

# Statist individualism in the Papal States during the modern period: the agrarian code of Pius VII

SIMONE ROSATI

**KEYWORDS:** Pius VII, 19<sup>th</sup> century, ownership, Papal States.

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*Through a methodological approach based on the study of legal sources and the context in which they were produced, this work demonstrates that the motu proprio Il vivo impegno (agrarian code) of 15 September 1802 radically changed conceptions of ownership. It especially affected collective rights, precipitating the birth of proprietary individualism in the territories of St Peter.*

## Individualismo estatalista en los Estados Pontificios ante la Modernidad: el *código agrario* de Pío VII

**PALABRAS CLAVE:** Pío VII, siglo XIX, propiedad, Estados Pontificios.

**CÓDIGOS JEL:** K11, P26, P32, B11.

***E**l objetivo de esta obra es demostrar —mediante un enfoque metodológico basado en el estudio de las fuentes jurídicas y del contexto en el que surgieron— de qué forma el motu proprio *Il vivo impegno* del 15 de septiembre de 1802 produjo un cambio de época en la forma de concebir la propiedad y, en particular, los derechos colectivos, sentando las bases jurídicas para el nacimiento del individualismo propietario en los territorios de San Pedro.*

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**Simone Rosati** [[orcid.org/0000-0002-2522-4399](https://orcid.org/0000-0002-2522-4399)] is Professor of History of Law at Universidad Católica de Murcia (UCAM). Address: Facultad de Derecho, Av. de los Jerónimos, 135, 30107 Guadalupe de Maci-  
ascoque, Murcia (Spain). E-mail: [srosati@ucam.edu](mailto:srosati@ucam.edu)

## 1. INTRODUCTION

The birth and spread of individual ownership as diffusion of a juridical mentality based on the cult of the individual and consequently of private property was a long and painful path that began to stir the collective conscience of all of Western Europe from the middle of the 18<sup>th</sup> century<sup>1</sup>.

The individual, individualism and the singular subject were symbols of the new bourgeois culture that slowly broke the rules and values of medieval legal culture. It has been established that this was not only a change of legal definition but a radical anthropological reversal that recognised the individual as the centre of a new legal order, with property constituting the external projection of the individual (Grossi, 2017: 71-2).

However, reading beyond the solemn and imperious national and local legislation of property, it is clear that this social, legal and economic process did not produce the immediate and absolute triumph of the individualist model (Grossi, 1992: 624-26).

In most cases, the erosion of ancient medieval institutions –powerful structures built on deep cultural foundations– followed centuries of judicial battles, often disregarded legislation, and heated doctrinal and even physical conflicts. That is, the solemn promulgation of a law that established the end of feudalism and its social and economic structures was not immediately followed by the cancellation of all remnants of the past. Even a fleeting glance at the European framework unequivocally demonstrates that the bourgeois programme, already fundamentally conceived at the end of the 18<sup>th</sup> century, took decades to transform the continent's shared and peacefully adopted values.

In other words, the journey was tortuous rather than continuous and unidirectional, featuring stages of acceleration, moments of stasis, phases of rebellion, and regressions

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1. The following is a short bibliography divided into topics to guide the reader's broader understanding of a complex subject: for the birth of proprietary individualism from a historical-legal perspective, see BAVEL & THOEN (2013), DE MOOR, WARDE & SHAW-TAYLOR (2002), JESSENNE, LUNA & VIVIER (2016), DEMÉLAS & VIVIER (2003), VENTURI (1991), VILLANI (1968), ALVAZZI DEL FRATE (2019), GROSSI (1992, 2005), SOLARI (1911), RODOTÀ (1990), DANI (2003, 2014); for studies concerning England, see HUNTER (1897), CURTLER (1909), SCHLATTER (1951), ORWIN (1963), THIRSK (1964), HARDIN (1968), TATE (1978), BONYHADY (1987), CRISCUOLI (1994), NEESON (1996), MINGAY (1997), CHAPMAN (2014), FRENCH (2003), RICHARDSON (2017); for studies concerning France, see SOBOUL (1956), LEVY (1972), BLOCH (1973, 1979), RODOTÀ (1990), VIVIER (1998), CANDIAN (2002); for studies concerning Italy, see TOCCHINI (1961), DANI (1999, 2013), VALGUARNERA (2014), GROSSI (1992, 2005, 2017), PUGLIATTI (1954), DE FELICE (1960, 1965), ROSATI (2017).

to the pristine state. It was, in short, a complex social, cultural and human adventure (Grossi, 1992: 630).

This legal-historical study represents the first attempt to recognise the birth of proprietary individualism in the Papal States; this involves investigation of the pontificate of Pius VII, which adopted the first legislative measure in favour of private property. Upon outlining the historical-legal context of the Papal States, a detailed examination of the *motu proprio Il vivo impegno* (agrarian code) of 15 September 1802 identifies the elements enabling a defence of the article's thesis.

This pioneering historical-legal investigation intends to fill a gap concerning the territories of the Papal States, which have heretofore only been considered deeply by research in the historical and socio-economic fields.

## 2. THE CULTURAL CONTEXT OF THE REFORM

### 2.1. The rebirth of agrarian-legal studies under the papacy of Pius VI

From the 7<sup>th</sup> century until the first half of the 18<sup>th</sup> century, popes were mainly concerned with the proper functioning of the *Annona*<sup>2</sup>, especially during the time of Pope Sabinian, who made distribution of wheat in Rome especially onerous. Inherited from the Roman administrative structure, this dicastery was charged with buying wheat from both papal and foreign lands, enabling it to be collected in Rome's *horrea ecclesiae* (granaries) and resold to the Roman *cives* (civilians) at a controlled price.

Since as early as the 5<sup>th</sup> century, the Pope had been critical to managing the city's *Annona*, especially its *horrea ecclesiae*, sufficiently to fulfil the population's food needs. Although ancient privilege had provided gratuitous wheat distribution in Rome –and later also in Constantinople–, Pope Sabinian's intervention, documented in the *Liber Pontificalis*, abandoned this privilege by obligating the whole citizenry to pay a –controlled– price on wheat. This decision enraged the *cives* so much that Pope Sabinian's funeral procession was staged outside the city walls. Despite being an unpopular decision, the episode indicates that the Pontifical Curia had already taken control of the Roman *Annona*. (De Cupis, 1911; Durliat, 1990, 1996: 1294; Martinat, 2004; Lonardo, 2012).

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2. The *annona* was a tribunal of the administration of papal Rome that dealt with all aspects of foodstuffs.

However, from the second half of the 18<sup>th</sup> century, the low profitability of cereal production in the Roman countryside and the diffusion of new economic theories, such as physiocracy and economism, favoured lively debate on agrarian ownership among agriculture experts and, later, the papal government itself, which was sensitive to the new requests circulating in Europe.

This motivated the Curia to radically update its approach to agrarian policies that had, until then, constituted an unremitting sequence of contingent provisions aimed at assuring Rome's grain supply.

The papacy of Pius VI coincided with the beginning of the fruitful scientific discussion on methods for improving agriculture that would reach its climax with Pius VII. Pius VI promoted various provisions, including the reclamation of the Pontine Marshes<sup>3</sup> and the establishment of a penalty system for those who did not cultivate their land and a reward system for those who introduced crops other than wheat, such as olive trees<sup>4</sup>.

During the government of Pope Braschi, various localised georgic academies flourished<sup>5</sup>; then, in 1786, the Congresso Accademico dell'Agricoltura, Arti Manifatture e Commercio di Roma (Academic Congress of Agriculture, Arts, Manufactures and Trade of Rome) was instituted as an academic centre with coordination functions (De Felice, 1965: 25).

All of this undoubtedly favoured the diffusion of a legal-agrarian culture, with the clearest expression of such scientific fervour likely the treatise by Monsignor Francesco Maria Cacherano di Bricherasio<sup>6</sup>, *Dei mezzi per introdurre ed assicurare stabilmente la colti-*

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3. The reclamation of the Pontine Marshes was a momentous work that required 3,500 workers over almost 20 years (from 1777 to 1796). The project's drainage of around 10,000 *rubbia* of flooded land was partly nullified by the establishment of the Jacobin government, due to its neglect of maintenance and cultivation. For more on the Pontine Marshes, see COPPI (1828), NICOLAI (1800) and FOLCHI (2002). The *Rubbia* was, in the ancient Papal States, a unit of measurement of agricultural area, equal to 18,480 m<sup>2</sup>. The *Rubbia* was also an ancient unit of measurement of grain capacity used in Central Italy, with values varying from city to city (in Rome 294.46 litres).

4. With the *motu proprio Una delle più gravi cure* of 25 January 1783, Pius VI established a detailed framework for the cultivation of the Roman countryside; the decree established what type of agricultural activity could be conducted on each property according to the land's characteristics; these characteristics had previously been verified by the general cadastre of lands ordered in 1783.

5. Notable examples among many others are the georgic societies of Montecchio, Corneto, Viterbo, Alatri and Treia. For more on the georgic societies, see PISCITELLI (1958) and DE FELICE (1965).

6. For more on the Monsignor from Bricherasio, see RE (1808), TOMASSETTI (1910), DE CUPIS (1911), PISCITELLI (1958), DE FELICE (1965) and GIARRIZZO *et al.* (1965).

*vazione e la popolazione nell'agro romano* (The means of establishing and maintaining stable cultivation and population in the Roman countryside). The book's title significantly indicates the Roman countryside two central preoccupations, concerns the author knew well, having been the governor of the province of Marittima e Campagna: namely, insufficient cultivation compared to the quantity of arable land and the subsequent depopulation, especially in more rural areas.

The work is substantially dedicated to the right of ownership; the Monsignor considered the best method for improving the productivity of Roman land to be a land-assets intervention that did not deprive the lazy landowners of their dominion over their land (Cacherano Di Bricherasio, 1785: 218-19).

Evoking the maxims of Grotius<sup>7</sup> and Pufendorf<sup>8</sup> –which admitted the possibility of public occupation of uncultivated lands– Cacherano Di Bricherasio advocated splitting uncultivated *latifundia* (estates) into small portions which would be distributed to peasant families through perpetual emphyteusis (Cacherano Di Bricherasio, 1785: 223-24). Such subdivisions were thought capable of returning the Roman countryside to the almost legendary state of prosperity that already belonged to a distant past, ensuring fulfilment of the treatise's twin objectives of increasing cultivation and population. Accordingly, individual ownership was elected to remedy the economic crisis afflicting agriculture.

However, it would be a mistake to classify the governor of Campagna e Marittima as an ardent defender of a version of free and absolute private ownership incompatible with any legal or social expression from the community. Cacherano Di Bricherasio's vision was more than an abstract replacement of large *latifundia* with small farming properties; in-

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7. Regarding this, Grotius, in the *De iure belli ac pacis* (book 2, chapter, 14 §7), stated that, “Hoc quoque sciendum est, posse subditis jus etiam quaesitum auferri per Regem duplici modo aut in poenam, aut ex vi supereminentis dominii. Sed ut id fiat ex vi supereminentis dominii, primum requiritur utilitas publica” (But one must also know this, that the right acquired can be taken away from the subjects in a twofold way by the king, either by penalty, or by virtue of a more eminent authority. But for this to happen by virtue of a more eminent authority, public benefit is first required) (GROTIUS, 1680: 284).

8. In the *De iure naturae et gentium* (book 8, chapter V, §7), Pufendorf says, “Dominii eminentis non tam rem, quam vocabulum aliqui damnant. Ipsam enim vim imperii propter salutem publicam instituti, sufficientem principi titulum praebere, urgente necessitate utendi bonis suorum subditorum; eo quod omnia simul concessa intelligantur, sine quibus obtineri bonum commune non potest” (Eminent domain is condemned by some, but in reality they condemn the name rather than the legal concept. They assert that the very nature of sovereignty, which was established for the public good, authorises the prince to use, in cases of urgent need, the necessary power to do and demand whatever is necessary for the preservation and benefit of the state) (PUFENDORFII, 1715: 875).

stead, he had conceived of an ambitious project promoting the institution of actual agricultural villages (Cacherano Di Bricherasio, 1785: 230-34). This was to be achieved by ensuring the small land packages surrounded the houses of the peasants, enabling them to enjoy all of the benefits of city life after an intense workday by incorporating social spaces such as churches, public squares and medical centres. Furthermore, collective property (*patrimonio dell'Università o della Tribù*) was to be established as a common good of the entire community (*ibid.*: 230-90).

That is, the Monsignor was aware that the division of land needed to adequately correspond to the relational dimensions of persons and the places they lived. This was a firm reproach of the dramatic drifts of agrarian individualism that would, motivated by profit, likely abandon the social values and identity associated with the land, condemning each person to the loneliness of their own work. Although the treatise was published in Rome in 1785 and became very famous, it was never translated due to the excessive cost (Nicolai, 1803: 178).

## 2.2. The Roman Republic interlude

Another important moment for the discussion of ownership was the short interlude of the Roman Republic during which both the new Jacobin administration and the academic community ignited significant economic-legal debate, although no laws were promulgated.

This was specifically prompted by the serious economic crisis confronted during the two-year Jacobin period, a crisis provoked by the heavy taxation imposed by the French and the inflation that reduced the value of banknotes to almost zero (Caravale & Caracciolo, 1971: 573-76; De Felice, 1965: 152-56). This necessitating selling national goods to fulfil the insatiable economic requests of the French (De Felice, 1960: 14-6; Giuntella, 1950: 37-8).

This economic collapse encouraged an intense period of research and study activity of modalities which could improve the condition of the agricultural sector. The societies born during the papacy of Pius VI and new societies established by pressure from the Republic were privileged spaces of discussion; these spaces were favourable to the diffusion of new ideas in the commercial field, among which it is worth mentioning the Istituto

Nazionale, based on the French model and equipped with an agriculture section<sup>9</sup>, and the Società di Agricoltura, Commercio ed Arti<sup>10</sup>.

The ideas emanating from these intellectual circles reached the republican ruling class, who empathised with the desperate conditions of the peasants who had been brought to their knees by both brigandage and the requisitions of the French soldiers.

Accordingly, a debate on ownership took place in the courtroom of the Tribunate, identifying the *latifundia* as the root of the problems, especially the opposition to progress from the landowners who spent their time relaxing in the city, uninterested in economic affairs. During the session of Floréal VI, this prompted a tribune to decree division of the land among various families in order to improve agricultural productivity (Giuntella, 1954).

This proposal was received with such approval that two draft laws were proposed. The tribune Nicola Corona presented the first, which suggested limiting land ownership to a maximum limit of 100 *rubbia* and obligated landowners to build perpetual colonies in the rest of their land (De Felice, 1965: 171).

Meanwhile, the second proposed law, introduced by tribune Angelo Angelucci, demonstrated a profound knowledge of Roman ownership structures and a remarkable legal sensitivity. Aware of the difficulties that distributing the land among families of peasants would have caused, the republican politician invoked collective ownership and the ancient laws protecting it. Without depriving the large landowners of their right to ownership, Angelucci's proposal made possible improving agriculture through better managing the community lands that, since antiquity, had maintained a balance between cultivated and uncultivated lands. Accordingly, cultivated portions of those lands would have been assigned to Roman peasants who would have been obligated to give a fifth of their produce to the community. Meanwhile, uncultivated portions would have been reserved for the civil right to pasture, a condition of which would have been the obligation to sell a share

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9. The foundation of the Istituto Nazionale was foreseen by article 291 of the Constitution of the Roman Republic. It comprised two sections: mathematical and physical sciences and philosophy, literature and fine arts. The two sections were divided into six classes, with the agricultural class belonging to the first and comprising four members appointed for life: Luigi Doria, Gaspar Xuares, Carlo Backer and Federico Zaccaleoni (PEPE, 1996: 703-30).

10. The rules of the Society, founded on 10 Prairal, year VI of the Republican Era, indicated the aims of the academic circle under president Agostino Chigi and secretary Vincenzo Colizzi: first, the publication of the *Giornale della Società di agricoltura, commercio ed arti* (Journal of the Society of Agriculture, Commerce and Arts); second, the award of prizes to those who wrote particularly relevant scientific reports and of economic incentives to those who had made new discoveries in the research fields of the society (SOCIETÀ DI AGRICOLTURA, COMMERCIO ED ARTI, 1798: 15-20).



of the wild herbs to allow the Republic to meet the demands of the French<sup>11</sup>. Although Angelucci's proposal represented an interesting, if relatively isolated, recovery of collective ownership, his ideas would soon become the object of substantial oppression and criticism from the economic-legal intellectual circles.

This rich scientific discussion on the role of land ownership in the Papal territories would finally receive significant legislative recognition from Pius VII, ultimately having very important consequences for the fate of common resources and spreading the notion that an exclusive appropriation model needed to be imposed to resuscitate the economy; namely, individual ownership.

With the exception of certain rare exceptions (like the proposals of Cacherano and Angelucci), individual ownership and the power to intervene inside the borders of private land were identified as solutions to economic misery in the Pontifical territory. Options considering community management and sharing of land were perceived as economically unviable and eliminated in favour of individual ownership approaches.

### 2.3. The papacy of Pius VII

The Jacobin experience ended on 13 February 1800 and the Imola-born Benedictine monk Barnaba Chiaramonti was elected to the pontifical throne under the name Pius VII<sup>12</sup>. This pope's impact on the ownership issue indelibly marked this chapter of the Church's history.

Following the fall of the Jacobin government, Pius VII confronted a terrible economic situation, a situation characterised by the absence of basic necessities and rapid inflation (Marconcini, 1970: 157-58). Upon overcoming the immediate need of restoring the papal institutional machinery, helped by the faithful and extremely skilled Cardinal Consalvi<sup>13</sup>, Pius VII devoted himself to a broad reform plan. It is worth noting that it would be erroneous to understand this plan as motivated by the desire to eliminate the ideas for which the republican government had become the spokesperson.

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11. Archivio di Stato di Roma, Giunta di Stato, fasc. Angelo Angelucci.

12. Regarding the figure of Pius VII, see GAUDENTI (1947), ANDERSON (2000), CARBONE (2013), CECCARELLI (2001), SPINELLI (2003), EMILIANI (1998), HALES (1962), MENGOZZI (2000), MONDIN (2006).

13. Regarding Cardinal Consalvi, see CASSI (1931), DE VOLDER (1998), ROBINSON (1987), BOUTHILLON (2002), ARMANDO (2003), COLAPIETRA (1963, 1973), PÁSZTOR (1960), CECCHI (1980, 1981), SCHWARZENBERG (1987), ROVERI (1974), LEFLON (1984), REGOLI (2007).

That is, although Pius VII and his entourage were certainly convinced of the insufficiency of restoring the tout court of the previous administrative institution, they were not considering the innovations that had been circulating in the palaces of the Jacobin government and spreading more broadly within the European legal systems that were increasingly open to the new economic theories of liberalism.

Having identified essential features of the reinstated papal government through the Constitution *Post diuturnitas*<sup>14</sup>, the Curia's commitments were oriented towards three areas of intervention: first, annulling the sale of national goods established by the Roman Republic to fulfil French greed, which had dismantled enormous ecclesiastical and community patrimonies; second, reducing the municipal debt that had increased further during the two years of the Jacobin Republic, especially due to impositions of the French troops; third, economic reform, in which agriculture and ownership would play a critical role<sup>15</sup>.

Pope Chiaramonti's agrarian policy mostly represented a departure from previous papal provisions, with possible exceptions being the *domuscultae* (papal estates) of Pope Zaccaria and Pope Adrian of the 8<sup>th</sup> century. Ignoring that those *domuscultae* were instituted on lands belonging to the Apostolic See, there was considerable similarity between them and the villages of Pius VII, with both methods intended to both supply the city of Rome and unify communities within the territories through the construction of houses, churches, storage facilities and other buildings useful for agricultural practice<sup>16</sup>.

In another departure from older practices, Pius VII's legislative work (examined in detail in the following sections) did not exclusively comprise establishing cultivation duties according to land ownership; instead, he directly intervened at the source of every problem; namely, ownership and land-based rights. It should be noted that this research omits initiatives by Pius VII designed to liberalise the grain trade (after centuries of obstruction by the *Annona*) by subjecting it to the rules of the free market; that is, allowing the in-

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14. The Apostolic Constitution *Post diuturnitas*, promulgated on 30 October 1800, tried to bring order to the papal administration by, for example, decreeing a clear distinction between the competencies of the Chamberlain and the general Treasurer, who were frequently in conflict; this was to be achieved by increasing the competencies of minor tribunals to reduce burdens on higher courts, by abolishing gratuities and by ordering a Code of Trade that, although completed in 1806, was never published (CECCHI, 1981: 71-3).

15. For more on this topic, see CONSALVI (1950), DAL PANE (1965b), CECCHI (1975) and RISI (2012).

16. For an in-depth analysis of the *domus cultae*, see JONES (1966), BERTOLINI (1968), DE FRANCESCO (1996) and MARAZZI (2003).

crease and reduction of prices to be dictated by the abundance or lack of wheat (Pius VII, 1801).

Nonetheless, this new papal approach to economy and law was undeniably influenced by the scientific discussions within the numerous georgic circles, and the Tribunate itself, that began during the session of Pius VI and peaked during the two-year Jacobin period, discussions which frequently contemplated the ownership issue.

### 3. THE *MOTU PROPRIO IL VIVO IMPEGNO* OF 15 SEPTEMBER 1802

The developments described in the previous sections can be plainly observed in the articles of Pius VII's magnum opus of agrarian reform, the *motu proprio Il vivo impegno* of 15 September 1802.

The document clearly demonstrates the impact of the academic and political discussions of land ownership on the Curia, which was also convinced that big properties needed to be divided into smaller portions that could be used at full capacity:

La ridente prospettiva delle innumerevoli avventurose conseguenze, che sarebbero certamente per derivarne tanto rapporto alla privata, che alla pubblica utilità ci ha sostenuti nelle nostre considerazioni, e dopo di esserci lungamente occupati intorno a tale oggetto, abbiamo trovato, che sicuramente si arriverebbe ad ottenere l'intento, ove l'immensa quantità de' Latifondi deserti, ed incolti, che al presente si scorge nelle Campagne Romane, venisse divisa in un maggior numero di possessi. È lungo tempo infatti, che generalmente si declama contro questa troppo grande quantità de' Latifondi, e che da tutti si desidera una maggior divisione nei possessi non solo per questo oggetto di veder restituite ad una miglior coltura tante belle, e feraci campagne, ma eziandio per l'addolcimento del prezzo delle Derrate, che principalmente dipende dalla concorrenza, e dalla molteplicità dei Venditori (Pius VII, 1802: 8)<sup>17</sup>.

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17. The following English translation has been produced by the author: "The excellent prospect of the many possible consequences that would certainly affect both the private and the public utility have supported our consideration, and, after a long reflection regarding this topic, we have discovered that we would certainly achieve our aim if all of the deserted and uncultivated lands that are currently present in the Roman countryside were divided into a greater number of parcels. For a long time, people have been broadly in opposition to the large numbers of Latifundia and in favour of greater division of property in order not only to see so many beautiful and fertile lands returned to

However, Pius VII understood that this could not be pursued by expensively expropriating and concomitantly redistributing lands to peasant families, an approach that would have drawn reproach from the noble landowners, clashing with their “sacred” right to ownership.

Therefore, a mechanism of indirect intervention was established, an approach that would have led to the long-term division of land without obviously impacting ownership. This involved imposing an annual *tassa di miglioramento* (improvement tax) on all of those who owned vast agricultural lands, whether laypeople, clerics or religious entities of any nature (Pius VII, 1802; Ventrone, 1942; Palermo, 1965, De Cupis, 1911; La Marca, 2005; Colapietra, 1966; Rosati, 2017).

The *tassa di miglioramento* was established as five *paoli per rubbio* and was to be applied exclusively to the *milliari* area identified for each property. Collection was to take place in September, conducted by functionaries designated by the Deputazione Annonaria, who were empowered to take action against debtors, regardless of whether they were clerics or not. Where improved lands regressed to their previous state of misery and neglect, the owners would have had to pay double the ordinary tax (Pius VII, 1802: 1617-18).

“Proof of non-cultivability” was the responsibility of the landowner, who had to demonstrate their proof before the tribunal of the Deputazione Annonaria (Pius VII, 1802: 16), with forests and locations allocated to trees planted for construction timber exempted from the tax. Otherwise, the *tassa di miglioramento* could only be extinguished by dividing the land (through emphyteusis, colonisation or sale) or by the owners themselves directly meeting the demands of cultivation (Pius VII, 1802: 8-9).

This papal reform recalled many intuitions and practical solutions developed in Tuscany, which, at the time, was the domain of Grand Duke Pietro Leopoldo (Dani, 1999, Montorzi, 1997; Mirri, 1955; Tocchini, 1961; Giorgetti, 1966). There, in the 1770s, given the reduced productivity of collective lands, the administration prioritised privatisation through perpetually renting or selling land pertaining to the vast properties of the municipalities and other bodies; this was encouraged to create a new class of owners that would revitalise not only the economy but also the local governments (Dani, 2013).

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better cultivation but also to mitigate the price of the Goods, which mainly depends on the competition and the multiplicity of the Sellers”.

### 3.1. The division of the *latifundia*

The first chapter of the *motu proprio* specifically dictates the system for dividing the *latifundia*.

First, there was awareness of the fact that such a radical and almost revolutionary project regarding the physical and demographic aspects of the Roman countryside would be impossible to implement in the short term by simply imposing the *tassa di miglioramento* on all papal properties. That is, the administration also had to find a way to convince entire peasant families to permanently settle in the middle of a completely abandoned *latifundium*, properties featuring no shelter to provide relief from daily toil and that were frequently pestiferous due to malarial miasmas (Pius VII, 1802: 10).

Thus, it was necessary to proceed gradually. Following first experimenting with Roman lands that were closer to the city and then continuing with all the papal territories, the Deputazione Annonaria (recently reformed by Pius VII)<sup>18</sup> would proceed, following publication of the agrarian code, with the identification of the *circondari milliari* (Pius VII, 1802: 10); that is, uncultivated land extending one mile around already cultivated and inhabited lands, which were already subject to the *tassa di miglioramento*. This meant that newcomers could benefit from proximity to inhabited and cultivated places, where they could shelter during colonisation and the purification of air insalubrity, anticipating the establishment of a new rural village in the near future.

Upon reaching the objective of cultivation, the Deputazione was to begin identifying new *circondari milliari* around the recently reclaimed and built land and subject those parcels to Indirect Law; this would continue until covering the entire Papal States with these new administrative subdivisions (Pius VII, 1802: 15). To make the provision even more tempting, incomes obtained by the *tassa di miglioramento* were to be filed with a separate *cassa* within the Deputazione Annonaria, which would encourage, through specific economic prizes, the realisation of non-wheat cultivars, tree plantations, constructions of

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18. Concurrent with the new system allowing free trade of wheat, it became necessary to create a new dicastery which differed from the previous one. This dicastery was to be charged with monitoring the correct application of all of the duties and limitations imposed on wheat circulation. The new Deputazione Annonaria was established with the *motu proprio Le note sciagure* of 2 September 1800, the first of many provisions that would gradually liberate trade and wheat circulation. It comprised a prelate, six knights, experts on *Annona*, an assessor with the right to vote and a secretary. In addition to supervising the new legal system, it also inherited, from the previous *Annona*, judicial functions which enabled it to resolve *sola facti veritate inspecta* (only through summary trial) all litigation arising from issues regulated by the Wheat Laws. The text of that *motu proprio* is quoted in full in NICOLAI (1803: 90-102).

new farmhouses and rural villages and works reclaiming and canalising water; some incentives were designed to promote resistance to the challenges of living in isolated locales hostile to comfortable human life (Pius VII, 1802: 27-30).

In territories further from the city, which were going to be gradually rescued from the desolation of the *latifundium*, Pope VIII's special Cassa Agraria<sup>19</sup> was to subsidise the construction of villages and small communities, providing them with the means for a comfortable city life (Pius VII, 1802: 28-30). Specifically, each agricultural centre had to feature particular elements enabling an actual community to be established.

First, there was the parish, the duties of which were completely financed by the Deputazione Annonaria; therefore, the application of tithe and offers was not allowed, except in cases of funerals, baptisms and marriages. The main role of the priest – apart from his specific spiritual *munus* – was to centrally drive the development of peaceful city life. Where village residents had a dispute, the priest was to be the first natural judge in the case, summarily resolving the matter such that only controversies in *extrema ratio* would be examined by the *giudice delle mercedi* before the tribunal of the Deputazione Annonaria.

Moreover, to avoid distracting them from their work in the fields during the planting and harvest periods, residents could not be summoned to trial under any circumstances; thus, resolving any nascent social conflict was the responsibility of the priest.

Second, the agrarian code provided strict instructions for the construction of farmhouses, roads and wells, as well as granting the permanent presence of a surgeon to fulfil medical needs and a smith and a woodcutter for repairs of agricultural tools (Pius VII, 1802: 29-30).

Undoubtedly, this agrarian code features an admiring affinity with the work of Cacherano Di Bricherasio, which had spread widely, especially in the Papal States. However, in these moral measures, the stamp of the typical *modus operandi* of the Church can also be observed, which had continued uninterrupted since the first provisions of the *domuscul-tae* of Pope Zaccaria, demonstrating attention paid to both the spiritual and relational dimensions of the church's subjects.

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19. Pius VII entrusted the actual execution of these land division laws to the Deputazione Annonaria, which had been provided with a separate Cassa Economica to fulfil all tasks established by the law for agricultural improvement. As a check, the Deputazione Annonaria was required to account for its actions biannually (June and December) at the Economic Congregation (PIUS VII, 1802: 34-5).

### 3.2. The obstacles to the progress of agriculture

Arguably the most important component of the agrarian code is Chapter II, which concerns the elimination of obstacles created by the application of the papal regulations. This was clearly the most properly technical-legal section of the *motu proprio*, aiming to eliminate any circumstance linked to land ownership that might have frustrated the aims of the Law.

The first obstacle to “better cultivation” was identified as the lease contracts concerning land and legal transactions, which, by linking the land to the objectives of the agrarian code, would have impeded the subdivision of the *latifundium*. Accordingly, Article 1 annulled, effective immediately, all leases that existed in lands included in the *circondario miliario* (Pius VII, 1802: 20).

Another set of obstacles was represented by primogenitures, *fideicommissa* and other forms of substitution or legacy that would have prevented the owners of the lands concluding transfers or to subdividing through emphyteusis or perpetual colonisation. Accordingly, Article 2 abolished any testamentary disposition, either present or future, that contradicted the aims of the Law, although it included those who were owed fees by the leaseholder or the purchasers (Pius VII, 1802: 20-1).

Third, specific provisions were established in favour of any category of ecclesiastical body or cleric (*i.e.*, pious places, monasteries, cardinals, bishops, hospitals, orphanages, apostolic chamber) who had to conduct the subdivision given they owned territories subject to the *tassa di miglioramento*. In such cases, any decision regarding the use of the land was to be authorised by the Congregation of Bishops and Regulars or a council member through a specific rescript (Pius VII, 1802: 22).

Another limit to dividing the land, in instances of selling the land to be improved, was potential pre-emption in favour of the owner of the land adjacent to the transferred land. Such circumstances were seen unfavourably by the legislator because they would have increased land ownership and, consequently, risked increasing the *latifundium* phenomenon (Pius VII, 1802: 23).

In contrast, Article 4 is concerned with the known distinction –inherited from the medieval world– between *dominium directum* and *dominium utile*. This distinction indicated that a landowner exclusively holding *dominium utile* would have been unable to divide the land through absolute sale, instead requiring sub-emphyteusis of the same duration as his *dominium utile*. Accordingly, such decisions needed to be communicated to the



owner of the *dominium directum*, who would have no means of opposition (Pius VII, 1802: 22-3).

Finally, Article 6 represents the most important element of the code, concerning the rights to pasture (Pius VII, 1802: 23-4), which were considered central obstacles to the code's objectives for several reasons.

First, it is essential to understand the nature of the rights to pasture –or, as they are called in strictly legal terms, the *ius pascendi in re aliena* or servitudes of pasture on private lands<sup>20</sup>. These rights described a promiscuous modality of enjoyment of the soil widespread in pontifical lands; the nature of this modality connected two different and opposed centres of interest: on the one hand, the owner of the land (who held the *ius serendi*) and, on the other hand, the community, which held the collective rights to pasture (the *ius pascendi*).

The *ius pascendi* represented the concrete realisation of the decomposition of absolute dominion (Petronio, 1988; Meynial, 1908; Thibeaut, 1970; Rosati, 2017). According to this theory, ownership was divided into as many forms of ownership as the number of *utilitates* that could be obtained from the land (Petronio, 1988); in this case, this included the natural fruits for grazing (the *ius pascendi*) and the industrial fruits that require the work of the landowner (the *ius serendi*)<sup>21</sup>.

This type of ownership system was the basis of different legal entitlements for an individual and a collective owner on the same land could not be integrated into the new system, which favoured free private ownership and the cult of the individual. The cost of this outdated model would ultimately and inevitably be borne by the community; the agrarian collective rights, the model's legal reflection, were considered the legacy of a murky past and unacceptable social and economic theories.

Arguably, the date officially marking the beginning of what, to quote Paolo Grossi (1998: 32), we can define as *individualismo statalistico* (statist individualism) is the date printed on the *motu proprio* of Pius VII, *Il vivo impegno*. On 15 September 1802, the des-

20. On the *ius pascendi in re aliena* see FALZACAPPA (1842), FREZZINI (1889), SERCIA & CANCANI MONTANI (1926), VILLANI (1960), DANI (1999, 2003, 2011, 2013), ZENDRI (2002), BARBACETTO (2003), ROSATI (2019a).

21. Reference to natural and industrial fruits derives from a distinction made by Cardinal De Luca in his most famous work, *Theatrum Veritatis et iustitiae*. Another relevant jurist and judge of the Rota in Siena and Florence is Neri Badia (1657-1726), who exposed these principles in his *Decisiones et responsa iuris*, dec. 51, as Alessandro Dani highlighted (DANI: 2003: 179).



tiny of the pontifical countryside and the interpretation of certain forms of appropriation began to follow a clear and unambiguous path that would continue uninhibited until the beginning of the 20<sup>th</sup> century, confirmed and ratified by pontifical provisions (Commissione Governativa di Stato, 1849) and state administrations until the 1927 introduction of a law enforcing the elimination of the *usi civici* rights (Rosati, 2019b).

The sacred legislator, through a general legislative text, formulated universal political guidelines, with no individual exempted. For example, the rights to pasture had to be eliminated because they represented an obstacle to private ownership and, consequently, to improved cultivation by impeding the subdivision of the lands that was necessary to make the languid and abandoned papal territories flourish again.

From the agrarian code, this article seeks to extrapolate not a technical assessment of the practical realisation of economic provisions –which is beyond its scope– but instead the power to direct modalities conceiving of and approaching *ownerships*. This requires the plural form of the noun because, from this moment, the process of *reductio ad unum* of the forms of appropriation of the soil that significantly characterises legal modernity began, with harshness and, frequently, with prevarication.

Pius VII himself began the agrarian code by clearly exposing his government's economic guidelines, immediately specifying precisely how the economic policy was to decide the future of ownership structures (Pius VII, 1802: 1). That is, the promulgation of the pontifical edict established the basis for many legal and political controversy in the trade-off between the improvement of agriculture and the elimination of collective rights to pasture. In fact, since this moment, rights to pasture have been entangled in the economic theory that was accepted as the unambiguous criterion for affecting new ownership structures.

Proof that ownership was increasingly becoming the domain of the government and had to be managed exclusively through economic science precepts –which inevitably tended to resolve and reduce the complex anthropological relationships deriving from the relationship between humans and land to the circulation of any type of goods– can be found in the decision to entrust the elaboration of a draft of the law on pastures to the Economic Congregation, which had been restored by Pius VII with the *motu proprio Post diuturnas* of 1800<sup>22</sup>.

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22. An Economic Congregation was first charged with assessing the drafts of laws and other provisions of an economic nature during the papacy of Clement XI, based on an edict promulgated on 10 July 1708. Due to conflicting competences with the Sacred Congregation of Good Government, it was

This dicastery had a primary role in the papacy of Chiaramonti, who was involved in an ambitious economic reform project that would be scrutinised by the Economic Congregation. Apart from providing economic advice, the curial ministry also had a mandate to sell community goods whose proceeds were allocated to the remission of community debt, including suppressing arts and craft guilds and discussing and ruling on issues entrusted to it by the Roman Pontiff, who was always responsible for the final sanction.

However, in the case of eliminating rights to pasture, the Congregation could not obtain the desired effect because, since the beginning, it had faced strong opposition from local communities, in the form of the submission of extremely clear legal-economic reports proving that the suppression of collective rights would have deprived the community of a primary means of subsistence.

The central issue concerning local communities, according to their memorandums, regarded considering collective rights to pasture as real property rights rather than indicating a status of servitude on another person's land. That is, in land subject to civic pasture, properties should have been divided into two forms of dominion: the *ius pascendi*, whose holders were the citizens as a whole, and the *ius serendi*, which instead belonged to an individual subject. Apart from being an expression of authentic collective property rights, rights to pasture were to be respected for another reason: they crystallised a very ancient customary patrimony that, by virtue of that history, was worthy of being preserved and recognised.

For example, all of the communities that presented their own pamphlets to protect the civil pastures adduced, as documentary proof of their antiquity, statutes of the communes dating back to medieval times. Indeed, these legal sources featured numerous rules concerning regulation of agricultural activity based on a system that accepted, concurrent with individual ownership and especially in the case of pastures, the recognition of the collective rights of all citizens, rights which could also be exercised on private lands (Rosati, 2018, 2019b, 2019c, 2019d).

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dissolved and reinstated by Benedict XIV through the Constitution *Apostolicae Sedis aerarium* of 18 April 1747. After the two-year Jacobin period (1799-1800), the Economic Congregation was reorganised, as demonstrated in this paper, by Pius VII through the constitution *Post diuturnas*; this functioned as both a consultative and a judicial body until the second French invasion of 1809. After the pontifical restoration, an order of the Secretariat of State on 26 July 1815 specified its functions, which were limited to discussing projects and issues that had been submitted by the Secretariat of State and to the proposal of maxims for a better public administration; it was completely deprived of the competence to preside over cases of litigation. The dicastery was suppressed by the *motu proprio* of 1 October 1847. Regarding this, see MORONI (1842), FRANCHINI (1950), LODOLINI (1956), DAL PANE (1965a), SPAGNUOLO (1966), DEL RE (1998), ROSATI (2019e).

These discussions continued for almost twenty years, featuring the participation of illustrious curial members, experts in the subject and supporters of new physiocracy theories, including Paolo Vergani and Nicola Maria Nicolai. However, great resistance from local communities paralysed the work of the sacred Economic Congregation (Rosati, 2019c), such that, after the death of Nicola Maria Nicolai, a law abolishing pastures was not discussed again until the papacy of Pius IX (Commissione Governativa di Stato, 1849).

#### 4. CONCLUSIONS

Pius VII's *motu proprio Il vivo impegno* established the theoretical and legal foundations for the trajectory of *reductio ad unum* of the collective forms of appropriation exclusively in favour of private ownership, which has substantially characterised legal modernity<sup>23</sup>. With this provision, the pope pursued the objective of improving agricultural conditions through a plan incorporating productive incentives and measures that would shatter the *latifundia* that were considered a central cause of the poverty of the Roman countryside.

The main component of this agrarian code –which conforms completely to the physiocracy and liberalism informed policies of the time– was absolute and unlimited private ownership. The code established, for the first time in the history of the Church, that in order to implement the guidelines of the *motu proprio*, free individual ownership was imperative. However, this was patently incompatible with the anti-economic nature of promiscuous land use, leading the collective rights of communities to pasture on private land to become a major legal obstacle to implementing the code.

Nonetheless, this papal legislative intervention entered the papal countryside during the chapter of European history marked by the privatisation of common goods in the name of principles of ownership, which came to mark progress and modern civilisation.

Importantly, this extremely long and painful process did not determine a simple modification of legal definitions; instead, it was a radical anthropological shift that projected the individual and ownership into the centre of a new legal order (Grossi, 2011: 71-2, Barcellona, 1988: 12).

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23. Here, the famous doctrinal stance of Paolo Grossi is assumed; Grossi sees three legal experiences in the long path of human history, indicating that the expression of many historical civilisations can be differentiated from legal, cultural and social perspectives: the Middle Ages (IV-XIV), the Modern Era (XIV-XX) and the Postmodern Era, which starts at the beginning of the 20<sup>th</sup> century and constitutes the current developmental path and is, as such, yet to be decoded by academics (GROSSI, 2011: 8).

Accordingly, concepts of the individual, individualism and the individual subject symbolised a new culture that was slowly slipping into the collective conscience, fracturing the norms and values of the previous culture. The individual owner substituted the community as the locus of identification for the individual and as the mediator in their relationship with natural resources; now, the individual owner had unlimited power over the tangible world.

Pius VII's agrarian code contextualises the abolition of the rights to pasture in this new cultural climate as an apparently harmless provision which practically transcribed an abstract project, the project of emancipating individual ownership –the only model now accepted in mainstream Western culture– from the legal and social ties that characterised medieval civilisation and could not be tolerated within an individualistic logic.

This text in no way supports a nostalgic view of ancient regimes and their institutions; instead, this paper represents the first historical-legal recognition of the process of *reductio ad unum* of forms of land ownership in the territories of St Peter. This analysis bears witness to the conflict between two distinct mentalities which might otherwise be buried beneath the apparently empty definitions of jurists; although these two mentalities were profoundly rooted in the collective conscience, they were distinguished by their alternately individual and collective forces of will.

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