and their participation in political reforms that would benefit society as a whole. Unlike French intellectuals of the Enlightenment, for him, natural law is not aimed at political transformation, but rather at citizens' education. Mario Pagano (1748–1799), one of Genovesi's most renowned disciples, carried out the shift from such educational function of natural law to its political use. As an active member of the 1799 Parthenopean Republic, Pagano shaped Genovesi's view, endowing, through a historical foundation of natural rights, political action with more relevance. Hence, within the Neapolitan context, natural law facilitated the transition not only from reform to revolution, but also from a rationalist to a historical foundation of natural rights.

In relation to the northern-eastern context, Serena Luzzi's essay focuses on the tension between law and religion, and on the various strategies employed to propagate and adjust Protestant natural law within a Catholic environment. Giambattista Almici (1717–1793) is the author of the first Italian translation of Samuel Pufendorf's *De iure naturae et gentium*, based on the French version by Jean Barbeyrac. Luzzi highlights how the encounter with theories from a Protestant tradition nourished a gradual and limited attempt by the political power to make itself more independent of the Catholic Church. The circula-

tion of translations, essays and books aided finding an alternative to Scholastic natural law. In the second part of her chapter, Luzzi accounts some particularly significant reactions to Almici's translation, from the Dominican friar Giovanni Bonifacio Finetti to Carlantonio Pilati. The latter was the author of *Di una riforma d'Italia* (1767) and articulated a critique of natural law that was unprecedented in Italy.

In the north-eastern context, especially Venice, the theories of natural law and the law of nations were also characterized by a strong political stance. Through the reinterpretation and adaptation of treatises such as Emer de Vattel's *Droit des gens*, they provided an effective support to the governments of the small republics within the international system. Antonio Trampus devotes his chapter to the vicissitudes of the teaching of natural law at the University of Padua. On the one hand, Trampus presents the key figure of Giovanni Battista Bilesimo (1716–1799), who was appointed to the chair of natural law in 1764; on the other hand, he stresses the collective intellectual effort in introducing works coming from the Protestant world, such as Vattel's. The end of the Republic of Venice in the post-Restoration context entailed not only a transformation of the teaching of natural law in universities, but also its eclipse as a source because it was considered to be outmoded.

Part 3: From Natural Law and the Law of Nations to International Law

The third part of the volume spans chronologically from the end of the eighteenth century to the well into the nineteenth, especially the crucial moment in Italian history marked by the 'Risorgimento' and the process of unification, the main steps in which were the First Italian War of Independence in 1848 and the proclamation of the Kingdom of Italy in 1861.[10] With the 'Legge Casati' of 1859 reforming the whole education system, the teaching of natural law and the law of nations saw a transformation, while the new discipline of international law gradually emerged.

Ivo Comparato examines the official introduction of teaching of natural law and the law of nations at the University of Perugia after the reforms carried out between 1798 and 1799. The story of this chair is linked to the political events

10 A still useful and insightful introduction to the process of Italian unification is the classic book, with a selection of texts, edited by Denis Mack Smith, *The Making of Italy, 1796–1866* (London: Macmillan, 1988 [first published 1968]).

that took place up to Unification. Thanks to the analysis of texts adopted by professors such as Giuseppe Colizzi, Pietro Antonio Magalotti, Vincenzo Bini and Bonfiglio Mura, it is possible to highlight not only the different intellectual orientations, but also the most important disagreements between theories of natural law and the previous tradition. These debates were characterized by a recurring tension between the diffusion of liberal ideas and the papacy's measures, such as the 1824 Bull *Quod divina sapientia*, which suppressed the teaching of natural law and the law of nations, until it was restored in 1847.

An attempt to introduce a chair of *jus gentium* was made in Turin[11] as early as the 1730s. Yet, the strong opposition of the Curia prevented it. However, as Frédéric Ieva points out, during the eighteenth century, theories of natural law and the law of nations were taught in courses on moral philosophy. In the early nineteenth century, a chair of international law was established in the University of Turin, and the renowned jurist Pasquale Stanislao Mancini (1817–1888) was appointed to it in 1850. This chair acquired a strong symbolic political role during the national unification process. Indeed, during this period, Mancini had the opportunity to present his theory of nationality as the foundation of the law of nations, which influenced the public and private reception of international law significantly. For authors such as Pufendorf, Wolff and Vattel the *state* constitutes the main subject of the law of nations; instead, for Mancini, international law is the natural law of peoples, and consequently the primary factor is the *nation*, with its essential features of 'reason, race, language, customs, history, laws and religions'. From this perspective, the concept of nationality obtains an utterly new configuration as 'collective expression of liberty', as well as a 'holy and divine thing, like liberty itself'.

Another key figure from Piedmont is the Jesuit Luigi Taparelli d'Azeglio (1793–1862). Taparelli provided an original contribution to the reception of Protestant natural law theories, to the development of the so-called 'social doctrine of the Church', and to the reinterpretation of international law. As Francesca Iurlaro highlights, Taparelli's perspective combined Christian Wolff's doctrines with Catholic theology, especially Francisco Suárez's, dwelling upon the notions of *perfectio* and *concursus*, as well as the relationship between 'debt' and 'international love'. According to Taparelli, the

11 Since the sixteenth century, Turin had been the capital of the territories belonging to the Dukes and then Princes of Savoy, who acquired the Kingdom of Sardinia in 1720. Turin was then also the capital of that Kingdom, but Piedmont and Sardinia remained two distinct political entities until the beginning of the nineteenth century. See Anthony L. Cardoza and Geoffrey W. Symcox, *A History of Turin* (Torino: Einaudi, 2006).

definition of international order is a lengthy process of assimilation and mediation of theories, which, even though apparently distant, have many points in common, also concerning the elaboration of just war theories.

Giuseppina de Giudici examines the tension between the law of nations and international law, through a case study of the University of Cagliari from 1764, when a reform by Giovanni Battista Lorenzo Bogino (1701–1784) was implemented, until the official creation of a chair of international law with the Casati reform in the 1850s. De Giudici emphasizes the difference between the 1850s and the period between 1764 and 1849, when Cagliari, like many other Italian universities, had seen natural law and the law of nations taught indirectly, in courses on *jus civile* and *jus canonicum*. The University of Cagliari offers an example of the diverse and complex dynamics involved in the development of international law and the Italian school which had Mancini as its founder.

In conclusion, our book contributes to a rethinking of what has been conventionally understood as modern natural law. The essays collected here show that natural law has not only been the subject of a highly codified academic teaching, but also provided a broader conceptual and philosophical frame underlying the 'science of man'. Natural law is also a language wherein reform programmes of education and of politics have taken form, affecting a variety of discourses and literary genres. Even though a conceptual unity of natural law may exist, it should no longer be a problem to talk about modern natural laws, in the plural. The Italian debates we examine here show how authors were aware of a multiplicity of divisions: from the quarrel over whether the state of nature is a 'feral' state or not, to debates concerning the relationship between natural law and history, reason and passions, different theories on just war, and various political implications of social contract doctrine. Even with regard to the theme of secularization, a definition of modern natural law as a process of secularization contains the same questions and limits that generations of historians have encountered while dwelling upon the relationship between Enlightenment and religion.[12] Forms of materialism, irreligion or atheism do not necessarily entail a rejection of natural law. The specificity of the Italian case does not correspond to a particular conceptual or philosophical stance, like, for example, the primacy of history, of politics or of morals. Rather, it is the plurality of the *particular* ways in which these general features manifested

12 On the problematic concept of 'secularization' we share the insightful analysis by Ian Hunter, 'Secularization: The Birth of a Modern Combat Concept', *Modern Intellectual History* 12 (2015): 1–32.

themselves in Italy that allows us to grasp the richness of the Italian uses and interpretations of natural law: a plurality of theories that mirrors the plurality of contexts and actors, whose dramatic change with the process of unification shaped the birth and evolution of the Italian law of nations.

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