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ITALIAN NATURAL LAW

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If natural law were Italian or English or French, it would not in fact be "natural", i.e. universal. To speak of "Italian natural law" is a contradiction in terms. Positive law has a national character, while natural law, if it exists, does not depend on any particular context and concerns mankind of all times in all places. Indeed, one of the strongest arguments against the existence of natural law has always been the number of different ways of defining it.

One must not however confuse natural law with the natural law doctrine. This is our way of considering natural law, the fruit of our reflecting upon it, the process of its conceptualization. All this must necessarily depend to a certain extent on cultural conditioning. The controversies about natural law are substantially due to the confrontation of different theories of natural law. In this sense it is not at all contradictory to speak of an "Italian way" in natural law, an Italian natural law doctrine. But does such a unitary tendency in fact exist in Italian culture?

It may seem strange, at a time when the unity of the Italian state is being debated, to seek to establish the existence of an Italian way in natural law (Fassò 1964; Pérez Luño 1971; Lorenzi 1990; Marini 1987). However this is a question of relating the natural law doctrine not so much to political or national unity as to the mentality or genius of a culture. Every culture may be regarded as a particular approach to the nature of man. This is moreover the only acceptable sense in which we may distinguish an Italian, British, French, German or any other philosophy. Does an Italian culture of natural law really exist?

I shall limit this question particularly to the period between the end of the second world war and the present day, disregarding entirely all studies of a historical character, whatever their importance. Has a theory of natural law been dominant in Italy in the second half of the twentieth century? I will say immediately that the answer to this question is negative. We will be discussing not unitary doctrine so much as some typical ways of approaching the problem of natural law that persist in Italian culture and are derived from its tradition of thought.

1 The Italian Tradition

If we are to understand the more recent history of natural law in Italy, we must bear in mind a tradition of thought that goes back a long way.

In this tradition the common background is represented by Christian ethics, whose principles and values have been widely believed in, though not always fully observed. For the Italians, Christian morality for long centuries has been equated with morality pure and simple and has had no rival alternatives of any importance. This has been the common base of two movements of thought, which may be ascribed emblematically to the Neapolitan philosophers Thomas Aquinas (1225-1274) and Giambattista Vico (1668-1744). Aquinas represented both the theological origin of this normative ethics and its possible rational foundation, as natural law is at one and the same time the law of God and the law of reason. Vico, to whom we are grateful for a philosophy of history interested in the manner in which natural inclinations and the principles of reason are able to progress in the minds of men and in the process of civilization, pointed out the need for a link with the practical and concrete experience of social and political life. Reason and history, divine will and human culture are therefore the everlasting elements in the background of this tradition of thought.

One of the indubitable characteristics of the Italian interpretation of natural law consists in the fact that the two trends of thought, which themselves are not irreconcilable, have rarely cross-fertilized and indeed have tended to develop along parallel and sometimes antagonistic lines.

Italian exegetes of Aquinas have produced varieties of interpretation ranging from voluntarism to rationalism, but which often ignore the historicity of human experience. The followers of Vico's line of thought, which did not generate a school of its own and for long periods fell into oblivion, directed their attention above all to the interpretation of political and social history, abandoning Vico's incontestably religious inspiration.

If now, making a rapid jump a few centuries forward, we take even the most superficial of glances at the nineteenth century, we are bound to recognize that the philosophical foundations were not sufficiently developed in the framework of the Catholic thought that monopolized the natural law doctrine[1]. It is generally recognized that there has been a considerable measure of eclecticism in Christian thought and, more widely speaking, in all Italian philosophical culture until the present day[2]. In the first half of the nineteenth century the only organic treatises on natural law were decidedly rationalistic in their approach.

The glorious tradition of Christian thought had been seriously injured by its impact with the Enlightenment, but it was not entirely dead. In the second half of the nineteenth century some scholars interested in legal and political matters

returned with full awareness to Aquinas' concept of natural law. Among these scholars the most outstanding for depth of thought was Luigi Taparelli d'Azeglio (1793-1862), who elaborated a thorough and detailed theory of natural law that is not without importance even today. This trend of thought certainly had a conservative leaning intended to counteract the spread of liberal individualism, and yet, especially in Taparelli d'Azeglio (1949), the effort was made not to impose the natural law principles from high but rather to interpret them as if they were in some way immanent in the history of habits and customs and in social practice.

Following Pope Leo XIII's encyclical *Aeterni Patris* (1879) Catholic thought rediscovered its identity and resumed the tradition of Thomism. In Italy the Neo-Thomistic movement developed until after the second world war and we are clearly indebted to it also for a particular concept of natural law. The tendencies of this school of thought were destined to have a considerable effect on the image of natural law that was widespread in Italian cultural circles before and after the second world war.

In Italy Neo-Thomism was a movement of thought closely bound up with Catholic Church. We should remember that there were no state theological faculties, as indeed there are none today. Catholic culture, also because of the political circumstances of the unification of Italy, has always had strong ecclesiastic and clerical overtones. Consequently, the Thomistic natural law theory has always experienced a dual separation: that of secular culture and that of juridical culture. It has been restricted to the level of theologico-philosophical and ethical fields, while the prevalent approach of jurists remained closely related to legal positivism[3].

If we now reflect upon the manner in which natural law is considered, we may say that it revolves around the affirmation of absolute and immutable rules of conduct that are independent of historical variations and are founded on the rational will of God or on human nature itself interpreted on the basis of the principle of creation. It is possible to make a certain difference in the relationship between positive and natural law according to the well-known two ways of derivation, i.e., *ad modum conclusionis* and *ad modum determinationis*. However, recourse to the experience of history is useful not so much in order to understand the principles of natural law as to realize the variety of their application (Olgiati 1944).

From the secular point of view[4], historicism and idealism, which represented the dominant philosophy and which obviously denied the naturality of natural law, had appropriated the thought of Vico, the other great interpreter of the Italian spirit, bending him to the demands of an immanentistic philosophy of history. Benedetto Croce in 1910 and Giovanni Gentile in 1915, in their interpretation of Vico, profoundly affected the attitude towards the Neapolitan philosopher, not because of the leaning towards to Hegelian philosophy but more as a result of the excessive importance given to matters of aesthetics and poetics rather than

to legal questions, which were considered to possess little theoretical relevance. Consequently historicism was no less abstract in its positions of thought and the clash between Catholic and secular conceptions was fought out on the most abstract of levels. In these cases the ferocious battle on principles was almost invariably accompanied by a form of pragmatism that showed scant regard for values on the practical level.

We must also bear in mind the particularly difficult situation of legal philosophy. On the one hand, to be recognized as a genuine philosophical speculation, it had to relate itself with the dominant streams of thought of the time, i.e. positivism, Neo-Kantism and Neo-Idealism; on the other hand, however, these philosophical tendencies did not lead to an adequate appreciation of the legal phenomenon. Philosophical positivism considered law to be an antiquated instrument of social control; Neo-Kantism tended to think of it as a merely external and coercive force; and Neo-Idealism reduced it to a matter of economics, or raised it to the level of ethics. As a result, legal philosophers nearly always appeared to be not in full agreement with the trend of thought which they in fact followed and were thus regarded with suspicion by pure philosopher. And while pure philosophers degraded them to the level of jurists, the latter would not admit them to their ranks[5].

Neo-Thomistic thinking, or more broadly speaking Catholic spiritualism, was in fact the only natural law doctrine in Italy before the second world war. Some questions concerning natural law were of course also considered by the opponents of the Catholic natural law doctrine and in particular those regarding a fairer form of positive law. Positivism used the expression "social idealities" (*idealità sociali*). It is also possible to identify non-Catholic trends of thought on natural law that go back to Filomusi Guelfi (1846-1903) and Igino Petrone (1870-1913) and are related to the Neapolitan Neo-Hegelian School. But these positions are much tempted by historicism.

The only real theory of natural law that was an alternative to Neo-Thomism is the Neo-Kantism of Giorgio del Vecchio (1878-1970), of Bologna, who founded the *Rivista internazionale di filosofia del diritto*. The difference is not so much in the contents of natural law, which are in any case those of Christian ethics, as in the distinction between legality and justice. Del Vecchio maintains the independence of the logical concept of law from that of justice. Legality is a logical form which makes it possible to give legal sense to social phenomena of intersubjectivity and which is neutral from the evaluative point of view. But law moves towards the ideal of justice, which is its main content. The originality and the importance of the thought of Del Vecchio, to whom we are also indebted for a number of valuable publications on natural law (e.g. Del Vecchio 1954), lie principally in the elaboration of a definition of law that does not depend on the controversy between legal positivism and natural law theory.

Del Vecchio distinguishes three fields of philosophico-legal inquiry: the logical field of the concept of law, the phenomenological field regarding historical and empirical development, and the deontological field relative to the idea of justice. This three-way definition of the philosophico-legal problem has been very successful in Italian legal philosophy, even if the three fields have been diversely interpreted (Del Vecchio 1930).

On the level of ethico-political commitment none of the trends of natural law doctrine present in pre-war Italy was fully aware of the radical incompatibility of the Fascist ideology with natural law or developed an organic and combative critical protest. This is further proof of the abstract character of Italian natural law and its incapacity of standing up against history.

2 The Natural Law Doctrine of the Jurists

One of the most important cultural effects of the second world war on philosophico-legal problems was a renewed interest in natural law[6]. This happened in the culture of the defeated countries, generally speaking, i.e. in Italy and Germany. Much has been said about the responsibility of legal positivism as regards Nazi and Fascist totalitarianism[7]. In fact it would have been more realistic to seek true responsibility not in legal positivism but rather in the separation between ethical and legal culture. And this was something for which the supporters of both legal positivism and natural law doctrine were equally responsible.

One of the first results of the rebirth of natural law was the renewed interest in it on the part of the jurists. Once again the moving force came from the Catholic Church. Pope Pius XII was very sensitive to legal matters and advocated a new international legal order.

The history of post-war natural law began with a Congress of the Union of Italian Catholic Jurists (U.G.C.I.), devoted to the "natural law in force" (*diritto naturale vigente*). It is interesting to note that the central problem now was that of the professional deontology of the jurist. The jurist's task is linked to positive law and the value of certainty. The existence of an unfair law produces a deep crisis in the jurist's conscience. Unfair positive law was now no longer merely a theoretical hypothesis but a weight oppressing the historical conscience.

The variety of opinions in this debate was an indubitable sign of a development of the problem of the enforcement of natural law. First and foremost the Neo-Scholastic position was reproposed, according to which natural law had at one and the same time a trascendent and systematic character. Consequently, whenever a jurist sees a contradiction between the positive and the natural law, he has to recognize that the positive rule is not true law (Barbero 1953, 40). But this *strong version*[8] of natural law theory was not well received and even its

supporters did all they could to reduce its negative impact on the value of certainty and on the duties of the jurist's role. The *weak versions* insist either on the difference between the single positive rule and the overall system of rules or on the particular character of the rules of natural law. These are two moderate approaches which permit some dialogue between positive law and natural law without presupposing a duplication in the legal system[9].

According to the first of these two alternatives a substantial distinction has to be made between the overall legal order and the single rule. The overall order can never be in conflict with natural law, since it is the objective order of social coexistence, an order that has become consolidated through the test of history and is therefore endowed with immanent rationality. In this sense natural law is the sum total of the constitutive requirements of positive law itself, whether they are derived from the structure of action or expressed in the internal values that constitute a legal order. This is also substantially the position of Giuseppe Capograssi (1889-1956), a philosopher of law who exerted a great influence on the formation of post-war Italian jurists. Capograssi, the propounder of a philosophy of legal experience[10], explicitly recalled Vico and spoke of the "natural law of the wise" (*diritto naturale degli addottrinati*), i.e. of the result of the work of reason throughout history in order to establish the profound needs of mankind. From this point of view unfair law must be reconciled by means of interpretation to the internal values of the positive order and thus freed of its contradictions.

The second line of thought refuses the identification of natural law with a system of precepts. Natural law consists rather in a few fundamental and nuclear precepts and in a series of orientations that guide the production of positive law. Today we would say that natural law manifests itself above all through principles, i.e. general guides for action. Consequently the insoluble conflict between natural and positive law would be limited to a few extreme cases concerning precepts, while it would have a moral and not strictly legal significance in the case of principles.

The novelties thus consisted in a differentiation of the manners of interpreting the enforcement of natural law and in the involvement of jurists in related problems. This latter aspect was strengthened by the appearance of a legislative text imbued with ethico-political values, i.e. that of the Italian Constitution, which came into force in 1948. As the text of the Constitution contained some principles that belonged to the natural law tradition, the fidelity to the law that is typical of the Italian jurists could to a certain extent be combined with the natural law theory. It is however significant that the concept of a "philosophy of the jurists" (Caiani 1955)[11] came into being, which before the war would have seemed a contradiction in terms. This philosophy does not abandon the non-historical formalism typical of the Italian jurist (Merryman 1966) but accepts that values are incorporated in legal and institutional norms and are "law in force", and must

therefore be taken into consideration in procedures of legal interpretation and legal science.

The result of this evolution was a strengthening of the consensus of opinion regarding the fundamental contents of law, which for the followers of natural law theory rested on the natural law in force and for the followers of legal positivism were positive law to all intents and purposes. But agreement is always the paralysis of research. There was no discussion in Italy at that time about the contents of fundamental legal values but only about their qualification *vis-à-vis* natural law theory or legal positivism. A doctrine of natural law should on the contrary present itself as a programme of research into the precepts and principles of law, i.e. it should use practical reasoning to identify and justify legal rules.This is moreover in no way extraneous to the tradition of Italian legal science, which goes back to Roman law and medieval jurisprudence and which — as Alessandro Giuliani (1988) has pointed out — could now use the resources of the new rhetoric and the theory of argumentation. But the jurists in the age of codification had abandoned this tradition, unlike British and American jurisprudence. In conclusion it may be stated that the two weak versions of natural law were not adequately developed and investigated.

3 The Natural Law Theory as a Theory of Morality

It is hardly surprising that the main point of the debate was transferred to the epistemological domain. As it was no longer the content of the precepts that qualified a doctrine as a natural law theory, the stress now fell on a determinate foundation or a determinate justification. Norberto Bobbio, with his customary lucidity, perceived this problem when he interpreted the natural law theory not as a particular form of morality but as a determinate theory of morality (Bobbio 1965, 180). This is an objectivistic theory of ethics which presumes to found value contents on a cognitive basis. The conflict between natural law theory and legal positivism thus became one between cognitivism and non-cognitivism of value judgments (Viola 1993). The epistemological controversy drew the main attention to itself, consigning matters of normative ethics to oblivion.

The separation now regarded meta-ethics, the conception of legal science and interpretation, and the concept of law, i.e. whether it is fact or value. A strong current of legal positivistic and analytical thought began to affirm itself, inspired by the works of Hans Kelsen, Alf Ross and Herbert Hart and which became the principal opponent of the natural law theory of morality, using the "is-ought question" as its favourite weapon (Bobbio 1965, 172; *contra* cf. Carcaterra 1969).

Meanwhile, in the wider Catholic philosophical culture, Neo-Thomism has weakened and virtually disappeared, without being replaced by a different and

more adequate interpretation of the thought of Aquinas. It is true that the thinking of Jacques Maritain (1985) was extremely influential in the Catholic culture of post-war Italy, but more with regard to political and social philosophy than to legal philosophy[12]. In fact natural law theory was scattered a thousand ways, no longer having a strong and unitary speculative support behind it.

That there was indeed an essential connection between Christianity and the natural law doctrine was deeply questioned by Guido Fassò (1915-1974), professor of the philosophy of law at the University of Bologna and the author of the only complete history of legal thought ever to be published in Italy (1994). Fassò, in whom the philosophy of Vico once again made itself heard, clearly distinguished the plane of the absolute transcendence of moral and religious values from the institutional and social plane, which is necessary for peaceful coexistence and which must therefore accept a certain degree of relativism and historicism of values, with their necessary consequent secularization (Fassò 1969; *contra* cf. Ambrosetti 1985). Law takes its place in this latter plane, just as all social or rational moralities are in reality legal forms of coexistence that in some way are in conflict with the essential ultrasecularity of Christianity. In this there is a certain lack of confidence in human reason which in some way recalls non-cognitivism (Pattaro 1982) and the mysticism of Wittgenstein, although Fassò absolutely rejected voluntarism. In this religious background he recognized, for the construction of legal and political institutions, the educative importance of natural law in the sense of the *law of reason* (Fassò 1964a). This was the empirical and historical reason of Vico that is in no way eternal and immutable, but essential to guarantee rights and liberty, i.e. to found the values of constitutionalism.

Despite the non-absolute value of natural law, this recognition of the importance of practical reasonableness is of some interest. Fassò himself referred to English legal tradition which has developed a law from the concrete requirements of society as interpreted by reason, a law that is not voluntaristic — like continental law — or a *positive natural law*, to use Roscoe Pound's expression.

One should also remember that, some years before, Alessandro Passerin d'Entrèves (1902-1985), an Italian with a Thomistic background and a profound scholar of English legal and political thought, had sustained in his *Natural Law* that the importance of the notion of natural law consists more in its *historical function* than in its doctrine (Passerin d'Entrèves 1951). It was precisely this historical function that Fassò was later to stress, i.e. the possibility of limiting the power of the state and of protecting the individual from the arbitrary power of the sovereign. Recognizing this "historical" merit, Bobbio noted that for this an objectivistic theory of ethics like the natural law doctrine was not necessary, since the same merit is to be found in other doctrines or philosophies that have nothing to do with it (Bobbio 1965, 190). But the natural law theory is not the only

possible cognitive meta-ethics and the doubt remains whether constitutionalism and the rights of man are better defended on the theoretical plane by cognitivism or by ethical relativism. In the final analysis, for the fate of the natural law theory, the crucial point is not the content of natural law but its foundation, i.e. the concept of human nature.

To escape from this difficulty it was necessary to provide a non-naturalistic interpretation of human nature and this required a fresh speculative effort. It was to this theoretical endeavour that Sergio Cotta devoted his studies, introducing an inspiration of Augustine origin into an ontological interpretation of Husserlian phenomenology (Cotta 1991). Cotta does not pause to defend determinate contents of natural law, to which he grants a fair degree of historicity. The philosophical concept of "nature" cannot be reduced to mere factuality but rather indicates the constitutive structure of an existential being. The being to which law refers is man. Philosophical research brings out the structural characteristics of this being and reveals its coexistential relationality. This anthropological truth gives rise to objective duties that apply to every human being. Natural law is therefore that form of positive law that is justified by its correspondence to the structure of the being to which it refers. It is not an ideal law or a naturalistic law, but a *law in force* because it is an expression of man's being. The main task of the natural law theory becomes that of justifying the obligatoriness of positive law, i.e. of answering in substance the radical question "why law?" (Cotta 1981). In this way Cotta was able to identify in positive legal system some essential principles of a structural character, non-observance of which would make coexistential relations impossible (such as the duty of respecting the innocent and not subjugating other people's will). Cotta accepted that the criteria of historical content and of social function are not sufficient to define natural law theory. This is not the unity of a school or a doctrine but the unity of a *model of research* characterized by the question about the foundation of law when this is sought in the nature of man (Cotta 1989).

The return of the question of natural law to the philosophical level, both ontologically and epistemologically, although of great speculative value, never satisfied the requirements of jurists more interested in the content of law than in its foundation. Moreover, jurists favourable to natural law had been satisfied by the constitutional values and had therefore taken a stand for legislative formalism in defence of the certainty of law. It was on the contrary jurists animated by left-wing ideologies who attempted alternative interpretations of positive law in the name of the search for a fairer law.

4 The Return of Normative Ethics within Law

A cultural phenomen of great interest for the search for natural law began to be apparent in the 1970s. We have said that the only firm point above all discussion was the agreement on the content of Christian ethics. But this consensus gradually began to crumble in the Italian society of the day. The introduction of divorce (1970) and the legalization of abortion (1978) confirmed the end of a common morality and the pluralistic fragmentation of moral convictions. The crisis of moral beliefs once again opened up to discussion the normative ethics which meta-ethic research had caused to be neglected.

The principles and precepts of natural law need to be defended on the argumentative plane on the basis of legal experience. But the philosophers of law had moved away from legal experience and the jurists wavered between formalism and ideologism. However, the crisis of common ethics shifted to positive law the task of guaranteeing common participation in the values necessary for any form of peaceful coexistence (Viola 1989). Oddly, this situation was favourable to natural law, which has always had to reply to two contradictory charges, i.e. that of belonging to ethics rather than to law and that of being based on nature as fact. Today in Italy — as indeed in the rest of the world — legislation is once again beginning to take an interest in ethical questions and the theme of nature (bioethics, ecology, the rights of future generations, etc.). History itself confutes Piovani's strong attack on the natural law theory which is considered antimodern (Piovani 1961, 11).

The general concept of nature has become the crucial point of law and morality (Lombardi Vallauri 1990). This is not just a question of the nature of man but also of the nature of things and of the very nature of law. Natural law concerns not only rules of conduct but also rules of organization (Lombardi Vallauri 1987). Also the procedures, to which some would today reduce all positive law, are not merely arbitrary but must respect certain constraints of value and practicability. Constitutionalism, democracy and the rights of man have binding internal rules, they have — as Fuller would say — an internal morality of their own. The "naturality" of positive law lies in all that is subtracted from the full control of human will. In this sense there is a sort of minimal natural law doctrine which is at the basis of our present-day legal culture. This is based on the refusal to reduce values to facts, on the rejection of absolute subjectivism (Lombardi Vallauri 1981) and on the defence of the individual against the power of the state (Cattaneo 1994).

The most difficult problem concerns the natural law of conduct because this remains closely related to the controversial concept of the nature of man, around which there still remains a division between Catholic and secular thought. For

this to be resolved it will be necessary to overcome two obstacles still present in the question of natural law in Italy.

The first obstacle is the reconciliation between the universal form of the precept of natural law and its content which to some extent is historical (Sala 1971). Once again this is the problem of uniting in a real synthesis Aquinas and Vico, i.e. reason and culture, principles and history.

The second obstacle lies in the difficulties of developing practical reasoning without being conditioned by ideological presuppositions. What we need in Italy today is greater trust in reason and its capacity to institute communication and dialogue between differing positions. Philosophers need to be better acquainted with the argumentative processes of jurists, while jurists need to be able to appreciate the non-positivistic presuppositions of their reasonings and interpretations.

Some forward-looking signs suggest the feasibility of a renewed approach to the question of natural law in the sense of a search for the first principles of legal reasoning.

The most important development, in my opinion, is the slow but progressive abandonment of the identification of law as a norm. Dworkin's distinction between norms and principles has been amply discussed in Italy. Positive law appears to be a set of interpretative processes rather than a system of norms and the problem of the sources of law once again presents itself. It is therefore natural to ask oneself if this practice has *inner goods* or guiding principles, what they are and what type of normativity they exhibit. The study of the rights of man, in any case, favours a reconsideration of the natural law theory and compels jurists to abandon all rigorous formalism and to review the question of the strict separation of validity and justice, between law and morality (U.I.G.C. 1993).

However, although it is now clear that the concept of nature cannot be reduced to mere factualism but must instead refer to the unity of sense of the fundamental ontological spheres of human experience, it is still too far from and too extraneous to social practice and historical processes, which are the real stuff of law. One path that is still comparatively unexplored is that which seeks within historical experience the constant values of legal rules, with reference to the findings of cultural anthropology (Cosi 1993), to transcultural laws (Carcaterra 1969), to the considerations of Maritain and Gadamer on the "dynamic schemata" or patterns of action, to the reflective judgement of Kant (Mathieu 1989).

Notes

1. One of the few exceptions consists of the philosophical system of Antonio Rosmini (1797-1855). He was a Catholic priest who succeeded in combining the Christian philosophical tradition with modern thought. For this purpose he revalued the thinking of Kant against sensism and empiricism. He has however remained an isolated figure and is regarded with suspicion within Catholic Church (Fassò 1994).
2. The thought of Gian Domenico Romagnosi (1761-1835) is a typical example of eclecticism in philosophico-legal field. He mingled naturalism and ethical finalism, and it is difficult to establish whether he is to be considered a supporter of natural law doctrine or of legal positivism. He was however without a doubt a fine scholar of the theory of society and of constitutional law.
3. The institutionalism of Santi Romano, which was a rigorously legal positivistic conception, dominated Italian legal circles in the first half of our century.
4. Among the exponents of lay Catholic culture we may recall Eugenio Di Carlo (1882-1969), of Palermo University, for his approval of the historical dimension of natural law.
5. "The anti- philosophical tendencies of jurisprudence" in Italy have rightly been discussed (Cammarata 1922).
6. It is curious to note the rapid conversion of idealist philosophers to natural law doctrine. Even Croce's school produced a defender of natural law (Antoni 1959).
7. Uberto Scarpelli and Norberto Bobbio vigorously defended legal positivism from this accusation: the former on the grounds of the relationship between legal positivism and the Rule of Law and the latter on the grounds of the distinction between legal positivism as a theory and as an ideology.
8. A version is strong if it comprises the following assumptions: non-positive law exists; this law is valid per se, i.e. without any need for human recognition; this law, being axiologically superior to positive law, prevails over it as regards obligatoriness (D'Agostino 1993, 71).
9. The accusation brought against natural law theory of duplicating the legal system was advanced by Kelsen and repeated by Bobbio.
10. Capograssi's philosophy is a form of Christian existentialism based on Augustine and Rosmini (Capograssi 1959). Among his numerous disciples one of the most faithful custodians of the philosophy of legal experience is Enrico Opocher, of the University of Padua (Opocher 1983).
11. The distinction between the "legal philosophy of the philosophers" and the "legal philosophy of the jurists" for Bobbio became a separation between two philosophies, one synthetic and "metaphysical" and the other analytical and "empirical" (Bobbio 1965, 43).
12. The most interesting of Maritain's work for legal philosophers was published posthumously in Italian even before it appeared in French, but unfortunately has not been influential (Maritain 1985).

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