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**Compte rendu de Jurists and jurisprudence in medieval Italy, Texts and contexts, written by O. Cavallar and J. Kirshner**

Dante Fedele

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OSVALDO CAVALLAR and JULIUS KIRSHNER, *Jurists and Jurisprudence in Medieval Italy. Texts and Contexts*, [Toronto Studies in Medieval Law], Toronto/Buffalo/London, University of Toronto Press, 2020, xxvi-866 p., ISBN 9781487507480 (cloth), 9781487536343 (EPUB), 9781487536336 (PDF)

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The product of more than thirty years of research, this volume is primarily intended as an anthology of *ius commune* texts in English translation designed to support undergraduate teaching and to ‘introduce an audience of nonspecialists to outstanding voices of medieval Italian jurisprudence’ (p. 39). However, while pointing to one of the authors’ undoubted achievements, the latter affirmation appears to be something of an understatement. Preceded by a large number of studies, editions and translations (such as Kirshner’s translation of Bartolus of Sassoferrato’s *De tyranno* and the edition and translation of Bartolus’ *De insigniis et armis* produced by Kirshner and Cavallar with Susanne Degenring)<sup>1</sup>, this massive work actually represents a *summa* of the methodology developed by the two scholars in their decades-long research on the history of the late medieval *ius commune*.

After a general Introduction (p. 3-43), the volume is divided into six parts, each devoted to a general topic: ‘Professors and Students’ (p. 45-174), ‘Legal Profession’ (p. 175-252), ‘Civil and Criminal Procedure’ (p. 253-396), ‘Crime’ (p. 397-462), ‘Personal and Civic Status’ (p. 463-577) and ‘Family Matters’ (p. 579-826). These are followed by a Glossary of Latin terms (with references to the chapters in which each term appears) and two Appendices: the first introduces the *Corpora iuris civilis* and *canonici* and the medieval system of legal citation, and the second lists 90 selected jurists, including the date of their death. An index of names and places is also provided.

The six parts encompass a total of 45 chapters dealing with specific themes. Each chapter opens with a brief but informative introduction that gives the necessary background for the subsequent translation(s). In the space of a few pages, the authors manage to clarify technical aspects in plain language and to illustrate the interplay of *ius commune* doctrines and the socio-political world in which they operated by referring to a wide range of local statutes<sup>2</sup>. Occasionally these introductions turn into dazzling frescos illustrating the

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<sup>1</sup> See Bartolus of Sassoferrato, *On the Tyrant*, in: University of Chicago Readings in Western Civilization, general ed. J.W. Boyer and J. Kirshner, vol. 5: The Renaissance, ed. E. Cochrane and J. Kirshner, Chicago-London 1986, p. 7-30 (translation by Julius Kirshner, based on the critical edition published by Diego Quaglioni in 1983) and O. Cavallar, S. Degenring and J. Kirshner, *A Grammar of Signs: Bartolo da Sassoferrato’s Tract on Insignia and Coats of Arms*, Berkeley, CA 1994.

<sup>2</sup> The statutes of the following towns are cited throughout the book (sometimes in various versions, either published or unpublished): Arezzo, Bologna, Castiglion Fiorentino (Aretino), Chianciano, Como, Cortona,

development of a particular institution from Roman law onwards, or proposing comparisons with twentieth-century and present-day (especially Italian) law aimed at showing the long-term impact of *ius commune* doctrines<sup>3</sup>. A bibliography provides the references to the sources cited in the introduction and a rich and up-to-date overview of a multilingual literature. Given the broad scope of the volume and the number of themes it covers, not all the relevant material could be included, but the authors have always chosen most skilfully and the selection will undoubtedly prove useful to both students and scholars<sup>4</sup>. Furthermore, the introductions and bibliographies sometimes enable the authors to go beyond the limits of the volume and touch on themes that, although they are related to those under discussion, do not have their own separate chapter: this is true, for instance, of arbitration in chapter 17 (on civil procedure) and the ‘*sindicato*’ (i.e. the public inquest to which the foreign magistrates were subject at the end of their term) in chapter 18 (on *consilium sapientis*), and of the debate over oaths taken to confirm invalid agreements in chapter 41 (on the prohibition of gifts between husband and wife).

After this “preliminary” material come the centrepieces of the various chapters, i.e. the translations. A total of nearly 90 texts appears throughout the book; apart from a handful of excerpts from Justinian’s compilations, they date from the mid twelfth century (Martinus Gosia’s tract *De iure dotium* and Frederick I’s law *Habita*) to the early sixteenth century (two *consilia* by Francesco Guicciardini). Their length is diverse, ranging from the few lines of some glosses to the many pages of the (excerpts from) larger texts, like Guillaume Durand’s *Speculum iudiciale* (36 pages in chapter 11), Benedictus de Barzis’ *De filiis* (49 pages in chapter 37) and Albertus Gandinus’ *Tractatus de maleficiis* (55 pages in chapter 21). The typology of these sources is highly varied too. The “learned” literature includes *consilia*, *quaestiones*, glosses, commentaries, treatises and doctoral orations; both renowned and lesser-known doctors of civil and canon (or both) laws are represented. While the only translation of a piece of imperial legislation is the law *Habita*, there are far more examples of local statutes. Archival sources (either published or unpublished) also encompass other city provisions and measures, guild deliberations, petitions, contracts, wills, and a eulogy. Chapter 15 (on discourses dismissing the benefits of legal education) features a tale by the Florentine writer Franco Sacchetti; other stories by Sacchetti, Giovanni Boccaccio and Giovanni Sercambi da Lucca are cited in the introductions to other chapters, along with literary texts by Machiavelli and Giovanni Della Casa or documents from legal practice presenting situations that seem straight out of a story – e.g. a tax declaration of 1427 in

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Florence, Forlì, Modena, Montepulciano, Padova, Perugia, Rieti and Siena. Further references (also to extra-Italian contexts) are drawn from secondary literature.

<sup>3</sup> As already noted by F. Treggiari in his review of the volume that appeared in *Bollettino della Deputazione di Storia Patria per l’Umbria*, 117 (2) (2020), p. 547, with reference to the authors’ affirmation on p. 179 it should be pointed out that, in Italy, the figure of the ‘procuratore legale’ was abolished in 1997.

<sup>4</sup> Among the very rare omissions, one might mention, on public disputations (p. 225-226), Manlio Bellomo’s works, especially *I fatti e il diritto. Tra le certezze e i dubbi dei giuristi medievali (secoli XIII-XIV)*, Rome 2000; on peace agreements (p. 333), A. Padovani, *Violenza e paci private in una città di Romagna. Imola nel Quattrocento*, *Historia et ius*, 11 (2017), paper 13; on adoption (p. 596), F. Roumy, *L’adoption dans le droit savant du XII<sup>e</sup> au XVI<sup>e</sup> siècle*, Paris 1998.

which a Florentine merchant requests a tax relief alleging the vast and constant expenses he had to meet ‘to keep [his wife] in fashionable clothing and other accessories, just as other women of the same standing wear’ (p. 727). All these non-legal sources contribute to our perception of the multifarious relationships between legal culture and social life in late medieval northern and central Italy.

Particular attention was paid by the authors to the editions of the translated texts. In only a tiny minority of cases did they base their work on a single early modern edition, and most of the time they drew on existing critical editions (sometimes their own, earlier, work) or collated one or two early modern editions with one or two manuscript copies. On eight occasions, dealing with texts for which editions were either inexistent or unreliable, they based their translations solely on manuscripts<sup>5</sup>. As a result, there are reasons to regret the decision, necessitated by the need to keep the volume a reasonable size, to print only the translations. Since the authors generously invite interested readers to contact them to request any of the Latin texts they edited for the volume, one wonders whether they would be willing to make these texts available online: whereas critical editions of larger works can be published as stand-alone volumes, a website provided with proper institutional support and, perhaps, open to contributions by the academic community worldwide might be the ideal platform for shorter pieces like individual *consilia*, *quaestiones* or comments.

The absence of the original Latin texts is, to some extent, compensated for throughout the volume by the inclusion of some key terms in Latin in brackets and by a consistent balance between readability and the respect for the original prose. ‘Striving to avoid the Scylla of archaism and the Charybdis of anachronism’ was the authors’ aim<sup>6</sup>. In this respect, the outcome of their efforts must be welcomed as an outstanding achievement. Anybody who has had to translate *ius commune* sources into a modern language knows the daunting challenges involved. The translations presented here offer an array of specimens in various areas of the law and, as well as providing texts that serve as excellent introductions for students to the late medieval jurists’ style of argumentation and forms of reasoning, they offer a model and a valuable guide for any scholar engaged in a similar exercise. All references present in the translated texts have been verified and transcribed following the current style of legal citation; given the nature and the purpose of the work, the authors opted to put them in the footnotes, keeping in the main texts only those that ‘are especially relevant to the argument the jurist was making and provide a brief explanation of the purport of the law (*lex*) or canon cited’ (p. 43). The footnotes are also used to give some basic information or to explain the meaning of specific terms or phrases (often referring to the Glossary).

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<sup>5</sup> These are a long excerpt from Franciscus de Zabarellis’ tract *De modo docendi ac discendi ius canonicum ac civile* (chapter 4), a certification of a judge’s doctoral degree delivered in Florence in 1374 (chapter 13), a deliberation of the Florentine guild of judges and notaries of 1366 (chapter 14), and five *consilia* by Francesco Guicciardini (chapter 20), Ivis de Coppolis (chapter 25), Jacobus of Fermo (chapter 34) Dionisius de Barigianis (*ibid.*) and Petrus de Albisis (chapter 40).

<sup>6</sup> P. 14. As the authors note in their acknowledgements, Sean J. Gilsdorf, Thomas Kuehn and Patrick J. Lally contributed some translations to the volume.

The selection of the topics addressed in the 45 chapters of the book reflects the authors' research interests and offers a solid overview of many fundamental legal concepts and institutions in late medieval Italy. Given the presence of a section devoted to criminal matters and of several chapters on citizenship in the section on civic status, one might have expected a specific chapter on banishment, but – again – it may be safely assumed that the vastness of the subject-matter tackled in the book compelled many difficult choices. In the general Introduction, the authors note that they have omitted a section on war with extracts from Johannes de Legnano's treatise, a full translation of which is already available in English<sup>7</sup>. They also announce the preparation of an autonomous volume that developed out of a previously planned section on politico-legal thought, including the three political treatises of Bartolus and other relevant texts from other jurists. This would indeed be a great contribution to the study of *ius commune* jurists' interest in public law and of their views on the complex relations between the different levels of the multi-layered political order in which they lived.

Aside from any opinions on topics that were or were not included, the volume as it stands has no equal in the existing literature and represents a radically innovative type of manual. Admittedly, students do need the information on the typology of legal sources, the teaching methods and the most important jurists which is normally provided by the traditional manuals, whose approach is systematic and chronological. Nevertheless, this information is included (however briefly) in the general Introduction to the volume and in the Appendices, and can probably also be learned – under proper guidance – by reading the primary sources in translation on selected topics. It will be interesting to see to what extent this method, developed by Kirshner in his Western Civilization course at the History Department of the University of Chicago, will be adopted by Law Faculties. Any method has its pros and cons, but there is at least one major methodological benefit that students – and, incidentally, the legal historians who still consider *ius commune* to be mere bookish law – can derive from this book: a vivid demonstration of how much legal scholarship was intertwined with legal practice and was embedded in the social world of late medieval Italy. On the one hand, glossators and commentators endeavoured to transpose the language of Justinian's compilations 'into terms that were responsive to contemporary socioeconomic and institutional arrangements' (p. 14); on the other, local statutes presupposed the terminology and conceptuality of the "learned" law, and simply adapted or modified *ius commune* rules on specific points. The resulting interplay between the two dimensions could take various forms, of which this volume provides many illustrations. The genre of the *consilia* stands out as particularly compelling in this regard, since *consilia* were requested by the parties or the judge "in real time", i.e. during litigation, and were 'commissioned by public officials when faced with uncertainties about the application of the city's statutes and the legality of executive actions, mainly in matters of taxation, banishment, citizenship, and the administration of subject communities' (p. 280). Although we often lack access to the

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<sup>7</sup> Some other medieval legal texts in translation on the topic are found in G.M. Reichberg, E. Begby, H. Syse (eds.), *The Ethics of War: Classic and Contemporary Readings*, Malden, MA 2013.

documentary evidence that would be needed to reconstruct the case from which a particular *consilium* originated, these opinions can prove valuable historical sources in themselves. A good example of how important the authors consider them to be is found in chapter 2, which features a *consilium* written in the years 1393-1396 by Baldus de Ubaldis (aptly defined as ‘medieval Italy’s überconsultant’ on p. 221) on the university (*studium*) of Milan. Despite the contrary opinion or the silence of renowned historians of universities such as Hastings Rashdall and Paul F. Grendler, essentially due to the lack of further evidence<sup>8</sup>, Cavallar and Kirshner rely on this opinion alone to assert that, although – as admitted by Baldus himself – Milan lacked an approved *studium generale*, at the time there must have been a *studium* there for the teaching of law.

All in all, this volume makes a clear case for an understanding of legal history as an intrinsically interdisciplinary field of study, which requires not only deep legal and historical knowledge but also linguistic, palaeographic and philological skills in order to grasp the meaning of concepts that are used ubiquitously in legal texts across many centuries within a given intellectual and socio-political constellation. Cavallar and Kirshner also reveal what legal history, and the history of late medieval Italian *ius commune* in particular, can tell us beyond specific legal methods and institutions about a society of the past, and even what it can teach us about the society we live in today: ‘[b]eyond its intrinsic intellectual worth and imposing historical legacy, medieval Italian jurisprudence provides an engrossing portrait of a society in which private and public disputes were resolved in accordance with well-established and clearly defined laws and procedures and public officials were held accountable for their decisions and actions. It boasts telling examples of what it means to take legality seriously under less than ideal circumstances’<sup>9</sup>.

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<sup>8</sup> See H. Rashdall, *The Universities of Europe in the Middle Ages*, vol. II, part II, Oxford 1895, p. 728-729 and P.F. Grendler, *The Universities of the Italian Renaissance*, Baltimore & London 2002.

<sup>9</sup> P. 41. See also p. 17-18 on the medieval jurists’ contribution to the ‘rule of law’.