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Dante Fedele

## An unpublished *consilium* by Dionysius de Barigianis (1434-1435) and the Peace between the Varanos of Camerino and Norcia (1421)<sup>1</sup>

SUMMARY: 1. The Varanos' lordship over Camerino up to the Peace with Norcia (1421) – 2. The war with Norcia and the Peace of 1421 – 3. Dionysius de Barigianis' *consilium* (1434-1435) – Appendix: I. Martin V, *Littera clausa* (Florence, 6 March 1419) – II. Martin V, *Littera solemnis* (Florence, 2 June 1419) – III. Martin V, *Littera solemnis* (Rome, 13 March 1421) – IV. Martin V, *Littera solemnis* (Rome, 14 March 1421) – V. Dionysius de Barigianis, *Consilium* (1434-1435)

ABSTRACT: This paper examines an unpublished *consilium* written by the Perugian jurist Dionysius de Barigianis in 1434-1435 which refers to the Peace concluded in March 1421 between the Varanos, lords of Camerino, and the commune of Norcia. Building on the analysis of four papal letters, the paper affords new insights into the conclusion and the contents of the Peace, thereby setting the context for the subsequent discussion of Barigianis' *consilium*. The edition of these letters and the *consilium* is provided in the Appendix.

KEYWORDS: *ius commune*, *consilia*, peace

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The manuscript Ottob. lat. 1249 of the Vatican Library preserves an unpublished *consilium* by the Perugian jurist Dionysius de Barigianis written in the years 1434-1435 and dealing with the murder of a *comitatensis* (a person from the *contado*) of Camerino perpetrated by a citizen of Norcia. The Peace concluded in March 1421 between Rodolfo III da Varano and his sons, lords of Camerino, on the one side, and the commune of Norcia, on the other, stated that any injuries committed by someone belonging to one party against someone belonging to the other should be punished in the same way as injuries committed against a fellow citizen. Based on this Peace, the question was asked whether the rule laid down in the statutes of Norcia which punished the local murderer of a fellow citizen with death – while the murderer of a foreigner incurred only a pecuniary penalty – should apply to the offender. As he pondered the issue, Barigianis wondered whether the Peace could be held to be still in force after the (temporary) end of the Varanos' lordship of Camerino in October 1434. His *consilium* has never been studied, and so far knowledge of papal intervention in the war between the Varanos and Norcia has, with very few exceptions, been limited to the truce of 1419 (published by Augustin Theiner in his *Codex diplomaticus domini temporalis Sanctae Sedis*). This paper is an attempt to explore the case and its implications regarding political interactions between territories belonging to the papal lands and legal doctrines on the continuity of the rights and obligations arising from peace in case of regime change. It begins with an overview of the Varanos' lordship over Camerino (§ 1), which aims to contextualise the reference to Rodolfo III and his sons (rather than the city of Camerino) as parties to the peace in the papal letters establishing the 1419 truce and the 1421 Peace, and to provide the necessary background to Barigianis' discussion of the Peace. The paper then goes on to offer some insights into the war between the Varanos and Norcia that broke out in early August 1418 and into the action taken by the papacy to bring the parties to peace, drawing on an analysis of four papal letters (three of which are unpublished) (§ 2). Finally, the focus shifts to Barigianis' *consilium*, with an illustration of the arguments deployed by the jurist in support of his thesis that, after the Varanos' fall, the citizens of Camerino no longer benefitted from the Peace provisions (§ 3). The texts of the four papal letters and of Barigianis' *consilium* are published in the Appendix.

### 1. *The Varanos' lordship over Camerino up to the Peace with Norcia (1421)*

In the late Middle Ages, Camerino was one of the major urban centres of the March of Ancona. When it was still part of the imperial lands, the region

was known as the March of Camerino, and the so-called *Constitutiones Aegidianae* of 1357 classified the city among the five *civitates maiores* in the March, together with Ancona, Fermo, Ascoli and Urbino<sup>2</sup>. Organised as a commune in the mid twelfth century, Camerino submitted to the papacy in 1199. The presence of consuls and a *podestà* is attested in documents from 1198 and 1201, respectively, and for a long time these institutions coexisted. Reference to the *capitano del popolo* is found in 1259, another to the *capitani delle arti* in 1285, and a document from 1305 mentions – alongside the *capitani* – the *nove sapienti della guerra*, who represented the societies of arms (*societates armorum*) established for the defence and protection of the guilds<sup>3</sup>. The Varanos were part of the urban aristocracy of Camerino and held important municipal posts in the town as early as the thirteenth century<sup>4</sup>. Gentile da Varano (later called Gentile I) led the community

<sup>2</sup> P.L. Falaschi, *Berardo I da Varano signore di Camerino*, in *Camerino e il suo territorio fino al tramonto della signoria* (Studi Maceratesi 18), Macerata 1983, p. 9-76: 21-22; F. Pirani, “*Multa notabilissima castra*”: i centri minori delle Marche, in F. Lattanzio and G.M. Varanini (eds), *I centri minori nel tardo Medioevo. Cambiamento sociale, crescita economica, processi di ristrutturazione (secoli XIII-XVI)*, Florence 2018, p. 259-285; and, on the *Constitutiones Aegidianae*, P. Sella, *Costituzioni egidiane dell'anno MCCCLVII*, Milan 1912, lib. II, rub. 37, p. 121. Ancona, Ascoli, Camerino, Fermo and Urbino are also called ‘terre maiores’ in Alborno’s *Descriptio Marchiae Anconitanae* of 1362-1367 (see E. Saracco Previdi, *Descriptio Marchiae Anconitanae*, 2nd ed., Spoleto 2010, p. 53-54), and Grimoard’s *Praecepta* of 1371 say of Camerino that ‘[i]nsignis et pulcra civitas est cum magno comitatu [...] Magnum membrum est dicta civitas in Marchia’ (A. Theiner, *Codex diplomaticus domini temporalis S. Sedis*, 3 tomes, Rome 1862, t. II, n. 527, p. 536b). On the Papal State in the late Middle Ages, see D. Waley, *The Papal State in the thirteenth century*, London 1961; P. Partner, *The Papal State under Martin V. The administration and government of the temporal power in the early fifteenth century*, London 1958; Id., *The Lands of St Peter. The Papal State in the Middle Ages and the Early Renaissance*, Rome and London 1972; and S. Carocci, *Vassalli del papa. Potere pontificio, aristocrazie e città nello Stato della Chiesa (XII-XV sec.)*, Rome 2010, with further references.

<sup>3</sup> A. Bonfili, *Il Comune di Camerino: costituzione e vicende fino al 1240*, in *La città medievale nella Marca. Problemi di storia e urbanistica* (Studi Maceratesi 7), Macerata 1973, p. 57-72; F. Ciapparoni, *Introduzione*, in Id., *Statuta communis et populi civitatis Camerini (1424)*, Naples 1977, p. I-XLVIII; and I. Biondi, *Introduzione*, in Ead. (ed.), *Il libro rosso del comune di Camerino*, Spoleto 2014, p. XXV-XXX and LVII.

<sup>4</sup> While historiography traditionally attributed feudal origins to the family, Jean-Baptiste Delzant has recently argued that, although the Varanos did occupy the two villages of Varano, they always belonged to the urban aristocracy of Camerino: see J.-B. Delzant, *Varano, Gentile II da*, in *Dizionario biografico degli italiani* (2020), available at <https://www.treccani.it/biografico> (henceforth *DBI*). On the offices held by the Varanos in the thirteenth century, see *ibid.* and I. Biondi, *Introduzione*, p. XLIV, XLVI and LXI. P.L. Falaschi, *Berardo I*, p. 16 and 18 inferred from the offices held by Rodolfo and his son Gentile (I) da Varano that they must have studied law. He also pointed out that the *Summa de feudis* which is today attributed to Johannes Fasolus de Pisis was dedicated to Gentile.

of Camerino in the reconquest and reconstruction of the city after its destruction by Manfredi's army in August 1259<sup>5</sup>. He was appointed *capitano*, with extensive civil and military powers, and later held the office of *podestà* several times. In the subsequent decades, he and various members of his family held similar positions in some towns of the March of Ancona and the Duchy of Spoleto, and also in Florence and Bologna<sup>6</sup>.

The city of Camerino began to acquire control over the territories around it some time before the Varanos extended their influence over the local institutions. A famous example concerns the privilege granted by Sinibaldo Fieschi on 27 January 1240: in addition to important jurisdictional and fiscal concessions, the rector of the March – who had taken refuge in Camerino during the invasion of the region by Enzo (son of Frederick II) – recognised the city's jurisdiction over a series of fortified places. The privilege, confirmed by Gregory IX and (on numerous occasions) by Fieschi himself after becoming pope as Innocent IV, was later the subject of a dispute with Spoleto, which claimed that some of these fortified places belonged to the territory of the Duchy: Bartolus de Sassoferrato was called upon to draw up a *consilium* on the matter, subsequently Gil Albornoz issued another confirmation in favour of Camerino in 1353<sup>7</sup>.

In the second half of the thirteenth century, the city's dominion continued to expand under the Varanos, at times sparking tensions with the provincial Curia or the papacy<sup>8</sup>. Despite such tensions, however, the family situated itself

<sup>5</sup> S. Corradini, *Gli Svevi ed il triste epilogo della politica del comune di Camerino*, in *Le Marche nei secoli XII e XIII. Problemi e ricerche* (Studi Maceratesi 6), Macerata 1972, p. 215-227.

<sup>6</sup> P.L. Falaschi, *Berardo I*. On the Varano family, see also M.T. Guerra Medici, *Famiglia e potere in una signoria dell'Italia centrale. I Varano di Camerino*, Camerino 2002 and, for a family tree, A. Meriggi, *Honorabilibus amicis nostris carissimis. Lettere inedite dei Da Varano di Camerino al Comune di Montecchio (Treia) (1381-1426)*, Camerino 1996, p. 21.

<sup>7</sup> P.L. Falaschi, *Il consilium CXCVI di Bartolo da Sassoferrato*, in 'Annali della Facoltà giuridica di Camerino', XXXIII (1967), p. 167-200, who on p. 168, note 6 lists the places included in Fieschi's privilege. See also I. Biondi, *Introduzione*, p. XIII-XVII and XXXVI-XL. Further submissions of surrounding fortified places in the years following Fieschi's privilege are mentioned *ivi*, p. XLI-XLIII.

<sup>8</sup> See I. Biondi, *Introduzione*, p. LVI-LV for the interdict placed by Nicholas V on the city in 1289 (and removed the following year) and for the trial at the end of the thirteenth century in which Camerino and Matelica disputed the possession of the castle of Santa Maria in Monte (conquered by the former in 1282). Another moment of tension occurred in the early 1320s, with the founding of the diocese of Macerata, which resulted in the dioceses of Camerino and Fermo losing territories. The disagreements between Camerino and the provincial Curia – which Cynus de Pistorio came to the city during the spring of 1321 to endeavour to resolve, as prime collaborator and collateral judge of Amélie de Lautrec, rector of the March – led to an interdict laid on the entire diocese and the beginning of a trial against Berardo da

in the Guelph camp. Their allegiance emerges clearly from the enquiry into the political situation in the March of Ancona conducted in June 1341 by the legate Jean Dalpérier on the orders of Benedict XII and known as the *Informatio status Marchiae Anconitanae*<sup>9</sup>. The cousins Gentile II and Giovanni da Varano with their descendants are listed by their adversaries among the local tyrants and are said to rule over Camerino, San Ginesio and other *castra* or *terrae* which in principle were directly subject to the Church. A reply to these accusations is included in a written testimony presented by the two cousins highlighting the political instability of the area, which was ravaged by the struggles between the Guelphs and the Ghibellines. Linking the latter factions explicitly to the *pars Ecclesiae* and the *pars Imperii*, this testimony describes the Ghibelline lordships as being motivated solely by greed for power, while their Guelph counterparts are said to be ruled by *fideles* or *fidelissimi* of the Church and to strive to preserve the rights of the papacy<sup>10</sup>. With a cunning preterition, the two cousins profess to say nothing about their rule over Camerino and the other lands (*quia laus propria in proprio honore sordescit*), but do not fail to emphasise their long-standing loyalty to the Church. This commitment is also evident in the family's regular military support

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Varano and other rebels: see P.L. Falaschi, *Ut vidimus in Marchia*. *Divagazioni su Cino da Pistoia e il suo soggiorno nelle Marche*, Naples 1987. Further episodes are mentioned in J.-B. Delzant, *Varano, Gentile II da*, and Id., *Varano, Rodolfo II da* (2021), in *DBI*.

<sup>9</sup> F. Pirani, *L'inchiesta legatizia del 1341 sulle condizioni politiche della Marca*, Ancona 1999, electronic edition available at <http://www.rm.unina.it/iper/informatio/pagine/presentaz.htm> (Pirani points out that the document includes thirty-eight depositions, given by a total of sixty-six witnesses). The middle decades of the fourteenth century saw the rise of various *signorie*, as families succeeded in making their power dynastic (the Chiavellis in Fabriano, the Varanos in Camerino, the Smeduccis in San Severino, the Cimas in Cingoli, the Ottonis in Matelica), see F. Pirani, *Statuti cittadini e regimi signorili nella Marca di Ancona fra Tre e Quattrocento*, in P. Maffei-G.M. Varanini (eds), *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri*, 2, *Gli universi particolari. Città e territori dal medioevo all'età moderna*, Florence 2014, p. 119-131: 122-123. On the political and institutional characteristics of the *signorie* in the March of Ancona, see J.-C. Maire Vigueur, *Comuni e signorie nelle province dello Stato della Chiesa*, in Id. (ed.), *Signorie cittadine nell'Italia comunale*, Rome 2013, p. 105-172.

<sup>10</sup> With regard to the Malatestas, who held Pesaro, Fano and Frosinone, the Varanos say that they dominated 'in illis terris non in contrarium Ecclesie, sed pro conservatione fidelium et amicorum'. According to fourteenth-century legal scholars such as Bartolus de Sassoferrato, Albericus de Rosciate and Baldus de Ubaldis, the names of the Guelphs and Ghibellines simply represented opposite factions striving for power, with no ideological ties to the interests of either empire or Church: see P. Costa, *Bonum commune e partialitates: il problema del conflitto nella cultura politico-giuridica medievale*, in *Il bene comune: forme di governo e gerarchie sociali nel Basso Medioevo*, Spoleto 2012, p. 193-216, with further references. See also P. Grillo, *La falsa inimicizia: Guelfi e Ghibellini nell'Italia del Duecento*, Rome 2018.

for the papacy<sup>11</sup>. However, despite the de facto authority they exercised over Camerino by means of their military power and network of alliances and patronage, the Varanos' influence did not entirely dominate the communal institutions. For example, in 1345 the city completed the *Libro rosso*, a compilation of the documents and privileges that had ordered the life of the commune since the early thirteenth century, defining its autonomy, establishing its rights over dependent territories and regulating its relations with the outside world. The papacy also considered the commune, not the Varanos, to be its legitimate interlocutor: in 1346 and 1349 Clement VI sent his emissaries to the city and recommended them to the local officials<sup>12</sup>.

During the two Italian legations of Gil Albornoz, the Varanos further consolidated their dominions, which grew as a hotchpotch of lordships the nature of whose authority varied in legal terms<sup>13</sup>. Apart from some brief episodes, they managed to maintain good relations with the Church: on 8 December 1354 Rodolfo II swore allegiance to it in the presence of Albornoz<sup>14</sup>; on 17 March 1355 the Cardinal appointed Rodolfo as captain of the papal army in the March of Ancona (*vexillifer Ecclesiae Romanae in Marchia Anconitana*)<sup>15</sup>; and on 9 November of the same year he granted him Tolentino and San Ginesio in fief for twelve years (although in fact the Varanos were able to perpetuate their rule over these territories)<sup>16</sup>. No specific recognition, however, was given to their rule over

<sup>11</sup> On the activity of the Varanos as *condottieri*, see J.E. Law, *The Da Varano Lords of Camerino as Condottiere Princes*, in J. France (ed.), *Mercenaries and Paid Men. The Mercenary Identity in the Middle Ages*, Leiden and Boston 2008, p. 89-103.

<sup>12</sup> J.-B. Delzant, *Varano, Gentile II da*.

<sup>13</sup> J.E. Law, *The Da Varano*, p. 91. Albornoz' policy towards local lords, and in particular his recourse to the apostolic vicariate, has been debated: see P. Colliva, *Il Cardinale Albornoz, lo Stato della Chiesa, le "Constitutiones Aegidianae" (1353-1357)*, Bologna 1977 and A. Jamme, *De la République dans la monarchie? Genèse et développements diplomatiques de la contractualité dans l'État pontifical (fin XII<sup>e</sup>-début XVI<sup>e</sup> siècle)*, in F. Foronda (ed.), *Avant le contrat social. Le contrat politique dans l'Occident médiéval, XIII<sup>e</sup>-XV<sup>e</sup> siècle*, Paris 2011, p. 37-79, with further references. More broadly, on imperial and apostolic vicariates, see G. De Vergottini, *Ricerche sulle origini del vicariato apostolico* (1939), in Id., *Scritti di storia del diritto italiano*, ed. G. Rossi, 3 tomes, Milan 1977, t. II, p. 535-584; Id., *Note per la storia del vicariato apostolico durante il secolo XIV* (1939), *ivi*, p. 585-612; P.L. Falaschi, *Intorno al vicariato apostolico 'in temporalibus'*, in D. Maffei et al. (eds), *A Ennio Cortese*, 3 tomes, Rome 2001, t. II, p. 1-26; and A. Zorzi, *Ripensando i vicariati imperiali e apostolici*, in P. Grillo (ed.), *Signorie italiane e modelli monarchici (secoli XIII-XIV)*, Rome 2013, p. 19-43.

<sup>14</sup> E. Saracco Previdi, *Descriptio Marchiae Anconitanae*, p. LII.

<sup>15</sup> A. Theiner, *Codex*, t. II, n. 297, p. 288b-289a.

<sup>16</sup> E. Saracco Previdi, *Descriptio Marchiae Anconitanae*, p. LIII and M.T. Guerra Medici, *Famiglia e potere*, p. 12. See also P.L. Falaschi, *Intorno al vicariato*, p. 18, who cites a document entitled *Memoria di cose appartenenti alla Reverenda Camera Apostolica con altri particolari et utili e curiosi, cavato*

Camerino. The proem of the reformed statutes of 1355 does not suggest that the Varanos had any formal role in the commune, and Albornoz' *Descriptio Marchiae Anconitanae* (drafted between 22 December 1362 and 23 August 1367) states that Rodolfo and his brothers held Camerino 'with no title, tyrannically'<sup>17</sup>. The *Praecepta* compiled in 1371 by the papal legate in Italy Anglic de Grimoard, brother of Urban V, also refer to a merely de facto authority: they describe Camerino as formally governed by the commune, but with the Varanos acting as 'rectors' and doing 'what they want' with the city<sup>18</sup>. The four brothers – Rodolfo II, Giovanni, Venanzio and Gentile III – paid the tax (*tallia*) imposed on the city, participated in the provincial parliament and provided the Church with military service: 'in other words, they fulfilled the duties imposed by the Apostolic See on the cities that were directly subject to it, thus arrogating the representation of the commune'<sup>19</sup>. At the time, the brothers' rule over Camerino was a family lordship, in which power was shared between them. This

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*et rescritto da un libro intitolato 'De domo regia Francorum' scritto a mano in 16 che era di cartapeccora di carattere bello fatto circa l'anno MCCCCVI, found in ms. Vatican Library, Barb. lat. 2441; on f. 23v reference is made to a grant Albornoz gave to Rodolfo II on 1 May 1360, including 'potestaria, custodia et regimen' over other lands in the March of Ancona ('[...] potestariam, custodiam et regimen Sernani, Pontis, Montis Melonis, Belfortis et Staffuli'), limited to the duration of the Cardinal's legation and subject to the pope's approval. Podestaria means the authority to appoint a *podestà*. Some of the lands mentioned in the document, however, are among those said to be illegitimately occupied by the Varanos in Albornoz' *Descriptio* of 1362-1367: see *infra*, note 17.*

<sup>17</sup> For proem of the reformed statutes, see C. Lillii, *Dell'istoria di Camerino. Parte seconda*, [Macerata] [1652], p. 119 and J.-B. Delzant, *Varano, Rodolfo II da*. For Albornoz' *Descriptio*, see E. Saracco Previdi, *Descriptio Marchiae Anconitanae*: the text distinguishes between 'civitates and terre que tenentur sine titulo tirampnice' (p. 38, where 'Civitas Camerini et totus comitatus, Castrum Penne Sancti Iohannis, Castrum Sernani' and 'Castrum Bellifortis' are said to be held 'per dominum Radulfum [!] de Camereno et fratres') and 'terre et civitates que tenentur sub titulo et vicariatu pro sancta Romana Ecclesia' (p. 38-39, where 'Tolentinum, Sanctus Genesius et Castrum Manardi' are said to be held 'per Rodulfum de Camereno'). According to the *Descriptio*, Camerino controlled sixty-one *castra* and seventy-one *villae* (p. 2-8 'Civitas Camerini habet castra infrascripta et villas et sunt hec') and occupied another eight *castra* in the March (p. 36-37: 'Infrascripta sunt castra Romane Ecclesie in provincia Marchia Anconitane que detinentu occupata per Camerinenses'; see also p. 59). Eight *rochae* in the countryside of Camerino were also held by the Varanos, see *ivi*, p. 44.

<sup>18</sup> A. Theiner, *Codex*, t. II, n. 527, p. 527a-539a: 536b: 'Item civitas Camerinensis regitur per Commune illius civitatis [...] et licet regatur per Commune, tamen dominus Rodolphus et sui fratres merentur pocius dici Rectores quam Commune, et de ipsa faciunt prout placet, solvunt talliam et veniunt ad parlamentum et ad exercitus et cavalcatas'.

<sup>19</sup> P.L. Falaschi, *Intorno al vicariato*, p. 20. See also Id., *Berardo I da Varano*, p. 73-75. The *tallia* was 'una tassa di natura prettamente militare', E. Saracco Previdi, *Descriptio Marchiae Anconitanae*, p. LXXVII.



continued in later decades, while other territories were divided between brothers and cousins, and although – as observed by Grimoard in 1371 – intrafamily relationships were not always good<sup>20</sup>.

The years immediately following the *Praecepta* saw the legitimation of the Varanos' rule over Camerino with the grant of an apostolic vicariate *in temporalibus*<sup>21</sup>. We do not possess the actual grant, and therefore know neither the conditions nor the duration of the vicarial title, but in three letters, the first two dated 19 August 1373 and the third dated 1 October 1375, Gregory XI addressed Rodolfo II as *vicarius in temporalibus* of the city of Camerino<sup>22</sup>. Another document of August 1375 – from the *rotuli receptorum et expensarum* of the

<sup>20</sup> A. Theiner, *Codex*, t. II, n. 527, p. 537a: 'Sunt quatuor fratres milites [...]: non sunt bene concordés, et propterea civitas Camerinensis patitur in multis'. For other testimonies and examples of strained relationships within the family, see J.-B. Delzant, *Varano, Gentile (III) da*, in *Repertorio delle esperienze signorili cittadine in Italia*, <http://www.italiacomunale.org/resci/individui/varano-gentile-iii-da/> and *infra* in the text. On the Varanos' family lordship, see J. Guiraud, *L'État pontifical après le Grand Schisme. Étude de géographie politique*, Paris 1896, p. 199; A. Meriggi, *Honorabilibus amicis*, p. 23; M.T. Guerra Medici, *Famiglia e potere*, p. 10-11; J.-B. Delzant, *Varano, Rodolfo II da*; and Id., *Varano, Rodolfo III da* (2020), in *DBI*.

<sup>21</sup> On a vicariate that Louis the Bavarian may have granted to the Varanos (and to other families in the March of Ancona) in 1342, according to information reported by Blondus Flavius and corrected by Giovanni De Vergottini, see G. De Vergottini, *Ricerche sulle origini del vicariato apostolico*, p. 542-550 and P.L. Falaschi, *Intorno al vicariato*, p. 12-13. See also C. Lili, *Dell'istoria*, p. 85-87, who mentions other sources according to which Gentile II received a vicariate from Louis the Bavarian, and adds that Leo X's bull of 1515 granting the ducal title to Giovanni Maria da Varano refers to a vicariate previously granted by Clement VI. Although this bull is the only evidence of an apostolic vicariate accorded to Gentile II, G. De Rosa, *Qualche nota sui vicariati dei Da Varano*, in *Camerino e il suo territorio*, p. 77-109: 81-82 argued in support of this hypothesis. It must be remembered that, with the exception of Lili, historiography traditionally excluded the grant of an apostolic vicariate over Camerino before the mid fifteenth century: see J. Guiraud, *L'État pontifical*, p. 202 and P. Partner, *The Papal State*, p. 47. The issue, however, has come under new scrutiny since the publication of Fabrizio Ciapparoni's introduction to his edition of statutes of Camerino of 1424: see *infra*, in the text.

<sup>22</sup> For the first two letters, see Vatican Archives, Reg. Vat. 269, f. 343r-344r and G. Mollat, *Lettres secrètes et curiales du pape Grégoire XI (1370-1378) intéressantes les pays autres que la France*, Premier fascicule, Paris 1962, n. 2082 and 2081, p. 289: the first *inscriptio* reads 'Dilecto filio nobili viro Rodolfo de Varena [!] militi Camerinensi in civitate nostra Camerinensi pro nobis et ecclesia Romana in temporalibus vicario' and the second 'Dilecto filio nobili viro Rodolfo de Varena [!] militi in civitate nostra Camerinensi pro nobis et ecclesia Romana in temporalibus vicario'. For the third letter, see Vatican Archives, Reg. Vat. 271, f. 237r and G. Mollat, *Lettres secrètes et curiales du pape Grégoire XI (1370-1378) intéressantes les pays autres que la France*, Deuxième fascicule, Paris 1963, n. 3496, p. 151: 'Dilecto filio nobili viro Rodolpho de Camerino militi in civitate Camerina pro nobis et ecclesia Romana vicario'. I owe these references to Jean-Baptiste Delzant.

Apostolic Chamber – attests that Gentile, brother of Rodolfo, paid the tribute (*census*) he owed as ‘vicar’ of the city and district of Camerino, as well as other territories, without specifying whether the office was shared by Gentile and his brothers<sup>23</sup>. Admittedly, no other document of the time (including the papal letter of 29 January 1377 authorising the establishment of a *Studium generale*) refers to this title, but there is no doubt that the Varanos’ position in Camerino strengthened significantly in those years<sup>24</sup>.

The outbreak, first, of the War of the Eight Saints between a coalition of Italian cities led by Florence and the papacy (1375-1378) and, shortly afterwards, of the Western Schism (1378) ushered in a new period of disorder in the papal lands. Oscillating between allegiance to Rome and Avignon, different members of the Varano family supported one or the other pontiff, maintaining contacts with both<sup>25</sup>. The political and military situation favoured attempts at territorial expansion, and the Varanos took advantage of it. Although Gentile and his son Rodolfo had pledged loyalty to Urban VI in December 1388, on 16 July 1389 the pope wrote to the vicar general in the March of Ancona to ask that John XXII’s constitutions which condemned to excommunication those who occupied the territories of the Church and placed these territories under interdict be applied to them. Having taken various lands in the March of Ancona (including Camerino) and in the Duchy of Spoleto (Cerreto and Montesanto), the two Varanos were to be deprived of any privilege, honour, office

<sup>23</sup> See F. Ciapparoni, *Introduzione*, p. XIX, who quotes from the Vatican Archives, Instrumenta miscellanea 2877: ‘Item a domino Gentili de Camerino milite vicario civitatis et districtus de Camerino et aliarum terrarum in instrumento concessionis eidem per sedem apostolicam facte contentarum pro domino nostro papa et ecclesia romana in deductionem census quem facit singulis annis CL florenos camerae...’. See also J.-B. Delzant, *Varano, Gentile (III) da*. The *census* was ‘un tributo dovuto per il possesso di diritti prediali e di proprietà fondiaria’, E. Saracco Previdi, *Descriptio Marchiae Anconitanae*, p. LXXII. The notion of *districtus* encompassed the entire territory under a city’s jurisdiction: see C. Danusso, *Ricerche sulla ‘Lectura feudorum’ di Baldo degli Ubaldi*, Milan 1991, p. 125-126, note 175 and R. Cordella, *Inquadramento*, in Id. (ed.), *Statuti di Norcia. Testo volgare a stampa del 1526*, Perugia 2011, p. XXVII.

<sup>24</sup> P.L. Falaschi, ‘*Studium generale vigeat*’. *Alle origini della Università di Camerino*, Camerino 2000, with the edition of Gregory XI’s letter (not a breve) on p. 87-89 and reproductions from Vatican Archives, Reg. Aven. 201, t. XXIX, f. 29r on p. 90 and 92. This letter is addressed to the commune and people of Camerino and refers to Gentile (who solicited the grant) without mentioning a vicarial title.

<sup>25</sup> P.L. Falaschi, ‘*Studium generale vigeat*’, p. 95-100 (on Rodolfo II’s role as captain of the Florentine troops before switching to the papal side in 1377) and 111-116 (on Rodolfo II’s involvement in the election of Clement VII and on the good relations between the Varanos and the Avignon papacy); J.-B. Delzant, *Varano, Rodolfo II da*; Id., *Varano, Gentile (III) da*; and Id., *Varano, Rodolfo III da*.

or jurisdiction they had obtained from the Church<sup>26</sup>. Then, on 17 March 1390, after again pledging allegiance to the Church, they were pardoned<sup>27</sup>. Further documents, issued in the following years, attest the legitimation of the Varanos' possessions: a letter by Boniface IX, dated 6 April 1392, mentions Gentile III as papal vicar *in temporalibus* of Camerino<sup>28</sup>, and on 18 October 1396 the same pope granted Gentile III and his sons Rodolfo, Gentilpandolfo and Berardo various territories in the March of Ancona (without mention of Camerino, however) and in the Duchy of Spoleto (Montesanto, Cerreto and Visso)<sup>29</sup>. After Gentile III's death (1399), Innocent VII granted another seven-year vicariate over various territories in the March (again, without mention of Camerino) and the same three *castra* in the Duchy to Rodolfo III and his sons Gentilpandolfo, Berardo, Piergentile, Venanzio and Giovanni, in August 1405<sup>30</sup>.

In the early fifteenth century, the Varanos were allied with Ladislas of Durazzo<sup>31</sup>. The king of Naples adopted an aggressive policy towards the *terrae Ecclesiae*, which became the target of his expansionist ambitions after he had been forced to renounce to the Hungarian throne. In October 1404, Ladislas entered Rome and compelled Innocent VII into a humiliating agreement: the pope had to pledge to end the Schism, Ladislas was to be arbiter in papal disputes with the commune of Rome and, furthermore, to be given wide-ranging powers in the southern provinces of the papal lands. Subsequently, Ladislas occupied large territories in the March of Ancona, the Duchy of Spoleto and the Patrimony of

<sup>26</sup> A. Theiner, *Codex*, t. II, n. 648, p. 612b-613a and *ivi*, n. 655, p. 620a-621a. The Varanos had already controlled Cerreto and Montesanto (and Visso) in the Duchy of Spoleto at various times during the fourteenth century: see A. Fabbi, *Storia dei comuni della Valnerina*, Abeto (Pg) 1976, p. 822-823; G. De Rosa, *Qualche nota sui vicariati*, p. 100-101; and G. Avarucci, *Un frammento di statuto della fine del secolo XIV e Gentile III da Varano*, in 'Annali della Facoltà di Lettere e Filosofia dell'Università di Macerata', XVI (1983), p. 647-668.

<sup>27</sup> I. Biondi (ed.), *Il libro rosso*, n. 98, p. 232-240: among the territories that were returned to the Varanos, Camerino, Visso, Cerreto and Montesanto are mentioned on p. 240.

<sup>28</sup> See Vatican Archives, Reg. Vat. 313, f. 313r. F. Ciapparoni, *Introduzione*, p. XIX-XX cites this letter but states (incorrectly) that it is a papal breve, found on f. 311r and dated 25 March (possibly a confusion between Ides and Kalends in reading the date 'VIII Id. Aprilis'). I thank Marco Grilli (Vatican Archives) for checking this document for me.

<sup>29</sup> A. Esch, *Bonifaz IX. und der Kirchenstaat*, Tübingen 1969, p. 601.

<sup>30</sup> P. Pirri, *La Guàita d'Ussita dall'origine del Castello ai giorni nostri*, in 'Atti e Memorie della R. Deputazione di Storia patria per le Marche', III serie, I (1) (1916), p. 67-133: 107-108.

<sup>31</sup> F. Ciapparoni, *Introduzione*, p. XIV and J.-B. Delzant, *Varano, Rodolfo (III) da*, in *Repertorio delle esperienze signorili cittadine in Italia*, <http://www.italiacomunale.org/resci/individui/varano-rodolfo-iii-da/>.

St Peter in Tuscia, before again entering and plundering Rome in 1413. Only his sudden death in 1414 put an end to his dire threats to papal authority<sup>32</sup>.

It was in this context that some new regulations, which their editor Fabrizio Ciapparoni dates between 1406 and 1414, were enacted in Camerino; we do not know if they were part of an organic reform of local statutes or specific provisions adopted during an emergency<sup>33</sup>. The surviving text reveals the influence of Ladislas in the papal territories, stating that the commune shall remain steadfast in its allegiance to the Holy See and King Ladislas<sup>34</sup>. To maintain peace and tranquillity in Camerino and its *contado*, very extensive powers were given to Rodolfo III, who was authorised to derogate all previous laws. Defined as ‘*gubernator comunis et populi Camerini*’, he was entrusted with the *custodia* and *guardia* of the city and had the authority to authorise people to carry arms in its defence<sup>35</sup>. He could impose his decisions on the *podestà* and the *capitano*, who were bound by oath to obey him, and, if those officers refused to comply, was authorised to implement them himself<sup>36</sup>. The inhabitants of Camerino and its district were forbidden under pain of death to establish any society or sect with the Ghibellines, to afford them any assistance, help or advice, or to host them; if the culprit could not be seized, they faced perpetual banishment and the confiscation of their goods<sup>37</sup>. Remarkably, ‘the Ghibellines’ – who were also prohibited from leaving their homes during riots – are defined as anyone who is not on Rodolfo’s side, or anyone whom he has declared as such<sup>38</sup>. While retaining the communal structures, these regulations appear to have sanctioned Rodolfo’s control over the city, an impression confirmed by the fact that in 1406 the Florentine Republic asked him – not the communal magistrates – to confirm Arrigo Salutati (son of Coluccio, who had died that year) in his office of *podestà*<sup>39</sup>.

<sup>32</sup> P. Partner, *The Papal State, ad indicem*; A. Kiesewetter, *Ladislaò d’Angiò Durazzo, re di Sicilia* (2004), in *DBI*.

<sup>33</sup> F. Ciapparoni, *Introduzione*, p. XII-XVI; F. Pirani, *Statuti cittadini e regimi signorili*, p. 130-131; and J.-B. Delzant, *Varano, Rodolfo (III) da*.

<sup>34</sup> Rub. 50, in F. Ciapparoni, *Statuta comunis et populi civitatis Camerini*, p. 324.

<sup>35</sup> Rub. 48, 51, 52, *ivi*, p. 323-325.

<sup>36</sup> Rub. 48, *ivi*, p. 323.

<sup>37</sup> Rub. 50, *ivi*, p. 324.

<sup>38</sup> Rub. 52, *ivi*, p. 325.

<sup>39</sup> D. Marzi, *La Cancelleria della Repubblica fiorentina*, Rocca S. Casciano 1910, p. 150, note 3, and F. Ciapparoni, *Introduzione*, p. XX. Nevertheless, J.-B. Delzant, *Varano, Rodolfo (III) da* observed that the local institutions were still alive, as attested by various sources from between 1407 and 1418 that refer to their activities and to unrest against Rodolfo’s sons. Moreover, a new redaction of the statutes was enacted after Rodolfo III’s death, in 1424, which

After Gregory XII's abdication (1415), the Council of Constance sent two embassies to Italy. One of these, presided over by the Archbishop of Ragusa, was destined to the March of Ancona. In December, the commissioners arrived in Macerata, where Rodolfo III, like other local lords, announced his submission. On 8 February 1416, in Ancona, the commissioners acquitted Rodolfo and his sons Gentilpandolfo, Berardo, Piergentile, Venanzio and Giovanni of the offenses committed against the Church and, in the name of the Council, confirmed the Varanos' legal titles over various family possessions. The document actually distinguishes three different situations: for Camerino, with its *comitatus* and district, and for Morrovalle, it speaks of *gubernatio*. For other lands in the March, and Visso and Cerreto in the Duchy of Spoleto (to which Montesanto is now added), the term *vicariatus* is used. Tolentino and San Ginesio are confirmed as fiefs<sup>40</sup>.

It is difficult to grasp the actual meaning of these distinctions, especially because the conditions of the different grants are not specified. Pier Luigi Falaschi has observed that *gubernator* (and the related *gubernatio*) became usual terms in fifteenth-century papal documents, and sometimes corresponded almost exactly to *vicarius*. Moreover, after the end of the Schism, the ordinary papal representatives in the province – traditionally called rectors – were redennominated as ‘governors’<sup>41</sup>. This suggests that, in using the word *gubernatio* with regard to Camerino, the commissioners did not intend to deprive the Varanos of any prerogatives. Indeed, it seems likely that they simply wanted to confirm previous attributions: except for adding Montesanto to the list of the vicariates, the document expressly confirms grants made by previous pontiffs, including the one by Sinibaldo Fieschi later confirmed by Gregory IX and by Innocent IV himself<sup>42</sup>. This interpretation is supported by a document dated 22 April 1418

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has survived, and been published by F. Ciapparoni, *Statuta comunis et populi civitatis Camerini*. A large lacuna in book I prevents us from fully understanding the role played by the Varanos in the city, although it appears from a document dated 1429 that the city government was held jointly by Rodolfo's four sons ‘ex forma Statutorum et ordinamentorum Comunis civitatis Camerini’, see *ivi*, p. XXIV.

<sup>40</sup> O. Turchi, *De ecclesiae camerinensis pontificibus libri VI*, Rome 1712, Appendix, n. 101, p. CXLIX-CLII (‘in gubernatione’, ‘in vicariatu’, ‘in feudum’). A document preserved in the Archives of the castle of Ussita (which was part of the commune of Visso) dated 28 February 1417 defines Rodolfo III ‘Domin[us] de Camerino et etiam Comunis Terre Vissi pro S. Rom. Ecclesia gubernato[r] Vicari[us] generalis’: P. Pirri, *L'archivio del Castello di Ussita. Notizie ed inventario*, Isola del Liri 1932, p. 36.

<sup>41</sup> P.L. Falaschi, *Intorno al vicariato*, p. 22 and A. Gardi, *Il mutamento di un ruolo. I legati nell'amministrazione interna dello Stato pontificio dal XIV al XVII secolo*, in A. Jamme-O. Poncet (eds), *Offices et papauté (XIV<sup>e</sup>-XVII<sup>e</sup> siècle). Charges, hommes, destins*, Rome 2005, p. 372-437.

<sup>42</sup> O. Turchi, *De ecclesiae camerinensis pontificibus libri VI*, Appendix, n. 101, p. CL.

in which the newly elected pope, Martin V, again confirmed the grants to the Varanos, including the *gubernatio* of Camerino ‘under the same terms and conditions their ancestors had enjoyed before the Schism’<sup>43</sup>. Moreover, explicit references to a ‘vicariate’ over Camerino can be found in later documents. On 26 November 1420, Martin V granted Braccio da Montone the revenues of some vicariates in the March of Ancona, as a payment for the mercenaries hired for the Church; this included the *census* owed by Rodolfo and his sons for the city of Camerino and other lands<sup>44</sup>. And another letter from 1422, which provided for a less onerous payment of the *census*, was addressed to Rodolfo III ‘*in civitate Camerinensi et nonnullis aliis terris et locis [...] in temporalibus vicario generali*’<sup>45</sup>. It is, therefore, evident that the family did not exercise a mere de facto authority over Camerino: they were recognised by the papacy as legitimate rulers in the years up to the 1421 Peace.

## 2. *The war with Norcia and the Peace of 1421*

The seat of a bishopric in Late Antiquity, Norcia became part of the Duchy and the diocese of Spoleto in 679 and, although it no longer enjoyed the status

<sup>43</sup> P. Partner, *The Papal State*, p. 48, note 1 and F. Ciapparoni, *Introduzione*, p. XXII, who both quote from the Vatican Archives, Reg. Vat. 348, f. 60r: after recalling some letters issued by Gregory XI in favour of the Varanos, Martin V says: ‘[...] declaramus nostre intentionis existere quod status ac regimen civitatis, comitatus et districtus predictorum [*sc.* Camerini], quo ad gubernationem, statum, preeminenciam et honores eorum toto tempore vite ipsorum, et quoad idem Rodolphus et eius filii prefati vitam duxerint in humanis, in aliquo non mutantur, sed in eisdem terminis et conditionibus quibus utebantur predecessores eorum ante exortum scisma in ecclesia sancta Dei et gaudebant etiam perseverent’. On the (slight) differences between the 1416 and the 1418 confirmations with regard to the other territories, see G. De Rosa, *Qualche nota sui vicariati*, p. 86. Mentioning the 1418 document, J.E. Law, *The Da Varano*, p. 91 says that the confirmation was made ‘presumably to help secure [Martin V’s] return to Rome’ and adds that ‘the role and obligations of a papal “governor” remain unclear’.

<sup>44</sup> F. Ciapparoni, *Introduzione*, p. XX and A. Theiner, *Codex*, t. III, n. 199, p. 270b: ‘Nomina vero Vicariorum predictorum, ac summe florenorum auri de Camera, quas ratione huiusmodi Vicariatum nobis, ecclesie et Camere predictis pro huiusmodi censibus dare et solvere tenentur, sunt hec, videlicet: [...] Rodolphus de Varano et filii pro censu Civitatis Camerinen-sis, et certarum aliarum Terrarum et locorum florenos mille quadraginta quinque’. A similar document, issued by Innocent VII on 1 April 1406 and granting the same revenues to Paolo Orsini, did not mention a vicariate over Camerino, see A. Theiner, *Codex*, t. III, n. 87, p. 151b: ‘Rodolphus de Varano domicellus Sanctigenesii et nonnullis aliis Terris, Castris et locis provincie Marchie Anconitane Mille [florenos]’. On Braccio da Montone, see the references provided *infra*, note 52.

<sup>45</sup> F. Ciapparoni, *Introduzione*, p. XX-XI, quoting from Vatican Archives, Reg. Vat. 349, f. 198v (new pagination f. 212v).

of *civitas*, it was still considered a *maior libera terra* in a document emitted by the general *curia* of the Duchy in July 1329<sup>46</sup>. The commune was presided over by the consuls (*consoli del popolo*), a collegiate body renewed every two months and responsible for appointing the communal officers, in particular the *podestà* and the *capitano*. Members of the Varano family had held the office of *podestà* in the town since the thirteenth century<sup>47</sup>. In March 1377, Norcia obtained from Gregory XI a *gratia* according to which its territory could not become an apostolic vicariate and was to remain directly subject to the Apostolic See<sup>48</sup>; another grant, in the same year, included Monte San Martino, Cortigno and Rocca Nucilli (between Cortigno and Triponzo)<sup>49</sup>. These acquisitions were among the attempts at territorial expansions in the Valnerina that repeatedly created tensions between Norcia and surrounding communities such as Visso, Cerreto and, especially, Spoleto<sup>50</sup>. In 1378, for example, Norcia occupied Cerreto and acquired other areas situated on the borders of the territories belonging to Spoleto and Camerino. It appears, however, that the city's relations with the Varanos were friendly during this period<sup>51</sup>.

<sup>46</sup> John XII, *Lettres Communes*, n. 50770, consulted in the database 'Ut per litteras apostolicas...' (Brepols), CD-ROM, Release 1 (2001).

<sup>47</sup> F. Patrizi Forti, *Delle memorie storiche di Norcia libri otto*, Norcia 1869 (on the Varanos holding the office of *podestà*, see p. 158 and 171, on the rivalry with Spoleto, see p. 185); J. Guiraud, *L'État pontifical*, p. 186 and 188-190; P. Partner, *The Papal State*, p. 97; R. Cordella, *Inquadramento*, p. XVIII and XLII-XLIII and, on the communal institutions and offices, XXIX-XXXV; I. Ait, *Lo spazio economico dei centri minori dell'Umbria (secoli XIV-XV)*, in F. Lattanzio-G.M. Varanini (eds), *I centri minori*, p. 287-312; F. Lattanzio, *Le relazioni politiche tra Norcia e il governo pontificio nel Quattrocento*, in 'Il capitale culturale', XIX (2019), p. 345-375; Id., *Norcia nello stato pontificio. Istituzioni, relazioni di potere e culture politiche nella Montagna umbra del Quattrocento*, in 'Reti Medievali Rivista', XXII (1) (2021), p. 295-319, available at <http://www.serenana.unina.it/index.php/rm/article/view/8047>.

<sup>48</sup> G. Mollat, *Lettres secrètes et curiales du pape Grégoire XI (1370-1378) intéressent les pays autres que la France*, Troisième fascicule, Paris 1965, n. 3993, p. 43 (dated 5 March 1377, 'III nonas Martii'). P. Santoni, *Un altro liber iurium nell'archivio storico del Comune di Norcia*, in 'Bollettino della Deputazione di Storia patria per l'Umbria', CVII (1-2) (2010), p. 363-381: 370 and 374 seems to cite the same document, but gives the date 7 March 1377.

<sup>49</sup> G. Mollat, *Lettres secrètes et curiales du pape Grégoire XI*, Troisième fascicule, n. 3984, p. 41, and n. 4005, p. 45, and P. Santoni, *Un altro liber iurium*, p. 370 and 373. Monte San Martino was later included in the vicariates granted to the Varanos in 1396 and 1416 (while it is not mentioned in Martin V's letter of 1418).

<sup>50</sup> R. Cordella, *Pontani e Cerretani in epoca sforzesca*, in 'Spoletium', XXV (1983), p. 69-78; Id., *Paci e guerre in Valnerina nel '400*, in 'Spoletium', XXVI/XXVII (1985), p. 78-93; F. Lattanzio, *Il comune di Norcia e i suoi rapporti con il governo pontificio nel secolo XV*, PhD thesis, Florence 2011/2013, p. 208-209.

<sup>51</sup> F. Patrizi Forti, *Delle memorie*, p. 186-189, and P. Santoni, *Un altro liber iurium*, p. 369. On the relations with the Varanos, F. Patrizi Forti, *Delle memorie*, p. 193 says that in 1384 it was

In the 1410s, Braccio da Montone rampaged through the papal lands. A mercenary in the pay of the Church, he had been increasing his power in the March of Ancona since 1407, harrying and occupying towns and fortified places, and extorting substantial sums in return for sparing places from further raids. The Varanos had been his allies since that time, and in 1420 Nicolina, daughter of Rodolfo III, became the *condottiere's* second wife. Braccio managed to establish a large dominion in the territory of the Duchy of Spoleto, and acquired the lordship of Perugia in 1416. In the same year, he was appointed defender of the Church by the Rector of the March, who represented the Council of Constance, and conquered San Severino, Pesaro, Osimo and much of the territory between Fano and Ascoli, before briefly occupying Rome in the summer of 1417<sup>52</sup>. When Martin V was elected, Braccio tried in vain to have the territories he held recognised as vicariates; to this end, he sent an embassy headed by his ally Berardo da Varano, son of Rodolfo III, to the new pope in Constance<sup>53</sup>. Martin V's refusal to grant the vicariate sparked a conflict that was not resolved until 1420, with Florence mediating.

Little is known about the events that led to the war between the Varanos and Norcia in 1418. Braccio, who had already raided the lands of Spoleto and Norcia in May 1417, was in Gubbio on 4 August 1418, on his way back from Lucca<sup>54</sup>. Here he made an agreement with the Varanos to move against Norcia<sup>55</sup>. Rodolfo's sons, Gentilpandolfo, Berardo and Piergentile, willingly agreed to help Braccio in the venture, since Norcia had attacked the countryside around Camerino in the previous March and there were border disputes between Visso (which the Varanos held in vicariate) and Norcia over the

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decided to offer a valuable gift to Rodolfo, 'affine di mantenere non solo, ma eziandio di accrescere le relazioni dell'antica amicizia'.

<sup>52</sup> On Braccio da Montone, see P. Partner, *The Papal State, ad indicem*, and P.L. Falaschi, *Fortebracci, Andrea* (1997), in *DBI*.

<sup>53</sup> P. Partner, *The Papal State*, p. 53, note 4. *Ivi*, p. 59 Partner observes that the Varanos 'steered a very tortuous course between Braccio and the pope, seeking to offend neither one nor the other, and having, in appearance, a great deal of success in this design'. See also J.-B. Delzant, *Varano, Rodolfo (III) da*, and *Id.*, *Varano, Rodolfo III da*.

<sup>54</sup> On the events of 1417, see G.A. Campano, *Braccii Perusini vita et gesta ab anno 1368 usque ad 1424*, ed. R. Valentini (Rerum Italicarum Scriptores XIX/4), Bologna 1929, p. 119. See also R. Valentini, *Braccio da Montone e il comune di Orvieto*, in 'Bollettino della Regia Deputazione di Storia patria per l'Umbria', XXVI (1923), p. 1-199: 48: from Gubbio, Braccio decided to extend the office of the *podestà* of Orvieto on 4 August.

<sup>55</sup> G.A. Campano, *Braccii Perusini vita et gesta*, p. 129, note 2, where Valentini states that 'la scorreria contro Norcia è determinata da mancate corresponsioni di provvigioni'.



possession of some lands and fortified places<sup>56</sup>. A report drawn up in Camerino and dated 12 August confirms that military operations were already underway at that time<sup>57</sup>. Braccio's siege ended within a few weeks, when, on 26 August, two hundred infantrymen that Spoleto had been obliged to send to help him returned to their city<sup>58</sup>. Under the agreement with Norcia, Braccio was paid 14,000 ducats and Rodolfo retained Castel di Monte Precino (today Castelluccio) and 'another castle' in the plain between the mountains of Norcia and Camerino<sup>59</sup>. However, the conflict with the Varanos seems to have continued, as in December the priors of Visso ordered new mobilisations of armed men and in the spring of 1419 they started to guard the mountains again<sup>60</sup>.

Feliciano Patrizi Forti reports that, as soon as the commune of Norcia heard of Martin V's arrival in Italy, it sent him two ambassadors (Giovanni Ranieri and Cristoforo Fusconi) to beg him to intervene and mediate a peace with Rodolfo. Since the pope did not reach Rome until 28 September 1420, the embassy was not sent there but more probably to Mantua. Prospero Colonna was entrusted with the task of getting the parties to agree to a peace<sup>61</sup>. Romano

<sup>56</sup> P. Partner, *The Papal State*, p. 47; R. Cordella, *Vertenze territoriali tra Visso, Camerino e Norcia nei secoli XV-XVI*, in *Ambiente e società pastorale nella montagna maceratese* (Studi Maceratesi 20), Macerata 1987, p. 309-339: 314; and F.M. de' Reguardati, *L'Umbria Ducato di Spoleto e Norcia nel sec. XV. Pagine inedite di storia umbra*, Perugia 1989, p. 20 and 22, note 3.

<sup>57</sup> L. Fumi-E. Lazzareschi, *Il carteggio di Paolo Guinigi (1400-1430)*, Lucca 2007 [or. publ. 1925], p. 421, quoted by Valentini in G.A. Campano, *Braccii Perusini vita et gesta*, p. 129-130, note 2.

<sup>58</sup> *Frammenti degli Annali di Spoleto di Parruccio Zanolini dal 1305 al 1424*, in A. Sansi (ed.), *Documenti storici inediti in sussidio allo studio delle memorie Umbre*, Foligno 1879, p. 147. I owe this reference to Jean-Baptiste Delzant.

<sup>59</sup> G.A. Campano, *Braccii Perusini vita et gesta*, p. 129-130, note 2, where Valentini refers to a letter by Bonfiglio de' Bonfigli to Paolo Guinigi lord of Lucca, dated 28 August, in L. Fumi-E. Lazzareschi, *Il carteggio*, p. 435: 'Ora al presente, signore mio, sapete che Braccio tornò de qua et è stato lui et le bregate del s. Rodolfo supra quello de Norsia, et ora se dice che sono accordati che Norsini denno dare ad Braccio predetto ducati 14 mila in mesi 18 et al s. Rodolfo remane il castello del monte et una altra torre con la metà de tutto il piano et praterie che sono in nel decto piano de la montagnie, che sono tra Norsia e il terreno de Camerino, et essi levati del terreno de Norsia et avia dato ad intendere Braccio che volia andare ad l'Aquila [...]'. See also R. Valentini, *Braccio da Montone*, p. 48; P. Pirri, *La Guàita*, p. 125.

<sup>60</sup> P. Pirri, *La Guàita*, p. 128-129.

<sup>61</sup> F. Patrizi Forti, *Delle memorie*, p. 205-206 (quoting an unspecified document) and P. Pirri, *La Guàita*, p. 128 (who refers to Patrizi Forti). P. Pirri, *L'abbazia di Sant'Eutizio in Val Castoriana presso Norcia e le chiese dipendenti*, Rome 1960, p. 123 – after stating that 'il comune di Norcia era stato sempre, per antica tradizione, partigiano della famiglia dei Colonna; ebbe quindi in questo momento la sorte propizia, giacché proprio il card. Oddo Colonna, già suo protettore, nel sinodo di Costanza si affermò' and was elected the new pope – mentions again the embassy to Martin V quoting from a *Memoriale dato per parte della Comunità di Norcia l'anno 1600 a fine di ottenere il proprio Vescovo* which is preserved in a manuscript volume entitled

Cordella found four papal letters in the Archivio Storico of the commune of Norcia, which attest Martin V's involvement in the dispute<sup>62</sup>. It is noteworthy that none of these letters mentions Braccio da Montone; moreover, the letter of 13 March 1421 (which established peace between the parties) says that the war broke out on 2 August 1418. Prior to Cordella's study, historians referred solely to the letter of 2 June 1419 which ordered that a truce be called – the only document amongst the four to have been edited until now<sup>63</sup>.

The first of these letters is a *littera clausa* dated Florence, 6 March 1419, and directed to the consuls and people of Norcia<sup>64</sup>. The text suggests that Martin V had already intervened, enjoining Berardo da Varano to avoid any hostile act against Norcia and encouraging him to order the return of the goods and animals to the villas and fields whence he had had them taken for fear of enemy attack. Despite repeated injunctions from the pope, however, the inhabitants of Norcia carried out raids against Berardo, capturing men and goods and setting fire to buildings. This led the pope to order Norcia to return all the prisoners, animals and goods they had seized without delay. He also asked them to send someone to him who knew what was really going on, and said that he would ask the same of Berardo, so that he (Martin) could put an end to the conflict.

The three remaining documents were issued in the form of bulls or *litterae solemnes*. In the bull of 2 June 1419, also sent from Florence, Martin V began by lamenting the fact that Rodolfo III and his sons (called the *domicelli* of Camerino) and Norcia, with their respective subjects, allies and adherents, were at

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*Notizia di varie intorne all'antichissima Città di Norcia* 'di proprietà del sig. avv. Gentili' (p. 124, note 27). After leaving Constance on 16 May and Geneva on 3 September, Martin V crossed the Alps and Savoy, passed through Susa and Turin, and arrived in Pavia on 5 October. He stayed one week, then he headed for Milan, which he reached on 18 October, and Mantua, where he arrived on 24 October and stayed until 6 February 1419. Having left for Florence (via Ferrara), he remained in the Tuscan city until 9 September 1420, when he finally headed for Rome. See C. Bianca, *Martino V, papa* (2008), in *DBI*.

<sup>62</sup> R. Cordella, *Vertenze territoriali*, p. 314. The letters are preserved in the Archivio storico del comune di Norcia, Archivio segreto, Cassetto H, documents 429 (H3), 431 (H6), 432 (H5) and 433 (H7) although, after the seismic events of September and October 2016, all the archives of the commune of Norcia have been temporarily transferred to the Sezione di Archivio di Stato of Spoleto. These four documents are edited *infra*, in the Appendix.

<sup>63</sup> For example, P. Partner, *The Papal State*, p. 59 only refers to the 1419 truce. F. Patrizi Forti, *Delle memorie*, p. 206 mentioned a bull dated Rome, 13 March 1420 that established peace: in all probability he saw the bull of 13 March 1421, but gave an incorrect date (and said nothing about its contents). F.M. de' Reguardati, *L'Umbria Ducato di Spoleto e Norcia nel sec. XV*, p. 2 and 26 cites this bull with the date 13 March 1420, while on p. 20 he gives the correct date (13 March 1421). Like Patrizi Forti, he does not analyse the contents of the peace.

<sup>64</sup> See *infra*, Appendix, I.

war, and the ensuing damage<sup>65</sup>. The pope recalled having received envoys from the parties and having deputed Gabriele Condulmer and Branda Castiglioni, both Cardinals presbyters of St Clement in Lateran, to listen to them, examine the matter and report to him<sup>66</sup>. He said that after having pondered the issue, he is declaring a two-year truce, so that in the meantime the parties may conclude a perpetual peace (*'ita quod interim per congrua et accommoda media inter ipsas partes perpetua pacis tranquillitas componatur'*). During this period, neither party shall in any way, or for any cause whatsoever, take legal action against the other, disturb it, make any demands or initiate anything: but each shall keep and possess for the following two years what they now possess, any rights remaining unimpaired. Furthermore, the pope demanded that all prisoners in the hands of the parties or their *stipendiarii*, subjects or adherents be freed within a month and a half without any ransom to be paid. The debts of individuals belonging to the two parties, whatever their origin, can be freely collected during the two-year period following the established procedures. It is further stipulated that offenses which may be caused by individual persons to other persons of the said parties shall not be understood as violations of the truce. On the other hand, should any of the parties act contrary to the terms of the truce during the two-year period, the offended party shall not seek revenge but refer to the pontiff and the Apostolic See, and await their decision. Any violation of the truce shall result in a penalty of 25,000 gold florins de camera, one half of which shall be paid to the Apostolic Chamber and the other to the injured party<sup>67</sup>.

It is to be presumed that in the following months the parties were able to explain their grievances to the papal deputies and that the conditions for peace discussed under the latter's mediation were forwarded to the pope. Peace was established with a bull sent from Rome on 13 March 1421<sup>68</sup>. In it Martin V

<sup>65</sup> This bull was published by A. Theiner, *Codex*, t. III, n. 169, p. 241a-242a based on the copy preserved in the Vatican registers. See *infra*, Appendix, II.

<sup>66</sup> On Gabriele Condulmer, who was appointed Cardinal of St Clement by his uncle Gregory XII in 1408, and then later became pope as Eugenius IV, see C. Eubel, *Hierarchia catholica Medii Aevi*, editio altera, vol. I, Münster 1913, p. 31 and 41 and D. Hay, *Eugenio IV*, in *Enciclopedia dei papi*, Rome 2000, available at [https://www.treccani.it/enciclopedia/eugenio-iv\\_%28Enciclopedia-dei-Papi%29/](https://www.treccani.it/enciclopedia/eugenio-iv_%28Enciclopedia-dei-Papi%29/). On Branda Castiglioni, appointed Cardinal of St Clement by John XXIII in 1411, see C. Eubel, *Hierarchia*, p. 33 and 41 and D. Girgensohn, *Castiglione, Branda da* (1979), in *DBI*.

<sup>67</sup> On the gold florins de camera, see E. Martinori, *Annali della Zecca di Roma. Martino V (11 novembre 1417 – 20 febbraio 1431); Eugenio IV (2 marzo 1425 – 25 gennaio 1447)*, Rome 1918, p. 15-18 and 42.

<sup>68</sup> See *infra*, Appendix, III. It should be observed that Martin V needed Rodolfo's (at least outward) loyalty to maintain papal authority over the territories in the March of Ancona subject to the Varanos' rule. A matrimonial alliance had also been forged: one of Berardo's

again identifies the warring parties (with the Varanos once more termed the *domicelli* of Camerino), laments the damage caused by the war, and recalls the establishment of the two-year truce to favour the conclusion of peace. He also again mentions the envoys sent to him by the parties and the deputies he appointed to hear them: Antonio Correr, Cardinal bishop of Porto-Santa Rufina (who appears to have replaced Gabriele Condulmer at some time after the 1419 truce), and Branda Castiglioni<sup>69</sup>. We then read that, after the envoys had been heard and a report had been made to the pope, and following mature deliberation, Martin V established by apostolic authority a perpetual peace, stipulating the following clauses:

1. All wrongs committed for any reason and in any way by one party against the other, or against individuals or places belonging to it, shall be forgiven, and all civil and criminal actions dependent thereon shall be terminated.

2. All trials held, and sentences and banishments passed, in the cities and districts of the aforesaid parties for any reason or any crime and against any individual or community belonging to the aforesaid parties, shall be annulled<sup>70</sup>.

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sons, Rodolfo Angelo, had married Violante di Gerardo d'Appiano, daughter of Paola Colonna and niece of the pope, in 1420: see J.-B. Delzant, *Varano, Rodolfo III da*.

<sup>69</sup> Antonio Correr, cousin of Condulmer, was appointed Cardinal of San Pietro in Vincoli in 1408 and Cardinal of Porto-Santa Rufina one year later by his uncle Gregory XII: see C. Eubel, *Hierarchia*, p. 31 and 37 and F.-Ch. Uginet, *Correr, Antonio* (1983), in *DBI*.

<sup>70</sup> The letter provides for one specific exception: '[...] exceptis processibus, bannis et condemnationibus factis et datis contra Cataldinum Guanti [!] de Boncompagnis de Visso dicte Spoletane diocesis'. Despite the absence of any title (*dominus, doctor*), this may be the jurist Cataldinus de Boncompagnis de Visso who, according to the sources cited by R. Abbondanza, *Boncompagni, Cataldino* (1969), in *DBI* and L. Böninger, *Die Ritterwürde in Mittelitalien zwischen Mittelalter und Früher Neuzeit. Mit einem Quellenanhang: Päpstliche Ritterernennungen 1417-1464*, Berlin 1995, p. 220, was in fact the son of Bantius de Boncompagnis, and not of the latter's brother Apollonio, as reported by previous authors. E. Basso, *Boncompagni, Cataldino*, in I. Birocchi *et al.* (eds), *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, Bologna 2013, p. 286 also considers Cataldinus the son of Bante, while G. Venditti (ed.), *Archivio Boncompagni Ludovisi. Inventario*, 5 tomes, Rome 2008 still considers him son of Apollonio (*ad indicem*). Doctor *in utroque* from the University of Bologna (1396), in 1402 Cataldinus held the office of papal vicar in Orvieto. Having entered in the service of John XXIII as a crusade preacher in the dioceses of Lyon, Vienne and Besançon, he was excommunicated in 1415 by the Bishop of Thérouanne for failing to give reports on his preaching activity. In 1417 he intervened, along with Rodolfo III, as arbitrator in a dispute between Visso and Ussita. On 7 January 1418, a *mandatum* from Constance ordered the Bishop of Teramo Marino di Tocco to have Cataldinus arrested and his goods confiscated; the matter was resolved in August, as evidenced by a *quietanza* given to the jurist. On 15 March 1420, Queen Joanna II appointed Cataldinus *giustiziere* in the barony of Taverna (Calabria). See L. Böninger, *Die Ritterwürde*, p. 210-211; P. Pirri, *L'umanista Luzio di Leonardo da Visso cancelliere dell'abbate Pirro Tomacelli*, in 'Atti e Memorie della R. Deputazione di Storia patria per le province delle Marche', nuova

3. Nothing which is said in the letter shall derogate from, or impinge upon, the rights that the parties enjoyed before the beginning of the war (indicated as 2 August 1418) over any land.

4. All the rights that belong to Norcia against Cerreto and vice versa shall remain intact and shall be retained by the parties.

5. Any rights acquired or claimed by Rodolfo III, his sons and Cerreto over Castel di Monte Precino (Castelluccio), Torre Nova (between the Pian Grande and the Pian Piccolo) and Rocca Nucilli since the beginning of the war are declared null and void. These territories had probably been occupied by Rodolfo during the war and the clause was therefore intended to restore the *status quo ante*.

6. The subjects and adherents of both parties may freely remain in, depart from or return to the cities and territories of either party.

7. If a person of one party injures by word or deed a person of the other party, they shall be punished with the same penalty as if they had injured a fellow citizen, notwithstanding any statute to the contrary.

8. A procedure is established for the citizens of both parties who need to recover debts arising from commerce or anything else that has nothing to do with the war. The creditor can choose whether to sue the debtor in the place of the latter's domicile or in L'Aquila or Foligno. In order to limit the number of disputes, the pope states that the creditor and debtor must elect two merchants who shall hear the case within one month and decide it according to the merchants' customs; if the dispute is not resolved within this time limit, the creditor may summon the debtor before the ordinary judge, who must decide the dispute within one month. The decision of the merchants or of the ordinary judge of the debtor's place of domicile may be appealed against, before the ordinary judge of L'Aquila or Foligno, who must terminate the appeal or the *reductio ad arbitrium boni viri* within one month<sup>71</sup>. No appeal or *reductio ad arbitrium boni viri* is possible against the decision of the merchants or the ordinary judge of L'Aquila or Foligno. The parties are ordered to execute these decisions within one month: this may be done by capturing the debtors and confiscating and selling their goods at the creditor's request. Furthermore, upon petition of the creditor,

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serie, IX (1913) [printed 1914], p. 9-35: 10; and Id., *La Guàita*, p. 124. The circumstances of the sentences against Cataldinus mentioned in Martin V's bull are unknown.

<sup>71</sup> The *reductio ad arbitrium boni viri* was a form of appeal against the *laudum* issued by an arbitrator. On arbitration, see L. Martone, *Arbiter – Arbitrator. Forme di giustizia privata nell'età del diritto comune*, Naples 1984, T. Kuehn, *Law and arbitration in Renaissance Florence*, in Id., *Law, Family & Women. Toward a Legal Anthropology of Renaissance Italy*, Chicago and London 1991, p. 19-74, and A. Lefebvre-Teillard, *Arbiter, arbitrator seu amicabile compositor*, in 'Revue de l'arbitrage', III (2008), p. 369-387, with further references.

the debtor and their goods located in the Kingdom of Sicily, the March of Ancona, the Duchy of Spoleto, the Patrimony of St Peter in Tuscia or Romagna, or in Tuscany, Venice or other places, can and must be captured and detained by the ordinary judge of the place without exception.

9. A general *restitutio* is established for any goods or contracts that the parties or their subjects had before the beginning of the war in the parties' territories such that the *status quo ante* be restored.

10. Freedom of transit is established for merchandise: whoever transports wine, wheat or other products from the lands subject to Rodolfo through the territory of Norcia, and the men of Norcia who transport such goods through Rodolfo's lands, may do so without the need for any licence from the parties, but shall pay the taxes and tolls in place before the war. If such levies or tolls have been changed or newly introduced since the beginning of the war, such changes shall be considered null and void.

The letter then goes on to state that the Peace shall not be held to be broken if what is laid down therein is violated by individuals, including criminal acts; rather, such individuals shall be punished according to the statutes of the place where the crime was committed. However, the Peace shall be considered broken if at least fifty people of one party are complicit in any crime against the other, if one of the parties – or a community subject to it – invades the lands of the other or has it invaded, or if the lands of one party are besieged or plundered by the other or its subjects, either publicly or covertly.

In the conclusion, the parties are enjoined to observe inviolably the Peace without violation and in no way to go against it, under penalty of 10,000 gold florins de camera, half of which shall go to the Apostolic Chamber, and half to the injured party. The penalty shall be inflicted whenever one of the above breaches of the Peace occurs. However, the party that suffers the breach of peace, no matter how many times this may happen, must never take up arms against the offending party and invade its lands, and must instead notify the pope and the Apostolic See of the breach and await their decision.

The day after the Peace, on 14 March 1421, another bull was sent from Rome<sup>72</sup>. This letter refers to clauses no. 3 and 4 (above) of the Peace, emphasising the pope's concern that should the parties assert these rights, especially in the near future, the results would be extremely negative<sup>73</sup>. To prevent this

<sup>72</sup> See *infra*, Appendix, IV.

<sup>73</sup> '[...] verendum sit plurimum, ne si altera pars contra alteram dicta iura intemptaret aut ipsis quomodolibet uteretur presertim in temporibus proximis, scandala innoventur'. On the canonic roots of the notion of *scandalum* and its large semantic field, see A. Fossier, '*Propter vitandum scandalum*'. *Histoire d'une catégorie juridique (XII<sup>e</sup>-XV<sup>e</sup> siècle)*, in 'Mélanges de l'École française de Rome. Moyen-Âge', CXXI (2) (2009), p. 317-348 and W. Druwé, *Scandalum in*

from happening, the pope ordered ‘*ex certa scientia*’ that neither party (nor its subjects) could enforce such rights against the other (or its subjects), nor could Norcia or Cerreto enforce them against each other, for the next three years<sup>74</sup>. Should such enforcements take place in spite of this prohibition, any judgements pronounced would be null and void. The last part of the letter specified that, during this three-year period, the abovementioned rights should remain intact and unharmed.

The Peace did not succeed in settling the territorial dispute, which was particularly delicate as it involved fortified places on the border between the Duchy of Spoleto and the March of Ancona. Moreover, Martin V’s position was uncomfortably weak for his authority to carry sufficient weight, and the resurgence of tensions at the end of the decade reveals that claims on both sides were still alive. In January 1424, a judgement pronounced by Giovanni da Varano, on behalf of his father Rodolfo III (at the time very ill and close to death), on a dispute between Cerreto and Montesanto attests the authority that his family exercised over those territories<sup>75</sup>. Cerreto, however, passed to Norcia in September 1425, by virtue of a sentence pronounced by Daniele Scoti, Bishop of Novigrad (Croatia), on behalf of Antonio Correr, who was Legate of Perugia, Todi and other territories in the Duchy, in a border dispute between Visso and Norcia<sup>76</sup>. The taking of this possession further aggravated relations between

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*the Early Bolognese Decretistic and in Papal Decretals (Ca. 1140-1234)*, Leuven 2018, with further references.

<sup>74</sup> The clause ‘*ex certa scientia*’ signified the pope’s (or the emperor’s) absolute knowledge of all existing laws and his intention to waive them in new and subsequent laws. See J. Kirshner, ‘Baldo degli Ubaldi’s Contribution to the Rule of Law in Florence’, in C. Frova-M.G. Nico Ottaviani-S. Zucchini (eds), *VI Centenario della morte di Baldo degli Ubaldi 1400-2000*, Perugia 2005, p. 313-364: 339, with further references.

<sup>75</sup> G. Avarucci, *Un frammento di statuto della fine del secolo XIV e Gentile III da Varano*, in ‘Annali della Facoltà di Lettere e Filosofia di Macerata’, XVI (1983), p. 649-668: 652, note 11, who quotes the judgement (dated 20 January 1424): ‘[...] Nos Iohannes Rodulfi de Camereno gubernator et administrator atque protector terre Cerreti Pontis et ipsius terre hominum et castris terre Montissancti et hominum ipsius loci, ex commissione et mandato et delegatione michi verbo facta per magnificum et potentem dominum Rodulfum de Camereno vicarium generalem in temporalibus dictarum terrarum et locorum et hominum ipsius specialiter deputatum per reverendissimum in Christo patrem et dominum dominum Martinum divina providentia papam quintum pro sancta Romana Ecclesia [...]’. See also J.-B. Delzant, *Varano, Berardo da*, in *Repertorio delle esperienze signorili cittadine in Italia*, at <http://www.italiacomunale.org/resci/individui/varano-berardo-da/>.

<sup>76</sup> See R. Cordella, *Vertenze territoriali*, p. 323-326. On Daniele Scoti, see C. Eubel, *Hierarchia*, p. 74 and T. Duranti, *Scoti, Daniele* (2018), in *DBI*. On Antonio Correr, see *supra*, note 69.

Norcia and Spoleto and was the cause of several wars between the two cities. In 1432, Norcia also occupied Montesanto<sup>77</sup>.

However, the case considered by Barigianis in his *consilium* did not concern the possession of territories in the Valnerina, but the application of the rule laid down in the Peace of 13 March, according to which injuries caused to a person who belonged to the other party should be punished in the same way as those caused to a fellow citizen. It is now time to turn to this case and to its discussion by the Perugian jurist.

### 3. *Dionysius de Barigianis' consilium (1434-1435)*

A former pupil of Baldus de Ubaldis', Dionysius de Barigianis is mentioned in Perugian documents as *sapiens et iuris peritus* on 13 August 1389, *legum doctor* on 26 August 1395, and *utriusque iuris doctor* on 2 July 1403. His activity at the University of Perugia is attested (albeit not continuously) from 1391/1392 to 1431; in the years 1415-1417 he taught in Florence. In Perugia he also took on various tasks for the commune: *capitano di parte guelfa* in 1391, three years later he was consulted by the *Consiglio dei Priori* and in 1396 he was commissioned – with five other citizens – to revise part of the local statutory legislation. Ambassador to Boniface IX in 1389, 1399, 1400 and 1403, to Innocent VII in 1404, to Gregory XII in 1408, he was also dispatched to the Duke of Milan in 1400; in 1402 he negotiated Perugia's return to the Papal State, and in 1409 and 1414 he was sent as an envoy to the new city lord, Ladislao of Durazzo. He served as *podestà* of Recanati in 1423 and held important positions at the University of Perugia. His reputation as a learned jurist was high, although, with the exception of a few *consilia*, none of his works were ever printed<sup>78</sup>.

<sup>77</sup> A. Fabbi, *Storia dei comuni*, p. 823-824; G. Avarucci, *Un frammento*, p. 652; Romano Cordella's articles cited *supra*, note 50; and F.M. de' Reguardati, *L'Umbria Ducato di Spoleto e Norcia nel sec. XV*, p. 26-39.

<sup>78</sup> F. Liotta, *Barigiani, Dionigi* (1964), in *DBI*; M. Semeraro, *Dionigi Barigiani*, in I. Birocchi *et al.* (eds), *Dizionario biografico dei giuristi italiani*, p. 771; and especially T. Woelki, *Dionigi Barigiani (1365 ca. – 1435)*, in G. Murano (ed.), *Autographa I.2 Giuristi, giudici e notai (sec. XII-XV)*, Imola 2016, p. 160-164, who draws on the documents collected and presented by E. Bellini, *Comune e Studio a Perugia nel Quattrocento*, PhD thesis, Perugia 2006/2007, p. 326-344. On the circumstances of Barigianis' studies under Baldus, see Th. Diplovatius, *Liber de claris iuris consultis. Pars posterior*, ed. G. Forchielli-A.M. Stickler, in 'Studia Gratiana', X (1968), p. 346: 'Iste fuit discipulus et auditor Baldi de Perusio, ut in suis lecturis et consiliis in pluribus locis ipse refert, ubi dicit se pluries audivisse a Baldo'. Baldus left Perugia for Pavia on 19 February 1390, as attested by a note drafted by his son Francesco: see G. Vallone, *La raccolta Barberini dei "consilia" originali di Baldo*, in 'Rivista di storia del diritto italiano', LXII (1989), p. 75-135: 82. On Barigianis' reputation, in addition to Diplovatius' remarks see also the following



The unpublished *consilium* studied here was written in the last year of Barigianis' life, after the (temporary) fall of the Varanos, in October 1434, and before the jurist's death, occurred between 26 August and 31 October 1435<sup>79</sup>. The text, which includes an autograph subscription and bears the trace of a round seal in red wax, is part of a large collection of legal texts partially preserved in the ms. Ottob. lat. 1249 of the Vatican Library, on f. 131r-132v<sup>80</sup>. Further study is required to discover how this codex was compiled and to determine the criteria that guided its composition. Thomas Izbicki, who analysed the *consilia* by Bartolus de Saxoferrato preserved in the codex, noted that this 'is the second part of a once larger collection', as revealed by the fact that its first stamped folio corresponds to number 379 of a handwritten count. Based on the texts it includes – especially *consilia*, but also tracts, *repetitiones* and *quaestiones* – Izbicki convincingly argued that the manuscript 'reflects the environment of the University of Perugia'. The authors represented in the collection include many renowned jurists (such as Jacobus de Arena, Dynus de Mugello, Cynus de Pistorio, Johannes de Legnano, Baldus, Angelus and Petrus de Ubaldis, Bartholomeus de Saliceto, Paulus de Castro and Cataldinus de Boncompagnis de Visso) together with other, less known, authors (like Rainerius de Monte Ubiano, Giliolus de Cavatellis de Cremona, Benedictus de Magnanis de Aretio, Filippus de Casolis, Johannes de Canemortuo and Ricciardus Francisci del Bene). Marginal notes provide a short summary of most texts and identify the issues they address<sup>81</sup>.

No other copies of this particular *consilium* have been found and nor have any other documents containing details of the case or about the outcome of the proceedings<sup>82</sup>. The text does not indicate whether this opinion was *pro parte* or

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passage by Barigianis' pupil and fellow citizen Ivo de Coppolis, who in a *consilium* calls him 'excellētissimu[s] ac famosissimu[s] in orbe docto[r] pat[er] et precepto[r] meu[s] dominu[s] Dyionisiu[s] de Barisianis de Perusio' (ms. Ravenna, Biblioteca Classense, 485, II, p. 95).

<sup>79</sup> On the date of Barigianis' death, see T. Woelki, *Dionigi Barigiani*, p. 162 and E. Bellini, *Comune*, p. 343-344.

<sup>80</sup> On the autograph subscriptions of *consilia*, see V. Colli, *Autografia e autenticità. La subscriptio sub sigillo nei consilia dei giuristi del Trecento*, in 'Codex Studies', III (2019), p. 3-63. For examples of Barigianis' autograph writing, see T. Woelki, *Dionigi Barigiani*, p. 160-163. On f. 132v, next to the trace of Barigianis' seal, the ms. Ottob. lat. 1249 includes a short text by Baldus de Ubaldis which can also be read (with a different *incipit*) in Johannes Bertachinus, *Repertorium iuris utriusque. Pars prima, opera et labore Do. Ian. Thierry, [Bartholomaeus Fraenus excudebat]*, Lugduni 1552, s.v. 'Collectam', f. 205va-205vb.

<sup>81</sup> T. Izbicki, *The consilia of Bartolus de Saxoferrato in ms Ottob. Lat. 1249*, in P. Maffei-G.M. Varanini (eds), *Honos alit artes. Studi per il settantesimo compleanno di Mario Ascheri*, 1, *La formazione del diritto comune. Giuristi e diritti in Europa (secoli XII-XVIII)*, Florence 2014, p. 65-75: 65-66.

<sup>82</sup> Regarding further copies of the *consilium*, I have checked all the references to manuscripts including works by Barigianis provided by T. Woelki, *Dionigi Barigiani*, p. 164, with the

*pro veritate* (i.e. a genuine *consilium sapientis iudiciale*) and the style of argumentation provides no conclusive evidence either way<sup>83</sup>. One could argue that Barigianis intervened in the dispute on behalf of the accused based on a chapter in the Statutes of Norcia published in 1526 (the oldest surviving version) according to which *consilia sapientium* were forbidden in criminal proceedings – but only if one assumes that this rule was already in force in the fifteenth century<sup>84</sup>. Despite this lack of background information, the general issue at stake can be outlined on the basis of what is said in the *casus*<sup>85</sup>. The event that precipitated the dispute took place in Norcia, where a local citizen killed a *comitatensis* of Camerino. The clause of the 1421 Peace which states (albeit with a different wording) that if someone from Norcia injures a subject of Rodolfo or vice versa, the punishment provided for injuries against a fellow citizen should be applied, was invoked<sup>86</sup>. A statutory law of Norcia was also cited: the penalty for any local

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exception of the mss. Camerino, Biblioteca Comunale Valentiniana, 96, 97 and 98, and Foligno, Biblioteca Lodovico Jacobilli, 123.

<sup>83</sup> On this distinction, and on *consilia* in general, especially in the fourteenth and fifteenth centuries, see M. Ascheri, *Diritto medievale e moderno. Problemi del processo, della cultura e delle fonti giuridiche*, Rimini 1991, p. 181-253; I. Baumgärtner (ed.), *Consilia im späten Mittelalter. Zum historischen Aussagewert einer Quellengattung*, Sigmaringen 1995; M. Ascheri-I. Baumgärtner-J. Kirshner (eds), *Legal Consulting in the Civil Law Tradition*, Berkeley 1999; T. Woelki, *Juristische Consilia im Spätmittelalter zwischen Kommerzialisierung und Rechtsfortbildung*, in C.R. Lange-W.P. Müller-C.K. Neumann (eds), *Islamische und westliche Jurisprudenz des Mittelalters im Vergleich*, Tübingen 2018, p. 199-214; G. Marchetto, *Scienza giuridica quattrecentesca. Itinerari di ricerca*, Foligno 2019, p. 19-36; and P. Mari, *Terzo contributo per la storia della giurisprudenza consiliare. Un consiglio di Sallustio Buonguglielmi*, in *Initium*, XXVI (2021), p. 341-362, with further references.

<sup>84</sup> Except for a few fragments relating to individual rules, no known testimonies of the medieval statutes of Norcia have survived, although their existence is attested from 1257 onwards: R. Cordella, *Inquadramento*, in Id. (ed.), *Statuti di Norcia*, p. XIII, XVI-XXV and XXXV-XLV. See lib. II, cap. 35, *ivi*, p. 224-225: the *rubrica*, on p. 224, l. 25-28, reads ‘De lo officio del iudice et delli notarii delli malefici de misier lu potestà et del consiglio da non darse per ipso iudice, et del modo de le copie da trarse de li acti, et del consiglio del savio da non darse nelle cause criminali’. The text states – on p. 225, l. 25-28 – that ‘non possa alcuno ufficiale commectere alcuna causa criminale o alcuno puncto de causa criminali ad consiglio de alcuno ad pena de libre cento de denari per ciascuno et ciascuna fiata; et ad tal consiglio non se dia fede alcuna’. On *consilia* in civil proceedings, see *ivi*, lib. I, cap. 191 and 192, lib. III, cap. 28, and lib. IV, cap. 1. Rules requiring, authorising or prohibiting the *consilium sapientis iudiciale* in civil or criminal proceedings were common in late medieval statutes: see G. Chiodi, *Scelte normative degli statuti di Spoleto del 1296*, in E. Menestò (ed.), *Gli statuti comunali umbri*, Spoleto 1997, p. 123-305, at 292-296, with further references.

<sup>85</sup> For the edition of the *consilium*, see *infra*, Appendix, V.

<sup>86</sup> Clauses establishing the extension of municipal law to foreigners, or the equating of foreigners with citizens, were common in late medieval treaties: see for some examples K. Neumeyer, *Die gemeinrechtliche Entwicklung des internationalen Privat- und Strafrechts bis Bartolus*, 2.

citizen who ‘injures’ (but likely ‘kills’) a foreigner is one hundred florins, while if the victim is a fellow citizen the culprit is subject to capital punishment. Again, this rule cannot now be found in any redaction of the statutes that were in force at the time, but the vernacular version printed in 1526 includes a chapter that appears to be very close: chapter 47 in book II states that anyone belonging to the territory of Norcia, its countryside or its district who kills someone from the said territory or district, or has them killed, is subject to capital punishment, while if the victim is a foreigner the penalty is one hundred gold ducats<sup>87</sup>. The question tackled by Barigianis was therefore whether the murderer could avoid capital punishment and only suffer the pecuniary penalty provided for the killing of a foreigner.

Before examining the answer to this question, another event mentioned in the *casus* must be considered, namely the rebellion that overthrew the Varanos. Its causes lay in the bitter disagreements that arose between the sons of Rodolfo III after their father’s death, on 3 May 1424. While Rodolfo’s will of 1418 provided that power be divided between them, except for Camerino which was to continue to be governed as a family lordship, the four surviving heirs had subsequently agreed on how to distribute the fifty-six *castra* and the three *terrae* that made up their dominions, and Rodolfo, shortly before his death, had accepted their decision<sup>88</sup>. However, the frictions and rivalries between the brothers worsened in the subsequent years, with Gentilpandolfo and Berardo – the sons of Rodolfo’s first wife Elisabetta Malatesta – aligned against Piergentile and Giovanni – born of Costanza Smeducci. Giovanni was killed by hired assassins in August 1433, while Piergentile, accused of having adulterated papal money, was arrested by Cardinal Giovanni Vitelleschi (the legate of the March, bribed by the Gentilpandolfo and Berardo) and beheaded in Recanati on 6 September<sup>89</sup>. Less than a year later, on 12 July 1434, Berardo was killed at Tolentino, and on a holy day in early October (possibly Sunday 10<sup>th</sup>) a rebellion broke out in Camerino: Gentilpandolfo and Berardo’s sons were assassinated as they entered

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*Die gemeinrechtliche Entwicklung bis zur Mitte des 13. Jahrhunderts*, Munich *et al.* 1916, p. 4-8 and B. Paradisi, *Civitas maxima. Studi di storia del diritto internazionale*, Florence 1974, p. 785, note 283.

<sup>87</sup> R. Cordella (ed.), *Statuti di Norcia*, lib. II, cap. 47, p. 237, l. 23-26 and p. 238, l. 2-5: ‘Item statuimo et ordinamo che lu qualunque della terra de Norsia, contadino o districtuale, occiderà elcuno [*recte* alcuno R.C.] o alcuna della dicta terra de Norsia et suo districtu o farà occidere, sia punito alla pena del capo. [...] Ma se alcuno della terra de Norsia o suo districto occiderà o farà occidere alcuno forestiero sia condemnato in pena de cento ducati d’oro senza altra diminutione’.

<sup>88</sup> J.-B. Delzant, *Varano, Berardo da*, and Id., *Varano, Rodolfo III da*.

<sup>89</sup> P.L. Falaschi, *La signoria di Giulio Cesare da Varano*, in *Camilla Battista da Varano e il suo tempo*, Camerino 1987, p. 15-38: 15-16.

the church of San Domenico to attend mass. Amongst the male members of the family who survived were Rodolfo IV (son of Piergentile) and Giulio Cesare (son of Giovanni). It was not until December 1443 that the two boys returned to Camerino and Elisabetta Malatesta (Rodolfo's mother) regained its lordship on their behalf, putting an end to an almost decade-long republican government<sup>90</sup>. Some contemporary sources claim the 1434 rebellion to have been motivated by the citizens' thirst for liberty; although this explanation may be partly rhetorical, drawing on similar episodes in classic literature, it is certain that such desires were exploited by Francesco Sforza who, as a *condottiere* in the service of Filippo Maria Visconti, Duke of Milan, led a powerful army into the March of Ancona which soon undermined the Varanos' influence in the area and disrupted the regional balance<sup>91</sup>. Once the dust had settled, the citizens of Camerino begged Eugenius IV to welcome them back as subjects of the Apostolic See. In his answer, dated 23 November 1435, the pope reproached them for the massacres and the looting of the properties of the Varanos, the Church and their fellow citizens, revealing that the rebellion had actually turned into civil strife between two opposing factions. While declaring the citizens guilty of lese-majesty, enemies of the pope and the Church and rebels against papal authority, Eugenius IV did not reinstate the Varanos as city lords but granted the city a full amnesty<sup>92</sup>. The *casus* of Barigianis' *consilium* briefly refers to this change of regime by observing that, with the assassination of the Varanos, Camerino and the other territories subject to the family had been freed from their dominion and had returned under the direct rule of the Church (*'ad gremium ecclesie immediate se reduxerunt'*). This seems to be further evidence that the Varanos possessed a vicariate over Camerino and the town was under the indirect rule of the Church. In fact, public power in the *terrae mediate subiectae* was exercised by another city or a local lord, to whom the pope had granted some title (vicarial, feudal or other): papal authority was thus mediated through those who exercised the day-to-day powers of government. In contrast, any lands *immediate subiectae* were

<sup>90</sup> J. Guiraud, *L'État pontifical*, p. 200-201 and P.L. Falaschi, *La signoria*, p. 17-23.

<sup>91</sup> P.L. Falaschi, *La signoria*, p. 16-17 and more recently J.-B. Delzant, *Varano, Berardo da*, who refers to the *Cronaca* by Guerriero da Gubbio and to the testimony of a notary from Fermo, Antonio di Niccolò.

<sup>92</sup> J. Guiraud, *L'État pontifical*, p. 203-204 and P.L. Falaschi, *La signoria*, p. 20. See Eugenius' letter preserved in the Vatican Archives, Reg. Vat. 370, f. 258v: 'vos ad cor reversi [...] cupiatisque corde constricto et humiliato ad ipsius ecclesie gremium ac nostram et dicte sedis devotionem, obedientiam et gratiam redire et in illis de cetero incommutabiliter perseverare [...]'.<sup>2</sup>

directly dependent on papal government, even though the actual powers of the Church varied, according to time and place<sup>93</sup>.

Barigianis begins his opinion by pondering the legitimacy of the rule in the statutes of Norcia which punishes murder with no more than a fine. This rule, he says, seems to be invalid since it goes against the prohibition ‘Thou shalt not kill’, and human law, as stated by Bartolus in his comment on *Dig.* 1.1.9, cannot contradict divine law. It is also reprehensible that the capital punishment established for murder in the *lex Cornelia de sicariis et veneficis* has been reduced to a pecuniary penalty in the local statutes. Not even the emperor, Barigianis explains, can decide that a murderer should not be punished, unless for a specific reason (*ex causa*); and that which the emperor cannot do, neither can a municipal statute. Here Barigianis refers to Baldus’ comment on *Cod.* 1.1.1 and to the so-called doctrine of *permissio*, according to which cities were entitled to enact statutory legislation by virtue of an authorisation from the emperor<sup>94</sup>: since the

<sup>93</sup> G. Ermini, *Aspetti giuridici della sovranità pontificia nell’Umbria del secolo III* (1937) and Id., *Caratteri della sovranità temporale dei papi nei secoli XIII e XIV* (1938), both reprinted in Id., *Scritti storico-giuridici*, ed. O. Capitani-E. Menestò, Spoleto 1997, p. 737-795; P. Partner, *The Papal State*, p. 159ff.; M. Caravale, *Ordinamenti giuridici dell’Europa medievale*, Bologna 1994, p. 497-500; S. Carocci, *Vassalli del papa*, p. 15, 20, 74, 104-105 and 108-113. However, P.L. Falaschi, *Intorno al vicariato*, p. 6-7 qualified this distinction, observing that in fact it was not always clear-cut: ‘forse per l’accredito progressivo della finzione giuridica che il vicario sia rappresentante del pontefice, si parlerà talora di terre “ad ecclesiam immediate spectantes” anche per quelle concesse in vicariato’. The example cited by Falaschi concerns the Varanos and their vicariate over San Ginesio and Tolentino, see A. Theiner, *Codex*, t. II, n. 569, p. 562b (year 1375): ‘[...] homines terrarum Sancti Genexii et Tolentini [...] ad nos et Romanam ecclesiam immediate spectantium, in quibus idem Rodulphus pro nobis et ipsa ecclesia in temporalibus Vicarius existit [...]’. See also Martin V’s letter of 22 April 1418 found in Reg. Vat. 348, f. 59v and already cited *supra*, note 43, which concerns the government of Camerino: ‘Sincere devotionis affectus quem dilecti filii nobiles viri Rodulphus quondam Gentilis militis de Varano, Gentilispandulphus, Berardus Piergentilis Venantius ac Johannes fratres, et eiusdem Rodulphi nati domicelli Camerinenses ad nos et Romanam gerunt ecclesiam, necnon laudabilia eorum studia que cura salutare regimen ac defensam civitatis Camerinensis eiusdem comitatus, territorii et districtus, necnon civium, habitatorum et incolarum eorundem ad nos et Romanam ecclesiam immediate spectantium [...]’. Even Eugenius IV’s letter of 23 November 1435, Reg. Vat. 370, f. 258v, after calling the Varanos ‘tunc in nonnullis terris et locis pro nobis et Romanam ecclesiam vicarios generales’, refers to the city and *districtus* of Camerino as a territory that was subject to the direct rule of the Church, and says that the citizens of Camerino had illegitimately occupied it during their revolt of the previous year: ‘[...] civitatisque, ipsius castrorum et terrarum territorii et districtus dominium, quod directe et immediate ad nos et ipsam ecclesiam pleno iure pertinet, violenter occupaveritis [...]’.

<sup>94</sup> On the *permissio* theory, see M. Sbriccoli, *L’interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell’età comunale*, Milan 1969, p. 31-47 and C. Storti Storchi, *Appunti in*

emperor authorises peoples to enact statutes, the latter cannot enjoy greater authority than the former<sup>95</sup>. Barigianis goes on to cite another passage from Baldus' commentary on the *Libri feudorum* in which a *quaestio* discussed by Jacobus de Belviso is mentioned, concerning a statute that imposes a pecuniary penalty on a murderer: should the instigator of a murder be punished with the same penalty? Belviso argued that *ius commune* should be applied in this case, since the statute does not mention an instigator; moreover, Baldus quotes Guido de Baisio's opinion that such a statute would be invalid, because it would impose too light a penalty, with the risk of having no deterrent effect<sup>96</sup>.

Barigianis quickly rejects the latter view by referring to X 5.23.2, where he finds a legitimisation of the custom of punishing murder with no more than a fine. The question is therefore whether the victim should be treated as a citizen of Norcia on the basis of the relevant clause in the 1421 Peace, or if he should be considered a foreigner. Following the classic pattern of the *quaestio*, Barigianis

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tema di "potestas condendi statuta" (1991), in Ead., *Scritti sugli statuti lombardi*, Milan 2007, p. 122-136.

<sup>95</sup> Quoting Baldus, Barigianis here writes that 'merito id quod non potest princeps non posunt statuente, argumento sumpto a maiori potentia cause efficientis et sumpto alio argumento a defectu cause influentis'. In fact, Baldus' text as transmitted in numerous early modern editions reads 'ab effectu' instead of 'a defectu': see the editions of his *Lectura super primo, secundo et tertio libro Codicis* printed in Venice 1474 (the *editio princeps*, ISTC-iu00017000); in Venice 1485 (ISTC-iu00014000(I)), Milan ca. 1490 (ISTC-iu00014700(I)) and Lyons 1498 (ISTC-iu00016000(I)), 1513, 1539 and 1543 (all of these give the text 'ab effectu cause effluentis'); and Venice 1577, 1586, 1599 (Giunta) and 1599 (Societas Aquilae se renovantis). The ms. Vatican Library, Vat. lat. 2291, f. 6ra reads 'de effectu cause influentis'. However, the idiograph of Baldus' *Lectura*, ms. Rome, Biblioteca Nazionale Centrale, Varia 108 (on which see V. Colli, *L'idiografo della Lectura super primo, secundo et tertio libro Codicis di Baldo degli Ubaldi*, in 'Ius commune', XXVI (1999), p. 91-122), f. 4vb and the ms. Vatican Library, Ross. 1087, f. 4rb give the same text as Barigianis' *consilium*, i.e. 'a defectu cause influentis'. It must be pointed out that Barigianis' *consilium* is written by a different hand than the one that wrote the (autograph) subscription, and that an error on the scribe's part when writing under dictation might have occurred (but the same is also true for Baldus' idiograph). The *locus 'a defectum'* was usually used in cases of defect in form, while the *locus 'ab effectu'* had a much wider use, as can be seen in Nicolas Everaerts, *Topica iuris sive loci argumentorum legales*, Apud haeredes Alexandri Gryphii, Venetiis 1587, p. 174-183, and may be preferable in this context. I thank Andrea Padovani for his advice on this point.

<sup>96</sup> Baldus de Ubaldis, *Lectura super usibus feudorum; Super Pace Constantie*, In domo dominorum Anthonii et Raphaelis de Vulterris, Rome [c. 1474] (ISTC-iu00037000), ad LF 2.53, *De pace iuramento firmanda et servanda*, § *Iniuria*, f. 133ra, who cites Jacobus de Belviso's *quaestio* 'Lege civitatis cavetur' (discussed in 1322), for which see M. Bellomo, *Quaestiones in iure civili disputatae. Didattica e prassi colta nel sistema del diritto comune fra Duecento e Trecento*, Rome 2008, p. 225-226, and Guido de Baisio, *Rosarium super Decreto*, [Johannes Siber], [Lugduni] [ante 1497] (ISTC-ib00289200), ad C. 23, q. 4, c. 35, f. 276vb.

begins by presenting the arguments in favour of the thesis that he will eventually reject. He thus reiterates that, according to the Peace, a subject of the Varanos must be treated as a citizen of Norcia even if he is not actually one, referring to Bartolus' idea, expressed in his *repetitio* to *Dig.* 41.3.15, that cities can enact statutes according to which people who are not citizens are made such<sup>97</sup>. Above all, Barigianis insists on the perpetual character of the Peace, which was meant to settle the conflict between the Varanos and Norcia for all time, adding a reference to the last part of Baldus' commentary on the Peace of Constance where Baldus celebrates peace and terms that Peace in particular as '*leta et festiva*'<sup>98</sup>. The conclusion of this first part of the reasoning is that, although the victim was not in fact a subject of Rudolph III or of his sons, who are all dead, the contents of the Peace are still in force and apply to him: because it is perpetual, the Peace must be held to be valid beyond the life of the persons who were parties to it.

This was indeed a traditional principle in legal scholarship, which distinguished a truce from a peace by insisting on the fact that the latter put a definitive end to a dispute<sup>99</sup>. As early as the years 1260-1280, Guido da Suzzara had

<sup>97</sup> Bartolus de Sassoferrato, *In Primam Digesti Novi Partem*, Apud Iuntas, Venetiis 1596, ad *Dig.* 41.3.15, 95rb, n. 34: '[...] praemitto aliud, scilicet quod civitates possunt sibi facere statuta, per quem modum illi, qui non sunt cives, efficiuntur cives'. This *repetitio* was given at the University of Pisa in the first year that Bartolus taught there (1339/1340, see P. Mari, *Il libro di Bartolo. Aspetti della vita quotidiana nelle opere "bartoliane"*, Spoleto 2021, p. 48) and its contents have been analysed by F. Todescan, *Diritto e realtà: storia e teoria della fictio iuris*, Padua 1979, p. 106-128. On Bartolus' theory of citizenship, see J. Kirshner, *Civitas Sibi Faciat Civem: Bartolus of Sassoferrato's Doctrine on the Making of a Citizen*, in 'Speculum', VIII (4) (1973), p. 694-713. An essential bibliography on citizenship in late medieval legal scholarship and practice is provided in J. Kirshner-O. Cavallar, *Jurists and Jurisprudence in Medieval Italy. Texts and Contexts*, Toronto/Buffalo/London 2020, p. 510-514.

<sup>98</sup> Baldus de Ubaldis, *Lectura super usibus feudorum; Super Pace Constantiae*, ad PC § *Hec sunt nomina*, f. 162vb. Barigianis actually gives an incorrect reference, citing Baldus' commentary 'on Henry VII's constitutions (*super constitutiones Henrici imperatoris*)' but he clearly means the Peace of Constance. The mistake was possibly due to the fact that Bartolus' glosses to Henry VII's constitution 'Quoniam nuper' are cited a few lines below.

<sup>99</sup> See Bernardus Papiensis, *Summa Decretalium*, ed. E.A.T. Laspeyres, Ratisbonae 1860 [reprint Graz 1956], lib. I, tit. 24 (*De treuga et pace*), §1, p. 19: 'Treuga est securitas praestita personis et rebus discordia non finita, pax vero est discordiae finis', a definition which was frequently adopted by later scholars, including Bernardus Parmensis in the Ordinary gloss to X 1.34.1, ad v. 'treugas' (a canon cited by Barigianis). Commenting on the words 'in perpetuum' in the Peace of Constance, Odofredus started by explaining that this expression meant 'sine praefinitione temporis [...] vel dic usque ad vitam civitatum' (ms. Vienna, Österreichische Nationalbibliothek, 2094, f. 24vb). Dealing with the same passage, Baldus de Ubaldis, *Lectura super usibus feudorum; Super Pace Constantiae*, ad PC cap. 1 (*Nos Romanorum*), f. 151va-151vb observed: 'Hic dicit Imperator quod vult istam pacem esse perpetuam [...] sine praefinitione temporis,

argued that the emperor, although he was *legibus solutus*, was bound to keep his and his predecessors' agreements under both *ius naturale* and *ius gentium*. In Guido's view, Frederick I could not have repealed the Peace of Constance, nor could his successors have done so, despite the principle that 'equals have no authority over one another'. Among the arguments he used to support this view, he said that emperors have 'no equals' as long as they live; that their authority depends on the authority of the law, which they must observe; and that some people had acquired rights based upon that Peace, and not even the emperor could strip them of these rights<sup>100</sup>. Later scholars concurred, stating that contracts and treaties (which medieval jurists did not distinguish) concluded by the emperor, the pope or a king in the exercise of their offices also bound their successors, since they had been made in the name of the crown. As for cities that were governed by a commune, the periodic renewal of their institutions, which remained notionally the same, posed no problems regarding succession to power and thus guaranteed the continuity of the obligations they assumed<sup>101</sup>. Admittedly, as revealed by the papal bull of 13 March 1421, the Peace between the Varanos and Norcia was not, strictly speaking, an agreement, since it had been decreed by the pope; however, in fourteenth- and fifteenth-century central Italy papal authority – as has been observed – expressed itself less in terms of

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quia Imperator facit hanc pacem nomine sedis, non nomine proprio tantum, et imperium non moritur [...]. Et hoc ex parte imperii. Sed ex parte civitatis exponitur in perpetuum, idest usque ad vitam civitatis'. More broadly, on peace agreements and their validity see R. Lesaffer, *The Influence of the Medieval Canon Law of Contract on Early Modern Treaty Law*, in M. Bellomo-O. Condorelli (eds), *Proceedings of the Eleventh International Congress of Medieval Canon Law*, Vatican City 2006, p. 449-70, and O. Condorelli, *Gli accordi di pace (foedera pacis) e il principio pacta sunt servanda. Note di ricerca nel pensiero dei giuristi dei secoli XII-XV (con un postludio su Grozio)*, in O. Condorelli-F. Roumy-M. Schmoeckel (eds), *Der Einfluss der Kanonistik auf die europäische Rechtskultur*, Bd. 6: *Völkerrecht*, Köln/Weimar/Wien 2020, p. 40-85.

<sup>100</sup> See Guido's *suppletiones* to *Cod.* 1.14.4 edited and discussed by E. Cortese, *La norma giuridica. Spunti teorici nel diritto comune classico*, vol. I, Milan 1962, p. 156-158; K. Pennington, *The Prince and the Law, 1200-1600. Sovereignty and Rights in the Western Legal Tradition*, Berkeley/Los Angeles/Oxford 1993, p. 125-128 (on p. 126, note 26 a passage from ms. Paris, Bibliothèque nationale de France, Lat. 4489, f. 33va: 'Nota quod si imperator facit pacem cum aliqua civitate seu cum aliquo comite vel barone, et ineat aliqua pacta, teneretur ea observare, nec potest venire contra vel ea infringere [...]. Item nec pacta facta per suos antecessores potest infringere [...]'); and D. Fedele, *The Medieval Foundations of International Law. Baldus de Ubaldus (1327-1400), Doctrine and Practice of the Ius Gentium*, Leiden/Boston 2021, p. 376-378 (on p. 378, note 272 a passage from ms. Madrid, Biblioteca nacional de España, 823, f. 92va: 'Quid ut accidit de facto, <sup>a</sup>imperator Federicus<sup>a</sup> antiquo tempore fecit pacem cum Lumbardis, post ipse vel successor eius vult infringere<sup>b</sup> pacem, potestne? Dic quod non [...]'<sup>a-a</sup> imperatori federico *ms. ante corr.* imperator federicus<sup>b</sup> *infringere ms.*).

<sup>101</sup> D. Fedele, *The Medieval Foundations of International Law*, p. 378-391.



‘domination’ from above than in terms of ‘pacification and coordination’ of a plurality of power centres that were alien and opposed to each other<sup>102</sup>. The papal bull may therefore have formalised an agreement that had actually been reached by the parties themselves, with the mediation of the cardinals deputed by the pope.

In fact, Barigianis seems to regard the Peace as the outcome of a negotiation and does not turn to the papacy for a decision as to whether or not it is still in force. Rather, he begins by arguing for the opposite thesis to the one supported above, observing that the Peace expressly refers to the inhabitants of Camerino as the ‘subjects’ of Rodolfo and his sons, with the result that, since these persons have died, its provisions must be considered to have expired. Along the same lines, he emphasises that the Varanos – and not Camerino – were parties to the war and to the subsequent Peace together with Norcia, implying that the citizens of Camerino only benefited from the Peace insofar as they were the former’s subjects<sup>103</sup>. The jurist thus seems to attribute decisive importance to the end of the Varanos’ domination and to the regime change that occurred in Camerino, which in his view terminated the provisions of the Peace. Previous legal scholars had held that the agreements concluded by a tyrant only ceased to exist at the end of the tyrannical rule under certain conditions, while those concluded by a legitimate lord or king in the exercise of his office were to remain in force even in the event of a change of dynasty<sup>104</sup>. Not so for Barigianis,

<sup>102</sup> S. Carocci, *Vassalli del papa*, p. 19, 40 and 147.

<sup>103</sup> To make his point, Barigianis refers to *Dig.* 28.6.10.6, which concerns the hereditary substitute of an *impubes* adopted by *adrogatio*: the substitute is not entitled to what the *impubes* would have possessed if he had not been so adopted, but only to what the *adrogator* himself left him in his will and what the *impubes* has acquired by means of the *adrogator*.

<sup>104</sup> On agreements concluded by tyrants, see Bartolus de Sassoferrato, *Tractatus de tyranno*, in D. Quaglioni, *Politica e diritto nel Trecento italiano. Il “De tyranno” di Bartolo da Sassoferrato (1314-1357). Con l’edizione critica dei trattati “De Guelphis et Gebellinis”, “De regimine civitatis” e “De tyranno”*, Florence 1983, quaestio VII, p. 192-193, where Bartolus wonders about the validity of contracts made by tyrants ‘cum extraneis nomine civitatis’: drawing on Henricus de Segusio, he states that the city is entitled to reject the contract either in its entirety or, if the contract is made up of separate clauses, insofar as it is unfavourable, provided that the counterparty was aware that it was dealing with a tyrant (otherwise the counterparty is entitled to *restitutio* under the section *Dig.* 27.6). On the irrelevance of a change of dynasty, see Baldus de Ubaldis, *Consiliorum, sive responsorum*, 5 vol., Apud Hieronymum Polum, Venetiis 1575 [reprint Turin 1970], vol. I, n. 271, f. 81va-82ra; see also the edition, based on the ms. Vatican Library, Barb. lat. 1408, f. 146v-147v, found in A. Domingues de Sousa Costa, OFM (ed.), *A Península Ibérica e o cisma do ocidente, repercussão do cisma na nacionalidade portuguesa do século XIV e XV* (Monumenta Portugaliae Vaticana, t. 3/1), Montariol/Braga 1982, p. 664-671 and, on this *consilium*, D. Fedele, *The Medieval Foundations of International Law*, p. 385-386: Baldus held that the contracts made by Ferdinand I as King of Portugal bound the *respublica* and the royal

who appears to believe that the Varanos were parties to the Peace regardless of any office they held in Camerino, perhaps encouraged in this opinion by the fact that the four papal letters on the case refer to them as *domicelli* – and not vicars – of Camerino. Moreover, it is significant that he never speaks of ‘citizens’ of Camerino (the victim’s status as a *comitatensis* would in this case have required some clarification), but only of ‘subjects’ of the Varanos, as did the abovementioned papal letters<sup>105</sup>.

Actually, Barigianis goes on to state that the people of Camerino do not even deserve the qualification of ‘subjects’ because they rebelled against their lords, thereby making themselves unworthy of any benefit derived from them – including the contents of the 1421 Peace. Some passages in the *Digesta* are cited here concerning the manumission by will of servants deemed worthy, or legacies in favour of freedmen deemed worthy, who only benefit from such provisions if they have not committed offences against the deceased<sup>106</sup>. As a result, the *comitatensis* of Camerino who was murdered was not a ‘subject’ but a ‘rebel’: Barigianis here bases his reasoning on Bartolus’ glosses on the words ‘*rebellis*’ and ‘*rebellando*’ of the constitution *Quoniam nuper* issued by Henry VII in April 1313, where rebels are termed ‘*infidel[es]*’ (*sicut enim principi debetur omnis fidelitas [...] ita omnis deviatio a fidelitate est infidelitas*) and their actions are described as any resistance to authority which does not necessarily imply waging war against it<sup>107</sup>.

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fisc, and were therefore binding on the new King John I even though he was not Ferdinand’s heir.

<sup>105</sup> In fourteenth- and fifteenth-century Italy, the (*cives*) *comitatenses*, i.e. the inhabitants of the countryside (*contado*) that was subject to the overlordship of a city, enjoyed a lesser status than urban citizens (*cives civitatis*) and were required to shoulder greater public burdens (*munera*): see J. Kirshner, *Civitas sibi faciat civem*, p. 702-704.

<sup>106</sup> *Dig.* 40.4.51, *Dig.* 31.88.11 and *Dig.* 31.24.

<sup>107</sup> Bartolus de Sassoferrato, *Consilia, quaestiones, et tractatus*, Apud Iuntas, Venetiis 1596, ad v. ‘*rebellis*’, f. 103[recte 104]rb, n. 1, and ad v. ‘*rebellando*’, f. 105ra. On Henry VII’s constitutions *Ad reprimenda* and *Quoniam nuper*, see C. Zendri, *La legislazione pisana di Enrico VII: problemi filologici e interpretativi*, in G. Petralia-M. Santagata (eds), *Enrico VII, Dante e Pisa*, Ravenna 2016, p. 337-357 (with critical edition of both texts). On Bartolus’ gloss apparatus to these constitutions, see D. Quaglioni, ‘*Fidelitas habet duas habenas*’. *Il fondamento dell’obbligazione politica nelle glosse di Bartolo alle costituzioni pisane di Enrico VII*, in G. Chittolini-A. Molho-P. Schiera (eds), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna*, Bologna 1994, pp. 381-396. Actually, based on the constitution’s wording, Bartolus observed that rebellion against the emperor was never admitted, while it could be admitted against other rulers, see Bartolus de Sassoferrato, *Consilia, quaestiones, et tractatus*, ad v. ‘*rebellando*’, f. 105ra, n. 1-2: ‘Et advertendum est, quod in illo, qui rebellat contra Principem, haec constitutio loquitur simpliciter, quasi contra eum non possit esse aliqua iusta causa resistendi. Quod intellige de subditis Imperij, non de his, qui sunt in terris ecclesiae. In eo vero, quod loquitur in eo qui

The condition of a subject – Barigianis argues – must be verified at the moment in which an offence is suffered: since the rebellion nullified this condition, the victim could no longer benefit from the 1421 Peace and therefore had to be considered, with regard to the Statutes of Norcia, as a foreigner<sup>108</sup>.

The canon *Humanae aures* in Gratian's *Decretum* (C. 22, q. 5, c. 11) says that, although human judgement is usually based on words as they sound to the outside world rather than on inner intention, words ought to be interpreted in such a way as to serve intention and not vice versa. Drawing on this rule, Barigianis invites the judge to attribute to words their specific meaning and to consider only those who are under a particular ruler's jurisdiction to be that ruler's 'subjects'<sup>109</sup>; and since they are no longer under the Varanos' jurisdiction, the citizens of Camerino cannot be considered their subjects.

As the victim is evidently not a subject of the Varanos, based on this and the above arguments Barigianis concludes that the offender should be punished with the pecuniary penalty provided by the Statute of Norcia for the murder of a foreigner.

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rebellat contra officiales suos, loquitur limitative, scilicet in his quae ad commissum eius officium pertinent, & hoc quia si ultra facerent, posset eis legitime resisti [...].

<sup>108</sup> Barigianis refers here to *Dig.* 9.4.4.1, according to which the noxal action is granted to the person who has acquired the slave guilty of an offence although he was aware of it, since at the time the act was committed he was not the slave's master and had therefore no power to prevent the offence from being committed. The passage was so summarised by Bartolus de Sassoferrato, *In Primam Digesti Veteris Partem*, Apud Iuntas, Venetiis 1596, f. 191vb: 'Qualitas adiuncta verbo, intelligitur secundum tempus verbi, cui adicitur, hoc dicit secundum Dynum & Iacobum Butrigarii [...]'. Barigianis then cites *Dig.* 4.5.7, which Bartolus summarised as follows, *ibid.*, f. 139vb: 'Quod alicui sub nomine appellativo conceditur, illo perempto perit concessio'.

<sup>109</sup> This affirmation is the object of the last references. In fact, the very last one seems to challenge the perfect equivalence between a subject and a person who is under someone's jurisdiction (because he committed an offence in a certain place, for example), arguing that only those who are under someone's jurisdiction *ratione domicilii* are properly termed 'subjects'. See Ordinary gloss ad *Clem.* 2.2.1, ad. v. *subditos*: '[...] Ista tamen littera sic late posita, comprehendere etiam videtur eos, qui non ratione domicilij, sed delicti vel contractus subditi sunt, quod non puto fuisse de mente, nec talis proprie subditus dicitur, licet sortiatur forum quo ad casum illum'. See also Johannes de Imola, *In Clementinas opulentissima commentaria*, Per Joannem Moylin, Lugduni 1539, ad *Clem.* 2.2.1, f. 54ra, n. 32, whom however Barigianis does not cite: 'Qui autem dicantur subditi, an comprehendantur illi qui sortiuntur forum ratione delicti vel contractus in loco episcopi expulsi? Dicit glossa quod non: sed solum subditi ratione domicilij, nam alij praedicti non dicuntur proprie subditi sed solum forum sortiti. Nota bene singularem glossam ex qua habes primam differentiam inter ista verba, inter subditos et de subiectis. Secundo quod appellatione subditi stricte loquendo solum comprehenditur subditus ratione domicilij: non autem subiectus iurisdictione fori sortiti [...]'.

## Appendix

### I. Martin V, *Littera clausa* (Florence, 6 March 1419)

Archivio storico del comune di Norcia, Archivio segreto, Cassetto H, 429 (H3)

*Martin V orders the consuls and the people of Norcia to return the goods and the prisoners they captured to Berardo da Varano.*

Martinus episcopus servus servorum Dei. Dilectis filiis consulibus et populo terre nostre nursine salutem et apostolicam benedictionem. Non sine displicentia intelleximus quod, cum dilectus filius nobilis vir Berardus de Camerino fiducia mandati nostri per quod precepimus eidem ne contra communitatem vestram quicquam hostiliter attemptaret, cum foret intencionis nostre omnes discordias inter communitatem prefatam atque ipsum tollere, res et animalia, que propter timorem prius removerat, in villas atque agros sine suspicione reduci fecisset, vos, quibus sepe eadem mandavimus<sup>110</sup>, hiis non obstantibus, nec precauentibus illis utpote qui auctoritate nostra se tutos fore arbitrabantur, per villas quasdam et loca ad gubernacionem eiusdem Berardi pertinencia predatorie discurri fecistis, homines captivando, edificia incendendo et alia hostilia perpetrando, de quibus ab intimis condolemus, tum propter damna subditorum nostrorum, tum propter transgressionem voluntatis nostre. Cum igitur hec talia inter subditos nostros committi nullo modo sustinere possimus, vobis tenore presencium districte precipiendo mandamus, quatinus captivos et animalia huiusmodi resque omnes predatorie exinde receptas sine ulla mora restitui faciatis<sup>111</sup> quodque decetero talia attemptare nullatenus presumatis. Nam foret nobis ultraquam dici valeat molestum quod illi sub verborum nostrorum fiducia damna tam enormiter paterentur. Insuper volumus ut aliquem de hiis omnibus plene informatum ad presenciam nostram mittere procuretis, cum omnino velimus huiusmodi discordiis finem imponere, et asperitatem controversie in dulcedinem pacis convertere. Nos enim hoc idem ipsi Berardo circa non offendendum ac mittendum aliquem ad presenciam nostram versavice mandavimus. Dat. Florencie ii nonas marcii, pontificatus nostri anno secundo.

Jo. de P<?><sup>112</sup>

<sup>110</sup> mandavimus] mandavimus *ms.*

<sup>111</sup> *Rasuram post faciatis grossator sequentibus signis implevit.* .—§§—§§—§§—§§—.

<sup>112</sup> *Ob foramen in pergamina nomen non legitur.*

II. Martin V, *Littera solemnis* (Florence, 2 June 1419)

N = Archivio storico del comune di Norcia, Archivio segreto, Cassetto H, 431 (H6)

V = Vatican Archives, Reg. Vat. 352, ff. 264r-265r

*Martin V establishes a two-year truce between the Varanos of Camerino and Norcia so that peace may be concluded.*

Martinus episcopus servus servorum dei<sup>113</sup>, ad perpetuam rei memoriam<sup>114</sup>. Debitum pastoralis officii ex alto nobis iniuncti exigit ut inter cunctos Christifideles, et presertim filios peculiare nostros et ecclesie romane, qui ab invicem dissidentes guerrarum scandalis mutuo urgerentur, omnem concordiam omnemque pacis tranquillitatem sollicitis studiis et vigilantia opera exponamus. Cum itaque, sicut accepimus, inter dilectos filios nobiles viros Rodulphum de Varano eiusque filios domicellos camerinenses, communitatesque ac universitates et homines eis subditos ac eorum fautores, adherentes et complices ex una<sup>115</sup>, necnon communitatem, universitatem et homines terre nostre Nursie spoletane diocesis eiusque districtus et eorum subditos, fautores, complices et adherentes ex alia partibus, hoste humani generis suggerente, guerrarum scandala exorta sint, ubi hostiles incursus, depopulationes agrorum, incendia villarum, personarum captivitates, depredationes animalium, occupationes castrorum, et alia plurima damna utrinque facta, commissa et illata sunt, nos ne maiora aut longiora scandala producantur exinde, neve iacta malorum semina in amplio pestiferum cumulum excrescant, salubri remedio paternis affectibus et desiderii intensis occurrere cupientes, prefatarum partium habitis nuntiis, ac dilectis filiis nostris Gabriele tituli sancti Clementis et Branda eiusdem tituli presbiteris cardinalibus ad ipsos nuntios audiendum, prefata scandala sedandum, concordiam ac pacis tranquillitatem inter dictas partes procurandum per nos deputatis, et iterum atque iterum per eosdem cardinales nuntios predictis auditis, examinata re et superinde facta nobis relatione, matura quoque consultatione prehabita, ne malis mala succedant<sup>116</sup>, sed iam inchoata et per discordiam acta tollantur, supremis affectibus aspirantes, inter dictas partes auctoritate

<sup>113</sup> Martinus – dei] Martinus etc. V

<sup>114</sup> *Adnotatio in marg. sup.* N: portetur ad cameram. *Adnotationes in marg.* V: M. de Pisis (*sin.*) et De curia # (*dex.*)

<sup>115</sup> *Adnotatio in marg. sin.* V: Indicuntur treuge biennales inter dominos Camerini et Nursinos dissidentes etc.

<sup>116</sup> ne malis mala succedant] ne mala malis succedant V

apostolica tenore presentium indicimus treguas<sup>117</sup> hinc ad biennium duraturas, ita quod interim per congrua et accommoda media inter ipsas partes perpetua pacis tranquillitas componatur<sup>118</sup>, decernentes quod durante dicto biennio neutra partium prefatarum possit vel debeat aliquo modo, directe vel indirecte, publice vel occulte, ratione, causa vel pretextu seu occasione guerrarum, hostilium incursum, depopulationum, incendiorum, captivitatum, depredationum, occupationum, detentionum, ceterorumque damnorum prefatorum utrinque factorum, commissorum et invicem illatorum ac secutorum abinde, seu alia quacunque et qualicunque causa contra alteram in iudicio vel extra per se vel alium seu alios convenire, agere, innovare, petere, turbare, inquietare seu aliquatenus molestare, altera parte nolente, sed utraque ipsarum partium habeat, teneat et possideat prefato biennali tempore, prout nunc habet, tenet et possidet, per hoc tamen ius alicuius dictarum partium nullatenus tollatur, aut ei aliquatenus derogetur, sed unicuique conservetur illesum, volentes ac mandantes quod infra unum mensem cum dimidio a die date presentium computandum captivi omnes et singuli per dictas partes vel earum seu alterius ipsarum stipendiarios, subditos, adherentes vel complices quoquomodo detenti, absque redemptione aut tallie seu alterius cuiuscunque oneris vel expensarum solutione, vel exactione aliqua a prefatis partibus relaxentur et reddantur proprie libertati, debita tamen singularium personarum dictarum partium, quacunque causa fuerint, dicto durante biennio libere secundum iuris formam peti et exigi possint. Et insuper declaramus quod ob offensas, quas per particulares personas particularibus partium prefatarum inferri contingeret, contraveniri presentibus treguis<sup>119</sup> nullatenus intelligatur<sup>120</sup>. Quodque si altera partium predictarum, dicto durante biennio, contra prefatas treguas<sup>121</sup> quomodocunque aut qualitercunque venerit, in penamque infrascriptam inciderit, pars altera lesa contra ipsam nullatenus ad vindictam seu offensam possit insurgere vel insurgat, sed ad nos et sedem apostolicam ob illatas recurrat iniurias, prestolatura quod circa id per nos et sedem eandem ordinatum fuerit vel decretum. Et demum dictis partibus et utriusque earum dicta auctoritate expresse mandamus quatinus ab omni mutua offensione, iniuria vel molestia alterutrum se abstineant, ac huiusmodi treguas, et omnia et singula presentibus nostris litteris contenta, dicto durante biennio inviolabiliter adimpleant et observent sub pena viginti quinque milium florenorum auri de camera, quorum medietas apostolice Camere applicetur, et altera parti

<sup>117</sup> treguas] treugas V. *Vide* Du Cange *et al.*, *Glossarium mediae et infimae latinitatis*, L. Favre, Niort, 1883-1887, *ad vocem* 'Treva, treuga, etc.'.

<sup>118</sup> componatur] compona<?> N *ob foramen legitur in pergamena*; componatur V

<sup>119</sup> treguis] treugis V

<sup>120</sup> intelligatur *ex* intelligantur *forsitan corr.* V

<sup>121</sup> treguas] treugas V

lese. Nulli ergo omnino hominum liceat hanc paginam<sup>122</sup> nostre indictionis, constitutionis, voluntatis, declarationis et mandati infringere, vel ei ausu temerario contraire<sup>123</sup>. Si quis autem hoc attemptare presumpserit, indignationem omnipotentis dei et beatorum Petri et Pauli apostolorum eius se noverit incursum<sup>124</sup>. Dat. Florentie iiii nonas iunii, pontificatus nostri anno secundo<sup>125</sup>.

De curia,  
A. Fidelis<sup>126</sup>

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<sup>122</sup> Nulli ergo – paginam] Nulli ergo etc. V

<sup>123</sup> vel ei – contraire] etc. V

<sup>124</sup> Si quis autem – incursum] Si quis etc. V

<sup>125</sup> Collecta per me P. de Trilhia *add.* V

<sup>126</sup> De curia, A. Fidelis] De c<uria>, A. Fidelis *super plica ad dex.* N, *ubi verbum 'curia' non legitur ob foramen in pergamena*; A. Fidelis V

III. Martin V, *Littera solemnis* (Rome, 13 March 1421)

N = Archivio storico del comune di Norcia, Archivio segreto, Cassetto H, 432 (H5)

V = Vatican Archives, Reg. Vat. 353, f. 125v-128r

*Martin V establishes peace between the Varanos of Camerino and Norcia, and specifies its conditions.*

Martinus episcopus servus servorum dei<sup>127</sup>, ad perpetuam rei memoriam<sup>128</sup>. Apostolice sedis circumspectio provida omnem sollicitudinem diligentem ac operam efficacem libenter apponit ut omnes Christifideles et presertim peculiaries filii ecclesie romane qui abinvicem dissidentes guerrarum premuntur angustiis ad tranquillitatis et pacis redeant unitatem. Sane cum inter dilectos filios nobiles viros Rodulfum de Varano eiusque filios domicellos camerinenses, communitates ac universitates et homines eis subditos ac eorum fautores, adherentes et complices ex una, necnon communitatem, universitatem et homines terre nostre Nursie spoletane diocesis eiusque districtus et eorum subditos, fautores, adherentes et complices ex alia partibus, hoste humani generis seminante zizaniam dudum disturbis atque scandalis guerrarum exortis, unde hostiles incursus, depopulationes agrorum, villarum incendia, depredationes animalium, personarum captivitates, occupationes terrarum et alia damna plurima utrinque facta et perpetrata fuerunt, ut bellici motus ac hostiles strepitus sedarentur ne exinde graviora sequerentur scandala, treguas<sup>129</sup> usque ad biennium nondum finitum indixerimus duraturas, ut interim lenitis odiis atque rancoribus pax facilius sequeretur. Nos igitur, ut quod ad sedandum scandala laudabiliter inceptum est felicem sortiretur effectum, ferventi desiderio cupientes prefatarum partium que ut ad nos aliquos mitterent ob pacem habendam monite sunt, nuntiis ob hoc ad conspectum nostrum transmissis ac venerabili fratre Antonio episcopo portuensi et dilecto filio nostris Branda tituli sancti Clementis presbitero cardinalibus ad ipsos nuntios audiendum, tollendum rancores, scandala sedandum, concordiam ac pacis tranquillitatem inter ipsas partes tractandam per nos spetialiter<sup>130</sup> deputatis, et iterum atque iterum prefatis nuntiis per eosdem

<sup>127</sup> Martinus – dei] Martinus etc. V

<sup>128</sup> *Adnotationes in marg.* V: M. de Pisis (*sin.*) et De curia (*dex.*)

<sup>129</sup> treguas N; tregas V

<sup>130</sup> per nos spetialiter *iter. et del.* V



cardinales auditis, petitionibus hinc inde porrectis<sup>131</sup> diligenter examinatis, ac nobis de omnibus superinde facta relatione plenissima, matura quoque per nos super hiis consultatione prehabita, ad bonum tranquillitatis perpetue inter ipsas partes habende supremis affectibus aspirantes, auctoritate apostolica presentium tenore inter dictas partes facimus, concludimus atque indicimus pacem sinceram, integram, inviolabilem atque<sup>132</sup> perpetuo duraturam, volentes ac decernentes quod de omnibus et singulis iniuriis, incendiis, damnis, guastis, condemnationibus, ruinis, capturis, captivorum redemptionibus, extortionibus, oppressionibus, violentiis, furtis, robariis, rapinis, homicidiis, locorum et terrarum destructionibus ac demolitionibus hinc inde pro dolor factis, illatis, commissis et perpetratis per alteram partem contra alteram et contra quamcunque personam etiam singularem et loca partium predictarum quibuscunque ratione, modo, causa vel forma usque in presentem diem, ac de omnibus et singulis actionibus etiam realibus et personalibus tam civilibus quam criminalibus ex premissis quoquo modo competentibus hinc inde plena remissio et finis perpetuus sit, statuentes quod omnes et singuli processus, condemnationes et banna usque ad hanc diem facti et data in civitatibus, terris, castris, fortiis et districtibus partium predictarum quacunque ratione vel causa, etiam cuiuscunque criminis contra quamcunque personam singularem sive communitatem partium predictarum eorumque subditos, annullari debeant et cassari absque solutione aliqua de libris ubi conscripta forent infra unum mensem ab hac die in antea computandum, et ex nunc cassa et annullata esse penitus intelligantur, quorum nomina et cognomina hic haberi volumus pro sufficienter expressis, exceptis processibus, bannis et condemnationibus factis et datis contra Cataldinum Guanti de Boncompagnis de Visso dicte spoletane diocesis, adicientes quod per superiora aut inferiora nullatenus derogetur aut preiudicium afferatur iuribus partium predictarum vel alterius earundem aut terrarum subditarum ipsis vel earum regimini commissarum sibi ipsis quomodolibet competentibus ante guerram die secunda mensis augusti anni domini millesimiquadringentesimidecimioctavi<sup>133</sup> inter dictas partes exortam super quibuscunque terris, castris et locis que altera pars sive eius subditi possint contra alteram intemptare, quodque iura quovismodo competentia, tam dicte communitati Nursie contra communitatem terre Cerreti dicte spoletane diocesis super penis quas dicta Cerreti communitas incurrisset, ac etiam super quibuscunque pecuniarum quantitatibus quas ipsa universitas Nursie a prefata terra Cerreti quacunque ratione vel causa usque in presentem diem habere deberet, quam eidem communitati

<sup>131</sup> dilige (*post porrectis*) *del. V*

<sup>132</sup> atque *ex et corr. V in interl.*

<sup>133</sup> *Adnotatio in marg. dex. V: 2 Aug. 1418*

Cerreti contra ipsam terram Nursie ratione simili penarum ac pecuniarum ut preferitur, sint dictis partibus reservata, volentes etiam ac declarantes quod omnia iura que dicti Rodulfus et eius nati ac etiam communitas Cerreti acquisiverint seu se acquisivisse pretenderent in castro Montis Precini, Turrinova sive eorum pertinentiis ac confinibus ac in Rocheta Nucillorum quomodocunque post dictam guerram exortam sint cassa et irrita nulliusque roboris vel momenti, necnon quod omnes et singuli homines recommendati et subditi utriusque partium predictarum<sup>134</sup> possint tute ac libere omni impedimento omnique noxia novitate cessantibus stare, morari, recedere ac redire cum eorum rebus ac mercantiis quibuscunque in et de civitatibus, terris, castris, locis, fortiis et districtibus partium earundem, decernentes insuper quod si qua persona alicuius partium predictarum offenderet verbo vel facto aliquam personam alterius partis, puniatur eadem pena qua si civis vel terrigena civem vel terrigenam offenderet, iniuriaretur vel occideret, puniretur, ita quod pena equalis sit, non obstante aliquo statuto in contrarium vigente in aliqua terra regiminis partium predictarum. Adiciamus quoque quod si qua partium predictarum vel earum subditi aliquid recipere haberent usque in presentem diem ab aliqua persona alterius partis subdita cuiuscunque conditionis existat<sup>135</sup>, ratione mercantiarum vel aliarum quarumcunque rerum quacunque alia de causa quam causis superius expressis, sit in electione creditoris convenire debitorem suum in terra domicilii debitoris vel in altera duarum civitatum Aquile et Fulginei. Et ut evitentur litigia super petitis eligantur et eligi debeant per creditorem et debitorem duo mercatores ydonei qui litigantium questiones iuxta usum et consuetudinem laudabiles mercatorum infra mensem cognoscere ac decidere teneantur, infra quem si lites huiusmodi terminate non fuerint liceat creditori in altero trium locorum, videlicet domicilii debitoris ac civitatum Aquile et Fulginei prefatarum, ad arbitrium suum debitorem prefatum coram ordinario loci eligendi convenire, qui huiusmodi lites infra terminum unius mensis debeat terminare. Et a sententiis<sup>136</sup> ferendis per mercatores vel ordinarium loci domicilii debitoris semel tantum haberi recursus et appellari valeat ad ordinarium alterius dictarum duarum civitatum, qui causas appellationis et reductionis ad arbitrium boni viri infra mensem tantum possit et debeat terminare. A sententiis vero ferendis per mercatores sive ordinarios prefatarum civitatum Aquile et Fulginei appellari, aut ipsas peti reduci ad arbitrium boni viri, nullatenus possit. Et omnis scriptura vel littera quam altera pars contra alteram haberet sive fidedignorum attestatio plenissimam fidem faciat ac si esset publicum instrumentum, dummodo littere sive scripture huiusmodi

<sup>134</sup> offenderet verbo vel facto (*post predicatum*) *del. V*

<sup>135</sup> existat *ex* existant *corr. V*

<sup>136</sup> sententiis *ex* sententii *corr. V in interl.*

manu debitorum aut eorum sociorum vel factorum sive institorum aut aliarum personarum de voluntate creditoris et debitoris scribentium, conscripte sint, et in ipsis annus domini, mensis et dies ac nomen scribentis contineantur. Quicquid vero per dictos mercatores aut ordinarios et officiales predictorum locorum decisum ac determinatum extiterit ut prefertur debeant prefati Rodulfus eiusque nati ac communitas Nursie infra unum mensem etiam per captionem et venditionem pignorum et aliarum rerum ac capturam debitorum ad voluntatem et petitionem creditorum facere prorsus celerrime executioni mandari. Et insuper ad petitionem creditorum debitores prefati ac eorum res et mercantie in regno nostro Sicilie et in provinciis Marchie Anconitane, Ducatus Spoletani, Patrimonii beati Petri in Tuscia et Romandiole nostris, ac Tuscie, Venetiis et aliis locis in<sup>137</sup> quibus debitores prefati sive eorum res et mercantie reperti fuerint, omni exceptione remota per ordinarios locorum possint et debeant capi ac detineri, adicientes etiam quod si aliqua pars predictarum sive earum homines, terre et subditi habuissent aliquam rem stabilem, mobilem vel depositatam, sive quoscunque contractus ac scripturas mercantiarum vel aliarum rerum ante diem motionis guerre predictae in civitatibus, locis, castris ac terris prefatis, illa libere restituantur infra mensem per unam partem alteri et alteram alteri, sintque in priori statu in quo erant ante initium guerre predictae. Volumus etiam quod hominibus de Camerino, de Visso et aliis terris et locis suppositis gubernationi dicti Rodulfi ac aliis quibuscunque etiam forensibus vinum de dictis locis et terris extrahentibus per territorium nursinum eiusque comitatum et districtum ac etiam hominibus dicte terre Nursie et eius districtualibus per omnes et singulas civitates, loca, castra, territoria et districtus dicti Rodulfi et eius natorum sive eorum commissa regimini, liceat et libere possint portare, adducere ac deferri et deduci facere vinum et omnes alias mercantias et res, ac etiam granum et frumentum extra dicta territoria recollectum, absque aliqua licentia super hoc a dictis partibus hinc inde petenda<sup>138</sup>, solvendo tamen exinde gabellas ac pedagia solvi consueta ante initium guerre prefate, et si qua gabella sive pedagium aut alterius exactionis species post dictam guerram motam aucta vel innovata sit, innovationem et additamentum huiusmodi volumus esse sublata, nec imposteorum valeant innovari, subdentes etiam quod si qua persona subdita alicui partium predictarum credidisset vel vendidisset ad terminum alteri partium earundem vel earum subditis aliquas res, quecunque sint, scriptura vel instrumentum aut alia cautio superinde confecta infringi eo pretextu non valeant vigore alicuius statuti in contrarium disponentis. Declaramus insuper quod pax rupta sive fracta nullatenus intelligatur, dato quod comprehensa et specificata superius adimpleta non forent, aut si eis contrafactum existeret, etiam propter malefitium vel

<sup>137</sup> in *in interl.* V

<sup>138</sup> *'Nota bene' signum add. in marg. sin.* N

maleficia per singulares personas hinc inde quod deus avertat committenda, sed solum private persone huiusmodi maleficia committentes puniantur ut prefertur secundum formam statutorum locorum ubi maleficia prefata committerentur, nisi forte esset numerus quinquaginta personarum unius ex partibus insimul concurrentium ad malefitium committendum, aut altera pars predictarum contra alteram vel communitas aliqua eis subdita sive gubernationi sue commissa cavalcatas, discursiones et invasiones per terras et loca alterius partis faceret sive fieri faceret, aut loca, terre vel castra alterius partis per alteram sive eius subditos aut alias directe vel indirecte, publice vel occulte obsiderentur, caperentur vel quomodolibet diriperentur, seu etiam aliud simile vel equipollens casibus superioribus exceptatis per alteram partium predictarum contra alteram committi contingeret, volentes ac dictis partibus et earum utriusque auctoritate prefata expressim presentium tenore mandantes, quatenus hanc pacem et omnia et singula presentibus nostris litteris contenta inviolabiliter adimpleant et observent et nullatenus veniant contra ea sub pena decem milium florenorum auri de camera in casu fracture pacis predicte tantummodo committenda, cuius medietas apostolice camere applicetur et alia medietas parti lese, que totiens committatur et applicetur ut supra, quotiens aliquis casus ex superioribus occurrerit, ex quibus pax fracta intelligitur esse, quodque ne mala malis addantur, pars lesa ob fracturam pacis<sup>139</sup> quotiens rumpi contingeret, nullatenus contra partem ledentem arma sumendo eius terras ac districtus invadat, sed ad nos et apostolicam sedem notificando commissa recurat prestolatura quod circa ea per sedem ipsam ordinatum extiterit. Nulli ergo omnino hominum liceat hanc paginam<sup>140</sup> nostre conclusionis, indictionis, voluntatis, constitutionis, adiectionis, declarationis et subiunctionis infringere vel ei ausu temerario contraire<sup>141</sup>. Si quis autem hoc attemptare presumpserit, indignationem omnipotentis dei et beatorum Petri et Pauli apostolorum eius se noverit incursum<sup>142</sup>. Dat. Rome apud Sanctum Petrum iii idus martii, pontificatus nostri anno quarto<sup>143</sup>.

De curia,  
G. de Pisis<sup>144</sup>

<sup>139</sup> predicte tantummodo (*post pacis*) *del.* V

<sup>140</sup> Nulli ergo – paginam] Nulli ergo etc. V

<sup>141</sup> vel ei – contraire] etc. V

<sup>142</sup> Si quis autem – incursum] Si quis etc. V

<sup>143</sup> Collecta per me Ay. Gerbasii *add.* V

<sup>144</sup> De curia, G. de Pisis] *super plica in marg. dex.* N; G. de Pisis V

IV. Martin V, *Littera solemnis* (Rome, 14 March 1421)

Archivio storico del comune di Norcia, Archivio segreto, Cassetto H, 433 (H7)

*Martin V declares that certain rights left untouched by the peace established the previous day cannot be enforced for a three-year period.*

Martinus episcopus servus servorum dei, ad futuram rei memoriam. Romani pontifici ex debito officii pastoralis incumbit ut cum omni vigilantia remedio salubri occurrat, ne inter Christifideles et presertim filios peculiare romane ecclesie insimul pacem habentes quovismodo scandala orientur. Cum itaque inter dilectos filios nobiles viros Rodulfum de Varano eiusque filios domicellos camerinenses ac communitates universitates et homines eis subditos ex una, nec non communitatem, universitatem et homines terre nostre Nursie spoletane diocesis eiusque districtus et subditos ex alia partibus per alias nostras litteras<sup>145</sup> inter ipsas partes per nos dono dei perpetua pax conclusa et indicta sit et inter cetera caveatur ibidem, quod per contenta in ipsis nullatenus derogetur aut preiudicium afferatur iuribus partium predictarum vel alterius earundem aut terrarum subditarum ipsis vel earum gubernationi commissarum sibi ipsis quomodolibet competentibus ante guerram die secunda mensis augusti anni domini millesimiquadringentesimidecimoctavi inter dictas partes exortam super quibuscunque terris, castris et locis, que altera pars sive eius subditi possint contra alteram intemptare, quodque iura quovis modo competentia tam dicte communitati Nursie contra communitatem terre Cerreti dicte spoletane diocesis super penis quas dicta Cerreti communitas incurrisset ac etiam super quibuscunque pecuniarum quantitibus quas ipsa universitas Nursie a prefata terra Cerreti quacunque ratione vel causa usque in presentem diem habere deberet quam eidem communitati Cerreti contra ipsam terram Nursie ratione simili penarum et pecuniarum ut prefertur sint dictis partibus reservata prout in ipsis litteris serius continetur et verendum sit plurimum, ne si altera pars contra alteram dicta iura intemptaret aut ipsis quomodolibet uteretur presertim in temporibus proximis, scandala innoventur. Nos super hoc salubri remedio occurrere cupientes, ex certis rationabilibus causis animum nostrum moventibus, dictis partibus et earum<sup>146</sup> utrique auctoritate apostolica et ex certa scientia stricte presentium tenore mandamus, quatinus altera pars aut eius terre et subditi sive eiusdem regimini recommissi contra alteram sive eius subditos aut regimini recommissos et presertim dicte universitates Nursie et Cerreti contra se alterutrum nullatenus prefata iura aut eorum aliquod pro ipsis terris castris locis penis ac

<sup>145</sup> *Post litteras rasuram hoc signo —~— grossator implevit.*

<sup>146</sup> *earum super rasura scribit grossator forsitan ex verbo eorum perperam antea arato.*

pecuniarum summis seu aliquo eorundem aut eorum occasione vel causa hinc ad triennium intemptent, nec quovis modo utantur, expressim inhibentes eisdem, ne dicto durante triennio ipsa iura aliquatinus intemptare experiri aut prosequi iam intemptata presumant, sub pena nostro arbitrio auferenda. Interdicientes nichilominus ipsis partibus omne ius tam reale quam personale sive mixtum ratione premissorum huiusmodi durante termino in iudicio vel extra quovis modo experiendi aut intemptatum prosequendi coram quibuscunque iudicibus etiam per nos deputatis, ac decernentes irritum et inane quicquid contra huiusmodi mandatum, inhibitionem et interdictum a quoquam quamvis auctoritate exinde scienter vel ignoranter contigerit attemptari. Volentes etiam ac declarantes ne propterea iura ipsa aliquam lesionem incurrant, sed illesa et integra conserventur. Nulli ergo omnino hominum liceat hanc paginam nostri mandati, inhibitionis, interdictionis, constitutionis, voluntatis et declarationis infringere vel ei ausu temerario contraire. Siquis autem hoc attemptare presumpserit indignationem omnipotentis dei et beatorum Petri et Pauli apostolorum eius se noverit incursurum. Dat. Rome apud Sanctum Petrum ii idus martii, pontificatus nostri anno quarto.

De curia,  
G. de Pisis<sup>147</sup>

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<sup>147</sup> De curia, G. de Pisis] *super plica ad dex.*

V. Dionysius de Barigianis, *Consilium* (1434-1435)

Vatican Library, ms. Ottob. lat. 1249, f. 131r-132v

*Consilium on the murder of a comitatensis of Camerino by a citizen of Norcia and on the applicability to the perpetrator of the rule, stipulated in the Statutes of Norcia, that punishes the murder of a local citizen with death, based on the Peace between the Varanos of Camerino and Norcia of 13 March 1421.*

In Christi Yhesu nomine amen<sup>148</sup>. Pace inita inter magnificum condam Rodulfum de Varano ex una parte et comunitatem terre Nursie ex altera dei gratia et volente et tractante bone memorie Martino papa quinto, presupponitur inter alia capitula unum capitulum esse conditum huius tenoris, videlicet quod si contingeret aliquem nursinum offendere aliquem de subditis prefati Rodulfi aut eius filiorum vel etiam si contingeret aliquem de subditis prefati Rodulfi aut eius filiorum offendere aliquem nursinum, quod primo casu puniatur nursinus ac si nursinum offendisset, secundo casu habeatur ac si subditus prefati Rodulfi aut eius filiorum alium subditum offendisset. Et in terra Nursie viget statutum quod nursinus offendens forensem in centum florenis puniatur, offendens vero civem capitaliter puniatur. Contigitque in processu temporis, mortuo prefato domino Rodulfo, omnes eius nati miserabiliter interempti fuerunt, sicque tam civitas Cammereni quam alia quecumque loca a subiectione filiorum dicti condam Rodulfi se exemerunt ipsos filios occidendo, prout notorium est, et ad gremium ecclesie immediate se reduxerunt. Acciditque nunc quod comitatensis Cammereni de subditis condam dicti Rodulfi et eius filiorum occisus fuit per quemdam nursinum in terra Nursie, an possit evitare dictus nursinus penam capitalem, et pena statuti de offendente forensem per nursinum locum habeat?

Et licet in dubium non revocetur quod nursinus offendens forensem in centum florenis puniatur <et> tale statutum vires habeat, tamen recte intuenti dicta dispositio iuris municipalis non videtur robur habere quia contra precepta legis divine ‘ne occides’, ad hoc quod notat Bartolus in l. Omnes populi ff. de iustitia et iure [Dig. 1.1.9]<sup>149</sup>. Lex enim humana legem divinam tollere non potest, cum inferior non possit tollere legem superioris. Quod enim gravius est quam perpetrare homicidium et cum pena iure humano sit capitalis reducatur ad pecuniariam? Punitur enim homicida pena legis Corneliae de sicariis ut patet in toto

<sup>148</sup> *Adnotatio in marg. sin. ms.*: An capitula inita inter aliquos dominos et eorum filios in favorem subditorum suorum ex una parte et aliquam communitatem ex alia parte durent dicta capitula post mortem dictorum dominorum et eorum filiorum.

<sup>149</sup> *Vide* Bartolus de Sassoferrato, *In Primam Digesti Veteris Partem*, Apud Iuntas, Venetiis 1596, ad Dig. 1.1.9, f. 10va, n. 22.

titulo ff. et C. ad legem Corneliam de siccariis <et veneficis><sup>150</sup> [Dig. 48.8, Cod. 9.16]. Imo non posset princeps legem condere ut homicida non puniatur, nisi ex causa, quia princeps non potest permictere id quod vetat superior, idest ipse deus, ut dicitur in simili quod imperator non potest permictere usuras in l. Cunctos C. de summa trinitate [Cod. 1.1.1]<sup>151</sup>. |131v| Et illud quod non potest imperator multo minus potest statutum alicuius municipii, ut notat doctor illustris dominus Baldus in dicta l. Cunctos [Cod. 1.1.1]. Multo ergo minus potest statutum alicuius municipii vel civitatis vel terre. Quod enim non potest prima causa que habet influere in secundam, multo minus potest secunda. Cum ergo populi faciant<sup>152</sup> statuta auctoritate principis, merito id quod non potest princeps non possunt statuentes, argumento sumpto a maiori potentia cause efficientis et sumpto alio argumento a defectu cause influentis<sup>153</sup>, ubi considero quod refert idem dominus Baldus in c. i § Iniuria de pace tenenda et eius violatoribus [recte LF 2.53, *De pace iuramento firmanda et servanda*, § *Iniuria*] in questione illa, an occidens bampnitum<sup>154</sup> propriis manibus puniatur tantum in decem statuto hoc cavente: si mandans homicidium commicti solum in decem puniatur, an vero secundum ius com<m>une, quod videtur voluisse Jacobus de Belviso, quia statutum de mandante non loquitur. Archidiaconus<sup>155</sup> dixit quod tale statutum non valet quod imponit penam contemptibilem pro homicidio, xxiii q. iiiii <c.> Duo

<sup>150</sup> Rubrica tituli Dig. 48.8 ‘ad legem Corneliam de siccariis et veneficis’ est, rubrica tituli Cod. 9.16 ‘ad legem Corneliam de siccariis’.

<sup>151</sup> Adnotatio in marg. dex. ms.: An imperator possit permittere usuras.

<sup>152</sup> faciant] qui faciunt ms.

<sup>153</sup> Vide Baldus de Ubaldis, *In Primum, Secundum, & Tertium Codicis Libros Commentaria*, [Societas Aquilae se Renovantis], Venetiis 1599 [nova impressio Keip Verlag, Goldbach 2014], ad Cod. 1.1.1, f. 6rb-6va, n. 27: ‘Quod enim non potest prima causa, quae habet influere in secundam, multominus potest secunda. Unde cum populi faciunt statuta auctoritate Principis, merito id, quod non potest Princeps, non possunt statuentes, sumpto argumento a maiori potentia causae efficientis, & sumpto alio argumento ab effectu causae influentis’. *Haec est lectio tradita in plurimis editionibus, nec non in ms.* BAV, Vat. lat. 2291, f. 6ra. *In ms. idiographo* Roma, Biblioteca Nazionale Centrale, Varia 108, f. 4vb et in ms. BAV, Ross. 1087, f. 4rb *traditur* ‘a defectu’ pro ‘ab effectu’.

<sup>154</sup> bampnitum in interl. ms.

<sup>155</sup> Archidiaconus] Arcy. ms.



ista [C. 23, q. 4, c. 35]<sup>156157</sup>. Unde considerandum si esset ita modica pena pecuniaria pro homicidio quod non timeretur tale statutum non sortiretur effectum.

In proposito vero nostro, validum est dictum statutum, quia non imponit penam contemptibilem pro homicidio, facit quod notat textus et glossa in c. ii de delictis puerorum [X 5.23.2] dum loquitur de consuetudine, quod ex consuetudine prescripta pena pecuniaria pro homicidio imponitur<sup>158</sup>. Videndum est ergo id de quo principaliter queritur, an dictus perpetrans homicidium nursinus puniatur pena capitali occidendo comitatensem Cammereni de subditis condam dicti Rodulfi et eius filiorum, an solum in centum. Et videtur quod, vigore dictorum capitulorum propter que redactus est talis comitatensis Cammereni ad nursinum, ut nursinus offendens nursinum puniatur. Ex quo per dicta capitula pacis subditi dicti Rodulfi vel eius natorum prout nursini reputati sunt quamvis vere non sint, ut notat Bartolus in l. Si is qui pro emptore ff. de usucapionibus <et usurpationibus><sup>159</sup> [Dig. 41.3.15]<sup>160</sup>. Pax enim illa perpetua, non ad tempus, fuit et pax debet esse<sup>161</sup> leta | 132r | et festiva, l. i C. publice letitie <vel consulum nuntiatores vel insinuatōres constitutionum et aliarum sacrarum vel iudicialium litterarum ex descriptione vel ab invitis ne quid accipiant immodicum> li. xii [Cod. 12.63.1], C. de caducis tollendis l. i in principio [Cod. 6.51.1.pr.], de treuga<sup>162</sup> et pace c. i [X 1.34.1], et effectus pacis ponit prefatus dominus Baldus super constitutione Henrici imperatoris in ultima carta super verbo ‘Hec sunt

<sup>156</sup> Vide Baldus de Ubaldis, *Lectura super usibus feudorum; Super Pace Constantie*, In domo dominorum Anthonii et Raphaelis de Vulterris, Rome [c. 1474] (ISTC-iu00037000), ad LF 2.53, *De pace iuramento firmanda et servanda*, § *Iniuria*, f. 133ra: ‘Quero statuto cavetur quod occidens bannitum propriis manibus puniatur tantum in x, quid de mandatore? Respondeo mandans punietur secundum ius commune quia de eo non loquitur statutum secundum Iacobum Belviso qui disputat. Dicit Archidiaconus quod non valet statutum quod imponit penam contemptibilem pro homicidio, xxiii q. iiii duo ista per Archidiaconum’. Vide Jacobus de Belviso, *Quaestio ‘Lege civitatis cavetur’*, in M. Bellomo, *Quaestiones in iure civili disputatae. Didattica e prassi colta nel sistema del diritto comune fra Duecento e Trecento*, Roma 2008, p. 225-226. Vide Guido de Baisio, *Rosarium super Decreto*, [Johannes Siber], [Lugduni] [ante 1497] (ISTC-ib00289200), ad C. 23, q. 4, c. 35, f. 276vb.

<sup>157</sup> *Adnotatio in marg. sin. ms.*: Statutum penam contemptibilem pro homicidio imponens non valet.

<sup>158</sup> Vide *Glossa ordinaria ad X 5.23.2, ad v. ‘Infra decimumquartum annum’*: ‘Vel forte abbas hoc habuit ex consuetudine iam praescripta, ut pro homicidio poenam pecuniariam exigat’.

<sup>159</sup> de usucapionibus <et usurpationibus>] de usurpationibus et usucapionibus *in editione quam Mommsen recensuit*.

<sup>160</sup> Bartolus de Sassoferrato, *In Primam Digesti Novi Partem*, Apud Iuntas, Venetiis 1596, ad Dig. 41.3.15, 95rb-95va, n. 34-36.

<sup>161</sup> esse ex esset *corr. ms.*

<sup>162</sup> treuga] treuva *ms.*

nomina' [recte PC § *Hec sunt nomina*]<sup>163</sup>. Quamvis enim hodie non esset subditus dicti domini Rodulfi vel eius filiorum, tamen non desinit quod pax non duret vigore dictorum capitulorum, quia non ad vitam<sup>164</sup> solum ipsorum dominorum facta extitit.

Sed contrarium puto de iure verius, cum ad subditos certarum personarum capitula fuerunt relata: remotis ergo personis, removetur ipsum dispositum et virtus ipsorum capitulorum. Ex quo contemplatione ipsorum dominorum celebrata extitit, ut notatur ff. de vulgari <et pupillari> substitutione l. Sed<sup>165</sup> si plures § In arrogato<sup>166</sup> [Dig. 28.6.10.6]. Non enim guerra ex qua pax sequuta fuit erat respectu comunitatis Cammereni et terre Nursie, sed respectu ipsorum dominorum Cammereni et comunitatis Nursie. Nec potest dici subditus dictorum dominorum ex quo per homines dicte civitatis Cammereni mortui fuerunt dicti domini et rebelles extiterunt. Indigni enim se reddiderunt omni beneficio per dictos dominos eis attributo, ff. de manumissis testamento l. Testamento centurio [Dig. 40.4.51] de legatis <et fideicommissis> ii l. Lutius § Lutius Titius Damam [Dig. 31.88.11] et quod notatur eodem titulo l. Cum quidam<sup>167</sup> [Dig. 31.24]. Non enim dicitur subditus, sed rebellis talis comitatensis Cammereni, ad hoc quod notat Bartolus in glosis suis in constitutione 'Ad reprimendum' [recte 'Quoniam nuper'] super verbo 'rebellando' et super verbo 'rebellis'<sup>168</sup>. Qualitas enim illa personarum expressa in capitulis, quod si contingeret aliquem nursinum offendere aliquem de subditis prefati domini Rodulfi aut eius filiorum, non potest verificari de his qui non sunt subditi, licet fuerint subditi. Qualitas enim iuncta verbo significat secundum tempus verbi, ff. de noxalibus <actionibus> l. In delictis § Si extraneus [Dig. 9.4.4.1]<sup>169</sup>. Nec ad eos qui fuerunt subditi possunt trahi ut pax includat eos qui non sunt subditi tempore offense, facit quod |132v| notatur ff. de capitis diminutione<sup>170</sup> l. Tutelas [Dig. 4.5.7]. Desinunt enim esse subditi per dictam rebellionem et offensam, unde eis non debet patrocinari dictum capitulum pacis. Ponderandum est ergo tempus quo sunt subditi si offendantur ut in capitulis pacis includantur: si non sunt subditi, pro extraneis sive forensibus habeantur. Humanum enim iudicium regitur a verbis xxii

<sup>163</sup> Vide Baldus de Ubaldis, *Lectura super usibus feudorum; Super Pace Constantiae*, ad PC § *Hec sunt nomina*, f. 162rb-162vb.

<sup>164</sup> ipsorum (*post vitam*) *del. ms.*

<sup>165</sup> Sed] Sed et *ms.*

<sup>166</sup> arrogato] adrogato *in editione quam Mommsen recensuit.*

<sup>167</sup> Cum quidam] Cum quidam la grande *ms.*

<sup>168</sup> Vide Bartolus de Sassoferrato, *Consilia, quaestiones, et tractatus*, Apud Iuntas, Venetiis 1596, f. 105ra-106ra et 103[recte 104]rb.

<sup>169</sup> *Adnotatio in marg. dex. ms.*: Qualitas enim iuncta verbo significat secundum tempus verbi.

<sup>170</sup> de capitis diminutione] de capite minutis *in editione quam Mommsen recensuit.*

q. v <c.> Humane [C. 22, q. 5, c. 11] et significatio verborum debet considerari, quia significatio est proprius et verus sensus dictioni ab intellectu attributus. Verbum autem subditus proprie dicitur qui sub iurisdictione alicuius est, non sub potestate dominica vel paterna<sup>171</sup>, facit quod notatur in c. Ex parte de institutionibus, an archiepiscopus possit punire subditos suffraganei [*recte* X 3.7.3]<sup>172</sup>, et quod notat Innocentius <IV> in c. i de his que fiunt a prelato<sup>173</sup> <sine consensu capituli> [X 3.10.1]<sup>174</sup> et notatur in l. i ff. de iudiciis [*Dig.* 5.1.1] et in cle. prima de foro competenti [*Clem.* 2.2.1] ubi loquitur an ratione delicti quis dicatur subditus.

Ex quibus omnibus concludo dictum nursinum offendentem dictum comitatensem Cammereni puniri tamquam offendentem forensem et habere locum statutum terre Nursie et non capitulum dicte pacis.

Et ita ut suprascriptum est dico et consulo ego Dionisius de Barigianis de Perusio minimus utriusque iuris doctor et ad fidem me subscripsi et sigillari feci salvo iudicio melius sentientis<sup>175</sup>.

<sup>171</sup> *Adnotatio in marg. sin. ms.*: Appellatione subditi quis comprehendatur.

<sup>172</sup> *Titulus X 3.7 (De institutionibus) canonem Ex parte non continet: pro Ex parte legendum est Ex frequentibus. Vide Abbas antiquus [= Bernardus de Montemirato], Lectura aurea super quinque libris Decretalium, Joannes Schottus, [Argentorati] 1510, ad X 3.7.3, f. 144ra: 'Et sic nota archiepiscopum posse punire subditos suffraganeorum in notoriis'. Vide Baldus de Ubaldis, Margarita, Per Uldericum Scinzenzeler, Mediolani 1489 (ISTC-*iu00031000*), s.v. 'Archiepiscopus': 'Archiepiscopus potest punire subditos sui suffraganei, ita notat Abbas in c. ex parte [!] de institutionibus'.*

<sup>173</sup> prelato] prelata *ms.*

<sup>174</sup> *Vide Innocentius IV, In quinque libros Decretalium apparatus seu commentaria, Apud Carolum Pesnot, Lugduni 1578, ad X 3.10.1, f. 249rb.*

<sup>175</sup> Et ita ut suprascriptum – sentientis *subscriptio autographa cui sequitur vestigium sigilli formae rotundae in cera rubra.*