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Limits of Power: Gaetano Filangieri's Liberal Legacy

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Abstract

Whilst scholars working on Hispanic liberalism have looked for its roots in close connection with French liberalism, the present text aims at opening a new path. First of all, it argues that the kingdom of Naples developed one of the first lines of liberal thinking within the Spanish monarchy, the one developed by Gaetano Filangieri (1752-1788) in his masterpiece *The Science of Legislation* (1780-1791). The success of this piece was not limited to the Hispanic space, as in its time it drew the attention of other liberal thinkers including Benjamin Constant (1767-1830) who translated *The Science of Legislation* into French (1822-1824), as well as one of the Founding Fathers of the United States of America, Benjamin Franklin (1705-1790). Secondly, it will introduce some of the main arguments of Filangieri's political thought that made of him a liberal thinker and one of the most intriguing authors during the first constitutional moments in the Hispanic space. Finally, this text attempts an explanation of Filangieri's success, as we believe it was not only due to his position as a pioneer of liberal ideology but most of all, because his political theory was in close communication with the political needs and practices of the Hispanic space.

Keywords

Liberalism, Natural Law, Constitutional Tradition, Hispanic space.

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Límites del poder: el legado liberal de Gaetano Filangieri

Resumen

Mientras que los estudiosos del liberalismo hispano han buscado sus raíces con la intención de establecer una estrecha relación con el liberalismo francés, el presente texto tiene como objetivo abrir un nuevo camino. En primer lugar, argumenta que el reino de Nápoles desarrolló una de las primeras líneas de pensamiento liberal dentro de la monarquía española, la desarrollada por Gaetano Filangieri (1752-1788) en su obra maestra *La ciencia de la legislación* (1780-1791). En su tiempo, el éxito de esta obra no se limitó únicamente al espacio hispano, sino que atrajo la atención de otros pensadores liberales, a saber, Benjamin Constant (1767-1830), quien tradujo *La ciencia de la legislación* al francés (1822-1824), así como también la de uno de los padres fundadores de los Estados Unidos de América, Benjamin Franklin (1705-1790). En segundo lugar, presenta algunos de los principales argumentos del pensamiento político de Filangieri que hicieron de él un pensador liberal y uno de los autores más intrigantes de los primeros momentos constitucionales del espacio hispano. A través de este percurso, este texto intentará formular una nueva explicación del éxito de Filangieri, el cual, creemos, no se debió únicamente a su posición como pionero de la ideología liberal sino, sobre todo, a que su teoría política estaba en estrecha comunicación con las necesidades y prácticas políticas del espacio hispano.

Palabras clave

Liberalismo, ley natural, tradición constitucional, espacio hispano.

Liberalism from the historical perspective

The last few decades have seen an increasing interest in Spanish and Italian liberalisms. They have been considered from diverse angles, but most of all, from the perspective of an ideology. The results, in both cases, nonetheless have lacked full correspondence with the liberal ideals themselves, or with the theoretical point of view². It has not been, however, scrutinized why both Spanish and Italian liberalisms have been considered as secondary phenomena. In the particular case of Italian liberalism, it has even been seen as a minor feature in Italian political thought. In both cases, how liberal thought contributed to the reconstruction of the institutions of the state has not been studied, which is where we think its major impact is to be found. The lack of interest in these matters is an interesting phenomenon in itself. However, this phenomenon changes when we look at the discussion of liberal ideas, in particular, during the first constitutional moments within the Hispanic space. It is impossible to deny the huge impact of what we might nominate here as Italian liberalism, during the boom of constitutional debates in the Hispanic space that took place over the first decades of the nineteenth century. Although it has been seen as a minor and irrelevant phenomenon³, Italian liberalism through the ideas of Gaetano Filangieri, either in original or in translations, or together with its counterpart from Cadiz, was widely discussed in the Hispanic Atlantic space⁴.

But what was Italian liberalism? Which were its main features? And which were its main concerns? Research on Italian liberalism has presented some particular and paradoxical features. From the historical perspective, liberalism has been seen as an element in the fight against absolute power. Moreover, it has been considered

² Corrado Ocone and Nadia Urbinati, "Introduzione", in *La Libertà e i suoi limiti. Antologia del pensiero liberale da Filangieri a Bobbio*, ed. Corrado Ocone and Nadia Urbinati (Rome and Bari: Edizioni Laterza, 2006), viii.

³ See Jesús Astigarraga, "Victorián de Villava traductor de Gaetano Filangieri", *Cuadernos aragoneses de economía* 7 (1997); "Diálogo económico en la 'otra' Europa. Las traducciones españolas de los economistas de la Ilustración Napolitana (A. Genovesi, F. Galiani, G. Filangieri)", *Cromohs* 9 (2004); "I traduttori spagnoli di Filangieri e il risveglio del dibattito costituzionale (1780-1839)", in *Diritti e costituzione. L'opera di Gaetano Filangieri e la sua fortuna europea*, ed. Antonio Trampus (Bologna: Il Mulino, 2005), 231-290; and "La prima versione spagnola della 'Scienza della Legislazione'", in *Diritti e costituzione...*

⁴ For a pioneer study of the circulation of this text in America, see Juan Carlos Chiamonte, "Gli illuministi napoletani nel Rio de la Plata", *Rivista Storica Italiana* LXXXVI, no. 1 (1964); for the Colombian case, see Federica Morelli, "Tras las huellas perdidas de Filangieri: nuevas perspectivas sobre la cultural política constitucional en el Atlántico hispánico", *Historia Contemporánea* 33 (2006): 448. And for the Mexican case, see Adriana Luna González, "La recepción de ideas de G. Filangieri en José María Luis Mora: un primer acercamiento al contexto constitucional mexicano", *Istor* 29 (2007); and also Adriana Luna-Fabritius, "El modelo constitucional Naplestan en Hispanoamérica", in *De Cadiz al siglo XXI. Doscientos años de tradición constitucional en México e Hispanoamérica*, coord. Adriana Luna, Pablo Mijangos and Rafael Rojas (Mexico: Editorial Taurus, 2012).

as a revolutionary theory of the limits of power. In addition to that, it has been related to the need for consensual legitimization of political obligation. This stress on consensus as the condition of obligation has actually been taken as a Copernican revolution in human relations, for it displaced the center of gravity of political order from the recipients of power to the individuals, in particular to their capacities of reasoning and self-consciousness⁵. That is to say, the notion of consensus came to redefine in a strong manner the egalitarian foundation of liberalism, creating the possibility of contesting the abuses of power developed by some ancient Scholastic theorists⁶.

Limiting the power of the ruler and one's own, egalitarianism, and checks and balances in the political arena, have been thus the most distinctive historical features of liberalism. These have been the elements of an ideal and the core ideas that, interestingly enough, were disputed amongst them. That is to say, whilst as a political theory liberalism has been defined as the theory of limits in defense of the liberty of the individual to possess and use things without the interference of the laws, from the philosophical point of view, liberalism has defended the universal autonomy of the individual. However, or probably for this reason, moderation has been the classic virtue that liberalism adopted to counteract human fallibility and humankind's constant desire for absolute power. Taking as a starting point the idea of human fallibility, liberalism has relied on good laws as the guarantee of liberty. Constitutional government, parliaments, and public opinion have been seen as useful instruments in the formation of good laws and warranty of liberty. To be precise, the institutions that have served as warranty to prevent the possible formation of an absolute power fashioned either by the majority or by an individual have been mainly, written constitutions, the division of powers that counterbalance each other and depend exclusively on the laws, direct suffrage, and juridical control over the laws.

The idea that individuals are finite and fallible beings, together with the idea that they are not self-sufficient, are the main features that have demonstrated the impossibility of considering absolute power as a political option, directing the attention towards liberalism. In other words, the idea that human beings are not sociable beings – *zoon politikon* – is what has led political theorists to prefer liberal forms of government to any other. For some scholars, liberalism is the refutation of

⁵ For a debate on this consciousness in Hobbes and Locke, see Janet Coleman, "Are there any individual Rights or Only Duties? On the Limits of Obedience in the Avoidance of Sin According to Late Medieval and Early Modern Scholars", in *Transformations in Medieval and Early-Modern Rights Discourse*, ed. Virpi Mäkinen and Petter Korkman (Netherlands: Springer, 2006).

⁶ See Ocone and Urbinati, "Introduzione", ix. It is important to note that, whilst Ocone and Urbinati considered all the Scholastic theorists as a unified group, my analysis distinguishes the existence of different trends within the Scholastic philosophy over the time.

the ancient idea that claims self-sufficiency as the human condition and thus as a form of liberty⁷.

In contrast with the liberty of the ancients, for the moderns liberty concerned the idea of relating and exchanging goods in a reasonable and advantageous way⁸. It is probably because of this reason that liberalism has formerly dealt with forms of developing human's sociability, understood as the organization of the society, in the civil state. This form of dealing with human fallibility took liberal thinkers to discuss for instance rights, rules, and procedures to make humankind's sociability possible. To be sure, this sociability consists of the theory of the state of law, formal guarantees of liberty, the good application of procedural justice, the formation of public opinion, the rules of the market and good public economics. This form of sociability distinguishes from the previous, as it is not so much concerned about moral psychology, i.e., with the former natural inclination of the individuals to form the civil state, but rather about a subsequent moment, that is, the organization of the institutions to *preserve* the state. It is for this reason that liberalism has been seen as the theory of the regulation of conflicts of self-interested individuals in the search for autonomy.

While the current meaning of liberalism has shrunk in relation to the previous account, here we aim at restarting some of these discussions on the liberal tradition. It is our belief that looking at liberalism in its wider sense would enable us to examine Italian liberalism from a better perspective. Especially, it will allow us to get a better outlook of the most troublesome features of Italian and Spanish liberal traditions, as for instance, its relation with the Catholic confession, with the Enlightenment, and the target of the limits of power, as they were developed within this branch of liberalism. Firstly, when it comes to liberalism in the Catholic tradition, it has been argued that the relation of politics with this religious confession had an anti-Enlightenment setting. This assessment might explain the efforts of the historiography for creating a connection with the principles of French liberalism, which has been seen as the model of secular Enlightenment. Secondly, it has been argued that eighteenth-century political thinkers, rather than theorizing the limit of the power of the rulers, addressed their actions to enhance the power and authority of the sovereigns in detriment of the power of the feudal lords.

In order to throw new light on the previous matters, this text introduces the main ideas of one of its main precursors of Italian liberalism, Gaetano Filangieri. The key idea is to show the manner in which, within the Catholic confession, secular theories of the state of law, formal warranties of liberty, the good application of

⁷ *Ibid.*, xii.

⁸ On the liberty of the ancients and moderns, see María L. Sánchez Mejía, "Estudio preliminar", in Benjamin Constant, *Escritos políticos*, trans. and notes by María L. Sánchez Mejía (Madrid: Centro de Estudios Constitucionales, 1989).

procedural justice, the rules of the market and good public economics were shaped. In particular, this text focuses on Filangieri's arguments of the foundation of individual rights and the constitutional limits of political power in strong connection with the tradition of natural law and the European Enlightenment, but even more with its Italian context. That is to say, this text treats Filangieri as a continuator of certain practices within the process of secularization of an important branch of Neapolitan political thought. This process, started by the jurisdictional lawyers at late-seventeenth and early-eighteenth century, was continued by the generation of Doria and Vico, and passed to the second half of the eighteenth century through the ideas of Antonio Genovesi and Gaetano Filangieri. Finally, this text introduces Filangieri's ideas on the British mixed government, where he developed his ideas on the balance of power. In so doing, this text will build a line of continuity between the practices of limits as designed at late-seventeenth to late-eighteenth century in one of the most important kingdoms of the Spanish monarchy: a line of continuity that invented a political language in which main concepts were discussed across all the geographical space of the Spanish monarchy.

Filangieri and *The Science of Legislation*

The Neapolitan philosopher, jurist, and political economist Gaetano Filangieri (1752-1788) authored *The Science of Legislation*, one of the most influential texts in the Hispanic space during the boom of constitutional moments that originated in Cadiz in 1812⁹. Filangieri has also been considered as one of the most intriguing authors of the European Enlightenment. In the original or translated into several languages by the end of the eighteenth and the beginning of the nineteenth centuries, his text *The Science of Legislation* circulated around Europe and within all the Atlantic space of the Spanish monarchy¹⁰. *The Science of Legislation* was originally planned in seven volumes, however, only four of them were published during Filangieri's lifetime between 1780 and 1785. The project remained incomplete due to his death in 1788. The fifth book of *The Science of Legislation* was published posthumously in 1791.

During his life, Filangieri was a member of a Mason Lodge of the English rite that gave him an extensive network of contacts not only within Europe, but that extended towards America. It has been argued that this practice opened up for him a wide and privilege audience for the circulation of his work. Indeed, it is probable that the Mason circles provided him with the opportunity to get in contact

⁹ Luna González, "La recepción..."; Luna González, "El modelo constitucional Napolitano..."; Morelli, "Tras las huellas...".

¹⁰ The work was translated into German (1784), French (1786), Spanish (there are several complete and partial translations), English, Russian, and Swedish. On Filangieri's circulation in Europe, see Franco Venturi, *Illuministi Italiani*, Vol. V: *Riformatori Napoletani* (Milan and Naples: R. Ricciardi, 1962).

with Benjamin Franklin during the American War of Independence (1775-1783). During this period, moreover, Franklin was settled in Paris and was a member of the lodge of *Le Neuf Soeurs*, the channel that facilitated the communication between Filangieri and Franklin, which continued over time¹¹.

The Science of Legislation is well known as one of the most sophisticated pieces of law, politics, and political economy of its time. However, currently, there is a lack of agreement over why Filangieri's work deserves to be considered as one of the most important texts of late-eighteenth century European Enlightenment¹². Whilst some scholars have included this work as part of the general European reform movement of the age of the Enlightenment¹³, others have concentrated on emphasizing its cross-fertilizations and discrepancies with individual authors, being Montesquieu and Benjamin Constant amongst the most prominent. While yet others have stressed its eclecticism, which in their opinion is essentially the declaration of failure of Filangieri's enterprise¹⁴.

The Science of Legislation has been acclaimed as a synthesis, even if inaccurate, of the most relevant topics of the age of the Enlightenment in Europe¹⁵. Nevertheless, it has also been considered unstable for its position within two different political traditions. On the one hand, it has been seen as a work deriving from natural law theories, and on the other, as an original piece that combines a rational method with historical knowledge. It has been compared with two completely different poles, firstly, with the contractual theories of Rousseau and Montesquieu to legitimize and ground a new political order by using two main moments mainly, the state of nature and the social contract¹⁶. In addition, *The Science of Legislation* has been considered within the framework of natural law because of its grounds on absolute and relative goodness¹⁷. On the other hand, this text has been related to the civil philosophy of the Neapolitan philosopher, jurist and historian Giambattista Vico, a model that does not require the discussion of the pre-political condition of the civil society

¹¹ See Adriano Giannola, "Gaetano Filangieri, Il contributo Italiano alla Storia del Pensiero: Economia", 2012, access in March 2018, http://www.treccani.it/enciclopedia/gaetano-filangieri_%28II-Contributo-italiano-alla-storia-del-Pensiero:-Economia%29/

¹² Paolo Becchi, *Vico e Filangieri in Germania* (Naples: Jovene, 1986); Alberto Andreatta, *Le Americhe di Gaetano Filangieri* (Naples: Edizioni Scientifiche Italiane, 1995); Vincenzo Ferrone, *La società equa e giusta. Repubblicanesimo e diritti dell'uomo in Gaetano Filangieri* (Rome and Bari: Laterza, 2003); Francesco Berti, *La ragione prudente. Gaetano Filangieri e la religione delle riforme* (Florence: Centro Editoriale Toscano, 2003); Antonio Trampus ed., *Diritti e costituzione. L'opera di Gaetano Filangieri e la sua fortuna europea* (Bologna: Il Mulino, 2005).

¹³ See Ferrone, *La società equa e giusta*.

¹⁴ Pietro Costa, "Gaetano Filangieri's *The Science of Legislation*, Edizioni della Laguna, 2003-2004", *Iris* I, no. 1 (2009): 254.

¹⁵ *Ibidem*.

¹⁶ On the relationship with the social contract see Berti, *La ragione prudente*.

¹⁷ Giannola, "Gaetano Filangieri...".

to found a new politico-juridical order. The discussions on the theoretical models of Filangieri's text, in reality, refer to the question whether *The Science of Legislation* should be seen along the lines of the theoretical or of the historical tradition. That is to say, as an Italian advocate of the tradition of natural law theory of Montesquieu and Rousseau, or instead in line with the civil philosophy developed by Vico and in the context of his sophisticated theory of history.

This discussion on the frames of reference of *The Science of Legislation* can be improved by noting that Filangieri himself attempted to detach his work from what he considered "the mistakes of Montesquieu". For Filangieri, the main difference between Montesquieu's work and his own resided on the fact that, whilst the French philosopher searched for the "spirit" of everything that had been done before, he wanted to discern the rules of what needs to be done¹⁸. In arguing so, Filangieri made explicit that the main difference between Montesquieu's theory and his was in the primary orientation of their works. Essentially, whilst Montesquieu wanted to provide an explanation of the past, searching for the spirit that had moved it, Filangieri was looking for few but clear rules to build a theory for the future.

In relation to Filangieri's affiliation to natural law theory, despite its normal treatment, it is crucial to draw attention to the fact that normally, when historiography refers to the natural law tradition in the Mediterranean area, it takes it as a unified theory developed by Montesquieu, or by Rousseau. Historiography has treated natural law as a singular theoretical model of the foundation of the political state, a product of contractual theory as elaborated by Rousseau. In doing so, historiography has tended to forget the wide range of Catholic and Protestant natural law theories and practices that used to claim privileges and rights, and that reformulated the foundations and organization of the civil societies that extensively interacted in Europe during the seventeenth and eighteenth centuries. However, it would be more precise to see *The Science of Legislation* in line with the historical tradition represented by Vico, and that attempted to move the reflection beyond the language of natural law.

For its identification of the tension between liberty and property, Filangieri's *Science of Legislation* has also been related to the republican tradition. It has been settled in the discussion between the liberty of the ancients and the moderns¹⁹. At the foundation of this tension in *The Science of Legislation*, it has been argued that Filangieri did not simply used natural law tradition as the base for the rights of the subjects, but he also assumed the link between liberty and property as the absolute foundation of politico-juridical order prior to the existence of the civil society, and thus independent from it, just as Locke formerly did²⁰. This solution would actually

¹⁸ See Gaetano Filangieri, *La Scienza della Legislazione* (Naples: Raimondiana, 1780), Book I.

¹⁹ Ferrone, *La società equa e giusta*.

²⁰ Costa, "Gaetano Filangieri's...".

resolve the previous struggles of the historiography by locating Filangieri on the side of the moderns with a strong interaction with the natural law theory of Locke. Likewise, the tension between property and liberty in Filangieri's work has also been studied vis-à-vis the Physiocrat solution of placing property at the center of its *order naturel*.

Whilst the liberty-property discussion has been at the origin of several lines of research, Filangieri's republicanism has undoubtedly been of central significance, as it has concentrated the attention of the historiography. Regarding the connection between republicanism and natural law in Filangieri's *Science of Legislation*, it is crucial to note that by discussing pre-political rights of property and liberty, Filangieri built his own approach to the political situation of the Kingdom of Naples. The analysis of the link between property and liberty before the foundation of the state led him to identify the irresistible will of the sovereign and to stress the weakness of Neapolitan monarchs. This is indeed one of most distinctive elements of Filangieri's text.

The topic of sovereignty in Filangieri's work has also been studied by the historiography. Actually, for his interest and arguments in favor of reinforcing the sovereignty of the monarch, Filangieri has been considered as an advocate of enlightened despotism. But the situation is not as simple as historiography has presented it. In reality, a close examination of *The Science of Legislation* shows that, by using European theories of natural law to analyze the Neapolitan situation, Filangieri came to terms with the fact that the sovereignty of the monarch had to correspond with the rights, liberty, and equality of the subjects that he wanted to discuss. That is, the rights, liberty, and sovereignty that he wanted to theorize for the Neapolitan citizens had to be in balance amongst them; they had to have the same strong foundation. In this manner, Filangieri's new conception of sovereignty, one of the most innovative elements of *The Science of Legislation* took place along the lines of the most important matters of Neapolitan political economy, mainly the consideration of the obstacles for the development of the economy of the kingdom, in particular of the development of property, equality and liberty of commerce.

On the other hand, the need for a strong monarch to build a modern state could be seen as well as coming from the need to end the intermediate power of feudal lords in Naples, just like all his predecessors had done, starting with Hobbes. In Naples, actually, an analysis of this kind can be found in an earlier manner in the argument of Filangieri's mentor, the political economist Antonio Genovesi. In line with Genovesi's arguments, Filangieri in *The Science of Legislation* argued in favor of a strong sovereignty able to hinge a new politico-juridical order. For both of them, it was crucial to ending the multiplicity of intermediate powers in detriment to the power of the sovereign. *The Science of Legislation* appealed to the full power of the sovereign to liberate the subjects from the dependence and inequalities imposed by feudal lords. He realized that the force of the sovereign

and the equality of the subjects needed to be complementary in the new theoretical order. Our interpretation is corroborated by Filangieri's further elaborations on this matter, namely by his correspondence with Benjamin Franklin dealing with the absoluteness of the sovereign that coexists with the rival absoluteness of the rights of the individuals²¹.

Regarding the problem of how to centralize the power of the sovereign, Filangieri contemplates two main options, revolution or reform. Regarding European economic and political reforms, Filangieri has been considered by the historiography as a central architect of Neapolitan reform²². Nonetheless, a close reading of his analysis of the reform movements of the Enlightenment shows that whilst, on the one hand, he considered reform movements as replicas of the confusions of the European politico-juridical system that he had tried to correct, on the other, he considered revolutions as uncontrollable storms that did not introduce any real changes. Filangieri was particularly attracted by the Glorious Revolution (1688) and its results, and he devoted a great deal of attention to it in his work. In Filangieri's view, the English system is characterized by the excessive imprint of the nobles and the excessive continuum with the past. In this light, Filangieri's solution was not only a plan of reforms. Rather, his main contribution was a constitutional plan able to build the sovereign power according to the rights of the citizens, as it was being contemporaneously discussed in the United States of America²³. In *The Science of Legislation*, Filangieri advanced what he considered the most suitable plan of reforms for the Kingdom of Naples that should start by the reform of the administration of justice.

Regarding this matter, scholars have criticized the eighteenth-century commonplace in the public discourse that held the optimistic belief that sees the sovereign as the ally of the subjects' security. Filangieri has been seen in line with Condorcet and Sieyès²⁴. Nonetheless, our analysis shows that Filangieri was aware of the risks of giving so much power to the sovereign, and he discussed this matter in two different forms. The first, when he discussed the idea of spontaneous convergence of interests between the individual and the sovereign, and the second, through his analysis of the balance of power of the British constitution.

²¹ See Antonio Pace, *Benjamin Franklin in Italy* (Philadelphia: American Philosophical Society, 1958), 147-66; Alberto Andreatta, *Le Americhe di Gaetano Filangieri* (Naples: Edizioni Scientifiche Italiane, 1995). Eugenio Lo Sardo ed., *Il mondo nuovo de le virtù civili: L'epistolario di Gaetano Filangieri (1772-1785)* (Naples, Fridericiana. Editrice Un., 1999); and Monica D'Agostini, *Gaetano Filangieri and Benjamin Franklin: between the Italian Enlightenment and the U.S. Constitution* (Washington DC: Ambasciata d'Italia a Washington, 2011), 8-123. For the reconstruction of the context of the debate, see Venturi, *The End of the Old Regime in Europe, 1776-1789: the Great States of the West* (Princeton: Princeton University Press: 1991), 25-32.

²² Venturi, *The End of the Old Regime*.

²³ *Ibidem*.

²⁴ Ferrone, *La società equa e giusta*.

Love of power versus public happiness and the constitutional solution

Concerning the first discussion on the spontaneous convergence of interest, Filangieri defined human beings as self-interested individuals dominated by their love of power. In Filangieri's analysis, happiness was not only the main foundation of self-preservation but also of peace, thus it was the universal aim of *The Science of Legislation*²⁵. The happiness of the nation, he argued, was the true aim of the government, which was in turn underpinned in the progress of the system of laws.

In contrast with his Neapolitan predecessors, for Filangieri happiness was the sum of individual happiness. By arguing this, he operated an important shift in the conception of happiness in relation with previous Neapolitan political thinkers²⁶. However, despite this departing point in *The Science of Legislation*, he shared with the latter the idea of humankind's fallible condition that he conceptualized as humans' love of power. Consequently, the mob was for Filangieri a mass of interested and conflicted individuals fighting for their own happiness.

Whilst some authors have seen in Filangieri's interest on happiness a common topic of the Enlightenment in general, the reality is that happiness is one of the crucial concepts of Neapolitan political thought. In the Neapolitan context, happiness was linked to two main discussions developed in the context of the defense of municipal and jurisdictional practices that led to the transformation and secularization of Neapolitan political thought. On the one hand, it was linked to the claim of old local privileges²⁷, and on the other (yet not that separated from the previous), to the struggle for the abolition of the feudal system so often appealed for during the eighteenth century.

Due to the separation between political and economical matters that scholars have anachronistically split, they have considered Filangieri's economic system related to French Physiocracy, so his conception of happiness would come close to the French authors representative of this line of thought. Nonetheless, in reality, Filangieri developed a complex explanation of the social and political European order in the wider context of a universal historical process. For, in his view, the process of civilization had to be settled in accordance with the particular development of each specific nation, and taking into consideration the character of each one. Filangieri argued that legislators should be careful about this matter,

²⁵ Filangieri, *La Scienza della Legislazione*. The translation is mine.

²⁶ A. Luna-Fabritius, "The secularisation of happiness in early eighteenth-century Italian political thought. Revisiting the foundations of civil society", in *Trust and Happiness in the History of European Political Thought*, eds. Lázlo Kontler and Mark Somos (Leiden: Brill, 2017).

²⁷ *Ibidem*.

as this tuning was crucial to avoid providing their people with the wrong maxims and laws²⁸.

For Filangieri, there have been progress and shifts in the process of civilization. Europeans have certainly overcome the barbarism of their ancestors and have been able to remove the obstacles that impeded the progress towards a happier life for the nations and their people. Filangieri, in line with Vico, argued that individuals as well as their societies could get corrupted at any moment and go back to the age of barbarism. However, something had changed from the time of their predecessors. In Filangieri's interpretation, the general spirit of wealth mediated the social and political order of his time²⁹. As with Vico, Filangieri formulated that every nation proceeded at its own pace through its own process of civilization. But at the highest point of civilization, all of them were in danger of getting corrupted, of falling into a state of war, and then reverting to the beginning of a new cycle³⁰. In our analysis, in *The Science of Legislation* Filangieri came up with a solution to break the cycle and improved Vico's politico-juridical theory. In order to move forwards in the achievement of people's happiness, he argued, sovereigns should reform their legislations in accordance with ways to promote their people's happiness. In Filangieri's view, European courts, laws, and legislations were the main concern of his time in Europe, and they should reflect their different efforts towards such a noble aim. From the general point of view, the new laws and legislations should provide the monarchies with the stability needed to develop the real interest of the nations, controlling the ambition of princes and individuals. For Filangieri, the new legislations would be the pacific revolution against the deformations and excesses of governments.

Yet, for Filangieri the happiness of the nation was not only the main aim of the sovereign, but also his duty. On the grounds of one of the oldest features of Catholic natural law (namely the right of resistance), Filangieri argued that it was the sovereign's duty to create good laws to lead self-interested individuals, lovers of power, to form a *Respublica*. As with Paolo Mattia Doria and Giambattista Vico at the beginning of the century, Filangieri identified civil life as the only place to achieve happiness. Filangieri argues in *The Science of Legislation* that the sovereign should

²⁸ "Sotto l'uno o l'altro aspetto che si consideri, questo oggetto deve avere una grande influenza sul sistema della legislazione". Filangieri, *La Scienza della Legislazione*, Book I, 158.

²⁹ See *Ibid.*, 158-9. Some scholars have argued that this can be called masonic sociability, see Giuseppe Giarrizzo, *Massoneria e illuminismo nell'Europa del Settecento* (Venice: Marsilio, 1994); and Ferrone, *La società equa e giusta*.

³⁰ A. Luna González, "De Storia Civile. Algunas ideas de Historia en la Italia preilustrada: Giambattista Vico, Pietro Giannone y Antonio Muratori", in *Tiempo y Región, Estudios Históricos y Sociales*, Vol. I, coord. Ricardo Jarrillo (Mexico: CONACULTA-INAH-Universidad de Querétaro, 2007), 283 ff.

exacerbate and conduct the passions of the individuals to the point of transforming their love of power into the love of glory.

Filangieri knew and stressed that the transition from love of power to love of glory had to be accomplished by the legislator. This duty was more than an optimistic opinion of the sovereign. Filangieri actually bonded his power to the duty of transforming society. In this way, through good laws the sovereign should guide the subjects to the decision of forgoing their own interests for the preservation of their *Patria*. Filangieri did not elaborate further about the right of uprising or a system of checks and balances to delimit the performance of the executive power, however the idea that the monarch should rule in a virtuous manner and provide his people with happiness was a present and distinctive feature of Neapolitan political thought since the early-eighteenth century.

This tone in *The Science of Legislation* has reinforced Filangieri's designation as one of the champions of republicanism in his time³¹. Now, whilst Filangieri's republicanism has been considered in line with Helvetius's political theory, we believe that the love for the fatherland or country has been one of the oldest republican arguments in Italy. In Naples, Paolo Mattia Doria had brilliantly conceptualized it at the turn of the eighteenth century³². Furthermore, our examination has shown that Filangieri's reconciliation of republicanism and proto-utilitarian theory did not need to look for a solution outside of his own context and tradition. His arguments, in fact, were very much in line with eighteenth-century Neapolitan political thought. His reconciling of republican and proto-utilitarian theory echoed the ideas developed by political philosopher Paolo Mattia Doria (Genoese by birth but resident of Naples) in his masterpiece *The Civil Life* (1709)³³. From the European perspective, this convergence between republicanism and proto-utilitarianism was not far from the position sketched by the Dutch anatomist and political thinker Bernard Mandeville and his *Fable of the Bees* (1714)³⁴.

In fact, the conflict between the interest of the subjects and the sovereign is what took Filangieri back to the old Neapolitan discussion of the opposition between

³¹ Ferrone, *La società equa e giusta*.

³² Maurizio Viroli, *For Love of Country: An Essay on Patriotism and Nationalism* (Oxford: Oxford University Press, 1995), 64-67.

³³ On Doria's revival of republicanism in early-eighteenth century, see Adriana Luna González, *From Self-preservation to Self-liking in Paolo Mattia Doria: Civil Philosophy and Natural Jurisprudence in the Early Italian Enlightenment* (Florence: EUI, 2009).

³⁴ On Doria's happiness, see A. Luna González, *From Self-preservation...* and A. Luna-Fabritius, "The secularization...". On Mandeville's political theory, see Dario Castiglione, "Considering things minutely: reflections on Mandeville and the eighteenth-century science of man", *History of Political Thought* 7 (1986); Maurice M. Goldsmith, "Public Virtue and Private Vices: B. Mandeville and English Political Ideologies in the Early Eighteenth Century", *Eighteenth-Century Studies* vol. 9, no. 4 (1976); "Regulating anew the moral and the political sentiments of mankind: B. Mandeville and the Scottish Enlightenment", *Journal of the History of Ideas* 49 (1988); and Mauro Simonazzi, *Mandeville* (Rome: Carocci, 2011).

virtue and interest. The conflict is actually part of the discussion between the liberty of the ancients and the moderns. There is no doubt that Filangieri was deeply aware that the spirit of wealth had dominated his time. In order to promote wealth as the political economist he was, he promoted commerce and the rise of private interests. In this line, it has been argued that he saw in commerce, luxury, and inequality the foundations of modern societies. Yet the incorporation of these elements might not have followed an easy path, precisely because of the opposition between interest and virtue that descended from the republican oppositions, namely virtue-corruption and liberty-servitude. In accordance with his interests as a political economist, he leant towards the republicanism of the moderns and this might explain his need to re-elaborate the property-liberty connection.

As in Doria, the unsocial sociability of men in Filangieri's theory was the decisive feature that took him to see in the sovereign the only force able to transform private vices into public virtues by means of virtuous laws. Virtuous laws were the most appropriate for the lovers of power, as they might lead the citizens to love their country more than their own interests³⁵. Virtuous laws should be the result of the scientific understanding of human nature and passions. Virtuous laws and good government were, for Filangieri, the place where the liberty of the citizens resided, and where they could see their interests represented. That is why the Constitution became the key element of the liberty of the moderns, and the legislator the main agent of this moment of historical process. The legislation was the location of the resolution of conflicts and that is why it was established at the very core of the republican tradition in the eighteenth century. Argued in this manner, Filangieri conceptualized in fact the long Neapolitan interpretation started by the generation of Francesco D'Andrea and Giuseppe Valletta of seeing in both the laws and the new juridical practices the resolution of conflicts of interests amongst individuals³⁶.

As Doria and other Neapolitan political philosophers, for Filangieri the miracle of turning subjects into citizens, from self-interested individuals and lovers of power into citizens, passionate defenders of their laws and their *Patria*, required a long process of education based on self-consciousness³⁷. Consciousness is understood in two different forms. First, as the process of knowing about the human passionate condition, namely that human beings should be aware of the fact that they are self-

³⁵ On Doria's earlier elaboration of this matter see Adriana Luna-Fabritius, "The Lawgiver in Eighteenth Century Neapolitan Political Thought: Charting Mediterranean Liberalism", in *Constitutional Moments. Founding Myths, Charters and Constitutions through History*, ed. Xavier Gil (Leiden: Brill, forthcoming).

³⁶ Salvo Mastellone, *Francesco D'Andrea politico e giurista (1648-1698). L'Ascesa del cetocivile* (Florence: L. S. Olschi, 1969); Vittor I. Comparato, *Giuseppe Valletta. Un intellettuale europeo della fine del Seicento* (Naples: Istituto Croce, 1970); A. Luna González, *From Self-preservation to Self-Liking...*, and Luna-Fabritius "The Lawgiver...".

³⁷ On the ways of reaching happiness in the Neapolitan tradition, see A. Luna González, *From Self-preservation to Self-liking*, and A Luna-Fabritius, "The secularization...".

interested individuals, lovers of power in a constant competition with their fellow men. And second, consciousness as the awareness of the political situation in which they found themselves. These two elements together conformed Filangieri's scientific approach to human nature vis-à-vis the line of Neapolitan thought developed over the first half of the century. Likewise, in line with the late-seventeenth and eighteenth-century Neapolitan tradition, Filangieri was the promoter of the liberty of thought and the press, and the rise of public opinion. In Filangieri's view, the first element of consciousness would give individuals the possibility to understand themselves in a scientific manner, whilst the second would align them with the spirit and the requirements of their time.

The balance of power in the British system

In relation to the second point regarding Filangieri's discussion on the possibility of giving so much power to the sovereign, in *The Science of Legislation* he expressed his admiration as well as his critique of the British government. His critique of the mixed British system was articulated along what he identified as three main vices, first, the independence of the body that commands, second, the dangerous influence of the king in the parliament, and third, the inconsistency of the constitution.

But let us proceed one step at a time. Filangieri outlined mixed government as the one whose supreme power is in the hands of the legislative power represented by a congress divided into three bodies, mainly the nobility, the representatives of the people and the king. The main condition is that all these powers exercise the supreme power in agreement amongst them. The second characteristic of the mixed government is that all the matters that depend on the civil law, as well as the law of nations, are in the hands of the king, who in the exercise of his faculties is independent.

In Filangieri's opinion, the three vices of the mixed government were inherent to the constitution. At the beginning of his consideration of them, he distinguished between law and constitution. Further, he stated that legislation should not change the constitution of the government, but just to attempt to correct its vices. In his view, a good legislator should understand, first of all, the vices of the constitution of the government and, only after the evaluation of the situation, look for the appropriate remedies. His general analysis identified the following points: that the power should be distributed in accordance with the constitution of the government; that the three different powers should not be independent of one another; and that the movement of all the powers should have a common direction.

Regarding the first vice of the British government, the independence of the body that commands from the legislative power, Filangieri argues that British political

writers have not contemplated this case and, for this reason, it is not possible to change this prerogative without destroying the constitution of the government.

The solution in this case might be complicated, he affirmed, as the independence of the body that commands rests at the very essence of this kind of constitution. His solution for avoiding the destruction of the constitution was thus to distinguish between the executive and the judiciary faculty. It is true, Filangieri affirmed, that in mixed governments it is normal that the king had all the executive power of the law. Yet it was not required that he exerts both of them. In fact, Filangieri continued, it is not contrary to the nature of the constitution of the government that the king, rather than exerting the judiciary power, delegates it to fixed and immutable tribunals that exercise this power on his behalf. In Filangieri's view, the separation of the judiciary from the executive faculty would settle the king within the framework of the law, precluding him to judge arbitrarily on the honour, life and property of his subjects³⁸.

In relation to the second vice, the dangerous influence of the king in parliament, for Filangieri the origin of the problem came from the fact that, in mixed governments, the king had a double influence: the distributor of all the civil and military offices, and the administrator of the income of the nation. In his view, the conflict emerges when all the powers do not reach an agreement, for the king could manipulate the parliament secretly to oppress the nation. Filangieri warned that, in this kind of government, the king could be able to manipulate the parliament without been seen as the oppressor. For Filangieri, in mixed governments, the king could use the parliament as another instrument of his and oppress his people without real impediments. Filangieri recalls in *The Science of Legislation* examples regarding the manipulation and corruption of the assembly that represents the sovereignty.

Filangieri was of the opinion that there was not a real solution for this second vice of the mixed government; nonetheless he considered the opposite situation, namely, the consequences in the case that the king would not have the prerogative of distributing all the civil and military offices. He was interested in knowing what would happen if this right (derived by the constitution and that grants the executive power, as well as the civil and international law) would be removed from the hands of the sovereign. Reflecting on this possibility, Filangieri recalled the cases of Poland and Sweden that had reduced these royal prerogatives, and then contemplated their uses for future legislators who should, by all means, just correct its vices thereby avoiding the destruction of the constitution. In his opinion, the king should not loose his prerogatives, but still he should encouraged the legislators to find a way to balance the influence that this right has given to them. Continuing his considerations, Filangieri came to terms with the fact that the sovereignty of the king of England has

³⁸ Filangieri, "Sulla divisione dei poteri in Delle regole generali della scienza della legislazione (1780-91)", in *La Letteratura Italiana. Storia e testi*, Vol. V: *Il Seicento. La nuova scienza e la crisi del Barocco*, ed. Ferdinando Neri and Guido Martellotti (Milan and Naples: Ricciardi, 1951), 674-89; also Oncone and Urbinati, *La libertà e i suoi limiti*, 12.

been conceded in fact to the parliament, as the king was not the depository of the sovereignty.

Analyzing this second vice, Filangieri recalled as well the Anglican law that he considered admirable, for it forecast the secret influence of the prince in parliament. In Filangieri's account, this has enabled mechanisms to avoid the election of individuals devoted to the person of the king to the House of Commons. On the other hand, it had declared the impossibility of electing citizens that hold any office granted directly by the king to the House of Commons. Filangieri expressed his admiration for these measures. Yet he expressed a strong criticism on the lack of measures to control the House of Lords, which in his account was formed by perpetual members who had a crucial part in the deliberations of the king. Filangieri continued stressing the fact that there was no prince that had more offices to deliver than the king of England, for whom every lord represented a vote. In any case, he affirmed, legislators should not abolish or diminish a right conceded by the constitution of the government, destroying, in turn, the constitution. In that sense, as a solution, it would be better to give to the assembly, representative of the sovereignty, other rights to counterbalance the power of the king.

For Filangieri, it was paradoxical that the king of England, not being the titular of the sovereignty, could create both temporal and spiritual lords, for it is unusual that the king could concede or share something that he does not have. At this point Filangieri questioned whether it should not be a prerogative of the parliament to concede to the citizens the possibility of sitting in the chamber of the *ottimati*, or that they become representative of the people as a reward for their services to the fatherland. Filangieri's answer to this question was that, in reality, the parliament should be the only grantor of this distinction to the citizens in reward for their virtuous accomplishments. In this manner, he conceptualized the idea that, in a free nation, these rewards would become more desirable than the mercenary offices delivered by a prince representative of the servitude of the subjects. At this point, Filangieri argued that it should be the prerogative of the assembly to remove the members that have become discreditable from serving the fatherland. The assembly should exclude these citizens also from the offices delivered by the king.

Finally, let us examine the third vice identified by Filangieri regarding the mixed government, the sovereignty and inconsistency of the constitution, the constant fluctuation of power amongst the different bodies in which it is divided the authority. For Filangieri this fluctuation is impossible to prevent. In all governments the authority to create, abolish or change the fundamental laws is a privative right of the nation. Nonetheless, this power is not united to sovereignty. In fact, Filangieri argued, in mixed governments the instability of the constitution could actually benefit the body that creates the alteration, and all the bodies could compete for power in the same measure than the sovereign. On this matter, Filangieri recalled examples from British history, when the prince had been weak and the two chambers had usurped him.

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In his analysis of the third vice, Filangieri concluded that there was no real solution without compromising the nature of the constitution. In this case, the legislator should know that he is dealing with a fundamental law, and that whatever solution he proposes, it should be ratified by unanimity, since the majority might not be enough to make a new law valid to legitimate the change. The solutions should be universal as they should be recognized and desired by all the members of the parliament. Therefore, in the case that consensus is reached, the constitution would not be considered as changed or altered, but perfected³⁹.

In addition to the previous measures to correct the vices of the mixed constitution, Filangieri recommended that the number of offices delivered by the king should be limited by law; that the concessions and exclusions of these offices conceded by the king should be ratified by the two chambers of the parliament; and that legislation should not only prevent the corruption of the members of the chambers, but also of the electors, by means of education in the customs and honors of citizens.

Education was certainly a crucial topic for Filangieri. He actually devoted a full volume of his *magnum opus*, the fifth, to explain his program of education. In a nutshell, Filangieri argued there for the creation of a program of education able to awake the love of glory united to the patriotic enthusiasm of the citizens. In Filangieri's opinion, a nation would only be free when its citizens learn that they are free and decide in consequence the substitution of the court by an assembly.

In a final word on the British system, Filangieri addressed the British citizens to question how, despite of having surprised Europe with all their inventions and discoveries, they had forgotten their legislation, which was still founded upon the barbarities of their ancestry. For Filangieri, British legislation was based on a feudal system, contrary to the liberty they thought they possessed. British legislation was formed by so many customs, pernicious laws, and subsidies of despotism, that it resembled a shapeless collage. To conclude his critique, Filangieri recommended the British to create a new legislation that repairs the vices of the constitution in use, fixing the rights and prerogatives of both the Crown and the Parliament, and abolishing all the ancient customs incompatible with the current state of their time. Give to your legislation, Filangieri advised British citizens, the unity that a legislation done over several centuries and over so many different circumstances cannot take by itself: create a legislation that recalls the virtue without which men cannot be free; build new customs to build patriots; reward the virtues and punish the fraud and the customs of the court; build incorruptible and virtuous members of Parliament, so a solid freedom can substitute a licentious and dangerous anarchy; and build the public wellbeing that united to all your talents would complete your glory⁴⁰.

³⁹ Filangieri, *Ibid.*, 16.

⁴⁰ *Ibid.*, 17.

Conclusion

The analysis in this text shows that Filangieri can be seen not only as a commentator but also as one of the initiators of this liberal tradition that foresaw the spirit of wealth dominating all aspects of the politico-juridical order, and its paradoxes and consequences. In accordance with the new spirit of his time, he was aware of the fact that commerce, luxury, and inequality were the foundations of modern societies, and to tame it he shaped a reform plan and a constitutional solution. His identification of the foundations of the spirit of his time was done through the theoretical frameworks provided by the languages of republicanism and natural law in order to open his own in the language of political economy, keeping thereby aligned with his Neapolitan predecessors. In line with them, he established human beings as the beginning of both society and the process of civilization. He approached human nature in a scientific manner and inscribed the changes of the process of civilization with a full historical explanation. Accordingly, Filangieri recognized and broadcast the obsolescence of the European legal system and the need for new grounds. In this sense, his major achievement was the creation of a new ground on which to build a new science of legislation. His new science contemplated the idea of providing all the nations with a system of progress towards happiness.

Settled in this manner, at the core of Filangieri's proposal remained the liberty-property tension that led him to produce a new idea of justice, sovereignty and liberty, that limited and balanced the conflicting love of power of the individual and their creations, in particular institutions. Considering human fallibility, rather than a revolution in which he did not trust, Filangieri proposed a deep plan of reforms starting by the reform of the system of justice and its procedures. In our analysis, this stress on the limits of the universal autonomy of the lovers of power deserves not only the credit he acquired in his time, but also further attention from ours, because of the theoretical revolution it represented. The relocation of attention from the recipients of power to the individuals, in particular to their capacities, would be foundational not only of the legitimation of the political obligation but mainly of egalitarian liberalism.

Moreover, Filangieri discussed the main concerns of the emerging liberal thinking, mainly the need to fight the intermediate powers and build a strong sovereign power, and also the possibility of controlling the power of the sovereign by a system of mutual balance between the different powers. He discussed the possibility of limiting the power of the sovereign by settling it within the legal system. But most importantly, he argued for the recipients of the political power, that is, he argued for the limits of the individual love of power. Through a program of education based on self-consciousness and the redirection of human passions, he argued for the limit of the universal autonomy of the lovers of power. These were the main conditions

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for the creation of the citizens he was looking for, mainly interested in exchanging goods in a reasonable and advantageous way, but also passionate defenders of their laws and the *Respublica*.

For all these features Filangieri's *The Science of Legislation* should be considered in the liberal tradition in which it certainly belongs. Moreover, for its contribution to the theoretical formation and organization of the institutions of the state, and in close connection with his scientific approach to human nature, it should be considered as one of the most original pieces in this field. In *The Science of Legislation*, Filangieri improved a Neapolitan tradition that combined the liberal and republican traditions in a fascinating manner, creating a distinctive conception of liberty.

Finally, Filangieri was able to improve a line of thought that in accordance with the political practices and international variable situation of the kingdom of Naples developed a distinctive line of liberal thinking. *The Science of Legislation*, together with the project developed in Cadiz, settled the lines in which the limits and balance of power were discussed within the Hispanic space. Filangieri's *The Science of Legislation* resonated with the rest of the kingdoms of the Spanish monarchy because its ideas corresponded with the manner in which the different political and legal actors of the monarchy have negotiated and fought for their privileges and local liberties, transforming them into rights. In so doing, they created a normative space common to all of them.

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