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Real censorship of the *Theatrum veritatis, et justitiae* of Giovanni Battista De Luca: methodology and issues of research

A report of the seminar with Gian Luca D’Errico (Università di Bologna)
on September 24, 2015 at the Max Planck Institute for European Legal History

by

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Abstract:

In the colloquium of the MPFG, Gian Luca D’Errico analysed the role of the Roman Inquisition in relation to the (real) censorship of the work of Giovanni Battista De Luca in 1680 by the Congregation of the Holy Office and in 1689 by the Congregation of the Index. De Luca’s famous *Theatrum veritatis, et justitiae* and the early modern legal practice and jurisprudence, formed the main topics of this presentation in the seminar. First, D’Errico tried with his contribution to sketch the importance of Cardinal De Luca for the history of law and jurisprudence and to fill the gap in research existing in particular with regard to his role in particular as a reformer. Secondly, the presentation was about the Roman Inquisition, which De Luca has perceptively analysed and criticized in the *Theatrum*. The early recognition of the Cardinal of the crisis of law and jurisdiction of the Roman curia and his proposal to eliminate the confusion arising out of the multitude of courts of the Papal States caused took several attempts of the Roman Inquisition to put his work on the *Index Librorum Prohibitorum*, which D’Errico tried to demonstrate in many ways.

Keywords:

Barlacci, Giuseppe Felice; Caracciolo, Emilio; Carpegna, Gaspare; Censorship; Congregation of the Index; Congregation of the Holy Office; De Luca, Carlo Antonio; De Luca, Giovanni Battista; Early Modern Legal Practice; Index Librorum Prohibitorum; Innocent XI Odescalchi; Monacelli, Francisci; Roman Inquisition; *Theatrum veritatis et justitiae*; Van Espen, Zeger Bernhard;

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I. Introduction

On September 24, 2015 the Max Planck Research Group held a symposium with Gian Luca D'Errico at the Max Planck Institute for European Legal History in Frankfurt/Main, organized by Dr. Benedetta Albani. The guest of our meeting has studied early modern history at the University of Bologna where he also completed his PhD in religious studies. He took part in different projects related to the history of the Roman Inquisition, like the project "Römische Inquisition und Indexkongregation" between 2010 and 2012 at the University of Münster, directed by Professor Dr. Hubert Wolf. Between April and September 2015 D'Errico was a guest at the Max Planck Institute, where he worked on his project *The 'Heresis' of Giovanni Battista De Luca and Archival Sources of the Roman Inquisition*.

As Benedetta Albani stated at the beginning of the seminar, the person and the work of Giovanni Battista De Luca is closely linked with the projects of the research group, not least because he was the best expert of the judiciary of the Roman curia but also because he was a secretary of the Congregation of the Council.

II. Finding Giovanni Battista De Luca and his *Theatrum*

In the first theoretical panel D'Errico explained his interest for the jurist of the 17th century working at the Roman curia, Giovanni Battista De Luca. As a result of many research steps, from the beginning of his work on the Roman Inquisition of Bologna, he discovered the work of Cardinal De Luca as a very important research field. At the same time, D'Errico recognized that scientific research does not consider the person and the work of Giovanni Battista De Luca at all, in particular not related to him as a jurist but as a reformer of the Papal State and of the Catholic Church. The researcher described in

the seminar the way and the significance of finding De Luca on the basis of sources of the Archives in Rome and Bologna during his PhD-studies on Bolognese Inquisition¹.

D'Errico explained that he compared in his doctoral thesis the documents with provenance from Bologna in the archive of the Congregation of the Doctrine of the Faith, formally known before the renaming in 1965 as the Congregation of the Holy Office (i.e. Sant'Uffizio), with the sources found in the municipal library of Bologna, the *Biblioteca Comunale dell'Archiginnasio*, which had many important sources concerning the Roman Inquisition. For this purpose, he also consulted the collections of the *Decreta Sancti Officii*² in the Vatican Archive as an extremely important source. As a result of his research on these types of sources, he discovered that most of the crimes against faith in seventeenth century Bologna were sorcery, love spell, bad propositions against God, the lecture of forbidden books, the *sollicitatio ad turpia (ex parte confessarii)*, meaning sex crimes of priests with women during their confessions, and many more.

By dealing with the sources of the annual volumes of the *Decreta Sancti Officii*, the researcher came across the discussion of the Cardinals about the *familiaries* on May 24, 1668. As collaborators of the Holy Office, they usually had the *privilegium fori*, so legal ecclesiastical privileges. They could only be condemned by the tribunal of the Holy Office, even if they committed civil or penal crimes. For further understanding, D'Errico showed a *schedula*, a type of list, of the *familiaries* of the Holy Office, who had the *privilegium fori* and the crimes they had committed: for instance *homicidium* and *rixa*. The Cardinals of the Holy Office now had to decide in their weekly meetings what to do with the *familiaries* who had committed a crime. D'Errico explained this decision-making process of the Cardinals using the case of Aurelio Rivalta, a notary of the Holy Office, who was charged for insulting a priest. He was not condemned by any secular court, because he was a member of the Holy Office. An additional aspect of the discussions was that they largely focused on formal errors in the process.

¹ This had already been shown by Gian Luca D'ERRICO in his doctoral thesis *L'Inquisizione di Bologna e la Congregazione del Sant'Uffizio alla fine del XVII secolo: analisi e ricerche*, Rome 2012.

² As D'Errico noted the *Decreta* are like result protocols, which record in annual volumes the decrees of the Holy Office since 1548. Here the resolutions of the weekly meetings of Wednesday and Thursday of the Inquisition were collected. In these meetings the Cardinals of the Inquisition and the Pope discussed matters from the Catholic and even the non-Catholic world.

Having given the weekly meetings of the Inquisition serious consideration, D'Errico found in one of the cases in Bologna Cardinal Giovanni Battista De Luca. The jurist of the 17th century denounced for the first time the system of the Holy Office to handle religious problems or cases in this way, like giving the criminals the *privilegium fori* and exempting or/and giving them the permission to bear arms. Furthermore, De Luca studied the decisions and practices of the Inquisition closely and was not frightened to fiercely criticize the Congregation of the Holy Office. He called forcefully for a reform in 1678 and 1680: a reform of the Papal States, its administration and judicial authorities, in particular the strict separation of the worldly affairs of the Papal States from of the spiritual duties of the papacy. His project failed due to resistance from the majority of the Cardinals, who shied away from the upcoming modernization.

III. "...a kind of silence on Cardinal De Luca": the reformer as a field of investigation

Although De Luca was recognized as very important for the history of canon law, D'Errico observed that he and his works are still a neglected subject in historiographical research. On the one hand there is a handful of researchers, which take a close look at De Luca and his work (Aldo MAZZACANE, Raffaele RUGGIERO, Alessandro DANI), and on the other hand there are historians, who used his work to explain certain facts about the Roman curia (Irene FOSI, Adriano PROSPERI). According to D'Errico, the best work published about De Luca is the one of Agostino LAURO. He studied him during the period 1676 to 1683, and especially considered the Cardinal as a jurist as well as a reformer under Innocent XI Odescalchi (1676-1689). In the introduction of his work of 1991 "Il Cardinale Giovan Battista de Luca: diritto e riforme nello Stato della Chiesa (1676-1683)", Agostino Lauro wrote:

"La sorte ha riservato un destino avverso agli scritti politici di Giambattista de Luca. Studiosi e ricercatori hanno esplorato in un vario modo, con finalità e prospettive diversificate, il pensiero del giurista eminente, ma il giudizio della storia – che è giudizio concreto espresso da uomini – ne ha lasciato in ombra il pensiero sullo Stato e sulle istituzioni pubbliche, trascurando la sua esperienza di governo"³.

³ LAURO (1991), *Cardinale Giovan Battista de Luca*, p. XXI.

D'Errico wished to prove with the quote by Lauro that there is "a kind of silence" surrounding the Cardinal in research, although De Luca himself is one of the main experts of the government of the Church and the Roman curia.

IV. The (real) censorship of the *Theatrum veritatis, et justitiae* of Giovanni Battista De Luca in 1680 and 1689

In the third part of the seminar, Gian Luca D'Errico treated the censorship of the *Theatrum veritatis, et justitiae* of Giovanni Battista De Luca, published in 15 volumes (plus four supplements) and completed in 1680-81. He studied the censored books in the *Index Librorum Prohibitorum* in relation to their censorships by the Congregation of the Index and also by the Congregation of the Holy Office. In one of those censorships D'Errico exemplifies one of the five censorships of the bishop of Narni, Giuseppe Felice Barlacci (1633-1708) and explained the fundamentality of the criticism of the bishop, which focused on the four "persons" of the Pope, which De Luca had made in his *Theatrum*⁴:

- the bishop of the Universal Church ("vicar of Christ");
- the Patriarch of the West
- the bishop of Rome ("episcopus particularis urbis")
- the secular prince.

Barlacci used the classification made by De Luca to criticize the Cardinal in a theological way and to classify his statements as dangerous and as a contradiction between the "bishop of all the bishops" and the "episcopus particularis urbis", the first classified by Barlacci as the most important. Firstly, it was important for D'Errico to highlight that Barlacci never used the (canon) law for the censorship, only a theological argumentation, especially when he was talking about the "persons" of the Pope. De Luca speaks of a „mixtura utriusque ecclesiasticae et temporalis supremae potestatis in una persona“, but Barlacci understood it not as a separate spiritual and temporal person, but as one person.

⁴ The researcher noted that we find this classification made by De Luca in the work of Paolo PRODI, *Il Sovrano Pontefice. Un corpo e due anime: la monarchia papale nella prima età moderna*, (= Storica paperbacks; 111), Bologna 1982.

Secondly, De Luca saw the bishop as a very important institution for the government of the Church and described it in one of the books of the *Theatrum* (XIV.4) and in another important scripture that characterized the new legal culture after the Council of Trent: "*Il vescovo pratico*", published in 1675. De Luca tried to give the bishops a guide for the government of their dioceses with this work. In addition, he saw the bishop rather as a juridical than a theological institution.

Surprisingly, D'Errico discovered in the censorship of the work of De Luca that the one of Barlacci was one of the main writings, marked by a wide theological knowledge, which he used against De Luca. On the other hand, there were lawyers of the Roman curia like Raffale Fabbretti, Giovanni Battista del Palagio, Scipione Zanelli or Giuseppe Brunacci who had problems with the censorship of the *Theatrum*. The reason probably lay in the structured and logical arrangement of the work of De Luca. The *Theatrum*, as a representation of the critically reflected legal practice, legal opinions and court decisions, is about identifying solutions for a proposed problem that should come closest to the truth. The work is ordered by legal matters and provides the comprehensive overview of the legal practice of the time. The aim of De Luca is to identify the complex connections by exploring the broad base on which legal decisions are made; knowledge of the legal norm or the reference to a jurisprudential authority does not suffice for this purpose. If there was also a tangible problem in an institution, he explained the *calumniam et in subterfugies* and identified solutions to remove them.

In 1689, the *Theatrum veritatis, et justitiae* of Giovanni Battista De Luca fell under censorship, also six years after his death. But what is still unknown in the research is that there had already been an attempt to censor the work of De Luca in 1680. This first censorship of De Luca in 1680 is the most complex of the censorships and was done by the Congregation of the Holy Office, whereas the second one was done by the Congregation of the Index. D'Errico gave further information about the two censorships and made the legal proceedings of censorship and the decision-making processes in Rome comprehensible.

Methodologically, the researcher transcribed the documents of censorship and compared it with the original, the *Theatrum veritatis, et justitiae*, checking the censored text on the original for any errors, on heresy and the intention of the censor. A help for the

transcription could derive from the censor himself, by displaying for example the volume of the *Theatrum*, the part and the number of paragraphs. Sometimes, however, only general information is given, so that the censored passage has to be searched in the original for being able to compare censored and non-censored parts. In the fifteen books of the *Theatrum*, is a wide range to find the right passage, although the fourteenth and fifteenth book were the most censored books.

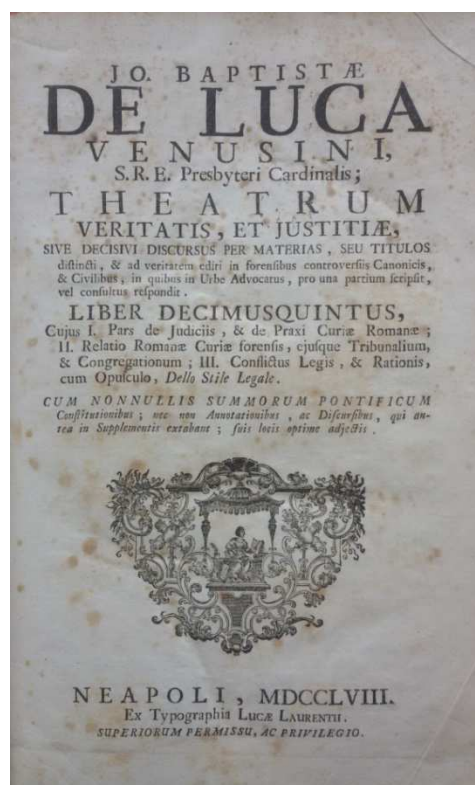
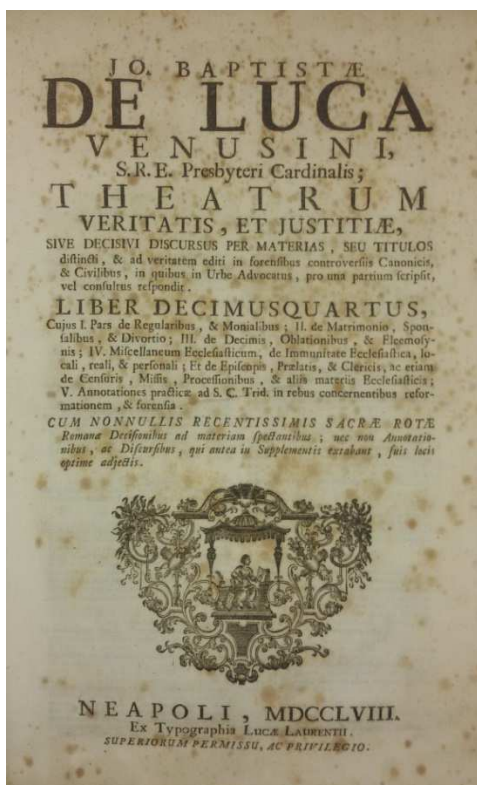


Figure 1:
 The frontispiece of the fourteenth and fifteenth volume of the *Theatrum veritatis, et justitiae* (Naples 1756) by Giovanni Battista De Luca (Library of the Max Planck Institute for European Legal History).

According to D'Errico, another problem exists with the dating of the second censorship: this one started at the end of 1689, the year of the death of Pope Innocent XI. Aldo MAZZACANE has recognized as the first researcher the connections between the censorship of 1689 and the death of the Cardinal in 1683 in his article in the *Dizionario Biografico degli Italiani* of 1990 on Giovanni Battista De Luca. Six years after the death of De Luca, in 1689, the Congregation of the Index started an examination procedure on several books of the *Theatrum*. The reasons for the interval of seven years were the position as Cardinal and his proximity to Pope Innocent XI. Before the censorship could

be initiated, the death of his protector had to be awaited. Finally, a few months later, in 1689, after Pietro Ottoboni became Pope with the name of Alexander VIII, the censorship began. The Head of the censorship was Cardinal Gaspare Carpegna (1625-1714), who was just like Ottoboni an enemy of De Luca and Odescalchi. These connections, so the researcher D'Errico, have not yet been recognized by researchers of canon law.

A second problem in the procedure of censorship was to find errors and heresies in the *Theatrum*. De Luca worked very carefully and he was well aware of the possibility to be censored. So D'Errico identifies in his works a kind of "strategic writing" and brought the problem of the censorship of the Cardinal to the point with a letter of the bishop of Narni, Giuseppe Felice Barlacci, to Cardinal Carpegna. The bishop tried here to explain the problem: Pope Innocent XI Odescalchi was dead and the censorship finished without success. De Luca was Cardinal since September 1681 and for this reason, so Barlacci, they had to find another solution ("si debba pensare a qualche altro espediente"). Two different solutions can be identified as possible for the censorship of the *Theatrum* according to D'Errico: Firstly, the solution of Giulio Maria Bianchi, the secretary of the Congregation of the Index. He wrote a kind of synopsis of the censorship of Barlacci and in a letter he wrote that it is allowed to print the books, but with the indication that they are not in agreement with the statements of De Luca on the jurisdiction. D'Errico noted that such statements do not exist or at least have not been discovered yet. Secondly, the solution of Bianchi who wrote in a letter that it would be possible to tolerate the work of De Luca, because it was not a problem for lawyers, theologians and heretics. If the work was put on the *Index*, the attractiveness to read the book would increase; this was to be avoided. Exactly the final consideration was what Barlacci meant when he wrote about "the other solution" and that the strategy of the Roman Inquisition after the death of Pope Innocent XI was not to ban the work on the *Index*.

To determinate the reasons for this solution, D'Errico presented the censorship of the Congregation of the Index of 1689, in conjunction with the first censorship in 1680 by the Congregation of the Holy Office: De Luca's judgment about the Roman Inquisition was hard, especially on the practice of the Roman Inquisition. Thereupon began in 1680 the first censorship of De Luca by the Congregation of the Holy Office. Although he

was at this time not yet a Cardinal, they could not put the book on the *Index*, because he was a close collaborator of the Pope, he was the *auditor Sanctissimi*, meaning that he was the personal legal advisor of the Pope. In addition, the censured book was the first part of the fifteenth volume of the *Theatrum* ("De iudiciis, et de praxi Curiae Romanae"), in which De Luca wrote about the various courts in Rome. But even here, the attempt to censor the work of De Luca failed.

The difference of the process of the censorship of 1680 by the Congregation of the Holy Office and then the one of 1689 done by the Congregation of the Index was that from the first they enforced an accusation at the Pope and from which De Luca was saved with difficulty. Furthermore it was not a coincidence that six years after his death, in 1689, the Congregation of the Index started (again) an examination procedure on several books of the *Theatrum*, concerning their suspicion regarding the jurisdiction and ecclesiastical immunity, but still ended as in 1680 without success.

V. The importance of the work of De Luca for jurists of the 17th and 18th century: Van Espen and Monacelli

In the fourth section, D'Errico gave a brief explanation of his research of the last months at the Max Planck Institute for European Legal History. The researcher tried to understand, for example, how and which books of De Luca were used by other important jurists of the seventeenth and eighteenth century.

The first jurist whom D'Errico presented as an example, was Zeger Bernhard van Espen (1646-1728), who was a professor of canon law in Leuven in 1675. Because of its alleged support for the so-called Jansenist dispute his entire work *Jus ecclesiasticum universum* came on the *Index librorum prohibitorum* in 1704. In the first volume of the book, the author writes about the Roman curia and uses several times the books of De Luca, especially the 14th and 15th book. However, it is interesting to notice, that Van Espen did not consult De Luca as an important authority when he dealt in his books with the subject of the Gallican Church and the jurisdiction of the bishops of France; there were no quotes from his work.

The second jurist presented by D'Errico was an important Roman canonist, the jurist Francesco Monacelli. The publication of his *Formularium Legale Practicum Fori*

Ecclesiastici, in three editions, the last in 1854, was done with approval of the Camera Apostolica. By comparing, D'Errico showed in an exemplary way that Van Espen used only the 14th and 15th book of De Luca, whereas Monacelli used the work of De Luca generally. So it seems that Monacelli, who uses in a general way the encyclopaedic work of De Luca in his *Formularium Legale Practicum*, knows about the attempted censorships of the Cardinal and writes for this reason very carefully, to avoid the same destiny of censorship by the Roman Inquisition as it happened to Giovanni Battista De Luca.

VI. The censorship of Carlo Antonio De Luca *Praxis civilis et criminalis* in 1686: a coincidence?

The last panel of the seminar was dedicated to the relationship between De Luca and another important jurist of the 17th century, Carlo Antonio De Luca, not related to Giovanni Battista De Luca, but who had a similar view on jurisdiction as the latter. His *Praxis civilis et criminalis*, probably published in Naples in 1685, came on July 2, 1686 on the *Index* by decree of the Roman Congregation. The strange thing about this was, so D'Errico, that Carlo Antonio De Luca had previously received the permission to print the book by the archbishop of Naples, Innico Caracciolo. This "coincidence of censorship" probably lies in the fact that Caracciolo was a friend of Giovanni Battista De Luca and after the death of the archbishop in 1685, also in the same year of the publication of the book, the *Praxis civilis et criminalis* was censored by the Roman Inquisition in 1686 and put on the *Index*. The reason lies in the use of the fifteenth book of the *Theatrum* "De iurisdictione" by Carlo Antonio De Luca. Since the censorship in 1680 failed, the Roman Inquisition tried in another way to censor Giovanni Battista De Luca.

VII. Final considerations

Giovanni Battista De Luca worked very successfully for twenty-seven years as a jurist at the courts of the Roman curia. He acquired knowledge that he has brought on paper in his *Theatrum veritatis, et justitiae*. The success of the work of De Luca's has continued to have an effect even after his death. Aldo Mazzacane called the work of the Cardinal as "uno dei più ambiziosi e suggestivi prodotti della cultura giuridica d'età moderna"⁵ and Antonio Menniti Ippolito described De Luca for his *opus magnum* as an „author of the best reconstruction ever made of the organization of the Roman curia“⁶. In the history of canon law, he has won a lasting place in Europe. Unfortunately, the importance of De Luca has not yet been adequately perceived in other research fields.

For this reason D'Errico tried to emphasize in the seminar especially the significance of the sources and the importance of decision-making processes of the Congregation of the Roman Inquisition and to recognize De Luca as an essential jurist and reformer. The historical significance of Cardinal De Luca is demonstrated by the fact that his white marble statue stands at the facade of the Palace of Justice ("Palazzo della Giustizia") in Rome. According to the researcher understanding the functioning of the Roman Inquisition can serve to see certain cases, like those of Giovanni Battista De Luca in a new, different perspective by using additional disciplines.



Figure 2:
The statue in white marble of Cardinal Giovanni Battista de Luca, a work finished in 1909 by Arturo Dazzi, in front of the Palace of Justice in Rome (Photo: Benedetta Albani, 08.10.2014)

⁵ MAZZACANE (1990), Art. *De Luca*, S. 342

⁶ MENNITI IPPOLITO (2002), *The Secretariat of State*, S. 154.

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