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The *Crimen laesae maiestatis* and the Limits of Sovereignty

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The *Crimen laesae maiestatis* and the Limits of Sovereignty*

In this volume, Angela De Benedictis gathers and expands her previously published research through a close engagement with Mario Sbriccoli's magisterial book *Crimen laesae maiestatis*, first published in 1974. Whereas *Crimen laesae maiestatis* focused on the process of criminalising dissent within penal doctrine between the Middle Ages and the early modern period, De Benedictis explores the opposite dimension: the juridical arguments which, in those very same sources, were mobilised to justify resistance as a form of self-defence and legitimate opposition to authority. At the core lies a theoretical and political problem: the possibility, recognised by the *ius commune*, of resisting without betraying, of disobeying while remaining faithful. It is within this tension between fidelity and infidelity, between order and tumult, that the author situates her inquiry: an investigation that interweaves juridical language, political practice, and the forms of governance.

In medieval and early modern juridical literature, the author argues, consistent attempts towards distinction and specification appear alongside the classification of the various types of revolt *(tumultus, seditio, rebellio, concitatio populi, rixa)*. Examples include the attempt to separate those who are truly guilty from those who may invoke a justification, those who acted out of *mala fides* from those who acted as *iuste resistens*. At its core is a vast juridical and political dispute over the meaning of obedience, the sense of fidelity, and the very essence of sovereignty. It is within this dispute that De Benedictis' survey of doctrinal sources is situated – it is rich, analytical and highly attentive to vocabulary, to the materiality of sources and to the contexts in which the texts were used.

The first case examined in the opening chapter is the sedition of Agen in 1513, which offers the author the opportunity to investigate one of the earliest systematic treatises on revolts: the *De seditiosis* by the French jurist Nicholas Bohier. The treatise stems from direct experience, since Bohier had been sent as royal commissioner to judge the city accused of rebellion. Agen was condemned for refusing to admit the representatives of royal power, for inciting the people to action and for imprisoning the consuls. Yet it is Bohier himself, as De Benedictis observes, who sets forth, alongside the juridical reasoning, a detailed catalogue of *notabilia* in which mitigating circumstances surface next to references to canonistic doctrine on the multitude and a distinction between deliberative counsel and tumultuous action. Here, the question of the *universitas delinquens*, of collective punishment, emerges in all its ambiguity: did the city act as a deliberating political body or as a disorderly mass?

The second chapter broadens the picture through the analysis of three juridical *consilia* written between the late 15th and the mid-16th century. The first, by Jason de Maino, was composed in defence of Gentile Baglioni, accused of rebellion for having taken part in the Congiura della Magione against Cesare Borgia. De Maino develops a defence centred on the legitimacy of confederation as a form of collective protection against threat: he writes that one who opposes a violent prince is not a rebel but a defender of justice. Further, if the confederation is motivated by the necessity of defending oneself or one's city, it does not violate the law but draws upon a natural right.

The second *consilium*, by Aimone Cravetta, was written in 1539 in favour of the community of Goncelin in France, which had assembled without authorisation from the superior authority to dis-

* Angela De Benedictis, »Crimen laesae maiestatis« e resistenza lecita. Un problema e il ›classico‹ studio di Mario Sbriccoli da riprendere e approfondire, Macerata: eum – Edizioni Università di Macerata 2025, 112 p., eISBN 978-88-6056-995-0

mantle the enclosures of pastures that had been unlawfully fenced off. Here too, the jurist justifies the congregation as an act of legitimate defence and reaffirms that the action of the community, though not formally authorised, was supported by customary right and by the principle to protect the common good.

Also presented is the *consilium* of Mariano Socini Jr., drafted within the imperial context to defend the cities of Goslar and Braunschweig in their armed opposition against the Duke of Braunschweig. The picture here becomes more complex, for imperial norms (the *Landfriedensordnung* of 1521) and categories of just war come into play. Resistance is described as not merely legitimate but obligatory, since the duke had violated the public peace. Armed defence, as in the case of the Schmalkaldic League, is therefore qualified as *bellum iustum*, with all the attendant juridical-theological implications.

The third chapter marks a turning point, returning to 1313 and the *Constitutiones Pisanae* issued by Emperor Henry VII: the *Edictum de crimine laesae maiestatis* and the *Declaratio quis sit rebellis*. With these texts, a tradition was established that was destined to have long-lasting influence – it identified as a rebel anyone who opposed imperial authority, equating resistance and disobedience with *crimen laesae maiestatis*. De Benedictis shows, however, that this absolute definition was contested from the very outset. The Italian cities that the emperor declared rebellious did not accept the condemnation; instead, they appealed before Pope Clement V, asserting the legitimacy of their resistance and, with the *Pastoralis cura*, obtaining recognition of the natural right to defend themselves. This event led to a dual trajectory that would reappear in the centuries that followed: on the one hand, the progressive absolutisation of *crimen laesae maiestatis* as an instrument of political repression; on the other, the doctrinal tradition upholding the possibility of just resistance against abuses of power.

In the fourth chapter, the author returns to the question of the *universitas delinquens*, broadening the scope to the history of doctrine from Giovanni da Legnano, through Bartolus and Baldus, to modern jurists such as Farinacci, Gail and Claro. Two major interpretative strands emerge: those who support the criminal liability of the collective only in cases of explicit deliberation, and those who insist on the dangerousness of the multitude, while nonetheless recognising the need for clemency. Here, juridical reflection becomes almost moral – punishment must not destroy the city, but correct its excesses. In this way, within the European juridical tradition, a law of the multitude – a law of tumult – takes shape, which neither absolves nor mindlessly condemns. It is precisely along this ridge that De Benedictis's research moves.

Subsequently, the author concentrates on three further decisive areas: the doctrinal reworking of the right of resistance in the early modern period, the transformation of the political-juridical lexicon of sovereignty, and above all, the intellectual battle surrounding the *legibus solutio* of the prince. The fifth chapter addresses a particularly delicate issue: the interpretation of *licet resistere* in the thought of Jean Bodin. The French jurist is often regarded as the founder of the modern concept of absolute sovereignty, yet, as the author demonstrates with great subtlety, his positions are far from unequivocal.

In specific passages of the *République*, Bodin openly condemns the medieval juridical theories that admitted the possibility of opposing power in the name of justice or reason, accusing jurists such as Bartolus, Cino and Guillaume Durand of having »opened the door to rebels«. Yet De Benedictis demonstrates how Bodin's position evolved. After the Estates General of Blois (1576), he came to recognise the constructive role of communities, intermediary bodies and civic assemblies as instruments for controlling and moderating monarchical authority (59 ff.). Thus, even for Bodin, sovereignty was not unlimited, and obedience was not blind. The author identifies here an important turning point: political modernity was not born with the elimination of resistance, but with its reconfiguration within the new languages of power.

This thesis is developed in the sixth chapter, which offers an original comparison between two texts published between the late 16th and the mid-17th century: the *Question politique* (attributed to Jean de Coras) and the *Orationes politicae* of Jacques Godefroy. The former is a pamphlet, anonymously published around 1570, that defends the right of subjects to *capituler* with their prince – that is, to negotiate and establish reciprocal agreements. For Coras, royal authority is founded upon consent and the balance between power and duties: if the king violates the fundamental pacts, the subjects

may appeal to a higher justice and return to their original liberty.

The discourse of Jacques Godefroy, a Calvinist jurist from Geneva, belongs to a different context, that of the Thirty Years' War, yet it touches upon related themes. Commenting on the *Lex Quisquis* in the Justinian Code, Godefroy contests the political use of the formula *princeps legibus solutus est*, and appeals to the Roman jurists to argue that no authority can release itself from natural, divine or international law. In a particularly insightful passage, he denounces the *absoluta licentia* as a form of modern idolatry, supported more by obsequious courtiers than by genuine jurisprudence.

In the seventh chapter, De Benedictis examines two contexts in which resistance was explicitly claimed even in public and political texts: Catalonia in 1640 and France during the parliamentary Fronde. In the first case, the Catalan jurist Francisco Martí Viladamor composed the *Noticia Universal de Cataluña* to defend the principality against the accusations of rebellion advanced by the Count-Duke of Olivares. His argument is simple but effective: it is the king's own *valido*, the Count-Duke of Olivares, who is guilty of *laesa maiestas*, having violated the Catalan pacts and constitutions. In contrast, the Catalans resisted out of loyalty and justice (82).

In France between 1649 and 1651, the *mazarinades* of the parliamentary Fronde strongly reiterated that parliament was not opposing the king but rather a corrupt and tyrannical minister, Cardinal Mazarin. The taking up of arms, justified as an *extrema ratio*, was presented as an act meant to safeguard the monarchy. The *remonstrances* appealed to the natural and civil right of defence, shifting the accusation of treason onto the courtiers and flatterers who surrounded the sovereign.

Finally, the eighth chapter serves as a bridge to the conclusions. The author turns to the present to show how the legal-political tensions analysed in the early modern period remain relevant today. From the NO-TAV movement to the repression of activists in Hong Kong, De Benedictis underscores how the categories of »sedition« and »resistance« continue to be employed in redefining the practices of collective dissent.

The conclusions of the volume return to Sbriccoli, to his methodological and political lesson. If for Sbriccoli modern criminal law was, above all, an instrument for the construction of sovereign power, De Benedictis shows how – within the folds of juridical doctrine – spaces for contestation, argumentation and resistance also existed. Justice, as expressed in the powerful metaphor of the »door of justice« evoked in Viladamor's text, can be closed, but it can also be reopened when legal language, sources and memory are allowed to speak. It is within this tension, between repression and legitimacy, that the reflection offered by this book is situated: a contribution capable of interweaving legal historiography and political history, restoring complexity and depth to the debate on political crime and discussions of the limits of sovereignty.

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