

**Immigrants: Asset or Threat?**  
**Foreigners, Property and the Right of Escheat in Enlightenment**  
**Milan**

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Recent studies on the concepts of ‘frontiers’, ‘citizenship’ and the status of those perceived as ‘foreigners’ in the modern period have shown how negotiable and dependent upon contextual circumstances these categories were. Particularly in so far as regards the areas under Spanish dominion – as the state of Milan was between 1535 and the beginning of the 18<sup>th</sup> century –, attentive research has made clear that the category of foreigner was often defined on the basis of the specific circumstances within which the need to define it had arisen: frequently, the dominating intent was to exclude some individuals from access to real property – or from carrying on commerce in certain fields<sup>1</sup>.

This brief study examines a few questions regarding the Duchy of Milan in the passage from Spanish to Austrian domination, a period in which a series of fundamental political and economic reforms sought to deal organically with the problem of defining citizenship and the rights of property held by foreigners. The political and economic reforms set in motion by Maria Theresa of Austria and Joseph II attempted to dismantle the traditional approach embodied in the conduct of the Milan Senate, bastion of a local patriciate. That traditional stance imposed the exclusion of foreigners from full access to property rights as well as to the transferal at will of that property once obtained, so limiting appreciably the foreigner’s power to buy and sell real estate and to leave a patrimony to whatever heirs he should wish to favor. In the state of Milan, this area fell, generically, under the right of escheat<sup>2</sup>, but it engaged a more ample variety of questions than that which the term had originally meant to codify.

The new legal and economic cultures coming to the fore in the age of the Enlightenment spurred the Austrian rulers to facilitate the circulation of individuals and goods across borders and, at the same time, dismantle the regulations protecting 'locals' and excluding in-coming 'foreigners' from full economic and legal parity. What sort of cultural and political categories did these attempts at reform introduce? What sort of resistance did they prompt? Were they able to change the policy regarding 'foreign' property established in Milan during Spanish domination? These are the questions I shall try to answer. Posing such interrogatives does not imply embracing a purely 'political' or 'legal' definition of foreignness in the *Ancien Régime*; nor it implies the rejection of theories reading citizenship as a mirror of the interplay of social positioning of individuals, in their mutual interrelationships<sup>3</sup>. I think, rather, that reading political context within which the categories of foreignness were redefined, can give us awareness of cultural spaces within which the actors could move, even to reject rules or to recreate them for their own personal advantage.

### 1. 'A Sort of Civil Death'

The right of escheat, present in some of the most important European states before the French Revolution, was *stricto sensu* the sovereign's right to confiscate the property of foreigners who died within the kingdom without legitimate heirs born and raised as his subjects. As the 19th century economist Gian Domenico Romagnosi - writing in a period in which this law was still in part active - observed, its basis was the privation of a right: that is an owner's liberty to do whatever he wishes with his property - especially real estate - within a territory where he is a foreigner. In the same way, whoever lacked the privilege of citizenship was, in turn, deprived of the right to inherit in that territory. "As a consequence of this prohibition", Romagnosi commented, "we may say a sort of *civil death* is inflicted on the foreigner", since he can "neither take up any inheritance, nor transmit in that way any possessions he might acquire while residing [in that territory]"<sup>4</sup>.

In their recent studies on this subject, both Jean-François Dubost and Peter Sahlins have found the right of escheat to be a central element in the construction of 'citizenship' as a category. Indeed, this term - despite what has

sometimes been affirmed<sup>5</sup> - is by no means alien to the administrative lexicon of the *Ancien régime*, though, obviously, it signifies content that cannot be equated to that carried by the same word today. The escheatee (if we may coin a word) was a 'stranger' or, better – as Peter Sahlins terms it, an 'alien'<sup>6</sup>. Indeed, most legal scholars and essayists in *Ancien Régime* France followed jurist Jean Bacquet (1588-1629) in deriving the French term for escheat (*aubain*) from the latin *alibi natus* – that is, *born elsewhere*. This etymology seems dubious: more probably, the term derived from *ali ban*, 'he who belongs to another Lord's jurisdiction'<sup>7</sup>; it is, however, wholly in line with the contemporary identification between foreign birth and political, social and economic 'distance'.

It is quite probable that, in Italian late Medieval states, the heirs of deceased 'foreigners' did not usually suffer the confiscation of their property and that the right of escheat was virtually unknown. In early modern Britain, as well, though there were many legal distinctions between citizens and foreigners, the Crown never advanced rights on the property of foreigners who died in the kingdom without heirs<sup>8</sup>. The same is true for Spain in the same period, even though foreigners were subject to economic limitations, including the formal prohibition of engaging in trade with the Indies and of holding public or religious offices or other forms of incumbency<sup>9</sup>. Still, we find that, in the period we are considering, the House of Savoy repeatedly promulgated laws of escheat in its territories – periodically abrogating them to favor the ingress of immigrants necessary for the burgeoning manufactories and construction projects centered on Turin<sup>10</sup>.

Where the right of escheat was habitually exercised, its application was inextricably linked to the condition of foreigners and to general economic and social situations. In an innovative study, Simona Cerutti has shown unequivocally how, after the plague of 1630, this legislation was suspended in the territories composing the Savoy state; the same thing occurred in the early decades of the 18<sup>th</sup> century when the renewed expansion of the silk industry produced a strong demand for "alien" craftsmen and workers. When, instead, (as was the case in the 1720s) production faced difficulties, economic entrepreneurs were more aggressive in their attitudes towards the presence of

internal 'foreign' competition and a sharp increase in requests for discriminatory measures<sup>11</sup>.

Though reference to the Roman-Imperial precedent regarding foreigners and slaves was a fixed part of any *Ancien régime* treatise on escheat<sup>12</sup>, actually it seems that, between the 13<sup>th</sup> and 14<sup>th</sup> centuries, French kings appropriated to themselves a privilege held by 9<sup>th</sup> century feudal barons. This right they transmitted to the following period through the good offices of the jurists, extending its reach to types of property not always available in medieval times. Among these new sources, the right to tax foreigners more heavily than 'locals' and – from about the time of the Hundred Year War – to limit their access to politico-religious posts as well as to economic and professional activities and to impose payment of bond to sue in the courts. In particular, from the reign of Philip le Beau and the first Valois, the Blois ordinance of 1579 subjected the profession of banker to severe controls and defended it from foreigners who, at the time, were chiefly Italians. The July 22, 1697 declaration – '*This last folly of Louis XIV, in every sense*'<sup>13</sup> – imposed an annual tribute (the *droit de chevage*) on any foreigners who fixed their residence in France. It provided, as well, that, when a foreigner wed a French citizen, he must cede a third or a half of his property to the crown (the *droit de formariage*); and, of course, the traditional *Right of escheat* remained in vigor, reinforced with a series of new restrictions which, among other things, forbade possession of farms, contracts, rank or public office, as well as money changing, banking and a series of other professional activities.

In France, the right of escheat was not, however, applied invariably to all foreigners and throughout the entire territory of the state. Exemptions and privileges accorded to cities, provinces, specific areas and single individuals, significantly limited its impact and diffusion<sup>14</sup>. In the case of the Duchy of Milan there were, as well, possibilities of exemption whose procedures might sometimes be defined as tailored *ad personam*. The 16<sup>th</sup> and 17<sup>th</sup> century pretense of 'universality' for escheat often derived from treating it as it as of a nature with other, lesser, provisions negative to foreign property holders; among such practices were the "rights" advanced by royalty on property that had been "abandoned" or not claimed, or other more general forms of limitation on civil, religious or political rights linked to the condition of being a

foreigner. “The Right of escheat” – as jurist Jean Bacquet had already concisely declared in 1620 – “was introduced in France [...] so as to know who has been born within the Realm, and who has not been born therein, though he has come to dwell there; and to establish a difference between the one and the other”<sup>15</sup>. To reinforce the identification between escheat and ‘alien’, the norms, indeed, provided that whoever should be born “outside of matrimony” should, though of French parentage, be considered escheatee. “Natural children” were, then, “of the realm” inasmuch as born and residing in France but, at the same time, subject to the right of escheat as extraneous to the “natural” social order. They were thus the only members of the realm to be also juridical foreigners<sup>16</sup>.

With the affirmation of a new political order centered on the nation – which imposed a redefinition of the relations between individual, order and sovereign - the right of escheat was abolished in 1790 France. Still, the distinction between citizen and foreigner did not vanish with the Revolution<sup>17</sup>; it tended, rather, to grow stronger in the very moment in which – in the Jacobin phase – the link binding individual to nation became ever tighter. Under Napoleon, the concession or refusal of naturalization became once more object of discretionary executive action. The old right of escheat reemerged from the *Ancien Régime* to which it had seemed to have been consigned.

From a strictly financial-fiscal point of view, it is difficult to estimate what weight the right of escheat had in the functioning of the early modern state. The state most studied – France - leads us to suppose that it was a relatively modest one in relation to the other sources of public revenue. Political developments of the application of limitations to foreign property were, instead, like the social and cultural consequences, conspicuous. On the economic plane, too, the definition and application of the right of escheat during the early modern age represented one of the most evident signs of the evolving modes of authority and sovereignty. The reactivation and the restructuring of escheat thus notably strengthened the absolute state, engaged in imposing uniform laws within national borders and upon all persons within them<sup>18</sup>.

Though the links between the right of escheat and the privilege of citizenship were many and deep in the society of the *Ancien Régime*, state policy regarding foreign owned property could be formed or modified on the basis of considerations which were in part divorced from the question of the

concession of the privilege of citizenship: considerations which not rarely depended upon the sphere of economic culture, being based – as I shall try to show – on tacit or explicit theoretic models regarding the operation of the system perpetuating human and material resources. Naturally, affirming this does not imply disavowing the fundamental cornerstone represented by the question of citizenship as a form of distinction, of separation and, in fact – as it is always defined by contemporary sources -, of *privilege*. Indeed, it is the notion of citizenship which, far more than that of escheat, has drawn the attention of historians of political institutions: traditionally with particular attention to the Middle Ages, but, today, with increasing interest for the modern age<sup>19</sup>.

## 2. *The Foreigner: Threat or Resource?*

Moral injustice, social iniquity and economic damage were thus the foundations on which the 19<sup>th</sup> century unanimously condemned the right of escheat, bringing about its gradual disappearance from Europe. But what were the legal, economic and cultural presuppositions on which the *Ancien Régime* based the persistence of an institution which only a few decades after the Revolution would seem despicable and ancient? What sort of political and administrative discussion developed as escheat gradually became outmoded in the second half of the 18<sup>th</sup> century? Let us attempt a first answer to these queries with a look at the case of the Duchy of Milan between the 17<sup>th</sup> and 18<sup>th</sup> centuries.

Until Austria introduced reforms in the 1760s and '80s, the statutes regulating the concession of citizenship to foreigners in the Duchy of Milan were the result of a stratification which had been settling down since at least the XIV century<sup>20</sup>. The Ordinance on the Faculty of Creating Citizens [*Ordo circa facultatem creandi cives*], enacted by the Senate in 1534, fixed the High Authority for the concession of citizenship “with the faculty of acquiring real estate” in the Superior Court [Magistrato Straordinario] – which also examined Imperial and Royal Degrees granting Privilege and, confirming their legal validity, registered them officially<sup>21</sup>. Under the ancient statutes of the city of Milan, a foreigner might obtain citizenship if he possessed real estate valued 400 Florins and paid the taxes imposed upon the citizens living in the city and territories concerned. To ‘seal’ this concession, it was further indispensable for

the foreigner to establish residence within a year - together with most of the members of his family - in the place in which his property was situated and reside there stably for at least a decade<sup>22</sup>.

On the basis of this provision, all subsequent Milanese statutes – at least until the epoch of Maria Theresa of Austria – accepted the ten year standard as a fundamental criteria separating foreigners and citizens. A Proclamation of November 9, 1641, for example, affirmed:

Foreigners are all those who are not naturally of this State: that is to say [who] have not been in residence in it without interruption for at least ten consecutive years<sup>23</sup>.

At this point the problem of the severe prohibitions – already present in the medieval period and only rarely set aside - to give or sell real estate to “non-subjects” (as the statutes themselves put it and as Charles V’s *Novae Constitutiones*, promulgated in 1541, had reaffirmed) became a practical concern. The prohibition was confirmed a number of times during the 1600s, opening the way to a series of interesting adjustments and tricks expressive of the legal and economic cultures that gave rise to them. First of all, let us note that the prohibition of acquiring real estate imposed on foreigners in the Duchy of Milan, already in vigor during the Middle Ages, was confirmed in Charles V’s *Novae Constitutiones* in the paragraph *Collegiis* under the title *de poenis* [Of penalties]. This fixed the incapacity of the foreigner to acquire any sort of property by direct inheritance or by testament, as well as by contract or any other legitimate means of transferal, together with the prohibition of receiving ecclesiastic Benefices or Pensions.

Under the title *de pheudis*, the *Costitutiones* furnished, as well - though indirectly - a partial definition of citizenship applicable to the Milanese territories. It declared the citizens (*cives*), in fact, to be exempt from the jurisdiction of the “Lower Officials [*Minor magistrate*]”, specifying that the “citizenry” (*cives*) should include “Not only those who are true citizens”, but also those property holders “who at least have borne [tax] burdens not as peasants do, but individually, as gentry [do]”<sup>24</sup>. The title *de publicanis et vectigalibus* also provided that:

Foreigners [who have been] made Milanese citizens – or are in the future so made – must pay Riparian Duties and the old Commerce Excise [Mercaturae] [...] having been conceded continuing citizenship, as they were habitually domiciled for most of a decade within the city or the Duchy, keeping therein their residence with all their families as if living in their place of origin<sup>25</sup>.

This legislation is important, because it shows that, at least at the normative level, the acquired condition of citizen [*cives*] did not represent in and of itself a right to the total elimination of the condition of ‘foreignness’, which could ensue only upon completion of ten years of uninterrupted residence within the state.

Since 1534, the effects of acquired citizenship had been limited, in the Duchy of Milan, to simple “enjoyment” – as a government Act still termed it in 1796 – “of civic privileges, withholding from new citizens the faculty of acquiring real estate”<sup>26</sup>. As to the capacity to acquire moveable property through inheritance, in 1548 and 1571 the Senate emitted two favorable sentences which served as precedents well into the central years of the 18<sup>th</sup> century. In 1642, the Senate, acting as Court, reaffirmed the principle in the case of a patrimony consisting solely of moveable property<sup>27</sup>.

As we may readily imagine, the problem posed by the property of lands along the Duchy’s borders was particularly delicate. When, in 1652, the Magistrato Straordinario undertook a census of foreigners who had managed to acquire property without a special license, he appealed “Particularly to the Referent [Referendario] in Cremona”, exhorting him to “gather very exact information from the Consuls, the Senior [figures] and informed people” regarding the ownership of real property, feuds, fees, feudal rights or revenues, water or fishing rights, tithes, honors, incomes or “concessions of Grace”. For a number of years, this initiative – probably due to the pressure which foreign owners were able to bring to bear on the peripheral organs of the government (some hundred years short of being a professional bureaucracy) – bore little fruit. When it was renewed towards the end of 1668, foreigners residing in the upper Cremonese Province sent an impatient memorandum to its Governor, vaunting their acquisition of historic merits as



“not original subjects of this State”, though they found themselves “in permanent residence”<sup>28</sup> :

The City of Cremona was so depopulated and barren of inhabitants due to the havoc caused by the contagion of 1630 that only a miserable residue of some ten [individuals] remained, of the 35,000 who were, to weep for the lost splendor - as well as that of almost all the farmers; and if it would have been necessary to emit at once a special call inviting foreigners to come and live there so as not to leave a city so faithful to its monarch without human beings, what was excogitated was that those few foreigners who had already resided there for three uninterrupted years engaging in some licit manual activity useful to the republic to earn their living publicly and notoriously, might freely and without sanction reside [herein] - by Edict of His Eminence, the Cardinal Albornozzi, countersigned by My Lord the Marquis of Leganes<sup>29</sup> .

Leganès, in particular – attempting in the early 1630’s to remedy depopulation with a special proclamation –, invited foreigners to farm “abandoned properties”, conceding them “dominion over such properties as they worked” and temporary immunity from the burdens and privileges attached to them. The foreign “craftsmen” were further “enticed” by the Marquis of Caracena (Governor from 1648-1656), with “many prerogatives and favors”, deciding at last to bring “their crafts, goods and Arts” into Cremonese territories. In the decades which followed, their descendants argued in 1669, they had “joined natural born citizens in paying taxes, populating the city, living therein with their families and, after long residence, had acquired real property”<sup>30</sup> .

Further, they affirmed:

Common sense also demonstrates that he who lives, in [a place], carries its burdens and holds property [there] is not [to be] called ‘foreigner’, because ‘foreigner’ is he who is Alien in origin and residence and not he who is Subject [*suddito*], - that is a [community] Member [*soggetto*] – and who may be obliged to take on incumbencies, arising from his real membership [*soggettione*], to continued assistance in that territory; *knowing one to be subject [suddito] of a City depends upon residence and not upon origin.* [...] And even as in the aforesaid (who were once foreigners and

now are Members) all the requisite characteristics are present (including that of soldier in His Majesty's militia, since all are enrolled in the city militia) and, with the tolerance of Lords and courts of law, these so-called 'foreigners' have bought considerable property, [the same] tolerance [must] excuse them from any sort of penalty<sup>31</sup>.

When we are given the opportunity of hearing it, the foreigner's voice rings out with authority and persuasively. It is morally and legally illicit to attract foreigners offering exemptions and favor in situations of crisis, only to invoke the letter of the restrictive laws when the adverse situation seems to be over. The privilege of being a subject, foreigners asserted, is won in daily practice – that is, by participating wholly in community life and its duties: first among which are an active productive, fiscal and military presence. Even governor Paolo Spinola must have concurred since, in 1669, he commanded the Magistrato Straordinario to cease “molesting [the supplicants], so long as they discharge the personal and material burdens legitimately laid upon them”<sup>32</sup>.

A historic moment like the one we have just considered highlights all the tensions and the specificities regarding foreign-held property aimed at excluding subjects of an overall policy which – though normally considered binding – could, in moments of societal difficulty, suddenly be transformed into opportunities. Without the immigrants – coming in part from the outlying countryside, but without doubt from foreign states as well – it would have been impossible, after the plague, for the Milanese population to grow from some 75,000 souls in 1633 to the 100,000 it numbered in 1648<sup>33</sup>. Along with a consistent community of immigrants from Genoa already present in the city, a growing number of merchants, in fact, immigrated from Bergamo and Brescia, as well as from various localities in Piedmont and the Canton Ticino, assuming a central role in the economy of the decades immediately subsequent to the epidemic<sup>34</sup>.

### *3. Renewal Comes from Vienna*

The era of Austrian domination brought important reforms regarding foreign property. In that historic renovation, the Senate of Milan, the leading institution of the city's aristocratic and politically conservative classes, found

itself in disagreement with the changes imposed by Vienna. This dissent became explicit in 1764, coagulating in a specific incident: in that year the Senate refused to allow the Spanish heirs of Count Carlo Bolano (who were related to the Hapsburgs) to inherit real property situated in Milan (including the luxurious mansion in via Cino del Duca today called Palazzo Visconti di Modrone) from his estate. This gesture was deemed an intolerable provocation by the Empress who struck down the decision in unusually harsh language:

The series of events which have occurred in the Senate's denial of the Spanish Bolano agnates inheritance [...] has made clear to Us that a provincial authority is wholly incompetent to treat the question of foreign estates in the territories of Milan in any hereditary situation and in whatever effects [may be] involved, for such questions have necessarily too weighty connections with all the provinces and all the dominions of our vast Monarchy. Nor can the inter-relations between We, who watch over [the Realm], and the other sovereign states be known [to them] and, still less again, the arcane care with which the stringencies of *raison d'état* regulate the Directions guiding our sacred Cabinet<sup>35</sup>.

No declaration could have been more politically explicit, nor any dismissal more offensive for the historic redoubt of the Milanese patricians. Within the context of a Hapsburg program aimed at renewing the state, the theme of escheat had become a concern of Government and international relations; for the Queen and her advisors its redefinition must thus be freed from the provincial short-sightedness of the Milanese élites and reabsorbed into the direct – and exclusive – competencies of the Sovereign. In this manner Vienna aligned itself with the other European institutional contexts which had for some time been promoting innovation along these lines. In France, as we have seen, the regulation of foreign property had assumed more fully the characteristics of Royal edicts; with the renewal of the Bourbon *Family Agreement* of 1760, escheat had been abolished in Spain. In 1766, Maria Theresa herself and Louis XV would sign an agreement of reciprocal exemption of their subjects from escheat with the explicit aim of shoring up the unpopular Franco-Austrian alliance established a decade earlier<sup>36</sup>.

In the altered international political climate, the Milanese Senate's blatant protectionism (though exercised in an area almost exclusively within its jurisdiction since the times of Charles I) provoked a contemptuous Hapsburg set-down of a "provincial authority", politically and culturally on the very margins of European power relations. So, in an unusually sharp tone, Maria Theresa imperiously took to herself:

And to Our Successors Forever [*in perpetuo*], the application, proclamation, interpretation and concession of the provision in the New Regulations [*Nuove costituzioni*] concerning the admission, or the exclusion, of foreigners from heredity whether by will or without, of property both mobile and real, with no sort of exclusion and not withstanding any type of familial bond, agnate and that of father and son and of brother and brother comprised<sup>37</sup>.

Expressed in language which, though strong, was not altogether unusual for the Empress<sup>38</sup>, it was, both from a juridical and a political point of view, a very strong step: it stripped the Milan Senate – the most important force moving the whole structure of positive law in Lombardy and main instrument of the Establishment – and, with it, the local patrician milieu - of one of its defining powers: the heretofore "Oracular" (that is definitive and without appeal) interpretation of the "Regulations"<sup>39</sup>.

So the Bolano Affair inserted itself – and, perhaps, in some ways anticipated, the institutional climate which would prompt Kaunitz to write *Plenipotentiary* Firmian the following year that he considered the *Costitutiones* to be "an extremely pernicious source of the Senate's despotism", prospecting its abolition as "a grand end, already for some time in the sights of Her Majesty's Sovereign Providence"<sup>40</sup>. If, as Franco Venturi has observed, from the close of the Spanish era "Lombard autonomy is the autonomy of a class - an aristocracy which sees in it the safeguard of its privilege" - the affirmation of a Hapsburg superiority even on the question of hereditary succession was an important milestone in the process of limiting patrician supremacy over Milan and its territory<sup>41</sup>.

For the entire second half of the 18<sup>th</sup> century, therefore, the problem of jurisdiction and its economic and patrimonial import represented a very real

question of State. Other episodes indicate the development of the Austrian project of reform, which sought to maintain a difficult balance between the conservation of the original foundations of the right to escheat (whose legitimacy was never called into question) and its modernization in the light of international economic and political renewal. Another delicate institutional situation developed in 1766, on the occasion of the death of don Cristoforo Mesmer, Secretary of the Secret Chancellery [*Cancelleria segreta*], when the publication of his will revealed the fact that he had bequeathed his patrimony to members of the noble Milanese Arconati family. Mesmer's brother, Antonio, was able to prove, however, the existence of a secret written agreement which revealed the Arconati to be merely figureheads, whose function was to transmit Cristoforo's patrimony to a foreign grand-nephew who, as an alien, could not have received any inheritance from a subject of Milan.

A petition was brought before the Senate, and subsequently reached the Court in Vienna, imploring not only that the inheritance be assigned to Antonio Mesmer, but "[its] annulment, and the permanent disqualification" to exercise the profession for any Notary Public who should, in the future, agree to carry out such transactions in favor of foreigners, citing as his authority the *Nuovae Constitutiones*, the Statutes and 'usage' (the Pragmatic sanction) which, in August of 1764, had recently confirmed their validity in the matter of inheritance<sup>42</sup>. The transgression - especially serious because it had been committed by one of the highest Authorities of Milanese government<sup>43</sup> - was immediately punished by Vienna.

It is important to note, in this instance, the Hapsburg intention to maintain nevertheless the institution of escheat and to fully support the proprietary protectionism on which it rested. Expressing his hope that "it may be possible to put a stop once and for all to the fervor of the Milanese to enrich foreigners with their own property, despoiling their fellow citizens and often even close relatives", Kaunitz, indeed, urged the Plenipotentiary to "look into a similar measure for the area of Mantua where "due to the closer presence of the Venetian and the Papal states, the danger is also greater, [for] through marriage - frequently contracted between respective subjects -, cases of inheritance by foreigners present themselves"<sup>44</sup>. Firmian's succinct reply was

to assure Kaunitz that he would “devise the most opportune and convenient [way] to serve Her Majesty and the welfare of Her subjects”<sup>45</sup>.

Thus, while maintaining solid the foundations on which traditional cases of proprietary protectionism unfavorable to foreigners rested, between the 1770s and the 1790s the problem of citizenship and its relations to the rights of property were nevertheless organically restructured in Austrian Lombardy. In this sector the same legislative and cultural mixture of tradition and reformation that has been recognized as the basis for a flowering of legal studies in Lombardy in the second half of the 18<sup>th</sup> century, is at work. The “sheer force of habit of the surviving common law” – the objectively fundamental and unyielding framework of the whole system of positive law, tangled with the legislation promulgated by the Sovereign, which bit by bit, eroded traditional legal order. The still officially hegemonic Senate, “restraining organ of central power”, continued to talk with the Vienna Court - attempting to the end to limit the centralization of power and control over the functioning of local institutions<sup>46</sup>.

### *Conclusions*

Analysis of the policies pursued in the granting of citizenship and property rights to foreigners in the state of Milan before and after the modernizing reforms introduced by Austrian domination (1706-1796) suggests that the criteria determining policies of inclusion and exclusion of individuals from the legal, social and economic benefits deriving from the privilege of citizenship were extremely variable. The situation of the manufactory economy, general financial trends, demographics, the affirmation of mercantilism - or of liberalism – as political paradigms, are but some of the elements which might occasion a revision of the criteria regulating the concession of citizenship and of rights of property to ‘immigrants’. Rights whose definition in Milan – not diversely than in other important institutional systems prior to the French Revolution – played a fundamental role in allowing “foreigners” to participate in the life of the state.

In the 1700s, the reform policy of the Austrian Hapsburgs attempted to ease the limitations hampering the circulation of ‘outlanders’ in the territories under their control. In the case of Lombardy, Vienna sought to shift the

regulation of foreign property – traditionally in the hands of local Milanese government and, especially, of the Senate, bastion of the Lombard aristocracy – to itself. This end was achieved within the framework of a new set of international paradigms of interpretation of the political relations between States and their various economic systems. In this manner, the Hapsburgs attempted to overcome the limited mercantile vision of the concept of wealth: partly because this project facilitated their administration of ever-widening cosmopolitan empires, in which subjects were not necessarily tied to locally-entrenched traditional interests; partly because they were carriers of a culture of government that expressed the new political and economic paradigms being developed in Europe at the time. Their pursuit of renewal came into inevitable conflict with the positions sustained by Milanese political élites, wholly engaged in maintaining and reinforcing traditional closures and therefore reluctant (in this as in other areas) to follow Maria Theresa and Joseph II into modernization.

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<sup>1</sup> T. Herzog, *Defining Nations: Immigrants and Citizens in Early Modern Spain and Spanish America* (New Haven-London: Yale University Press, 2003); Ead., *Frontiers of Possession: Spain and Portugal in Europe and the Americas* (Cambridge: Harvard University Press, 2015).

<sup>2</sup> The French “*aubain*”; in Italian “*albinaggio*”: see S.T. Gibson, ‘The Escheatrics, 1327-1341’, *English Historical Review* 36(1921): 218-24.

<sup>3</sup> These two theoretical approaches to the historical construction of the category of foreignness (one legalistic and one performative) were the focus of a debate conducted in *Les Annales* between Simona Cerutti and Peter Sahlins: see S. Cerutti, “À qui appartiennent les biens qui n’appartiennent à personne ? Citoyenneté et droit d’aubaine à l’époque moderne”, *Annales: Histoire, Sciences Sociales* 2 (2007): 355-83; P. Sahlins, “Sur la citoyenneté et le droit d’aubaine à l’époque moderne. Réponse à Simona Cerutti”, *Annales: Histoire, Sciences Sociales* 2 (2008): 385-98. See also S. Marzagalli, “Simona Cerutti, Étrangers. Étude d’une condition d’incertitude dans une société d’Ancien Régime”, *Cahiers de la Méditerranée* 86(2013): <http://cdlm.revues.org/6895>.

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<sup>4</sup> G.D. Romagnosi, “Della cittadinanza e della forensità” [1814], in G.D. Romagnosi, *Opuscoli su vari argomenti di diritto filosofico* (Prato: Stamperia Guasti, 1835<sup>2</sup>), 53-101: 69-70, original italics. In France, the institution of *civil death*, inherited from the *Ancien Régime*, was included in Article 22 of the 1804 *Code civile* and was abrogated in France in 1854.

<sup>5</sup> See, for example, P. Rétat, “The Evolution of the Citizen from the Ancien Régime to the Revolution”, in R. Waldinger, P. Dawson, I. Woloch, eds *The French Revolution and the Meaning of Citizenship* (Westport-London: Greenwood Press, 1993), 3-15. On the use of the term in Enlightenment culture, with its consequent adoption by the Revolution, see M.P. Fritzsimmmons, *The National Assembly and the Invention on Citizenship*, *ibid.*, 29-41.

<sup>6</sup> P. Sahlins, *Unnaturally French. Foreign Citizens in the Old Regime and After* (Ithaca: Cornell University Press, 2004), 30. On this book and the book by Michael Rapport cited below, see the comment by G. Pacini, “Contending with the Droit d’aubaine. Foreign Citizens in France before 1819”, *Eighteenth-Century Studies* 2 (2005): 371-3.

<sup>7</sup> Sahlins, *Unnaturally French*.

<sup>8</sup> *Ibid.*

<sup>9</sup> As T. Herzog, “Municipal Cities and Empire: Communal Definition in Eighteenth-Century Spain and Spanish America”, in J. Kirshner, L. Mayali, eds *Privileges and Rights of Citizenship. Law and the Juridical Construction of Society* (Berkeley: Robbins Collection Publications-University of California at Berkeley, 2002), 147-68 shows.

<sup>10</sup> Cerutti, “À qui appartiennent les biens qui n’appartiennent à personne? ».

<sup>11</sup> *Ibid.*, p. 361; S. Cerutti, *Giustizia sommaria. Pratiche e ideali di giustizia in una società di Ancien Régime (Torino XVIII secolo)* (Milan: Feltrinelli, 2003).

<sup>12</sup> M. Rapport, *Nationality and Citizenship in Revolutionary France: The Treatment of Foreigners 1789-1799* (Oxford-New York: Clarendon Press – Oxford University Press, 2003<sup>2</sup>): 34.

<sup>13</sup> J.-F. Dubost, P. Sahlins, *Et si on faisait payer les étrangers? Louis XIV, les immigrés et quelques autres* (Paris: Flammarion, 1999), 17.

<sup>14</sup> *Ibid.*, 18-9; the passage quoted is on page 18 (underlining mine). On exemptions within Savoy domains, see Cerutti, “À qui appartiennent les biens qui n’appartiennent à personne?”, 366 ff.

<sup>15</sup> Cited by J.-F. Dubost, P. Sahlins, *Et si on faisait payer les étrangers?*, 64.

<sup>16</sup> *Ibid.*, 66.

<sup>17</sup> L. Nuzzo, “Cittadinanza: un percorso di lettura”, *Rechtsgeschichte (Rg)* 8 (2006): 129-49, 133.

<sup>18</sup> As Peter Sahlins has put it: “because the *droit d’aubaine* was so intimately linked by the lawyers to sovereignty, from a strictly absolutist point of view it could not be fragmented as long as the sovereignty remained indivisible” (*Unnaturally French*, 46).

<sup>19</sup> A useful over-all examination may be found in C. Storti Storchi, *Ricerche sulla condizione giuridica dello straniero in Italia. Dal tardo diritto comune all’età preunitaria* (Milan: Giuffrè, 1990) and integrated with D. Quagliani, “The Legal Definition of Citizenship in the Late Middle Ages”, in A. Molho, K. Raaflaub, J. Emlen, eds *City-States in Classical Antiquity and Medieval Italy* (Ann Arbor: University of Michigan Press, 1991), 155-67.

<sup>20</sup> G. Maifreda, “I beni dello straniero. Albinaggio, cittadinanza e diritti di proprietà nel Ducato di Milano (1535-1796)”, *Società e storia* 129 (2010): 489-530.

<sup>21</sup> See A. Terreni, “‘Sogliono tutti i forastieri, i quali vanno a negoziare nelle città d’altri Dominii, essere favoriti et privilegiati’. La concessione della ‘civilitas mediolanensis’ ai mercanti-banchieri genovesi nel XVI secolo”, in C. Donati, ed. *Alle frontiere della Lombardia. Politica, guerra e religione nell’età moderna* (Milan: Angeli, 2006), 105-22: 109 and 113.

<sup>22</sup> *Ibid.*, p. 114.

<sup>23</sup> Cited in Archives of the State of Milan (herein after ASM) *Albinaggio parte antica* (henceforth APA), box 1, folder ‘1793, al’, ‘Copy of the vote, Royal Taxation Authority [Regio Fisco] to Royal Political Chamber of Magistrates [Regio Magistrato politico camerale], 13 June 1793, fol.3v.

<sup>24</sup> ASM, APA, box 1, folder ‘1793, al’ ‘Copy of the Vote, Royal Taxation Authority to Royal Political Chamber of Magistrates’, 13 June 1793, fol.2r.

<sup>25</sup> *Ibid.*

<sup>26</sup> ASM, APA, box 1, folder ‘21 October 1793’; Milan, March 29, 1796, Memorandum approved by the Governing Conference in the 29 March 1796 Session, fol.4r.



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<sup>27</sup> The three sentences (26 May 1548; 1 October 1571 and 25 September 1642) are cited in a letter from Firmian to Kaunitz (19 June 1764) located in ASM, APA, box 5, folder 'Sweden', fol.1v.

<sup>28</sup> This question is discussed in ASA, APA, box 1, folder '9 September 1669', Memorandum signed by the President and the Superintendents of Extraordinary Royal Duchy Revenues, 6 September 1669, fol.1r-v.

<sup>29</sup> ASM, APA, box 1, folder '9 September 1669', Copy of the Memorandum dated 2 April 1669, fol.1r. References are to the Proclamations of 10 August 1633 and 3 October 1635, cited in ASM, APA, box 1, folder '1793, al', 'Copy of the Vote, of the Royal Taxation Authority, Royal Chamber of Political Magistrates dated 13 June 1793', fol.3v. Albornoz was Governor in 1634-1635; Leganès was named to his first term of office in 1635-1636 and his second in 1636-1641.

<sup>30</sup> *Ibid.*, fol.1r-v.

<sup>31</sup> *Ibid.*, fols1v-2r; italics mine.

<sup>32</sup> *Ibid.* Governor's note dated 19 November 1669, on a memorandum signed by the President and the Commissioners [*Questori*] of Extraordinary Royal Duchy Revenues, cit., fol.2v.

<sup>33</sup> See the sources cited in S. D'Amico, *Spanish Milan: A City Within an Empire, 1535-1706* (New York: Palgrave-MacMillan, 2012).

<sup>34</sup> See S. D'Amico, "Rebirth of a City: Immigration and Trade in Milan, 1630-59", *Sixteenth Century Journal* 3(2001): 697-721, 700.

<sup>35</sup> ASM, APA, box 1, folder '1764 and 1765', subfolder 'August 16, 1764': Royal Dispatch of 16 August 1764, fol.1r.

<sup>36</sup> See Rapport, *Nationality and Citizenship in Revolutionary France*, 36.

<sup>37</sup> ASM, APA, box 1, folder '1764-1765', subfolder '16 August 1764', Royal Dispatch of 16 August 1764, fol.1v.

<sup>38</sup> On at least one other occasion, the Milan Senate had, in 1752, found itself accused by Maria Teresa of having exercised "the use of arbitrary power, rather than regular procedure in the application of laws - of which the Senate is simply the administrator": see U. Petronio, *Il Senato di Milano: Istituzioni giuridiche ed esercizio del potere nel Ducato di Milano da Carlo V a Giuseppe II*, vol. 1 (Milan: Giuffrè, 1972), 257.

<sup>39</sup> Cited in A. Cavanna, "La codificazione del diritto nella Lombardia austriaca", in A. De Maddalena, E. Rotelli, G. Barbarisi, eds *Economia, istituzioni, cultura in Lombardia nell'età di Maria Teresa. III: Istituzioni e società* (Bologna: Il Mulino, 1982), 611-57:621-2. On the *Nuovae Constitutiones* as the intellectual emblem of 18<sup>th</sup> century Lombard autonomy see C. Capra, "Luigi Giusti e il Dipartimento d'Italia a Vienna (1757-1766)", *ibid.*, 365-90: 381.

<sup>40</sup> Cited in Petronio *Il Senato di Milano*, 296.

<sup>41</sup> See F. Valsecchi, "Le riforme teresiane in Lombardia", in A. De Maddalena, E. Rotelli, G. Barbarisi, eds *Economia, istituzioni, cultura in Lombardia nell'età di Maria Teresa. I: Economia e società* (Bologna: Il Mulino, 1982), 27-40:29.

<sup>42</sup> ASM, ASA, box 1, folder '1766-1771', subfolder '1766, March 6 and 8', Memorandum of Mach 6, 1766, quotation fol.2r.

<sup>43</sup> On the importance - and the delicacy - of the Office of the Secret Chancellery and the post of Secretary, see F. Leverotti, "La cancelleria segreta da Ludovico il Moro a Luigi XII", in L. Arcangeli, ed. *Milano e Luigi XII. Ricerche sul primo dominio francese in Lombardia (1499-1512)*, (Milano: FrancoAngeli, 2002), pp. 221-53.

<sup>44</sup> ASM, APA, box 1, folder '1766-1771', subfolder '1766, March 6 and 18', Kaunitz to Firmian, Vienna, 6 March 1766.

<sup>45</sup> ASM, APA, box 1, folder '1766-1771', subfolder '1766, March 6 and 18', Firmian to Kaunitz, Milan, 18 March 1766.

<sup>46</sup> In Cavanna, "La codificazione del diritto nella Lombardia austriaca", 618.