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*Baldo degli Ubaldi's Contribution to the Rule of Law in Florence**

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Case

On 24 February 1344, the Councils of the People and Commune of Florence, at the instance of the *Signoria* and the colleges, enacted a measure (*provvisione*) awarding Arriguccio di Lotto Pegolotti a valuable immunity and privilege. Arriguccio, his sons, and their male descendants were granted a permanent exemption, with the exception of indirect taxes (*gabelle*), from all communal imposts and forced loans (*prestanze*). Arriguccio's petition for the exemption was granted in recognition of the "genuine love that Arriguccio has always had, and has, for the people and commune of Florence". More specifically, the privilege recognized his service to the commune during its negotiations with Mastino and Alberto della Scala, lords of Verona, for the purchase of Lucca[1]. In 1335 Mastino and Alberto had acquired Lucca from the lords of Parma, the Rossi. Since rule over distant Lucca proved unworkable, the Della Scala were eventually forced to put Lucca on the market. Pisa had long wanted to acquire Lucca, but its offer was rejected[2]. Lucca, along with Pietrasanta and Barga, was sold to Florence in August 1341 for a price of 250, 000 florins[3]. After further, protracted negotiations, the price was subsequently reduced to 65, 000 florins[4]. Meanwhile, Pisa and Florence went to war over Lucca, with Pisa prevailing and taking control of the city in July 1342[5].

Arriguccio, formerly of Guelf Florence, but now residing in Verona, was appointed by the Della Scala in 1341 as their representative (*sindaco*) in the initial negotiations with Florence[6]. Why Arriguccio was in Verona is not clear. In describing the negotiations between Florence and Della Scala, Giovanni Villani referred to Arriguccio as "nostro antico cittadino ghibellino"[7], which suggests that he had been exiled and had found safe haven in Ghibelline Verona. In any case, by 1342, Arriguccio was no longer mentioned as Della Scala's representative, but it would be misleading to say that he had cast his lot with Florence, which had rewarded him a permanent tax exemption. In fact, the legal enforceability of the tax exemption, as we shall see, was originally based on a unilateral promise made to the Della Scala by the *Signoria* of its willingness to grant Arriguccio a tax exemption in the future. Arriguccio was apparently trusted by both the Della Scala and Florence to act as an honest broker. In Florence's eyes, his meritorious service lay in facilitating the

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[1] ASF, PR, 32 (24 Feb. 1343/44), f. 130r; and in the Appendix, below.

[2] For Lucca under the rule of Mastino della Scala, see L. GREEN, *Lucca under Many Masters: A Fourteenth-Century Italian Commune in Crisis (1328-1342*), Florence 1995, pp. 77-124.

[3] For the sale of Lucca and the ensuing negotiations, see G. VILLANI, *Nuova Cronica*, ed. G. PORTA, Parma 1990-1991, Vol. 3, pp. 249-268 (XII, CXXX-CXXXIV).

[4] *I capitoli del Comune di Firenze, inventario e regesto*, ed. C. GUASTI, Florence 1993, Vol. 2, pp. 280-296.

[5] GREEN, *Lucca under Many Masters*, cit., pp. 125ff; C. MEEK, *The Commune of Lucca under Pisan Rule, 1342-1369*, Cambridge Mass. 1980 (Speculum Anniversary Monographs, 6); M. LUZZATI, *Firenze e la Toscana nel medioevo. Seicento anni per la costruzione di uno Stato*, Turin 1986, pp. 95-96.

[6] See the enactment cited in note 1, and *I capitoli*, cit., pp. 285-286 (documents dating from September and October 1341). See also L. FUMI, *Regesti del R. Archivio di Stato in Lucca*, Lucca 1903, Vol. 2, p. 18.

[7] G. VILLANI, *Nuova Cronica*, cit., Vol. 3, p. 262 (XII, CXXXIII, 91-92).

negotiations between the two parties, in showing regard for the hostage-sureties Florence sent to Verona during the negotiations, and in assisting Florence in other ways. In February 1344, when Florence fulfilled its original promise, Arriguccio had returned to his native city and was residing in the parish of Santa Felicita.

The privilege was honored by the commune until 1359, when a forced loan of 100 florins was imposed on Iacopo, the sole surviving son of Arriguccio, who had since died[8]. The loan had been levied by an extraordinary executive commission (*Balìa*) of sixteen citizens created by the legislative councils at the *Signoria*'s instance in December 1358. At the time, the commune was facing war with the troops led by the German mercenary, conte Lando[9]. The *Balìa* was granted plenary emergency powers to raise 50, 000 florins from citizens through forced loans[10]. Such ad hoc fiscal commissions became permanent fixtures in Trecento Florence[11]. If the powers of *Balìe* exceeded those of the commune's regular fiscal officials, they were hardly absolute. In practice, the tenure of *Balìe* was six months and their powers were specifically delimited. The *Balìa* of 1358, for instance, was prohibited from annulling the condemnations and fines imposed on banished rebels, favoring any fugitive, interfering with the election of communal officials, encroaching on the jurisdiction of other officials, violating the *Ordinances of Justice* of 1293-1295, granting tax immunities and exemptions, and conferring citizenship on foreigners[12]. The limitations imposed on the *Balìa*'s competency were standard[13].

Citing the privilege granted his father, Iacopo claimed that he was exempt from the forced loan that was imposed on him. In turn, the commune's position was that he must pay the loan in view of the powers and *balìa* vested in the sixteen officials by the Councils of the People and Commune. The *Balìa* acknowledged that unilateral executive action would not resolve the legal questions raised by the dispute. While the *Balìa* did not want to perpetrate an injustice, it also wanted to uphold its rightful prerogatives (*ius*). It therefore commissioned five jurists (Nicola Lapi, Luigi di Neri di Tello Gianfigliazzi, Francesco di Lotto Salviati, Francesco di Bici Albergotti, and Baldo di Francesco degli Ubaldi) to prepare a *consilium sapientis* — a formal legal opinion (Appendix, below) that would contribute to an impartial resolution of the dispute.

Sapientes Communis

The submission of the case to the city's jurists conformed to a wider pattern of formal conflict resolution and in northern and central Italy[14]. A recurring motif in Florence was that legal matters,

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[8] See Appendix, below.

[9] On the threat of war with conte Lando, see G. BRUCKER, *Florentine Politics and Society, 1348-1378*, Princeton 1962, pp. 176ff.

[10] ASF, PR, 46 (11 Dec. 1358), ff. 71r-72r.

[11] A working definition of the term, *balìa*, is given by G. PRUNAI, *Firenze*, Milan 1967 (Acta Italica, 6), p. 50: "*Balìe: nei casi di necessità o nei momenti difficili per la vita della Repubblica, tutti i poteri dei vari uffici e consigli, compresi, spesse volte, anche quelli della Signoria, venivano delegati a speciali commissioni e concentrati in una balìa temporanea. Questo termine aveva un doppio significato, indicava l'ufficio in cui venivano concentrati e a cui venivano delegati i poteri e, insieme l'autorità e la competenza, di cui tale ufficio era stato investito*". A comprehensive study of Florentine *Balìe* would be valuable. For now, one may consult: B. BARBADORO, *Le finanze della Repubblica fiorentina. Imposta diretta e debito pubblico fino all'istituzione del Monte*, Florence 1929, esp. pp. 123ff, 267, 572, 593; A. MOLHO, *The Florentine Oligarchy and the Balie of the Late Trecento*, in "Speculum", 43 (1968), pp. 23-51; N. RUBINSTEIN, *The Government of Florence under the Medici (1434-94)*, 2nd ed., Oxford-New York 1997; J. M. NAJEMY, *Corporatism and Consensus in Florentine Electoral Politics, 1280-1400*, Chapel Hill 1982, esp. 79ff. For Siena, see the detailed study of G. CECCHINI, *Archivio di Balìa*, Rome 1957(Pubblicazioni degli Archivi di Stato, 26).

[12] See the enactment cited above, note 10.

[13] For other examples of the limited powers of special fiscal *Balìe*, see ASF, PR, 50, f. 55r (1 Dec. 1362); PR, 60, f. 10 (1 Apr. 1360); PR, 62, f. 175v (20 Oct. 1374); PR, 64, f. 264r (6 Mar. 1376/77).

[14] For the latest overview and bibliography, see M. ASCHERI, *Le fonti e la flessibilità del diritto comune: il paradosso del 'consilium sapientis'*, in *Legal Consulting in the Civil Law Tradition*, edd. M. ASCHERI, I. BAUMGÄRTNER, and J. KIRSHNER, Berkeley 1999 (Studies in Comparative Legal History of The Robbins Collection in Religious and Civil Law), pp.11-54. For Florence, see J. KIRSHNER, *Consilia as Authority in Late Medieval Italy: The Case of Florence*, in *Legal Consulting in the Civil Law Tradition*, cit., pp. 107-140; T. KUEHN, *Il diritto di famiglia e l'uso del diritto nelle famiglie fiorentine nel Rinascimento*, in *Palazzo Strozzi metà*

especially those concerning the legality of executive acts, were better left to the dispassionate professional judgment of jurists rather than to the partisanship and emotions (*passiones*) of ordinary citizens[15]. This refrain expressed the Stoic-Christian perspective that the maladministration of justice emanates from destructive private passions of citizens competing for wealth, prestige, and privilege[16]. Armed with technical learning and authority-conferring university doctorates and imbued with a professional ethos that gave primacy to conscientious deliberation and law's transpersonal rules, jurists were called on to determine whether public officials were complying with the laws binding them in the exercise of their powers. The role of Florentine jurists in resolving legal disputes between the commune and persons (citizens, resident aliens, *contadini*, and foreigners) and corporate entities (guilds, ecclesiastical institutions, and subject communities) increased exponentially with the creation of the office of the *sapientes communis* or *savi del comune* in the 1350s. The new compilation of *statuti* (1355) provided that the *Signoria* might elect two jurists (*iudices, sapientes, advocati*) with responsibility for advising communal officials, "who were in need of consultors and jurists (*qui consiliariis seu sapientibus indigerent*)", on the legality of executive actions[17]. Only citizens of Florence and Guelfs in good standing could be appointed as *sapientes communis*, and once appointed, their tenure was limited to two months.

The office was not immediately staffed, which perhaps explains why an enactment of 1357 ordered Florentine jurists to respond to requests for *consilia* from foreign magistrates (*podestà, capitano del popolo*) or any communal officials. Private persons or entities (*universitates*) carrying on a lawsuit against other private parties in Florence's courts were also entitled to request a *consilium sapientis*. Jurists were obliged to submit their *consilia* to the requesting party in appropriate written form and according to the schedule established by the *statuti* of 1355[18]. The *sapientes*

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millennio 1489-1989. Atti del convegno di studi, Firenze, 3-6 luglio 1989, Rome 1991, pp. 108-125; L. MARTINES, *Lawyers and Statecraft in Renaissance Florence*, Princeton 1968. For an illuminating analysis of the reliance of Roman senators on *consilia* as a strategy of institutional self-legitimization, see I. BAUMGÄRTNER, *Rat bei der Rechtsprechung. Die Anfänge der juristischen Gutachterpraxis zwischen römischer Kommune und päpstlicher Kurie im 12. und beginnenden 13. Jahrhundert, in Legal Consulting in the Civil Law Tradition*, cit., pp. 55-106.

[15] See note 118, below, and the remark of Filippo Giamori, in a specially summoned meeting to advise the *Signoria*, on requesting the opinion of jurists concerning whether a certain act (*commissio*) performed by Florence violated the terms of a "*contractus pacis factus*" with the strategically situated city, Sarzana. ASF, CP, 9, f. 39v (31 Jan. 1367/68): *"Et facta commissio, videatur per sapientes iuris. Placeret mihi quod essent potius <sapientes> quam* (*potius facturi* ? *quam* **Cod**) *cives propter passiones quas cives habent*". Among the five jurists who rendered the opinion were Francesco Albergotti and Luigi Gianfigliazzi; see ibid, f. 44r (8. Feb. 1367/68). On the necessity of making executive decisions on grounds of public utility rather than private passions, see D. DE ROSA, *Coluccio Salutati: Il Cancelliere e il pensatore poltico*, Florence 1980, p. 166.

[16] On the relationship between destructive private passions and the maladministration of justice and misrule, a Christian-Stoic-humanist theme, see Thomas Aquinas, *Commentary on Aristotle's Nicomachen Ethics*, V. II n. 10 [1009], trans. C. Litzinger, Notre Dame Indiana, pp. 321-322; P. BRACCIOLINI, *De laude Venetiarum*, in *Opera omnia*, ed. R. FUBINI, Turin 1964-1969, Vol. 2, pp. 925-937; F. GUICCIARDINI, *Dialogo e discorsi del Reggimento di Firenze*, ed. R. PALMAROCCHI, in *Opere*, Vol. 7, Bari 1932 (Scrittori d'Italia, 140), pp. 55, 57;N. MACHIAVELLI, *Discorsi sopra la prima deca di Tito Livio*, ed. S. BERTELLI, Milan 1960, III, 35, p. 482 For an alternative position, that in seeking justice administrators and judges may properly base their decisions on *passiones*, see A. M. HESPHNA (with the collaboration of A. SERRANO), *La senda amorosa del derecho. 'Amor' y 'iustitia' en el discurso jurídico modern*, in *Passiones del jurista*: *Amor, memoria, melancolía, imaginación*, ed. C. Petit, Madrid 1997, pp. 25-56. I agree with the authors' contention that negotiation, local habits, and the ruler's love, rather than formal commands issued by central authorities, characterized the interrelationship of political power and law in early modern states. For a positive assessment of the emotional bases of contemporary lawmaking and judicial administration, see the first-rate contributions to*The Passions of Law*, ed. S. A. BANDES, New York 1999.

[17] ASF, Statuti (Podestà), 10, lib. 2, ff. 68v-69r (rub: *De advocatis gubernatorum gabellorum et aliorum offitialium civium eligendis*).

[18] ASF, PR, 44, ff. 51r-52r (16 Jan. 1356/57): *"quod omnes et singuli iudices, legiste seu cives florentini, cui seu quibus vel in quos aliqua questio seu punctus alicuius questionis, litis, controversiis, dubii sue cause commissus fuerit consulendum, sive qui electi fuerint ad consulendum super aliqua questione, lite, controversia, sive dubio, per aliquem rectorem sue offitialem comunis Florentie, seu per aliquem seu aliquas personas sive universitates, invicem litigantes coram aliquo rectore sue offitiale comunis predicti, teneantur et debeant sub*

communis came to the fore again in 1358, when the *Signoria* was charged with electing two jurists to the bimestrial office. In the new enactment, tenure was again limited to two months, electoral procedures were now detailed, and only those jurists possessing native citizenship (*cives originarii*) would qualify for this office[19]. The office of the *sapientes communis* was thereafter continually staffed from 1359 until 1449, when it was suppressed by the Medici regime[20].

To avoid anachronism, recall that in this period citizens whose privileges, immunities, and civic liberties were actually violated by the public acts of executive and administrative officials could not directly seek relief in any of Florence's courts. True, citizens could lodge complaints against foreign magistrates and their entourages for malfeasance and irregularities. Upon leaving office, these magistrates were compelled to submit to an investigation conducted by syndics of their official activities[21]. Yet it cannot be emphasized too strongly that constitutionalism and the separation of powers, a discrete body of administrative law, special administrative courts, judicial review of administrative acts, all fundamental institutions of the Italian legal system today, had not yet been conceived, let alone introduced, in the Trecento[22]. Iacopo di Arriguccio and countless other aggrieved Florentines had but one recourse: to ask for relief from the public officials directly responsible for the acts in question or from a hierarchical superior, the *Signoria*[23].

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pena trecentarum librarum florenorum parvorum cuilibet ipsorum hec non servanti auferendo summarie et de plano per quemcumque rectorem et offitialem dicti populi et comunis, commissionem et electionem ipsam acceptare, et sive acceptet sive non, perinde ac si acceptasset habeatur. Et super puncto sibi commisso consulere et consilium suum in scriptis dare offitiali qui talem fecerit seu coram quo talis questio seu controversia vel dubium ventilabitur seu esset, infra terminum per ipsusm talem rectorem seu offitialem statuendum seu prorogandum semel vel pluries, dummodo ipse terminos sive termini non possint excedere terminos contentos in statutis comunis Florentie disponentibus de predictis".

[19] ASF, PR, 46, f. 24r (12 Sept. 1358).

[20] J. KIRSHNER, *Consilia as Authority in Late Medieval Italy*, cit., p. 137.

[21] See. G. MASI, *Il sindicato delle magistrature comunali nel. sec. XIV*, in "Rivista italiana per le scienze giuridiche", Vol. 1/2 (1930), pp. 43-115, 331-411; V. CRECENZI, *Il sindicato degli ufficiali nei comuni medievali italiani*, in *L'educazione giuridica, IV: Il pubblico funzionario: modelli storici e comparativi*, Vol. 1, Rimini 1981, pp. 383-529. On public corruption in Florence, see A. Zorzi, *I Fiorentini e gli uffici pubblici nel primo quattrocento: Concorrenza, abusi, illegalità*, in "Quaderni storici", 66 (1987), pp. 725-751.

[22] G. CIANFERROTTI, *Pandettistica, formalismo e principio di legalità. Ranelletti e la costruzione dell'atto amministrativo*, in *Scritti di storia del diritto offerti del diritto offerti dagli allievi a Domenico Maffei*, ed. M. ASCHERI, Padua 1991, pp. 509-550. E. CANNADA BARTOLI, *Vanum disputare de potestate*', in "Diritto processuale amministrativo", 7 (1991), pp. 155-193 dates the birth of administrative law in Italy to the beginning of the nineteenth century. Dissenting, L. MANNORI argues convincingly that an administrative law regulating legal relationships between center and periphery in the Italian regional states crystallized in the sixteenth century. See MANNORI's *Per una 'preistoria' della funzione amministrative. Cultura giuridica e attività dei pubblici apparati nell'età del tardo diritto comune*, in "Quaderni fiorentini per la storia del pensiero giuridico moderno", 19 (1990), pp. 323-505, and his *Il sovrano tutore. Pluralismo e accentramento amministrativo nel principato dei Medici (secc. XVI-XVIII)*, Florence 1994. See also A. RIGAUDIÈRE, *Etat, pouvoir et administration dans la 'Pratica aurea libellorum' de Pierre Jacobi (vers 1311)*, in *Droits savants et pratiques Français du pouvoir (XI[e]-XV[e] siècles)*, edd. J. KRYNEN and A. RIGAUDIÈRE, Bordeaux 1992, pp. 161-210, who argues for a precocious conception of administrative law developed by the southern French jurist, Pierre Jacobi. On public administration in the *Midi* in the late twelfth and early thirteenth centuries, see the suggestive article by M. LESNE-FERRET, *Les fondements du pouvoir legislatif et statutaire dans les seigneuries meridionales*, in *Renaissance du pouvoir législatif et genèse de l'Etat*, edd. A. GOURON and A. RIGAUDIÈRE, Montpellier 1988 (Publications de la Societé d' Histoire du Droit et des Institutions des Anciennes Pays de Droit Ecrit), pp. 145-154. However, I would counter that it was not until the eighteenth century, with Montesquieu's ideas on the separation of powers in *De l'esprit des lois*, that executive functions began to be conceptualized separately from judicial institutions and procedures. Separate administrative courts, following the French model, were introduced in Italy only in 1971.

[23] That the priors of Perugia and the chief magistrates of Tuscan cities, such as the *Signoria* in Florence, may serve as a court of appeal in the absence of a *iudex appellationis* was endorsed by both Bartolo (according to Baldo) and Baldo himself. See BARTOLUS ad D. 26. 5. 19, *Ubi absunt*, cit., f. 58r: "*Nota diligenter istum casum et sic in civitatibus ubi non est iudex appellationis posset appellari a sententiis potestatis ad ordinem decurionem*". For Baldo's explicit statement, see J. CANNING, *The Political thought of Baldus de Ubaldis*, Cambridge 1987, pp. 204-205.

It appears that citizens and entities were not authorized by statute to request a *consilium sapientis* for the purpose of settling their disputes with communal officials. Initiative lay with the public officials who, from 1359 on, routinely submitted disputes with citizens and inhabitants of the Florentine territory to the *sapientes communis*. In accordance with judicial practice and municipal law, a *consilium sapientis* requested by a judge or litigants in a civil law dispute before a judge was binding in that it determined the judicial decision[24], whereas a *consilium sapientis* was not *de iure* binding on the requesting officials. Admittedly, a *consilium* requested by a public official carried persuasive authority; in practice, it was not easily ignored or circumvented. The *sapientes* had the advisory authority to declare an executive act unlawful, but their *consilia* had no instrumental power to reverse or modify an executive act. In effect, it was always left to the officials themselves or to the *Signoria* to grant complainants redress[25].

Statutory Interpretation

Jurists defended the prerogative of cities and towns to enact self-governing laws (*statuti*, *provvisioni*, *riformagioni*) and were regularly asked to assist in revising statutory compilations[26]. The preamble to the Florentine *statuti* of 1355 explained that the new compilation was made in recognition of the difficulty in applying the city's *statuta*, *reformationes*, *provisiones*, and *ordinamenata*, which were plagued by superfluities, contradictions, and vague language[27]. In retrospect, the efforts of the committee selected to revise the *statuti* were valiant but largely unrealized. The chronic deficiencies of Florentine municipal law persisted. First of all, the 1355 *statuti* were honeycombed with verbal inconsistencies made worse by the obscure and contradictory intentions of legislators. Second, because of gaps (*casus omissi*) in the *statuti*, whole areas of legal relations remained unregulated by municipal law[28]. Third, the fact that one provision was obsoleted by a subsequent provision made the priority of competing municipal laws a recurring

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[24] In general: W. ENGELMANN, *Die Wiedergeburt der Rechtskultur in Italien durch die wissenschaftliche Lehre*, Leipzig 1938, pp. 316-328; G. ROSSI, *Consilium sapientis iudiciale*, Milan 1958. In Florence: ASF, Statuti (Podestà), 18, Lib. 2, (rub. 44: *De petitione consilii sapientis*), f. 155v: "*teneatur et debeat dominus potestas et eius iudex, et quilibet alius offitialis dicte civitatis coram quo vel quibus questio verteretur, commictere in sapientem ipsam causam vel articulum, recepto suspecto aperto si dare voluerit, et secundum consilium sapientis super ipsa causa et articulo procedere, et non aliter, et quod contra fecerit non valeat ipso iure*".

[25] For comparable practices in early sixteenth-century Nürnburg, see H. G. WALTHER, *Die Rezeption Paduaner Rechtswissenschaft durch die Aufnahme Paduaner Konsilien in die Nürnberger Ratschlagbücher*, in *Consilia im späten Mittelalter. Zum historischen Aussagewert einer Quellengattung*, ed. I. BAUMGÄRTNER, Sigmaringen 1995, pp. 207-224.

[26] U. SANTARELLI, La gerarchia delle fonti secondo gli statuti emiliani e romagnoli, in "Rivista di storia del diritto italiano", 33 (1960), pp. 49-166; D. QUAGLIONI, *Legislazione statutaria e dottrina della legislazione; le 'Quaestiones Statutorum' di Alberico da Rosciate*, in his *'Civilis Sapientia.' Dottrine giuridiche e dottrine politiche fra medioevo ed età moderna* , Rimini 1989; C. STORTI STORCHI, *Appunti in tema di 'potestas condendi statuta'*, in *Statuti città territori in Italia e Germania*, edd. G. CHITTOLINI and D. WILLOWEIT, Bologna 1991 (Annali dell'Istituto storico italo-germanico, 30), pp. 319-343.

[27] ASF, Statuti (Podestà), 18, lib. 1, f. 82r. Such complaints about the deficiencies of Florentine laws had been voiced from the late thirteenth century onward. See N. OTTOKAR, *Studi comunali e fiorentini*, Florence 1948, p. 149. Similar problems existed in Siena, on which see M. ASCHERI, *Statuti, legislazione e sovranità: il caso di Siena*, in *Statuti città territori in Italia e Germania*, cit., pp. 145-194. The redactors of the Bolognese *statuti* of 1288 had to examine more than 250 volumes of prior *statuti* and legislation, as well as all the treaties, privileges, and grants of citizenship from 1250 on. See *Statuti di Bologna dell'anno 1288*, edd. G. FASOLI and P. SELLA, Città del Vaticano 1937, Vol. 1, p. viii.

[28] For instance, because the *statuti* of this period ignored disinheritance, jurists were forced to resolve disinheritance cases in accordance with *ius commune* rules. See J. KIRSHNER, *Baldus de Ubaldis on Disinheritance: Contexts, Controversies, Consilia*, in "Ius Commune. Zeitschrift für Europäische Rechtsgeschichte", 27 (2000), pp. 118-214. Another lacuna relating to *bona fides* and *praescriptio* in the Florentine statutes is analyzed by T. KUEHN, *Conflicting Conceptions of property in Quattrocento Florence: A Dispute over Ownership in 1425-26*, in his *Law Family and Women: Toward a Legal Anthropology of Renaissance Italy*, Chicago 1991, pp. 102-126. See also G. Bonolis, *Questioni di diritto internazionale in alcuni consigli inediti di Baldo degli Ubaldi, testo e commento*, Pisa 1908.

issue[29]. Fourth, many statutes and provisions simply fell unnoticed into desuetude. Fifth, municipal laws were in a perpetual state of potential conflict with the *ius commune*, essentially the *Corpus iuris* of Justinian and its *Glossa ordinaria*, but also the general law encompassing the vast body of romano-canonical rules and practices and their accompanying jurisprudence.

These were among the core problems addressed by jurists in *questiones* and in the tracts dedicated to statutory questions compiled by Alberto Gandino and Alberico da Rosciate[30]. Gandino had recommended that *statuta muncipalia* should be revised annually, unless the *statuta* contain a specific clause excluding annual revision. Alberico stated that it was common for legislators to limit the validity of legislation to one year. But following the teachings of Dino del Mugello, he argued that in theory *statuta* are valid in perpetuity just as its author, the people, endures in perpetuity[31]. Bartolo da Sassoferrato concurred[32]. If a few towns (e.g., Viterbo, Spoleto, Foligno) practiced an attenuated form of annual revision, most towns did not because it was manifestly impractical. This was especially the case in Florence, where, with its massive legislative corpus, annual readoption and revision would have paralyzed not just the legal system but also daily political life. Telling is the preambular language of a Florentine provision of December 1394 lamenting that it was forty years since the *statuti* of 1355 and *riformagioni* and *provvisioni* had been vetted. "In many parts and places, some statutes are mutually contradictory, some are corrected by others and many are superfluous, while still others are obscure and perplexing in arrangement, and there is so much confusion in them that they can no longer be understood, nor thoroughly known, nor even memorized by the foreign magistrates and their officials, who are in office for a limited time, unless the statutes are continuously read by them, so that because of ignorance, changing circumstances, and complexities, it often happens that public and private rights are violated and time and again many improprieties result"[33].

A remedy for the deficiencies threatening the operability of municipal law was found, as the *Glossa Neque leges* (D. 1. 3. 10) had put it, *interpretatione iurisconsulti authoritate*[34]. As the rules of statutory interpretation derived from the *ius commune* itself, the task of interpretation was assigned to the jurists, the self-appointed guardians of the *ius commune*[35]. The aim of interpretation was not to discover the subjective intentions of legislators or the purpose of the statute, by investigating the socio-political context in which it was drafted. Rather, interpretation was aimed at establishing the proper meaning (*ratio*) of the statutory text[36]. In accepting this task, Bartolo and the jurists who followed in his footsteps tended to give priority to the *ius commune*.

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[29] In the thirteenth century the commune of Siena established the office of the *maggior sindico* to defend its *constitutio*. According to Bowsky, "he was to attend all sessions of the City Council and there speak against any proposals that might derogate from the rights and honor of the commune". Pragmatic considerations led the Council to overrule the *maggior sindico* "very close to 100% of the time". See W. BOWSKY, *The Constitution and Administration of a Tuscan Republic in the Early Middle Ages and Early Renaissance: The 'Maggior Sindaco' in Siena*, in "Studi senesi", 17 (1968), pp. 7 -22, quotes on p. 9.

[30] C. STORTI STORCHI, *Prassi dottrina ed esperienza legislativa nel 'opus statutorum' di Alberico da Rosciate*, in *Confluence des droit savants et des pratiques juridiques.* Actes du Colloque de Montpellier... 12-14 déc. 1979, Milan 1979, pp. 437 -489; D. Quaglioni, *Legislazione statutaria e dottrina della legislazione*, cit.

[31] U. SANTARELLI, *Pensiero giuridico e applicazione. Gli strumenti normativi e la loro durata nell'Umbria medievale*, in *Gli statuti comunali umbri*, ed. E. MENESTÒ, Spoleto 1997, pp. 26-42.

[32] D. SEGOLONI, L'annalità dagli statuti comunali, in "Bollettino della Deputazione di Storia Patria per l'Umbria", 88 (1991), pp. 33-42.

[33] My translation from the text quoted by A. ZORZI, *L'amministrazione della giustizia penale nella repubblica fiorentina*, Florence 1988, p. 12. On the revision of the *statuti*, see also MARTINES, *Lawyers and Statecraft*, cit., pp. 185ff; and G. GUIDI, *Il governo della città-repubblica di Firenze del primo Quattrocento*, Florence 1981, Vol. 1, pp. 59ff.

[34] Cited and discussed by P. GROSSI, *L'ordine giuridico medievale,* Bari 1995, p. 167.

[35] On statutory interpretation, see CH. LEFEBVRE, *Le pouvoirs du juge en droit canonique* Paris 1938; M. SBRICCOLI, *L'interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell'età comunale*, Milan 1967; V. CRESCENZI, *Problemi dell'*interpretatio *nel sistema del diritto comune classico*, in "Bulletino dell'Istituto Storico Italiano per il Medievo", 98 (1992), pp. 271-322; W. P. MÜLLER, *Signorolus de Homodeis and the Medieval Interpretation of Statutory Law*, in "Rivista internazionale di diritto comune", 6 (1995), pp. 217-232.

[36] I. MACLEAN, *Interpretation and Meaning in the Renaissance: The Case of Law*, Cambridge 1992, pp. 115ff.

According to his pupil, Baldo degli Ubaldi, Bartolo held that "the *ius commune* shapes and clothes statutes but is neither shaped nor clothed by them, and this because of the powerful attraction that the *ius commune* exerts over municipal law, and not the other way around"[37]. For his part, Baldo refused to embrace Bartolo's view that without the supportive covering of the *ius commune* municipal law stood naked and impotent[38].

Baldo's theory of statutory interpretation was predicated on the principle of "subsidiarity", which gave wide latitude to municipal law and assigned the *ius commune* an auxiliary role of assisting municipal law when its operability was threatened by obscurity, inapplicability (*ubi cessat statutum habet locum ius civile*) and unprovided-for cases (*casus omissus remanet sub dispositione iuris communis*)[39]. In numerous *consilia* he therefore defended the operability of what he considered unambiguous municipal laws even when they contradicted the *ius commune*, while in many others he was compelled to give preference to the *ius commune*[40]. In addition, Baldo sustained appeals to the *ius commune* in disputes surrounding laws that had been emended, modified, or abrogated by new laws[41]. And he held that a local custom promoting criminal behavior may be abrogated by reference to general imperial law[42]. For Baldo and his fellow jurists, statutory interpretation anchored in the *ius commune* was a way of making the statute speak, of performing the law "by deciding its relationship to an individual case"[43]. As performers of the law, they uncompromisingly rejected the idea of a purely autonomous power of legislators and by extension a body of municipal law standing independently from higher norms and the authority of juristic interpretation. Their unyielding allegiance to the rule of law animated by reason would have compelled them to denounce so-called Machiavellian and Guicciardian realism, which supposedly severed the "politically effective" from the "normatively valid"[44]. Likewise, they would have

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[37] BALDUS ad X 1. 2. 1, *Canonum*:, Venice 1595, f. 11r, n. 49: "*Hoc est dicere quod ius commune informat statuta et vestit, sed non informatur nec vestitur ab eis, et hoc propter virtutem attractivam quam habet ius commune ad muncipale et non econtra de ista virtute attractiva, no. ff. de pac, l. Iuris gentium, § Quinimo* (D. 2. 14. 7. 5)".

[38] On this point see ROSSI, cit., *Consilium sapientis iudiciale*, p. 97, and SBRICCOLI's hermeneutic analysis, *L'interpretazione dello statuto*, cit., pp. 438-442.

[39] U. NICOLINI, *Il principio di legalità nelle democrazie italiane. Legislazione e dottrina politico-giuridica dell'età comunale*, Milan 1947, pp. 285ff; E. BUSSI, *Lineamenti di un sistema del diritto comune*, Milan 1949, p. 28. According to N. HORN, *Aequitas in den Lehren des Baldus*, Cologne-Graz 1968, p. 77, Baldo's position was "*Das ius commune hatte mithin nur subsidiäre Geltung*". See also CANNING, *The Political Thought of Baldus de Ubaldis*, cit., pp. 149ff.

[40] I refrain here from citing dozens of raw, unanalyzed examples from the ca. 3000 *consilia* that Baldo authored, many of which were cited by the sixteenth-century jurist, DOMENICO TOSCHI, in his *Practicarum conclusionum iuris ... tomus tertius*, Lyon 1634, pp. 361-367, concl. 573 (*Statutum debet interpretari secundum ius commune, et qualiter, et quando non*). For six studies of Baldo's approach, see: D. QUAGLIONI, '*Questione ebraica*' *e usura in Baldo degli Ubaldi (1327-1400)*, in *'Civilis Sapientia,'* cit., pp. 69-192, 229-34; J. PLUSS, *Reading Case Law Historically: A Consilium of Baldus de Ubaldis on Widows and Dowries*, in "American Journal of Legal History", 30 (1986), pp. 241-65; V. PIERGIOVANNI, *Diritto e potere a Genova alla fine del trecento: a proposito di tre 'consigli' di Baldo degli Ubaldi*, in *La storia dei Genovesi*, Genoa 1987, Vol. 7, pp. 40-62; G. P. MASSETTO, *Il lucro dotale nella dottrina e nella legislazione statuaria lombarda dei secoli XIV-XVI*, in AA.VV., *Ius mediolani. Studi di storia del diritto milanese offerti dagli allievi a Giulio Vismara*, Milan 1996, pp. 219-254; J. KIRSHNER, *Donne maritate altrove. Genere e cittadinanza in Italia*, in *Tempi e spazi di vita femminile tra medioevo ed età moderna*, edd. S. SEIDEL MENCHI, A. JACOBSEN SCHUTTE, and T. KUEHN, Bologna 1999, pp. 377-430; O. CAVALLAR, *La 'benefundata sapientia' dei periti: Feritori, feriti e medici nei commentari e consulti di Baldo degli Ubaldi*, in "Ius Commune. Zeitschrift für Europäische Rechtsgeschichte", 27 (2000), pp. 215-281.

[41] BALDUS, *Consilia*, Venice 1575, Vol. 3, f. 81v, cons. 365, n. 1 (=BAV, Barb. lat. 1406, f. 61r).

[42] BALDUS ad D. 1. 3. 30, *Princeps, Commentaria*, Venice 1586, f. 21v, nn. 3-4.

[43] MACLEAN, *Interpretation and Meaning in the Renaissance*, cit., p. 177.

[44] A. MOULAKIS, *Republican Realism in Renaissance Florence. Francesco Guicciardini's 'Discorso di Logrogno,'* Lanham, MD 1998, p. 17. Moulakis either ignores or is unaware that Guicciardini, writing as a jurist, accepted the right of a prince or state to expropriate the goods of particular individuals, so long as it was done for the "normatively valid" reason of public utility. On Guicciardini's use of this medieval construct, see O. CAVALLAR, *Francesco Guicciardini and the 'Pisan Crisis': Logic and Discourses*, in the "Journal of Modern History", 65 (1993), p. 273.

denounced as an abomination Carl Schmitt's norm-less conception of law—namely, that "the sovereignty of the law means only the sovereignty of men who draw up and administer the law"[45].

Five Consultors

The five consultors commissioned by the *Balìa* can be divided into two groups. Lapi, Salviati, and Gianfigliazzi were native citizens, active in political and diplomatic affairs, and engaged in the internal affairs of their guild[46]. We do not know at which universities they had earned their doctorates. Their reputations as jurists were strictly local and none was called to teach at Florence's university or *Studio*. The *consilium* itself was drafted on behalf of the five jurists by Francesco Salviati[47]. He belonged to a wealthy mercantile and politically active family of the first rank and served three times as *sapiens communis* (May/Jun. 1360; Sept./Oct. 1361; Nov./Dec. 1362)[48], and earlier, in 1342, served as one of the sixteen *gonfalonieri di compagnia*[49]. Lapi was the first jurist to hold the office of *sapiens communis*, (Jul./Aug. 1359)[50], and it is possible that he was serving in that capacity when, around July 1359, the *consilium* concerning this case (Appendix, below) was produced. Altogether he was reappointed *sapiens communis* six times during the 1360s[51]. He also was appointed to the board of officials who supervised the *Studio*[52], and is found performing promissory oaths on behalf of Florence to uphold intercity pacts[53]. It is likely that Lapi had first-hand knowledge of Arriguccio Pegolotti's exploits, for he was kept as a hostage-surety by the Della Scala in 1345 pending the outcome of the settlement with Florence over the purchase of Lucca[54]. Lapi's investments in the city's public debt suggest that he was wealthy[55].

There no evidence to support Novati's assertion that Gianfigliazzi, a leading member of an illustrious Guelf *casa* , was elected to the priorate three times (1351, 1357, and 1363)[56]. His did serve as *sapiens communis* once[57], and the advice he tendered in Florence's executive councils (*Consulte e Pratiche*) as one of the *richiesti* carried weight[58]. The commune also relied on his

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[45] C. SCHMITT, *The Concept of the Political*, trans. G. Schwab, New Brunswick, New Jersey 1976, p. 67.

[46] See, for example, ASF, Arte dei Giudici e Notai, 28, ff. 2r-95v (12 Feb. 1358/59-4 Jan. 1363); ibid., 90, unfoliated (year: 1358).

[47] Another *consilium* written by Salviati is found in BAV, Vat. lat. 8069, f. 333rv.

[48] ASF, Tratte, 188, f. 70r; Tratte 189, f. 53r; Tratte, 210, f. 56r. See also BRUCKER, *Florentine Politics*, cit.,., *passim*; and P. HURTUBISE, *Une famille-temoin. Les Salviati*, Città del Vaticano 1985, esp. pp. 28-29, 32-33, 38, 105.

[49] *I capitoli del Comune di Firenze*, Vol. 2, p. 297.

[50] ASF, Tratte, 188, f. 6r. Another *consilium* of Lapi was published with Bartolo's *consilia*: see the Venetian edition of 1570-71, Vol. 10, II, f. 68rv, cons. 59. Franco Sacchetti included Lapi in his encomium of the most worthy citizens of Florence. See his *Il libro delle rime*, ed. F. BRAMBILLA AGENO, Florence-Perth 1990, p. 380, CCXLIV (128-130): *"messer Nicola Lapi, che si crede che a la vera ragione si diriz<z>ava, come ch'ancor per la fama oggi si vede"*. For Domenico Silvestri's epitaph commemorating Nicola Lapi, see *Domenico Silvestri: The Latin Poetry*, ed R. C. Jensen, Munich 1973, p. 184.

[51] ASF, Tratte, 189, f. 41v (Jul./Aug 1361); Tratte, 210, f. 68r (Jan./Feb 1362/63); Tratte, 212, f. 83r (May/Jun. 1366); Tratte, 190, f. 40r (Sept./Oct 1366), f. 95v(Jan./Feb. 1367/68); Tratte, 191, f. 62r (May/June 1369).

[52] *Statuti della Università e Studio fiorentino dell'anno MCCCXX al MCCCCLXXII*, ed. A. GHERARDI, Florence 1881, pp. 111, 113, 123. For other commissions, see Tratte, 212, f. 54r (29 Dec.1365), f. 101v (27 July 1366); Tratte, 213, f. 38r (1 Feb. 1366/67).

[53] *I capitoli del Comune di Firenze*, cit., Vol. 1, pp. 29, 306, 312, 314, 328; Vol. 2, p. 63.

[54] Ibid., p. 296.

[55] ASF, Monte Comune o delle Graticole, Parte II, n. 779, f. 167r (year: 1370). Among Lapi's holdings were voluntary loans in the *Monte dell'un tre* with a face value of 2, 681 florins that paid 15 percent interest per annum. For a reference to Gianfigliazzi's holdings in the *Monte dell'un due*, see Ibid, n. 804, f. 105v (Nov. 1374-Oct.1375).

[56] F. NOVATI, *Luigi Gianfigliazzi, giureconsulto ed orator fiorentino del sec. XIV*, in "Archivio storico italiano", 5th ser., 3 (1888), pp. 441-447. The lack of evidence has been pointed out in V. Arrighi's bio-bibliographical profile in the *Dizionario biografico degli italiani*, Rome 2000, Vol., 54, pp. 363-366. Nor does Luigi appear as prior in the excellent database, *Florentine Renaissance Resources, Online Tratte of Office Holders* (http://www.stg.brown.edu/projects/tratte/).

[57] ASF, Tratte, 210, f. 5r (July/Aug. 1363).

[58] ASF, CP, 4, f. 15r (25 Jan. 1362/63); CP, 5, f. 28v (29 Feb. 1363/64), f. 55r (18 Apr. 1364); CP, 6, f. 24v (26 Nov. 1364), f. 37v (13 Jan. 1365); CP, 9, f. 7r (1054 Nov. 1367), f. 8r (11 Nov. 1367), f. 16r (12 Dec. 1367), f. 19v (17

diplomatic and oratorical skills, most notably in 1367, when he represented Florence in its dealings with Pope Urban V, who had recently returned from Avignon to Italy[59]. He was steeped in classical rhetoric and admired by his literary compatriot, Franco Sacchetti, as an "*eloquente legista*"[60]. His commentary on Cicero's *De inventione* is considered a prime example of early Florentine humanism[61].

The second group of jurists included Albergotti and Baldo degli Ubaldi, newcomers to Florence, welcomed as distinguished teachers and practitioners. A scion of a Guelf patrician Aretine family, Albergotti migrated to Florence where he acquired original Florentine citizenship in January 1350[62]. He was appointed as *sapiens communis* six times and taught at the *Studio* continuously from 1357/58 through 1369/70[63]. Baldo, his colleague at the *Studio*, parsimonious in praising his

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Dec. 1367), f. 44r (8 Feb. 1367/68), f. 93r (10 May 1368), f. 101v (2 Jun. 1368), f. 107r (6 Jun. 1368), f. 121v (3 Jul. 1368), f. 127v (19 Jul. 1368), f. 128v (19 Jul. 1368), f. 134r (22 Jul. 1368). Another *consilium* with Gianfigliazzi's (Luisius de Iamzilacis) *subscriptio* is found in Bologna, Collegio di Spagna, MS 83, f. 163r.

[59] NOVATI, *Luigi Gianfigliazzi*, cit., pp. 441-444; *I capitoli del Comune di Firenze*, cit., Vol. 1, p. 382. For his activities as ambassador to Perugia and Siena and to the congress held at Arezzo in 1351, see G. DEGLI AZZI VITELLESCHI, *Le relazioni di Firenze e l' Umbria nel secolo XIV secondo i documenti del R.° Archivio di Stato di Firenze*, Perugia 1904, doc. 166, 173, 269, 270, 272, 273, 274; D. MARZI, *La cancelleria della Repubblica fiorentina*, Rocca S. Casciano 1910, pp. 697-698.

[60] *Il libro delle rime*, cit., p. 379, CCXLIV (109-110).

[61] J. O. WARD, *Renaissance Commentators on Ciceronian Rhetoric*, in *Renaissance Eloquence: Studies in the Theory and Practice of Renaissance Rhetoric*, ed. J. J. MURPHY, Berkeley 1983, pp. 136-137; Idem, *Ciceronian Rhetoric in Treatise, Scholion and Commentary*, Turnhout 1995 (*Typologie des sources du moyen age occidental*, 58), pp. 65-66. R. G. WITT, '*In the Footsteps of the Ancients*': *The Origins of Humanism from Lovato to Bruni*, Leiden-Boston-Cologne 2000 (Studies in Medieval and Reformation Thought, 74), pp. 363-364, 369, 428, 443, who mistakenly calls Gianfigliazzi a "Roman lawyer".

[62] For his career and works, see J. KIRSHNER, *Messer Francesco di Bici degli Albergotti* d'Arezzo, *Citizen of Florence (1350-1376*), in "Bulletin of Medieval Canon Law", 2 (1972), pp. 84-90; and J. KIRSHNER and J. PLUSS, *Two Fourteenth-Century Opinions on Dowries, Paraphernalia and Non-Dotal Goods*, in "Bulletin of Medieval Canon Law," 9 (1979), pp. 65-77; A. CAMPITELLI, *Il "tractatus de cicatricibus" di Francesco Albergotti attribuito a Bartolo da Sassoferrato*, in "Annali di storia del diritto", 8 (1964), pp. 283-88; K. PARK, *The Readers at the Florentine Studio According to Communal Fiscal Records (1357-1380, 1413-1446*), in "Rinascimento", 21 (1980), pp. 249-267. For additional copies of Albergotti's *consilia* and doctrinal works, see Florence, ASF, Corporazioni religiose soppressi dal governo francese, 98, n. 252, ff. 154r-157r (*Disputatio domini Francisci de Albergottis de Aretio*); Biblioteca Nazionale, Magl. XXIX, 161, ff. 16v, 98r; Magl. XXIX, 172, ff. 122v, 208v, 248rv, 342v-343v (*De collectis et reportatis domini Francisci de Aretio in rubrica, De secundis nuptiis, C. in l. Feminae* [C. 5. 9. 3]); Magl. XXIX, 174, ff. 16v-17r; 115-117r; Fondo Nazionale, II, II, 375, f. 64r; Foligno, Biblioteca Iacobili del Seminario Diocesano, MS 23 (A VI, 17), ff. 20r-20v, 21v-22r, 23r-24r, 24r-25r, 28v-29v; 29v-30r; Lucca, Biblioteca Capitolare Felinina, Cod. 351, ff. 278ra-279va; Cod. 419, ff. 190v-192v (with *subscriptiones* of Giovanni da Legnano, Antonio de Presbyteris and others); Milan, Biblioteca Ambrosiana, MS I 249 Inf., ff. 133r-135r (expl: *Et ita nos Thomas de Cursinis et Antonius de Machiavellis, cives Florentini, et Francishus de Aretio, iuris doctores consulimus etc*; ff. 135v-137r, 310v-311r, with *consilia* on the same case by Baldo (f. 311r) and Giovanni da Legnano (f. 311rv); Pisa, Biblioteca Universitaria, MS Roncioni 704, ff. 123r, 414r-418v (*repetitio*); Torino, Biblioteca Nazionale Universitaria, Cod. H. I. 13, fols. 86v-87r; BAV, Urb. lat. 1132, f. 141rv; ANGELO DEGLI UBALDI, *Consilia*, Lyon 1551, ff. 192r-193v, cons. 349, (inc: *Martinus Io. de Florentia*) G. DOLEZALEK, *Verzeichnis der Handschriften zum römischen Recht bis 1600*, Frankfurt am Main 1972, Vol. 3, svv. Franciscus de Albergottis, Franciscus Bici de Aretio; and *I Codici del Collegio di Spagna di Bologna*, ed. D. MAFFEI *et alii*, Milan 1992, p. 915. Another MS, Phillips 8889, contains four Albergotti *consilia*: f. 113rv (Inc: *Brevis facti narratio est Martinus Johannis de Florentia decessit*), f. 119r (Inc: *In puncto premisso non stando*), ff. 129r-130r (Inc: *Statutum cavetur quod potestas*), f. 224rv (Inc: *In causa potestatis civitatis Florentie*, with *subsriptiones* by Giovanni de' Ricci and Nicola Lapi). This MS dates from the early fifteenth century and contains *consilia* of other Florentine jurists in addition to those of Bartolo, Francesco Tigrini, Baldo, and Angelo degli Ubaldi. It was formerly owned by the New York bookseller, H. P. Kraus, who sold it to a German bookseller in the early 1980s. The current location of the manuscript is unknown. The above references to Albergotti's works is by no means exhaustive.

[63] ASF, Tratte, 188, f. 50r (Jan./Feb1359/60); Tratte, 213, f. 297 (Jan. /Feb. 1366/67); Tratte, 214, f. 27r (Sept./Oct. 1367); Tratte, 191, f. 48v (Mar./Apr. 1368/69); Tratte, 192, f. 63r (Jan./ Feb. 1372/73); Tratte, 219, f. 46r (May/June 1376); PARK, *The Readers at the Florentine Studio*, cit., pp. 249-67.

contemporaries, called Albergotti "valentissimum doctorem"[64]. Later jurists considered him a disciple of Bartolo and his commentaries as well as his *consilia* were frequently cited, though most of his works remain unedited.

Baldo was a rising star when he arrived in Florence from Pisa in 1358 at the age of thirty-one to teach civil law at the *Studio*[65]. With a starting salary of 250 florins, climbing to 300 florins in 1360, which were substantial sums at the time, he was among the highest paid professors at the *Studio*[66]. At this early stage in his career, Baldo could not yet command the astronomical salary of 800 florins that was awarded in 1362 to the Bolognese jurist, Riccardo da Saliceto[67]. Like Albergotti and other foreign jurists arriving in Florence to practice law and to teach, Baldo was granted original citizenship in October 1359[68]. The following month his wife, Lauduzia, gave birth to twin boys "*in civitate florida Florentinorum*", an event the elated Baldo recorded in his commentary on the lex *Arboribus* (Dig. 7. 1. 12)[69]. In 1361, Baldo was enrolled in the Guild of Jurists and Notaries, but he was not an active member of the guild[70]. As far as we know, with the exception of his university position, Baldo was neither elected nor appointed to public office in Florence[71]. After teaching six years in Florence, Baldo returned to Perugia at the end of 1364 to assume a professorship at his alma mater.

Future research on the manuscript tradition of Baldo's commentaries may reveal which passages possibly incorporate or reflect his lectures in Florence[72]. For sure, the *Tractatus de vi et potestate statutorum*, edited by Meijers, formed part of a lengthy *repetitio* that Baldo had dedicated to lex *Cunctos populos* (Cod. 1. 1. 1) at the *Studio* in November 1358[73]. I agree with Meijers's observation that Baldo's experience in Florence informed his views on the application of communal statutes and the limits of communal territorial jurisdiction. Another *repetitio*, dedicated to lex *Iusiurandum* (D. 12. 2. 2) and delivered at the *Studio* in 1359, is preserved in the Biblioteca Ambrosiana of Milan[74]. Baldo also penned *consilia* dealing with disputes occurring in Florence or involving Florentines residing elsewhere[75]. A number of these *consilia*, however, date from the period after he had left Florence.

From the manuscript collections as well as the printed editions of Baldo's *consilia*, it is difficult to gauge the extent to which he collaborated with other jurists on the same *consilium*. There is at least one other *consilium* on which he collaborated with Albergotti, Lapi and Salviati[76]. He produced

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[64] BALDUS, *Consilia*, Brescia 1490, cons. 146, sp; TH. DIPLOVATATIUS, *Liber de claris iurisconsultis. Pars posterior*, edd. F. SCHULZ, H. KANTORWICZ, and S. RABOTTI, in "Studia Gratiana", 10 (1968), p. 296.

[65] T. CUTURI, Baldo degli Ubaldi in Firenze, in *L'opera di Baldo, per cura dell'Università di Perugia nel V centenario della morte del grande giureconsulto*, ed. O. SCALVANTI, Perugia 1901, pp. 365-395.

[66] PARK, *The Readers at the Florentine Studio*, cit., pp. 253-257.

[67] Ibid., pp. 256-258.

[68] CUTURI, pp. 366-369.

[69] BALDUS ad Dig. 7. 1. 12, cit., f. 301v.

[70] J. KIRSHNER, *Ars imitatur naturam: A Consilium of Baldus on Naturalization in Florence*, in "Viator," 5 (1974), p. 306.

[71] Baldo took a promissory oath on behalf of Florence in a pact with Volterra. The document is dated 30 August 1369—that is, after Baldo had left Florence for Perugia where he was then teaching. See *I capitoli del Comune di Firenze*, cit., Vol. 2, p. 329.

[72] For an excellent example of this type of research, see V. COLLI, *L'idiografo della Lectura super primo, secundo et tertio libro Codicis di Baldo degli Ubaldi*, in "Ius commune. Zeitschrift für Europäische Rechtsgeschichte", 29 (1999), pp. 91-122.

[73] Published in Haarlem 1939.

[74] MS 249 Inf, ff. 356v (*Repetitio singularissima l. ii, ff. de iureiurando secundum dominum Baldum compillata in civitate Florentie in qua legebat ordinarie in iure civile*)-400r (*Repetita fuit ista l. ii, ff. de iureiurando per utriusque iuris doctorem dominum Baldum de Perusio in civitate Florentie in qua ordinarie ius civile legebat 1359 et se supposunt correctiones* [correctiones *ex* correctioni *corr*. Cod.] *doctorum collegi Florentini*).

[75] Owing to the nettlesome issues of attribution and dating, I abstain here from giving a comprehensive list of the *consilia* Baldo devoted to Florence and Florentines abroad. For a few examples, see *Consilia*, cit., Vol. 1, f. 132r, cons. 408 (=BAV, Barb., lat. 1406, ff. 3r-4v); Vol. 2, ff. 62v-63r, cons., 218 (=BAV, Barb., lat. 1404, ff. 76v-76r); Vol. 4, f. 70r, cons. 315 (=BAV, Barb. lat. 1399, f. 130r).

[76] Bologna, Collegio di Spagna, MS 122, ff. 39v-40v. See *I Codici del Collegio di Spagna di Bologna*, cit., pp. 365-336, n. 26. For other *consilia* on which Baldo collaborated with Francesco Albergotti, see J. KIRSHNER and J.

consilia in collaboration with his brothers, Angelo and Piero[77], distinguished jurists in their own right who were also recruited to teach at the Florentine *Studio*. In Florence, at any rate, *consilia sapientis* were commonly drafted by one jurist and endorsed (*subscriptio*) by several others. The endorsing jurist (*subscriptor*) attested that he was adopting the lead opinion as his own. Four jurists in the case at hand made such endorsements, but Baldo also added that he had affixed his endorsement "after having first carefully discussed the opinion with the most outstanding doctor, lord Francesco, and the other doctors named above and those endorsing below (whose pronouncements and opinions I follow), as the pronouncements of the majority (*dicta maiorum*) are supported by valid reasons (Appendix, below)". The expression, *dicta maiorum*, denotes not only a numerical majority but also one's elders, thus signalling Baldo's respect for his senior colleagues.

Taking Baldo at his word, I shall treat the *consilium* as a collaborative effort, even though it is was drafted by Salviati in first-person discourse. Collaboration plausibly entailed several steps. The jurists likely discussed or submitted memos about the points of law that should be covered in the *consilium*. Next, Salviati would have produced a draft that was circulated among his colleagues for comments and additions. A final solemn draft would then be produced to which each jurist affixed his *subscriptio* and seal[78].

Immunitas and Privilegium

Two key terms in this dispute, *immunitas* and *privilegium*, had technical meanings. *Immunitas*, in the civil law, generally referred to an exemption from public imposts and duties (*munera*), as in *De iure immunitatis* (D. 50. 6), which was given for a legitimate reason. Although *immunitas* and *privilegium* were used interchangeably, *privilegium* carried a wider range of meanings. Broadly speaking, *privilegium* was a legitimate exemption from the ordinary constraints imposed by law, whether municipal law or the *ius commune*. It not only encompassed fiscal exemptions, but also special advantages (*favores* and *beneficia*) automatically accorded to an indefinite number of persons belonging to a qualifying group, such as wives, orphans, physicians, university professors, students, veterans, and even rustics[79]. As a matter of strict law, this type of privilege, known as *privilegium personae* and *ius singulare*, could neither be transferred by the privileged person to another nor transmitted to an heir[80]. Exceptions aside[81], a privilege attached to personal goods and usufructory rights was similarly neither transferable nor heritable, while a privilege attached to

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PLUSS, *Two Fourteenth-Century Opinions on Dowries*, cit.; Chicago, Regenstein Library, University of Chicago, MS 6, ff. 62va-64vb; Vat. lat. 8069, ff. 176r-177r. For Baldo's collaboration with Tommaso Corsini (?) on a Florentine case of January 1362, for which he received a fee of 3 florins, see C. M. DE LA RONCIÈRE, *Un changeur florentin du trecento: Lippo di Fede del Sega (1285 env. - 1363 env.)*, Paris 1973, p. 248.

[77] For Baldo's collaboration with his brothers, see Bologna, Collegio di Spagna, MS 83, ff. 143v, 330v; MS 126, ff. 150r, 230v-231r; Milan, Biblioteca Ambrosiana, MS I 249 Inf., ff. 435-440r; BAV, Barb. lat. 1400, ff. 13r-14v; D. QUAGLIONI, '*Civilis sapientia*,' cit., pp. 232-234.

[78] On *communicato colloquio*, see O. CAVALLAR, *Francesco Guicciardini giurista. I ricordi degli onorari*, Milan 1991, pp. 106-107, 178-179, 228-231.

[79] Roman law: R. ORESTANO, *Ius singulare e privilegium in diritto romano*, in "Annali della R. Università di Macerata", 11 (1937), pp. 5ff; P. GARNSEY, *Social Status and Legal Privilege in the Roman Empire*, Oxford 1970; H. WEILING, *Privilegium exigendi*, in "Revue d'histoire de droit", 56 (1988), pp. 279-298; S. LINK, Konzepte der Privilegierung römischer Veteranen, Stuttgart 1989; TH. MAYER-MALY, '*Rusticitas*', in *Studi in onore di Cesare Sanfilippo*, Milan 1982, Vol. 1, pp. 309-347. For the Middle Ages: V. PIANO MORTARI, *Ius singulare e privilegium nel pensiero dei glossatori*, in "Rivista italiana per le scienze giuridiche", 92 (1957/58), pp. 271-350; E. CORTESE, *La norma giuridica*, Milan 1964, Vol. 2, pp. 52ff (on the difference between *privilegium* and *beneficium*); A. GOURON, *La notion de privilège dans la doctrine juridique du douzième siècle*, in *Das Privileg im europäischen Vergleich*, ed. B. DÖLEMAYER and H. MOHNHAUPT, Frankfurt am Main 1999, pp. 1-16; D. LINDNER, *Die Lehre vom Privileg nach Gratian und den Glossatoren des Corpus iuris canonici*, Regensburg 1917; G. LE BRAS, CH. LEFEBVRE and J. RAMABAUD, *L'âge classique, 1140-1378*, Paris 1965 (Histoire du droit et des institutions de l'eglise en Occident, 7), pp. 489ff.

[80] BALDUS ad VI 5. 13. 7, *Privilegium*, ed. P. LALLY, in *Baldus de Ubaldis on the 'Liber Sextus' and 'De Regulis Iuris': Text and Commentary*, Ph. D. diss., University of Chicago 1992, Vol. 2, p. 367: *"Privilegium personale proprie dicitur id quod finitur cum persona"*.

[81] For exceptions, see DINO DEL MUGELLO ad VI 5. 13. 7, *Privilegium*, *De regulis iuris*, Lyon 1539, ff. 31r-32v.

real property and to property promised as a pledge was heritable (*privilegium reale*). In Florence, the forced and voluntary loans consolidated into the city's public debt (*Monte Comune*), called *crediti di monte*, were treated as privileged property. Although the commune was under no obligation to redeem the loans, the credits carried the city's promise to pay lenders a perpetual interest and an immunity against confiscation, except in cases of bankruptcy. Further, the credits could be sold to third parties, used as collateral, and transmitted to heirs. Note that these privileges attached to *monte* credits, not to the creditors[82].

A fiscal exemption granted a person for meritorious service was not automatically transmitted to an heir, but we know that it was common for the grantor to specify that the heirs of the grantee may also enjoy the privilege. The grantor was also entitled to exclude female heirs, by specifying that only male descendants could inherit the privilege. A privilege differed from a right (*ius*) in that it carried no corresponding duties. But such duties typically accompanied a privilege that was transformed into a contract. A prime example of a *privilegium contractum* was the grant of citizenship that became irrevocable and heritable (*civilitas contracta*), according to Bartolo, after the grantee had satisfied residency and tax requirements[83]. Baldo was in basic agreement with Bartolo on the contractual nature of acquired citizenship and fiscal immunities, and treated *civilitas per contractum* as a *privilegium reale* and consequently heritable[84]. And he also insisted that the emperor or a city-state like his native Perugia may lawfully annul the "irrevocable" contract of urban citizenship with their rural citizens (*comitatenses*), provided there is a legitimate reason — for instance, the *comitatenses* had not satisfied requirements to which they had agreed[85].

Consilium

Without mincing words, the five *sapientes* were unanimous in unequivocally determining that the fiscal immunity and privilege granted by the commune shielded Iacopo from the *prestanze* levied by the *Balìa*. Their *consilum* might well have been entitled *Pro Arriguccio et filiis*. In the *consilium* edited in the Appendix, six terms (*privilegium*, *beneficium*, *ius*, *immunitas*, *exceptio*, and *dispensatio*) were employed to refer to Arriguccio's tax exemption. The special meanings attributed to each term derived from the alleged legal analogies to which they were linked. The trio, *privilegium*, *beneficium*, and *ius*, asserted the positive, that Arriguccio and Iacopo have had, and still have, a valid legal claim to the tax exemption. The complimentary trio, *immunitas*, *exceptio*, and *dispensatio*, asserted the negative, that father and son were free from the general obligation of shouldering *prestanze*.

Nearly fifty arguments with one hundred analogies or citations of authorities were marshaled along a circuitous path leading to this foregone conclusion. The large majority of citations are to the *Corpus iuris*, the remainder to the *Glossa ordinaria*, Gratian's *Decretum*, to the *Decretales* of Gregory IX and *Liber Sextus* of Bonifice VIII, and to the jurists Andrea Bonello da Barletta, Alberto Gandino, Iacopo d'Arena, Dino del Mugello, Guillaume de Cunh, and Cino da Pistoia. Given the indiscriminate pluralism and hyperspecification of the arguments, it is curious that the authority of

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[82] BARBADORO, *Le finanze*, cit., p. 645; N. RODOLICO, *La democrazia fiorentina nel suo tramonto (1378-1382)*, Bologna 1905, pp. 274-75, 471.

[83] J. KIRSHNER, *'Civitas sibi faciat civem': Bartolus of Sassoferrato's Doctrine on the making of a Citizen,* in "Speculum", 48 (1973), pp. 707ff.

[84] BONOLIS, ed. *Questioni di diritto internazionale,* cit., pp. 146-147, cons. 95*:* "*Nam ista civilitas non est merum beneficium, nec mere conceditur contemplatione persone, sed potius contemplatione solutionis; unde qui solvit prospexisse non solum sibi, sed liberis suis... Preterea non apparet ex verbis quod istud beneficium sit personale, unde censeri debet reale, idest transitorium ad liberos*".

[85] MEIJERS, ed. *Tractatus duo de vi et potestate,* cit., p. 4: *"quod facit ad statutum Perusii de civilitate comitatensium, quae lex transivit in contractum per solutionem impositae eis factae, et ideo non potest eis tolli dicta immunitas per supervenientem legem, nisi ex nova causa et publica utilitate; tunc tamen puto, quod eis competat repetitio soluti quasi causa non secuta et redacta ad non causam"*; BALDUS ad C. 5. 16. 26, *Donationes*, cit., f. 198r, nn. 2-3: *"Unde illi comitatenses, qui fuerunt recepti a civitate per legem aliquo dato, non posunt revocari in comitatum, quia facta relatione donationis ad legem, res transivit in contractum innominatum. Unde facta est irrevocabilis, nam nec imperator potest revocare contractum secum celebratum, nisi ex causa, quia sibi non impletur quod impleri debet, ut Cynus, supra, de legi., l. Digna vox. Interdum lex stat in finibus contractus, et isti contractus sunt clari*".

Bartolo, who died in 1357, two years before our *consilium*, was not alleged. Curious, because Baldo was obviously familiar with his teacher's insistence on the irrevocability of a *ius* acquired by statute, even more so when it is buttressed by a derogatory clause[86]. This doctrine, also advocated by Dino del Mugello, Iacopo d'Arena, and Cino da Pistoia, provided an effective defense of privileges akin to Arriguccio's. In the critical edition below, readers may sift through and study the *consilium*'s multilayered arguments, analogies, and distinctions. Here I limit myself to highlighting the main arguments to which I refer by paragraph number (indicated by ¶).

Species derogat generi. The power of the *Balìa* to levy *prestanze* derived from general, rather than express, language. General language does not trump specific exceptions (cons. ¶ 5), which to this day remains a basic rule of legal drafting. The *Balìa* was granted powers to compel "*omnes et singulas personas quas volent ad mutuandum*". It is understood that these vague words always imply an indefinite class of individuals legally liable for *prestanze* and persons who, lacking a legitimate privilege and immunity, are not exempt from shouldering *prestanze* (cons. ¶ 8). The authority of Andrea Bonello da Barletta was enlisted for the argument that a broadly worded law does not derogate from a special privilege (cons. ¶ 19). If the legislators had wished to annul the special privilege (*species*) granted to Arriguccio in the earlier provision, they should have inserted a derogatory clause in the subsequent provision (*genus*) establishing the *Balìa*, saying "not withstanding that privilege or law granted on this matter (cons. ¶ 4)". The failure to insert express language derogating from the special privilege was crucial, since general words do not cover individual exceptions, dispensations, and fiscal exemptions, all of which require express mention[87].

Annulling Iacopo's fiscal exemption on the basis of the provision establishing the *Balìa* was patently indefensible. The ability of the *Balìa* to levy prestanze (*facultas imponendi*) was understood to be constrained by what is just and legal, and therefore *prestanze* may not be levied on someone who can defend himself with a lawful exception (*exceptione legiptima*) (cons. ¶ 1). Indeed lawful exceptions always operate against general wording applied unlawfully. General wording has the effect of beating off frivolous pleadings and subterfuges, but not lawful pleadings (*iuste defensiones*) (cons. ¶ 10). Since the officials of the *Balìa* have the power to levy *prestanze* on anyone whom they wish (*volent*), it would seem to follow that they are released from observance of the law. This is true insofar as the *Balìa*'s nonobservance is grounded in primitive equity (*rudis equitas*) which informs legal norms and, in consideration of unforeseen, emerging circumstances, allows deviations from the rigor of the law. But the *Balìa*'s release from observing the law does not operate in the face of established equity (*ad iuris preceptum redacta*), that is, equity hammered into law by Roman jurists and contemporary legislators (cons. ¶ 3).

The officials of the *Balìa* were considered representatives and agents (*commissari et mandatarii*) of the commune, whose general mandate did not include the specific power of annulling a justly deserved privilege awarded by the principal (*dominus*) (cons. ¶ 11)[88]. Further, the general wording of the *Balìa*'s mandate may not operate against the legal presumption that, unless evidence to the contrary is introduced, the will of the principal is considered steadfast and resolutely consistent from the very beginning of an undertaking or an obligation (cons. ¶ 12). This presumption of law operates for, "it is most certain that the commune wished to confer a legal privilege (*beneficium*), though we are uncertain that they had wished to repeal it, for vague statements produce ambiguity. But where on one side there is certainty, and the other ambiguity, one must adhere to certainty (cons. ¶ 13)". A proper assessment of the provision establishing the *Balìa* indicates that the legislator did not intend to harm the rights of single persons or remove a legal benefit (*commodum*) that someone acquired as private person from public property. Where the general

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[86] BARTOLUS ad D. 1. 1. 9, cit., *Omnes populi*, f. 11v, nn. 30-31; *Tractatus super constitutione 'Ad reprimendum'*, in *Consilia, quaestiones tractatus*, Venice 1528, f. 99rv, § *Non obstantibus*. See also CORTESE, cit., *La norma giuridica*, Vol. 2, p. 88, n. 87.

[87] On this doctrine, see FEDERICUS PETRUCIUS SENENSIS, *Consilia sive mavis responsa, quaestiones*, Venice 1576, f. 100v, cons. 233, n. 2: *"Item certum est, quod ad hoc ut tollitur privilegium vel rescriptum non sufficit generalis mentio, sed requitur specialis expressio"*.

[88] The limited scope of the *mandatum generale* also applied to Florentine ambassadors who were also invested with *potestas* and *balìa*.

intention of the legislator may operate against common benefits granted by general laws, it may not similarly operate against the rights of private persons (*contra ius private persone*) (cons. ¶ 15).

Beneficium videtur irrrevocabile. The jurists conceded that the privilege was granted in way that, under normal circumstances, it could be revoked at the discretion of the authorities if there were a legitimate cause—for instance, the wrongful receipt of a benefit or because of public utility (cons. ¶ 16)[89]. In the absence of a countervailing legitimate cause, however, the privilege appears to be irrevocable. First, a distinction is made between a privilege granted because of meritorious service, as in this case, which is classified as irrevocable, and one that is vulnerable to revocation because the benefits exceed the terms of the privilege (cons. ¶ 16). Second, the fiscal exemption granted to Arriguccio and his sons should be construed neither as an informal promise nor a gratuitous contract lacking an enforceable contractual obligation (*ex nudo pacto non oritur actio*). The exemption granted by the commune in response to Arriguccio's petition and in recognition of his meritorious service must be construed as a voluntary contractual obligation on the part of the commune (cons.¶ 17).

Accordingly, the specific law (*lex*) awarding the fiscal exemption was not a simple law, but one having the effect of a contract, since it was based on the mutual consent of the parties (cons. ¶ 18)[90]. This privilege-granting law, of course, did not bear any resemblance to the contracts classified in Justininan's *Institutes* (3. 13). Yet in accordance with the notion that any obligation may be considered a contract (D. 5. 1. 20), the privilege-granting law may be considered an enforceable contractual obligation with regard to Arriguccio and his sons. With regard to other persons, the law is not a contract but an enforceable directive (*preceptum*), the conventional definition of *lex*. It might be countered that the contract fails because the commune offered the fiscal exemption in Arriguccio's absence and thus without his consent, leaving the contract unconsummated and therefore invalid. The counter-counterargument was this: one can infer on the basis of Arriguccio's petition requesting the fiscal exemption, which both embodied his consent and was duly approved by the legislative councils, that he had in fact accepted the grant of immunity (cons. ¶ 18).

At this juncture, one-third way through the *consilium*, a defense was mounted on behalf of the *Balìa*'s prerogatives, which rested on establishing the hypothetical intent of the *Signoria* and the legislative councils (cons. ¶ 20). Did the *Signoria* and the legislative councils, through the plenary powers vested in the sixteen officials, wish to annul the privilege granted to Arriguccio and his sons, even though the privilege was admittedly granted for a legitimate reason (*ex causa*), not for favoritism (*per ambitionem*)? The admission was significant, because under lex *Ambitiosa* (D. 50. 9. 4), a decree of the decurions (equivalent to a measure enacted by the members of the legislative councils in Florence)[91] which favors someone by releasing him from paying his debts is not valid and should be annulled. Notwithstanding the legitimately granted privilege, it seems possible to infer on the basis of the plenary powers vested in the sixteen officials that the privilege fell within the ambit of the powers vested in the *Balìa*, and five reasons in defense of the inference were alleged.

Tanta auctoritas quantum habet totus populus. First, the authority of the *Balìa*, which derived from the *populus Florentie*, is plenary. Indeed, to exercise its prerogatives and perform its mandated functions maximally, the *Balìa* "is given as much authority as has the entire people of Florence (cons. ¶ 21)". Such unqualified authority was customarily vested by the legislative councils in the *Signoria* and *Balìa*, which required plenary powers to carry out their mandated charges expeditiously. The stock phrase, *tanta auctoritas quantum habet totus populus*, did not actually

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[89] Baldo, following Cino da Pistoia, opined that on grounds of public utility a generally worded derogatory cause may annul a specific statute. BALDUS ad C. 1. 14. 8, *Humanum*, cit., f. 69rv, nn. 4-5. However, the generally worded derogatory clause may not operate to someone's detriment, such as the annulment of a statutory privilege granted *ex causa*.

[90] For medieval doctrines on mutual consent as the binding force of contracts, see J. GORDLEY, *The Philosophical Origins of Modern Contract Doctrine*, Oxford 1991, pp. 41ff.

[91] On the identification of the medieval *consiliarii* with Roman *decuriones*, see P. COSTA, *Iurisdictio. Semantica del potere politico nella pubblicista medievale (1100-1433)*, Milan 1969, pp. 215-217.

appear in the provision establishing the *Balìa* of 1358[92]. But its variant was present — namely, that the *Balìa* was authorized, save express exceptions, to take whatever measures it saw fit to raise urgently needed funds, just as if these measures were authored and affirmed by the people of Florence. Second, the provision establishing the *Balìa* contained a derogatory clause that clearly manifested an intention to preclude in advance any contrary provision, law or statute, including those which required explicit revocation or repeal. Third, the provision remains operative against exceptions, whether they are lumped altogether, as here, or mentioned one-by-one. At any rate, in view of the analogy to C. 7. 39. 4, *Omnes*, the provision should be interpreted and understood to have included all the individual contrary cases that may exist, even though they were not enumerated. Fourth, exceptions which are valid confirm the rule against exceptions that are not — namely, Arriguccio's tax exemption. Fifth, the immunity in question does not extend to extraordinary levies like *prestanze* (cons. ¶ 21). The last point is a puzzling, since the privilege granted Arriguccio was meant to be impermeable to *prestanze*.

In their rhetorical defense of the *Balìa*, the jurists omitted the legal maxim and argument, *ex certa scientia*[93]. This maxim signified the pope's and emperor's absolute knowledge of the law and the ensuing fiction and presumption that the pope and the emperor, in new and subsequent laws, certainly intended to abrogate existing and prior express laws, even though this specific intention was not mentioned; it also signified that the pope and emperor acted with the absolute knowledge of all existing and prior laws and norms that could be said to contradict their new laws. In theory, this maxim was a powerful weapon in the arsenal of papal, imperial, and princely authority but it was also authoritarian, employed as a last resort to override opposing arguments grounded in *iusta causa* and jurisprudential interpretation[94]. The force of this maxim was acknowledged by our jurists. Someone's right may be taken away by imperial rescript, it was conceded later in the *consilium* (cons. ¶ 48), but the revocation must be performed *ex certa scientia* —that is, overtly. Had the provision establishing the *Balìa* of 1358 included in its derogatory clause the phrase, *ex certa scientia*, then the presumption that the legislative councils and the *Signoria* had acted to annul Iacopo's exemption would have had some traction. But the general wording of the provision made the argument *ex certa scientia* immaterial to the contested exemption.

To rebut the counterclaim that the intention of the legislative councils and the *Signoria* to annul the privilege could be inferred from the plenary powers vested in the *Balìa* and the general derogatory clause of the provision establishing this office, four arguments were presented (cons. ¶ 25). First, Arriguccio's tax exemption doubtlessly originated from the unilateral declaration of will or promise (*pollicitatio*) made to the Della Scala. Although the promise was neither expressly annulled nor confirmed by the *Signoria* and the legislative councils, it was always tacitly assumed to be valid. There remained two unstated-but-always-implied obstacles impeding the exemption. A stipulation in favor of a third party is not valid (*alteri stipulari nemo potest*)[95]. In addition, it was widely held

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[92] See, for example, a provision about hiring, or perhaps bribing, mercenaries encamped near Arezzo (ASF, PR, 50, f. 99r, 15 Feb. 1362/63): "*Et circa quelibet dependentia, coherentia vel connexa predictis vel a predictis vel aliquo ipsorum dicti domini priores et vexillifer, gonfalonerii societatum populi et duodecim boni viri communis Florentie et due partes omnium ipsorum, aliis etiam absentis et in requisitis, habeant omnem et totam illam baliam, auctoritatem et potestatem quam habet totus populus et commune Florentie*". For additional examples, see PR, 60, f. 53rv, (3 July 1372); f. 107rv, (19 Nov. 1372), ff. 135r-139r, 138v (22 Dec. 1372), ff. 143r-147v, 147r (11 Jan. 1372/73).

[93] On the maxim, *ex certa scientia*, see O. CONDORELLI, *'Quum sint facti et in facto consistant.' Note su consuetudini e statuti in margine a una costituzione di Bonifacio VIII ('Licet Romanus Pontifex', VI. 1. 2.1)*, in "Rivista internazionale di diritto comune", 10 (1999), pp. 205-295; J. KRYNEN, *'De nostre certaine science'. Remarques sur l'absolutisme législatif de la monarchie médiévale française, in Renaissance du pouvoir législatif et genèse de l'Etat*, cit., pp. 131-144; Cortese, *La norma giuridica*, cit., Vol. 2, pp. 81-99.

[94] For the use of the maxim, *ex certa scientia*, in a case involving the Este of Ferrara in the early fifteenth century, see M. CAVINA, *Carlo Ruini. Una 'autorità' del diritto comune fra Reggio Emilia e Bologna, fra XV e XVI secolo*, Milan 1998, pp. 115-126.

[95] On this rule and the exceptions to it, see R. ZIMMERMANN, *The Law of Obligations. Roman Foundations of the Civilian Tradition*, Deventer-Boston, 1990, pp. 34ff; for the medieval period, H. LANGE, *'Alteri stipulari nemo potest' bei Legisten und Kanonisten*, in "*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Rom. Abt.*", 73

that a simple unilateral promise does not create a natural-law obligation[96]. The jurists rejoined that the *Signoria*'s promise was valid as either *pollicitatio* or *pactum*. A simple verbal declaration of the will (*pollicitatio*) of the *Signoria* to give a tax exemption compels performance, even in the absence of the third party (Arriguccio) for whom the promise was made[97]. In effect, Arriguccio acquired a direct right to command the promised performance[98]. Whether he legally accepted or relied on the promise was immaterial, because a unilateral promise made for a legitimate reason (*ex causa*) and in good faith is binding on the declarant, without the acceptance of the third party. Ultimately, the *pollicitatio* was binding because it is treated as a sworn promise enforceable under canon law[99]. By parity of reason, if one treats the tax exemption in favor of the absent Arriguccio as the result of a mutual verbal agreement (*pactum*) between Florence and the Della Scala, it is binding under both natural and civil law. However the promise of the *Signoria* is construed, it continues to be binding.
The *Signoria*'s agreement is said to have even have greater enforceability, for it was made on behalf of the people of Florence whose authority, for argument's sake, corresponds to that of the emperor (*princeps*) (cons. ¶ 25). Agreements made by the Florentine *populus princeps*, like contracts made by Roman *princeps*, are understood to have the force of law in the city-state (*provincia*)[100] over which it exercises authority. And in accordance with the lex *Digna vox* (C. 1. 14. 4), the *populus princeps* of Florence, like the Roman *princeps*, must faithfully observe its own laws, lest the republic succumb to disorder, and by analogy to Roman history, fall prey to conspiracy and civic strife. In other words, citizens are encouraged to obey the laws when they see that the same laws are freely observed by the very officials and magistrates charged with their promulgation and enforcement. Weighty support for this commendable ideal of legality, an ideal that was also championed by supporters of popular regimes in Florence[101], derived from Cino da Pistoia's commentary on the lex *Digna vox*. The Pistoian jurist famously declared that the emperor is obliged to observe a *pactum* he has made with a city-state or baron, that a contract made by the emperor is law, and that the emperor may not seize someone's property without just cause[102].

(1956), pp. 279 ff. It is worth mentioning that in Trecento Florence agreements made in favor of third parties were common.

[96] See the discussion of BARTOLUS ad D. 2.14. 27. 2, *Si unus*, § *Pactus ne peteret*, cit., f. 92v, n. 16.

[97] Originally, *pollicitatio* referred to a unilateral promise made by a Roman citizen during an electoral campaign that, upon taking office, he would make a gift to his city. The promise was considered binding. See G. ARCHI, *La pollicitatio nel diritto romano*, in his *Scritti di diritto romano*, Milan 1981, Vol, 2, pp. 137-161; J. ROUSSIER, *Le sens du mot 'pollicitatio' chez les juriste romains*, in "Revue internationale de droit de l'antiquité", 3 (1949), pp. 295-317; N. Hayashi, *Die 'pecunia' in der 'pollicitatio ob honorem'*, in "Klio", 71 (1989), pp. 383-398. As far as I know, there is no study of *pollicitatio* in the Middle Ages. But see R. VOLANTE, *Il sistema contrattuale del diritto comune classico. Struttura dei patti e individuazione del tipo. Glossatori e ultramontani*, Milan 2001, pp. 34, 36ff, esp. 294ff. For early modern developments, see T. B. SMITH, *Pollicitatio—Promise and Offer*, in *Studies Critical and Comparative*, Edinburgh-New York 1962, pp. 168-182; ZIMMERMANN, *The Law of Obligations*, cit., pp. 574ff.

[98] See PAULUS DE CASTRO, *Consilia*, Venice 1581, Vol. 2, f. 163v, cons. 342, n. 2: "*et omnis pollicitatio continet pactum secuto consensu alterius cui facta est, vel etiam si non est secutus si facta, est pollicitatio propter honorem consequendum valet, et producit actus vel ius exigendi*".

[99] L. KOLMER, *Promissorische Eide im Mittelalter*, Kalmünz 1989; R. HELMHOLZ, *The Spirit of Classical Canon law*, Athens-London 1996, pp. 161ff.

[100] On the equation between the city-state and the Roman *provincia* made by Trecento jurists, see CANNING, *The Political Thought of Baldus de Ubaldis*, cit., pp. 125-127.

[101] According to Najemy, in the eyes of the Florentine *popolo* the legitimate exercise of political power was linked to four criteria: consent, representation, delegation, and accountability. He also argues that the *popolo*'s discourse of legality was opportunistically adapted by the Florentine political elites to sustain oligarchic power in the late Trecento and early Quattrocento. See J. NAJEMY, *The Dialogue of Power in Florentine Politics*, in *Athens and Rome, Florence and Venice: City-States in Classical Antiquity and Medieval Italy*, edd. A. MOLHO, K. RAAFLAUB, J. EMLEIN, Stuttgart 1991, p. 283. As I argue at the end of this paper, however, the commitment of *sapientes communis* to the rule of law was far less amenable to oligarchic manipulation.

[102] CYNUS ad C. 1. 14. 4, *In Codicem commentaria*, Frankfurt am Main 1578, ff. 25v-26r. For discussions of the glosses and commentaries regarding the *lex Digna vox*, see R. W. and A. J. CARLYLE, *A History of Medieval Political Theory in the West*, Edinburgh-London 1962, Vol. 6, pp. 14-17; U. NICOLINI, *La proprietà e l'espropriazione per pubblica utilità. Studi sulla dottrina giuridica intermedia*, Milan 1952, pp. 127ff; CORTESE, *La norma giuridica*, cit., Vol. 1, pp. 143ff; D. WYDUCKEL, *Princeps Legibus Solutus. Eine Untersuchung zur*

Invoked, too, was the opinion of the Roman jurist, Paulus, in D. 32. 1. 23, *Ex imperfecto*, that the emperor "should observe the laws from which he himself is considered to be free". It would be foolish, in face of these proof-texts, to cast doubt on the intentions of the *Signoria* to uphold the validity of its original agreement with the Della Scala and the subsequent tax immunity granted Arriguccio, both of which have the force of law.

Second, if the immunity were construed as nothing more than a gratuitous donation, which does not require reciprocal performance and compensation, it would then be open to challenge on the grounds that the commune's obligation was limited by what its finances allow. Given the fiscal straits of Florence in 1358, the immunity could thus be reduced or annulled. The promise and grant of immunity, the jurists continued to insist, arose from the intention to reward Arriguccio and sons with a specific compensation for meritorious service. The terms of the grant, once made, may not be unilaterally modified by the grantor. Analogy is made to lex *In commodato*, § *Sicut* (D. 13. 6. 17. 3), where a gratuitous loan of goods (*commodatum*) is made for a definite period. Afterwards the lender wants to modify the terms, but the lex states that he may neither unilaterally change the terms nor reclaim the goods before the expiration of the mutually determined period (cons. ¶ 27).

Third, *absurditas est vitanda*. Manifestly absurd consequences arising from the application of a statute should be avoided, a medieval maxim which approximates the so-called golden rule of modern statutory interpretation[103]. Classic absurdities include a statute transferring to an heir or a creditor greater rights than those possessed by the deceased; or a person who by obeying the law is worse off than one who does not. To avoid *reductio ad absurdum*, the jurist-interpreter had to establish the hypothetical intent of the legislator or the principal party authorizing the sixteen officials. It is ridiculous to believe, our jurists opined, that the officials of the *Balìa*, charged with acting in good faith as agents of the people of Florence, would perform acts that the *Signoria* was unlikely to do, such as harming Arriguccio. "In fact, it is unlikely that the people of Florence, the source of the laws in Florence's city-state, had wished to inflict harm on Arriguccio, snatching away without cause what it had granted him for meritorious service. For these <acts> constitute great injuries (cons. ¶ 29)".

Fourth, the wording of the provision establishing the *Balìa* should be construed narrowly, meaning that it should not be expanded through equitable interpretation to cover cases not specifically contained in the provision (cons. ¶ 31). We have come full circle, as more citation-filled arguments were presented to show once again that the general wording of this provision may not operate against a specific privilege legitimately granted. Not even such an august authority as the emperor, much less that of the legislators of a city-state, may annul an irrevocable privilege *sine causa* (cons. ¶¶ 43, 45). Finally, the authority of Hostiensis served to demonstrate "that a privilege conferred *ex causa* cannot be revoked, and that the one revoking <the privilege> is subject to punishment (cons. ¶ 51)".

Conclusion

Having accepted the determination of the jurists, the sixteen officials of the *Balìa* upheld Iacopo's exemption and cancelled the *prestanze* for which he had been assessed. Soon after, the treasury officials (*regulatores*) acted to affirm the *Balìa*'s decision. These executive decisions stemming "*de consilio multorum iurisperitorum*" were duly recorded in the registers of the *prestanze*[104]. The

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frühmodernen Rechts-und Staatslehre, Berlin 1979, pp. 52ff; and J. VALLEJO, *Ruda equidad, ley consumada concepcion de la potestad normativa (1250-1350)*, Madrid 1992, pp. 335ff.

[103] On *argumentum ab absurdis*, see SBRICCOLI, *L'interpretazione dello statuto*, cit., pp. 356-366.

[104] ASF, Prestanze, 6, f. 14r (Jun. 1359?): "Jacopus Arriguccii Pegolotti ... florenos settuaginta unum auri". Add. marg. sin.: *"Apparet dictum Jacopum Arrigucci fuisse et esse per officium sedecim liberatum et absolutum a solutione dicte prestantie propter immunitatem et privilegium eidem a communi Florentie concessum. De qua liberatione et absolutione patet ex actis dictorum sedicim, publicis scriptis manu ser Pieri Mutini, anno MCCCLVIII°, die IIII° mensis decembris, de consilio multorum iurisperitorum in dicta deliberatione sedecim descriptorum"*; Prestanze, 10, f. 8v (1359): "*Jacopus Arrigucci Pegolotti ... florenos quattuor, solidos quindecim, denarios decem ad aurum. Item ... florenos duos, solidos decemnovem, denarios duo*". Add. marg. sin.: "*Apparet dictum Jacopum Arrigucci* (*fuisse* del.) *non debere gravari pro dicta prestantia solvenda, quia habet privilegium et im<m>unitatem (per officium sedecim liberatum a solutione dicte prestantie* del.) *a communi*

swiftness of executive justice in this case was consistent with dozens of other cases in the second half of the fourteenth century in which Florentine treasury officials approved petitions from citizens and resident foreigners requesting cancellation of erroneous tax assessments[105].

Although the magnitude of Baldo's contribution to the *consilium* is unknowable, it is fair to assume that had he alone composed the *consilium*, he would have presented comparable arguments and conclusions. In making this assumption, I am aware that I run the risk of committing the fallacy of identity, the assumption that Baldo's positions, most of which were developed in later works and *consilia*, must have resembled those inhabiting the *consilium* of 1359. To avoid this pitfall, I have hitherto refrained from conflating Baldo's later positions with those presented in the *consilium*, even when the family resemblance is striking. Support for my assumption resides in the career-long consistency of his positions on statutory interpretation, privileges, and public pacts and contracts.

Baldo regularly resorted to the maxim, *species derogat generi*, when arguing that a special law annuls a general or less special law, and that those granted a special exemption from the law are not subject to general statutes or rescripts[106]. A special law fortified by a derogatory clause was subject to repeal only if it was expressly mentioned in the derogatory clause of the later law[107]. Further, amorphous laws yielding absurd and evil results are invalid[108]. Even "the emperor, employing general wording, is not understood to wish to grant what is wicked or absurd. For which reason, though he grants someone the ability to make a testament freely, he may not grant the ability to pass over silently or disinherit a child without legitimate reason"[109]. Baldo's influential

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Florentie. Et propterea fuit per Regulatores deliberatum et declaratum ipsum non debere gravari, ut patet manu mei Pauli eorum notarii, die XII°, mensis Junii, MCCLIX°, XIII indictione, visa deliberatione facta per officium sedecim monete et consilio super hiis habito per dictum officium sedecim per multos iurisperitos in dicta deliberatione descriptos". For another cancellation of Iacopo's levy , see Prestanze, 13, f. 18r (1362).

[105] See the cancellation of *prestanze* levies in 1362 on three citizens of Poggibonsi residing in Florence, because they had already been assessed in their native town; see ASF, Prestanze, 13, ff. 43v, 50r, 57r. The reduction and cancellation of *prestanze* levies were common in the early 1360s. See BRUCKER, *Florentine Politics and Society*, cit., p. 196.

[106] BALDUS, *Consilia*, cit., Vol. 1, f. 26r, cons.78, n. 1 (=BAV, Barb. lat. 1408, f. 41v); Vol. 2, f. 83r, cons. 292, n. 3 (=BAV, Barb, lat. 1404, f. 147rv): *"semper species derogat generi, etiam si non essent verba derogatoria vel contraria, sive species precedat genus, sive sequatur, ut in regulis generi per speciem"*; ad VI 45. 13. 34, "*Generi : Speties que adversatur generi derogat generi*", ed. LALLY, cit., Vol. 2, p. 316; ad X 1. 3. 6, *Cum ordinem, In Decretalium volumen commentaria*, Venice 1595, f. 31r, n. 50: *'Solutio: illa regula non habet locum im privilegium, quia privilegium eo, quod continet ius singulare, semper habetur loco speciei specialissime, ut no. ff. de legi., l. Ius singulare* (D. 1. 3. 16)*, et ideo non tollitur nedum per rescriptum, sed nec per constitutionem generalem sequentem, ut sing. no., l. Decurionibus, C. de silentiariis, lib. 12* (citing the same lex that our jurists cited in 1359)". In a *consilium* written while Baldo was teaching at Padua, we read: *"et ista pars est vera, quia generali statuto non includuntur exempti, quod est not. expresse C. de silentiariis, l. Decurionibus*". For the quote, J. KIRSHNER, *Between Nature and Culture: An Opinion of Baldus of Perugia on Venetian Citizenship as Second Nature*, in "The Journal of Medieval and Renaissance Studies", 9 (1979), p. 206. See also NICOLINI, *La proprietà*, cit., p. 173.

[107] KIRSHNER, '*Ars imitatur naturam*', cit., p. 316.

[108] SBRICCOLI, *L'interpretazione dello statuto*, cit., p. 358.

[109] BALDUS ad C. 3. 28. 35, *Si Quando*, cit., f. 203r, n. 4: "*Tertio, not. quod princeps sub verbis generalibus non intelligitur velle concedere illud quod est inquum vel absurdum. Unde licet concedat alicui quod libere possit testari, tamen non potest filium preterire vel exheredare sine causa. Item iste non potest puberi substituere directo, ut ff. de vulg. Substi., l. Ex facto, in prin.* (D. 28. 6. 43 pr)". Similar point made by Baldo in his much debated *consilium* on the authority of Giangaleazzo Visconti (post 1395), with arguments closely resembling those used in the *consilium* of 1359: *"Item princeps de perpetuo postest facere corruptibile, non tamen in preiudicium alterius, licet dominus mundi sit, quia illud intelligitur quoad bonum, et naturale regimen ne iniuriarum nascatur occasio unde iura nascuntur, ut C. unde vi l. Meminerint, et maxime quia in dubio princeps non intelligitur iura privatorum tollere, et maxime verbis generalibus vel effusis, ut C. de emancip. liber. l. Nec avus. ff. ne quid in loco publico l. ii. § Si quis a principe. C. de prec. imperat. offer. l. Rescripta. ff. de vulgari subst. l. Ex facto, et est expressum in c. Si propter tua, de rescript. lib. vi*". This *consilium* is edited by K. PENNINGTON, *The Authority of the Prince in a Consilium of Baldus de Ubaldis*, in *Studia in honorem Eminentissimi Cardinalis Alphonsi M. Stickler*, ed. R. I. Card. CASTILLO LARA, Rome 1992, pp 483-516, quote on p. 503.

opinion that under canon law an informal agreement is binding, provided there is legitimate reason[110], was in harmony with the interpretation of the *Signoria*'s promise to the Della Scala
Recognizing the inescapable perils arising from legally unregulated power, Baldo insisted that immutable natural law obliges princes to uphold contracts that they themselves have entered[111]. Thus a privilege, after having been transformed into a contract, may not be revoked[112]. By the same token, the privileges granted by a prince having contractual force—even if they are opposed to *utilitas publica*—are fully enforceable, so long as they are in conformity with good faith, natural equity, and the conventional meanings of words[113]. True, accepting seigniorial power as an enduring, multifaceted reality, Baldo qualified Bartolo's premonitory and totalizing invective against the *signori-tiranni* afflicting Italy (*tota Italia*)[114]. Still, it cannot be emphasized too strongly that, despite his differences with Bartolo, Baldo remained an uncompromising foe of tyranny[115]. He fully agreed with his teacher that since a tyrant lacks all jurisdiction, any statute he himself enacts is ipso iure unenforceable. By definition, therefore, any statute lacking legitimate reason (*iusta causa*) is considered equivalent to a law enacted by a tyrant[116]. Baldo and his fellow jurists did not hesitate to sanction exceptional measures taken by public authorities with plenary powers, when

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[110] See A. SÖLLNER, *Die causa im Konditionen-und Vertragsrecht des Mittelalters bei den Glossatoren. Kommentoren und Kanonisten*, in "Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Rom. Abt.", 77 (1960), p. 250; HORN, *Aequitas*, cit., pp. 184-189; GORDLEY, *The Philosophical Origins*, cit., p. 56.

[111] K. PENNINGTON, *The Authority of the Prince*, cit., p. 490, and his *The Prince and the Law, 1200-1600. Sovereignty and Rights in the Western Legal Tradition*, Berkeley-Los Angeles, 1993, pp. 216-217. See also E. CORTESE, *Intorno alla causa impositionis e a taluni aspetti privatistici delle finanze medievali*, in his *Scritti*, edd. I. BIROCCHI and U. PETRONIO, Spoleto 1999, p. 165. I find unconvincing Canning's argument that in recognizing that the *princeps* has the absolute power to expropriate his subjects' property in disregard of higher norms, Baldo thereby accepted "the reality of the exercise of pure power". See his *Italian Juristic Thought and the Realities of Power in the Fourteenth Century*, in *Political Thought and the Realities of Power in the Middle Ages*, ed. J. CANNING and O. G. OEXLE, Göttingen 1998 (Veröffentlichungen des Max-Planck-Instituts für Geschichte, 147), pp. 229-239, quote on p. 237.

[112] BALDUS ad D. 1. 6. 2, *Si Dominus*, cit., f. 33v, n. 2: "*Aut privilegium transivit in contractum; et tunc non potest revocari*".

[113] BALDUS, *Consilia*, cit., Vol. 1, f. 34v, cons. 112, n. 9 (=BAV, Barb. lat. 1408, f. 61r): "*Ultimo queritur, qualiter verba in ista materia sunt interpretanda? Respondeo, in privilegiis, que sunt contra publicam utilitatem, interpretantur valde stricte et rigorose, ut not. Gul in l. Beneficium, ff. de consti. prin.* (D. 1. 4. 3.pr.). *Sed nos sumus hic in via contractus, in quo debet servari bona fides et equitas naturalis, verbis tamen congruens vel communi intellectui loquentium*". In this vein, see also D. QUAGLIONI, *I limiti delle sovranità: il pensiero di Jean Bodin nella cultura poltica e giuridica dell'età moderna*, Padua 1992, pp. 68ff; M. CARAVALE, *Ordinamenti giuridici dell'Europa medievale*, Bologna 1994, p. 540; M. MECCARELLI, *Arbitrium: un aspetto sistematico degli ordinamenti giuridici in età di diritto comune*, Milan 1998, esp. 108ff; and M. Fioravanti, *Costituzione*, Bologna 1999, p. 31: "*Possiamo così formulare un primo carattere generale della nostra costituzionale medievale. È il carattere della intrinseca limitatezza dei poteri pubblici*".

[114] F. ERCOLE, *Da Bartolo all'Althusio. Saggi sulla storia del pensiero pubblicistico del rinascimento italiano*, Florence 1932, p. 361; J. CANNING, "Permanence and Change in Baldus's Political Thought", in "Ius Commune. Zeitschrift für Europäische Rechtsgeschichte", 27 (2000), pp. 283-298, who, however, ignores the concrete institutional contexts in which all forms of public power were exercised and in which Baldo himself operated and gave his opinions. There is no evidence that Baldo or the Lombard Jurists he met while teaching at Pavia (1390-1400) subordinated law to Viscontean power. In fact, Lombard jurists and judges, who constituted a powerful clique, resisted the Visconti's attempt to politicize civil and criminal procedure in the late Trecento and early Quattrocento. For a discriminating treatment of these issues, see C. STORTI STORCHI, *Giudici e giuristi nelle riforme viscontee del processo civile per Milano (1330-1386)*, in *Ius mediolani*, cit., pp. 47-187. See also J. BLACK, *The Limits of Ducal Authority: A Fifteenth-Century Treatise on the Visconti and their Subject Cities*, in *Florence and Italy: Renaissance Studies in Honour of Nicolai Rubinstein*, edd. P. DENLEY and C. ELAM, London 1988, pp. 149-160.

[115] D. QUAGLIONI, *'Un Tractatus de tyranno': il commento di Baldo degli Ubaldi (1327?-1400) alla lex Decernimus, C. De sacrosantis ecclesiis (C. 1, 2, 16)*, in "Il pensiero politico", 13 (1980), pp. 64-77. Baldo's commentary on the lex *Decernimus*, which is edited by Quaglioni, was delivered around 1365, soon after Baldo returned from Florence to Perugia. Osvaldo Cavallar and I have translated his commentary, which will appear in our forthcoming anthology of medieval Italian jurisprudential texts in English translation.

[116] QUAGLIONI, *Legislazione statutaria e dottrina della legislazione*, cit., p. 64.

warranted by compelling necessity and public utility[117]. That is why they affirmed, in general terms, the *Balìa*'s exercise of coercive power (*potestas coercendi*) to raise funds through forced loans from citizens in legitimate emergencies[118]. The target of their objections in particular cases like the one discussed here was the exercise of coercive governmental power in violation of the higher norms of equity and natural law[119].

Florentine public officials and legislators, whether *popolani,* new men, or patricians, were consummate realists; they did not advocate blind adherence to the letter of the law. They recognized that no single piece of legislation, even one flawlessly drafted, could cover all contingent imperatives or balance competing interests. They conceded that the application of statutory regulations and fiscal measures designed to promote communal welfare simultaneously, and sometimes brutally, invaded the lives of individuals and groups. As a corrective, they continually sought to make the exercise of coercive governmental power accountable to public justification, and introduced remedies offering citizens and noncitizen residents, corporate bodies, and subject communities the genuine possibility of redressing the arbitrary deprivation of their privileges and rights. The institution of the *sapientes communis* was among the most effective of these remedies: one that gave life to the commune's fundamental obligation to apply its own laws impartially and equitably, "leaving aside love, hatred, fear, and all emotion (*remotis amore, hodio, timore et omni passione*)"[120]. This commitment to the rule of law was exemplarily realized in the *consilium* affirming the binding force of Arriguccio Pegolotti's *privilegium contractum* with the commune of Florence[121].

Appendix

Consilium of Francesco di Lotto Salviati, Baldo degli Ubaldi, Francesco di Bicci Albergotti, Niccola Lapi, and Luigi Gianfigliazzi

A printed version of the *consilium*, to my knowledge, does not exist. My edition is based on the two extant manuscripts copies: Bologna, Collegio di Spagna, Cod. 83, 322 rv, 320v-321r, *saec.* XV, hereafter cited as **B**; and BAV, Vat. lat. 14094, ff. 373r-378r, *saec.* XV, hereafter cited as **V**. A full

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[117] CARLYLE, *A History of Medieval Political Theory,* cit., Vol. 6, pp. 85ff; NICOLINI, *La proprietà e l'espropriazione per pubblica utilità* , cit., pp. 23ff; M. H. KEEN, *The Political Thought of the Fourteenth-Century Civilians,* in *Trends in Medieval Political Thought,* ed. B. SMALLEY, New York 1965, pp. 122-123. On the topos, *necessitas*, see M. ASCHERI, *Note per la storia dello stato di necessità*, in "Studi senesi", 87 (1975), pp. 7 -94.

[118] Although Baldo had reservations about the morality of the interest paid to the creditors of Florence's public debt (*Monte Comune*), he gave concessive approval to the imposition of interest-bearing forced loans on the grounds that they were not technically loans. BALDUS ad C. 1. 1. 1, *Cunctos populos*, cit., f. 6v, nn. 34-35: "... *quod prestatio quae fit Florentiae habentibus pecuniam in monte sit licita, quia est inducta favore communitatis, ne solvere cogatur creditoribus sortem. Nam illud non proprie est mutuum, cum reddi non debeat, sed est quaedam subventio in communi et quaedam collecta necessaria*".

[119] Their vision of legality was also shared by Florence's chancellor, Coluccio Salutati. See DE ROSA, *Coluccio Salutati*, cit., pp. 108, 149.

[120] ASF, *Pareri dei Savi*, 3, f. 353v. The exhortation was addressed to Filippo di Tommaso Corsini, Francesco di Lorenzo Machiavelli, Alessandro di Salvi Bencivenni, Torello di Niccolò Torelli, and Nello di Giuliano of San Gimignano, the jurists commissioned in 1414 to write a *consilium* (ff. 353v-357r) on the legality of a *prestanzone* assessment imposed on Filippo and Matteo Scolari. I plan to publish an edition of this *consilium* in a future study on the competency of Florentine *Balìe.*

[121] From the 1360s onward, hundreds of such *consilia* addressing disputes on the application of Florence's *statuti* and *provvisioni* underscored that the consultors' commitment to rule of law was not an empty gesture but a robust reality. See, for instance, KIRSHNER, *Citizen Cain of Florence,* in *La Toscane et les Toscans autour de la Renaissance. Mélanges offerts à Charles de la Roncière,* Aix-en Provence 1999, pp. 175-92. Nor was their commitment a fig leaf for oligarchic power. See KIRSHNER, *Consilia as Authority in Late Medieval Italy,* cit., pp. 132-140, and J. BLACK, Constitutional Ambitions, Legal Realities and the Florentine State, in *Florentine Tuscany: Structures and Practices of Power,* edd. W. J. CONNELL and A. ZORZI, Cambridge 2000, pp. 48-64. Mounting evidence lends support to Martines's informed and original insight that before the advent of the Medici in 1434, Florentine jurists "revealed no obvious inclination to strengthen the hand of the executive". See MARTINES, *Lawyers and Statecraft*, cit., p. 402.

description of **B** is found in *I Codici del Collegio di Spagna di Bologna*, ed. D. MAFFEI *et alii*, Milan 1992, pp. 196-279, esp. 262, n. 419. Although there are no major divergences between **B** and **V**, I have used **V** as my base text, for it consistently offers better readings and fewer omissions. For the sake of readability, capitalization and punctuation follow modern practice, while paragraph divisions follow those in **V**. So that I could more efficiently refer to individual arguments in the body of the *consilum*, I have added numbers in parentheses before each paragraph. All variants and emendations have been duly noted in the apparatus. Angle brackets (< >) are used to indicate my additions to the text. In preparing the edition I have sought to follow the recommendations on editorial practice presented by S. KUTTNER, *Notes on the Presentation of Text and Apparatus in Editing the Works of Decretists and Decretalists*, in "Traditio", 15 (1959), pp. 452-464.

EDITION

Cum per dominos priores artium et vexilliferum iustitie populi et communis Florentie, una cum gonfaloneriis societatum populi et duodecim bonis viris communis Florentie in sufficienti numero congregatos, iuxta occurentes necessitates conservationi et utilitati rei publice communis Florentie providere volentes, habentes de infrascriptis baliam et potestatem per solempnia et opportuna consilia populi et communis Florentie eis concessam, electi fuerunt sedecim boni viri secundum formam reformationum super hiis editam per iam dicta consilia. Quibus et duabus partibus eorum data et concessa fuit in effectu balia inter alia posse invenire, providere <et> firmare omnem modum et viam quem vellent per quem redditus, introitus et proventus seu erarium communis Florentie augeatur seu per quem pecunia veniat in commune predicto. Et pro predictis et circa predicta et predictorum omnium expeditione possent condere provisiones et illa ordinamenta que vellent, que omnia perinde valeant in omnibus et per omnia ac si facta, composita et firmata fuissent per populum et commune Florentie. Et quod postea magnifici et potentes viri domini priores artium et vexillifer iustitie populi et communis Florentie, considerantes dictam provisionem de qua supra dicitur et baliam et potestatem ipsis sedecim traditam non sufficeret ad habendum pecuniam opportunam, habita deliberatione decenti, providerunt, ordinaverunt et deliberaverunt et per opportuna consilia iam dicta populi et communis provideri et deliberari fecerunt inter alia infrascriptum capitulum infrascripte continentie et tenoris in effectu, videlicet:

Et insuper quod dicti sedecim cives seu offitiales et due partes eorum possint eisque liceat semel et pluries et quotienscunque omnes et singulas personas quas volent ad mutuandum, ut dictum est, et ipsa mutua faciendum in ea et eis pecuniarum quantitatem quibus volent cogere et compellere et cogi et compelli[122] facere summarie et de facto omnibus iuris et facti remediis, et per domorum destructionem et personarum[123] detentionem, et alio quovis modo; et circa ipsorum inobedientium, cohertionem et penam facere et componere illas provisiones et illa ordinamenta que volent, que inviolabiliter debeant observari.

Salvo, expresso et declarato, quod per predicta vel aliquod predictorum non intelligatur aliquid esse provisum vel factum nec aliquid provideri vel fieri possit quod creditoribus dicti communis in quorum favorem fuerunt hactenus deputate seu assignate alique quantitates pecuniarum seu ipsis adsignamentis[124] vel deputationibus aliquod preiudicium generari vel aliqualiter derogari. Non obstantibus in predictis vel aliquo predictorum aliquibus legibus, statutis, ordinamentis, provisionibus aut reformationibus consiliorum populi et communis Florentie, aut obstaculis vel repugnantiis quibuscumque etiam contra quantumcunque derogatoriis, penalibus vel precisis vel etiam si de eis vel ipsorum aliquo debuisset vel deberet fieri spectialis mentio vel expressa. Quibus omnibus intelligatur esse et sit nominatim, expresse specialiter et generaliter derogatum. Et sic per opportuna consilia populi et communis Florentie firmatum fuit ac reformatum et obtemptum anno domini MCCCL....

Et quod postea per dictum offitium sedecim civium florentinorum habentium baliam, ut dictum est, fuit inpositum et inductum Iacobo filio Arrigucci condam Locti de Pegoloctis populi Sancte Felicitatis de Florentia, quod ipse deberet mutuare communi Florentie de prestanzia florenorum auri

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[122] compellere **V**

[123] destructione *post* personarum *del.* **V**

[124] adsegnametis **V** seu *post* adsegnamentis *del.* **V**

quinquaginta milium facta civibus florentinis certam florenorum auri quantitatem, scilicet centum florenos auri, in vexillo Schalarum quarterii Sancti Spiritus civitatis Florentie.
Et modo pro parte dicti Jacobi filii dicti Arrigucci, dicatur ipsum Iacobum non teneri nec posse gravari ad dictum mutuum faciendum, pro eo et ex eo, quia in anno Domini MCCCXLIII⁰ per commune Florentie, et solempne et opportuna consilia populi et communis Florentie, causis et rationibus in suprascriptis provisione et reformatione privilegio et immunitate contentis fuit facta et firmata infrascripta provisio et reformatio in favorem dicti Arrigucci et eius filiorum et descendenitium per lineam masculinam, et eisdem fuit concessa et data immunitas et privilegium a dicto commune Florentie infrascripte continentie et tenoris in effectu, videlicet:
In Dei nomine, amen. Anno sue salutifere incarnationis MCCCXLIII⁰, indictione XII, die XXIIII⁰ mensis februarii. In consilio domini capitanei et populi florentini, mandato nobilis et potentis militis domini Rainaldi domini Baligiani de Cumis de Staffulo populi et communis Florentie honorabilis capitanei et defensoris artis et artificum civitatis Florentie, precona convocatione[125] campaneque sonitu in palatio populi florentini more solito congregato; et die XXVI eiusdem mensis februarii in consilio domini potestatis et communis Florentie, mandato magnifici et potentis militis domini Johannis Marchionis montis Sancte Marie civitatis et communis Florentie honorabilis potestatis, precona convocatione campaneque sonitu in dicto palatio populi florentini more solito congregato. Et per ipsa iam dicta consilia, ut supra dicitur, congregata presente, volente et consentiente dominis prioribus artium et vexillifero iustitie populi et communis Florentie totaliter approbata, adceptata et admissa et firmata fuit provisio infrascripta per predictos dominos priores artium et vexilliferum iustitie et officium duodecim bonorum virorum, cum diligenti examinatione et deliberatione eorum officii auctoritate et vigore super infrascriptis in ea contentis editis et factis et infra, proxime et immediate adnotata et scripta. Et quod in hiis et super hiis procedatur et fiat et observetur in omnibus et per omnia prout et secundum quod infra, proxime et immediate plenius et latius legitur et habetur, cuius quidem provisionis tenor talis est:
Cum infrascripta petitio predictis dominis prioribus artium et vexillifero iustitie exibita et porrecta fuerit in hanc formam. Coram vobis dominis prioribus artium et vexillifero iustitie populi et communis Florentie, exponit et dicit Arrighuccius condam Locti de Pegoloctis populi Sancte Felicitatis de Florentia pro[126] se eiusque filiis et descendentibus maschulis per lineam maschulinam, quod quando fuit concordia inter magnificos et potentes dominos dominos Albertum et Mastinum della Schala de civitate et pro civitate Lucana ex una parte, et commune Florentie ex altera, actum fuit in dicta concordia licet verbis tantum; et promissum dictis dominis paciscentibus pro dictis Arriguccio eiusque descendentibus supradictis, quod ipse Arriguccius et ipsi descendentes predicti essent et esse deberent perpetuo liberi et immunes ab omnibus et singulis libris, impositis et factionibus et honeribus, quibuscunque tam realibus quam personalibus atque mixtis tam[127] presentibus, preteritis et futuris; et quod decetero ipsi et eorum bona propterea gravari et inquietari vel molestari non deberent vel possent aliqua ratione vel causa. Quare supplicatur vobis quatenus placeat vobis per vos et officium duodecim bonorum virorum et per opportuna consilia populi et communis Florentie deliberare et deliberari facere, quod ipse Arriguccius eiusque filii et descendentes per lineam maschulinam predictam non possint de cetero gravari vel molestari in iudicio vel extra de iure vel de facto, nec etiam inquietari pro aliquibus libris, impositis, prestantiis vel factionibus vel quibuscunque oneribus[128], realibus vel personalibus vel mixtis, tam presentibus, preteritis quam futuris, vel ipsorum bona presentia vel futura, aliqua ratione vel causa per commune Florentie eiusque officiales presentes et futuros.
Non obstantibus aliquibus statutis, ordinamentis, legibus seu iuribus editis vel edendis in contrarium facientibus quoquo modo. Unde predicti domini priores artium et vexillifer iustitie, considerantes amorem sincerum quem semper dictus Arriguccius habuit et habet ad populum et commune Florentie, et quod quando facta fuit et inita concordia inter dictos dominos Albertinum et Mastinum et commune Florentie continuo laboravit et sua opera disposuit in favorem et

[125] primi *post* convocatione *add.* **V**
[126] per **V**
[127] tunc **V**
[128] oneribus *ex* honeribus *corr.* **V**

commodum dicti populi et communis. Et obsides qui detinebantur in civitate Verone honoravit, et agevolari fecit et facit et alia multa fecit pro ipsius populi et communis honore conservandum propter que dignum et iuxtum est quod ipsum commune Florentie, ipsum Arriguccium prosequatur gratia et honore, ut bene faciendi ceteris cedat in exemplum, habita super hiis pluries consilio et deliberatione cum gonfaloneriis societatum populi florentini et officio duodecim bonorum virorum. Et demum inter dictos dominos priores artium et vexilliferum iustitie et dictum officium duodecim bonorum virorum secundum formam statutorum, premisso[129] facto et obtempto partito et secreto scruptineo ad fabas nigras et albas eorum officii auctoritate et vigore et omni modo et iure quibus melius potuerant, providerunt, ordinaverunt et stantiaverunt quod ipse Arriguccius eiusque filii et descendentes per lineam masculinam vigore et auctoritate presentis provisionis sint et esse debeant et intelligantur in futurum et pro futuro tempore liberi et immunes ab omnibus et singulis libris, prestantiis, factionibus et oneribus quibuscunque communis Florentie realibus vel personalibus vel mixtis, que in futurum et pro futuro tempore imponerentur vel indicerentur, excepto quam a gabellis communis Florentie; et quod per aliquod regimen vel offitialem populi et communis Florentie ipse Arriguccius vel eius filii et descendentes per lineam maschulinam, vel eorum bona occasionibus predictis vel aliqua earum, non possint vel debeant compelli vel cogi, excepto quam pro gabellis, ut dictum est, sub pena librarum quingentarum florenorum parvorum cuilibet contrafacienti, et predicta non servanti et quotiens auferenda et communi Florentie applicanda. Non obstantantibus aliquibus statutis, ordinamentis legibus vel iuribus editis vel edendis in contrarium facientibus quoquo modo.

Et ex adverso pro parte communis Florentie predicte dicatur et dicitur quod predictus Iacobus tenetur mutuare et solvere dicto communi dictum mutuum et quantitatem pecuniarum, actenta et considerata balia et potestate dictis dominis sedecim attributa per dicta consilia populi et communis Florentie et derogata in ipsa balia apposita. Et predicti domini sedecim offitiales de predictis et super predicto puncto dubitantes, nolentes posse de iniustitia redargui, set volentes unumquemque in suo iure quatenus in eis est conservare, predictam questionem de iure consulendam commiserunt in sapentes viros —

dominum Francischum domini Locti
dominum Niccolam Lapi
dominum Loysium de Iamfigliazzis
dominum Baldum de Perusio et
dominum Francischum domini Bici de Aretio

— cives florentinos, doctores et advocatos et iurisperitos. Quid iuris sit super predictis, visis dictis privilegio et immunitate concessis dictis Arriguccio et filiis et balia et potestate concessis dictis dominis sedecim, de quibus supra fit mentio, et aliis iuribus, rationibus et instrumentis et actis facientis ad predicta[130]?

Et quod non possit dictus Iacobus gravari de predictis, videtur posse dici rationibus infrascriptis:

(1) Considero primo[131], quod hic potestas conceditur illis, qui alias non habebant ius imponendi. Ideo quantumcumque imponendi facultas concedatur per verba generalia et etiam importantia[132] libertatis arbitrii, tamen intelligitur secundum ius, ut 1. Si quando, in principio, de inoffi. te. (C. 3. 28. 35), no. Ia. de Arena in 1. 1, § Omnis[133], de operis novi nuntiatione (D. 39. 1. 1. 4)[134]. Item, a generalitate sermonis iniusta[135] semper videntur excepta, ut 1. Qui servum mihi[136], et 1. Quidam cum filiam, de verborum obligationibus[137] (D. 45. 1. 96 et 132), l. Si cui, de servi. (D. 8. 1. 9), 1.

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[129] et *post* premisso *add.* **V**
[130] de viribus cuiusdam immunitatis *add. marg. sin.* **V**
[131] Punctum huius consilii infra cccii *in marg. sin.* **B**
[132] V *post* importantia *del.* **V**
[133] aurro B
[134] Jacobus de Arena ad D. 39. 1. 1. 4, *Item nunciatio*, Lyon 1541, f. 139v, n. 7.
[135] iuxta **V**
[136] mihi *om.* **B**
[137] de provi *post* obligationibus *del.* B

Quamquam in arbitrio, ff. de ritu nuptiarum[138] (D. 23. 2. 62). Ergo non videtur concessum quod illum[139] gravent qui potest[140] exceptione legiptima se tueri.
(2) Item, in verbis generalibus semper subauditur habilitas, 1. prima, de sacroscanctis ecclesiis (C. 1. 2. 1), 1. Ut gradatim, § Etsi[141] lege (D. 50. 4. 11. 1). Unde cum dicitur "omnibus quibus volent," intelligo de habilibus collectari et qui iusto privilegio non excusentur[142].
(3) Item, licet per verbum, "volent" videantur exempti ab observantia iuris, hoc est verum illius iuris quod est rudis equitas, que non sit ad iuris preceptum redacta[143], 1. iii, in fine, de pa. po. (C. 8. 46[47]. 3), 1. Creditor, § Lucius, ff. man. (D. 17. 1. 60. 4). Sic loquitur 1. Utrum, § Cum quidam, ff. de re. du. (D. 34. 5. 7[8]. 1), et probatur in 1. Thais[144] ancilla, § Sorore, de fideycommissariis liber. (D. 40. 5. 41. 4), faciunt[145] no. per Gui. de Cu.[146], ff. de auro[147], 1. fi. (D. 34. 2. 40), ubi de hoc[148].
(4) Item, verba generalia non comprehendunt casus de quibus[149] debet fieri mentio spetialis, ut ff. de mino.[150], 1. Illud, § Si talis domino[151] (D. 4. 4. 25. 1), et 1. Pomponius[152] in prin., de procur. (D. 3. 3. 40 pr.) cum ibi no. Set de hoc privilegio debuit fieri mentio specialis, quia clausulam habet derogatoriam, et quia ista dispositio totum ius illius absorberet[153]. Unde debuit dici, non obstante isto privilegio seu lege hoc concedente, 1. Quotiens, de preci. impe.(C. 1. 19. 2).
(5) Item, dictiones universales[154] non destruunt exceptiones singulares neque referuntur ad ea, de quibus est in specie provisum, 1. Coheredi, § Qui patrem[155], de vulga. et pu. (D. 28. 6. 41. 5).
(6) Item, si imperator confirmat omnia privilegia, non intelligitur[156] confirmare iniusta[157], no. Cy., C. de bonis que lib., 1. Cum opportet (C. 6. 61. 6)[158].
(7) Hec omnia tendunt inferre quod generalitas verborum non comprehendit casum quem non doceat comprehendi, set debet concessum[159] a principe privilegium esse mansurum.
(8) Item, ex generalitate sermonis non videtur esse[160] dispensatio cum personis inhabilibus, nec videtur a dispensatione[161] iuris et a tramite communis[162], ut volunt omnia predicta iura.
(9) Item, verba generalia iuris non sunt captanda, id est, per occasionem non sunt ad iniquitatem trahenda, 1. pe.[163], ff. ad exiben.[164] (D. 10. 4. 19), 1. Famosi, ad l. Iul. maie. (D. 48. 4. 7).
(10) Item, per verba generalia iuste defensiones nunquam cuique[165] videntur velle auferri, set frivole[166] defensiones et subterfugia, l. Ita pudor (C. 9. 9. 27. [28]), et ibi de hoc in Glo. et per Cy.[167], C. de adul.[168],ff. quod vi aut clam, 1. 1, § 1 (D. 43. 24. 1. 1).

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[138] Si cui de servi. *post* de ritu nuptiarum *tr*. **B** 1
[139] ut aliud **B**
[140] potest se **B**
[141] Set et **B V**
[142] excusantur **B**
[143] a iure precepta redacta **B**
[144] Tayis **B**
[145] quod *post* faciunt *add*. **B**
[146] legum *post* Cu. *add*. **B**
[147] arboribus **B**
[148] I have been unable to track down Guillaume de Cunh's commentary on D. 34. 2. 40, *Medico suo*.
[149] casum de quo **B**
[150] ff. de mino. *om*. **V**
[151] domino *om*. **B**
[152] penulitima **B**
[153] obsorberet **B**
[154] dicta universalia **B**
[155] patri **B**
[156] videtur **B**
[157] iniuxta **V**
[158] Cy. in lege Cum opportet, C. de bonis que libe. **B** Cynus de Pistorio ad C. 6. 61. 6, *In Codicem commentaria*, Frankfurt 1578, Vol. 2, f. 434v, n. 8.
[159] privilegium concessum **B**
[160] esse *om*. **V**
[161] a dispensatione *ex* a dispensatio *corr*. **B**
[162] tramite rationis esse recessum **B**
[163] de exerci.(?)*post* pe. *del.* **B**
[164] et *post* exiben. *del.* **B**

(11) Ad idem arguitur ex condictione personarum istorum officialium, quia cum sint commissarii et mandatarii, non videtur eis adtributa potestas revocandi beneficium domini datum benemerito, 1. Si hominem[169], ff. mandati (D. 17. 1. 30).
(12) Item, revocare concessum est inconstantia, sed constantia et perseverantia voluntatis incepte presumitur, nisi ostendatur mutata, sed non ostenditur sufficienter mutata, cum verba possint recipere congruum intellectum absque hoc. Unde non probat hoc esse et cetera, quia verba generalia non operantur adversus presumptionem iuris vel nature[170], 1. Set et si quis, § Quesitum (D. 2. 11. 4. 4), 1. Obligatione generali, de pignor. (D. 21. 1. 6), et 1. Qui filios (C. 8. 16[17]. 6), cum sy.
(13) Item, certissimum quod commune voluit conferre beneficium, set quod auferre voluerit sumus incerti, quia generalitas parit obscuritatem, ut. 1. Pretor edixit, § Si mihi plures (D. 47. 10. 7. 5). Set ubi ex una parte est certitudo[171], ex alia ambiguitas, certitudini[172] inherendum est.
(14) Item, verba generalia, maxime clausularum usitarum adponi non tollunt recursum iuri, 1. fi., § pe., de condictione inde. (C. 4. 5. 11. 1), et ibi bonus textus et restringuntur ad ea que sunt secundum ius, 1[173]. Quero, § Inter locatorem, ff. lo. (D. 19. 2. 54. 1), et 1. Quidam cum filium[174], de verb. ob. (D. 45. 1. 32).
(15) Preterea[175], legis latorem ita extimandum est legem condere[176], ut neminem in singulari suo iure ledat, et ledi dicitur, qui commodum perdit, quod percipiebat ex publico tamquam privatus[177], l. II, § Merito, et § Si quis a principe, ff. ne quid in loco publico (Dig. 43. 8. 2. 10 et 16), qui textus bene faciunt. Unde dicendum videtur quod illa sermonis generalitas interpetranda sit contra concedentem et contra leges generales, que[178] impedirent huiusmodi actus fieri ob commune commodum, quia modo communitas statuit. Unde contra se ampliatio voluntatis sue debet accipi, non contra ius private persone, ut 1. Beneficium (D. 1. 4. 3) cum sua materia. Unde cum dicit “non obstantibus quibuscunque obstaculis”, intelligo procedentibus ex[179] legibus generalibus commune commodum respecientibus; et convenit hec interpetratio etiam equitati, quia debet[180] ut cuiusque rei sequantur incommoda, que commoda prosequuntur.
(16) Preterea, istud beneficium videtur irrevocabile, quia indultum est ob meritum et eaque sic indulgentur, licet per modum qui alias solet generaliter vel causaliter esse revocabilis. Non est hoc[181] casu revocabile, quia excedit terminum[182] benefitii et adcedit negotio gesto., 1. Aquilius Regulus (D. 39. 5. 27). Ita[183] videtur velle, 1. Quod semel ordo (D. 50. 9. 5).
(17) Item[184], beneficium istud, cum sit ad liberandum, transit in contractum absque partis presentia, et maxime quia factum ad petitionem Arriguccii allegantis hoc fuisse promissum. Unde vendicat ut debitum et ita ei fuit[185] indultum. Et sic modo bene facit, 1. Aquilius Regulus, quia non

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[165] cuique *om*. **B**
[166] frigole **B**
[167] per Glo. et Cy. **B**
[168] Glossa *Quinquennii* ad C. 9. 9. 27 (28), Venice 1591, p. 1417; Cynus ad C. 9. 9. 27 (28), cit., Vol. 2, f. 547r.
[169] homines **V** l**.** Si hominem *post* ff. mandati *tr*. **B**
[170] eqas(?) *post* nature *del.* **B**
[171] incertitudo **B**
[172] certitudini *ex* certitudo *corr*. **B**
[173] ut l. **B**
[174] quidem cum filio **B**
[175] Item **B**
[176] concedere **B**
[177] privato **B**
[178] sit - que: quod illam legem generalem **B**
[179] a **B**
[180] decet **B**
[181] hic **B**
[182] terminos **B**
[183] et ita **B**
[184] cum *post* Item *del.* **B**
[185] fuit ei *tr*. **B**

videtur ex liberalitate tantum, set ex debito fieri. Ergo non potest dici mera lex, set lex habens effectum contractus, quia lex fit nullo iuris cogente, ut 1. Digna vox (C. 1. 14. 4).
(18) Item, de duorum consensu processit et sic in vi pacti, quia ad petitionem Arriguccii. Et si dicatur tempore concessionis[186] erat absens, dico quod non est verum, quia scripturam iudicat eum esse presentem et petentem. Item, quasi magistratus interrogavit et ex eius[187] facto queritur absens. Unde non est proprie lex, habet tamen mixtum effectum quia quo ad eum cui conceditur est contractus, quo ad alios est preceptum et sic est lex quo ad eos. Sic C. de do. inter virum et uxorem, 1. pe. (C. 5. 16. 26).
(19) Et ad predicta bene facit C. de silentiariis, 1. Decurionibus, libro XII[188] (C. 12. 16. 3), et quod ibi in prima glosa dicitur[189], et Andreas[190] de Barulo ibi scribit quod per generalem[191] legem non derogatur privilegiis specialiter indultis[192].
(20) Cum queratur utrum per predictam potestatem et baliam concessam dicto officio sedecim predicti, concedentes videantur voluisse adimere dictum privilegium dicto Arriguccio et filiis ex causa concessum et non per ambitionem vel obreptionem[193] impetratum, videtur primo quod sic:
(21) Primo[194], quia istis dominis sapientibus est data[195] in hoc in omnibus et per omnia tanta auctoritas quantum habet totus populus, ut patet in § “et pro predictis ibi ac si facta fuissent per populum, et cetera,” set per populum posset hoc fieri, ergo et cetera.
(22) Preterea, ordinamentum, ex quo[196] isti habent[197] auctoritatem, habet clausulam derogatoriam generalem et spetialem quo ad mentem et verba. Cessat ergo questio voluntatis, quia per[198] verba constat de mente, ut ff. de suppell.[199], 1. Labeo, § Nec mirum (D. 33. 10. 7. 1), et in[200] § Cum in verbis (D. 32. 1. 30. 2). Item, tantum operatur si lex dicit quod vult haberi casus singulares pro enumeratis quantum[201] si singulariter enumerasset, ut C. de prescriptione XXX. annorum, 1. Omnes (C. 7. 39. 4). Item, hic sunt excepti casus penales pene ecclesie Romane commictende. Ergo in reliquis stat regula firma, quia in non exceptis, exceptio regulam roborat[202] et confirmat. Item, immunitas hic[203] non videtur ad extraordinaria munera, scilicet[204] supra in dicta referenda, ut no. Dy. de le. primo, 1. Si ex toto (D. 30. 1. 8)[205]. Et sic intentio dominorum dupliciter adversari videtur: primo, in origine concessionis; secundo, in derogatione immunitatis.
(23) E econtra[206] videtur quod intentio dominorum non fuerit velle derogari immunitati, de qua queritur ad presens. Primo, propter precedentem pollicitationem. Secundo, propter debitam remunerationem. Tertio, propter adsurditatis et iniurie evitationem. Quarto, propter verborum restrictivam interpetrationem.
(24) Ex primo, scilicet[207] propter precedentem pollicitationem, arguo sic:

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[186] tempore concessionis **B** in concessione **V**
[187] eius *om*. **B**
[188] XI **B**
[189] Glossa *Decurionibus* ad C. 12. 16. 3, cit., p. 164.
[190] Andre **B**
[191] generalem *om*. B
[192] Andreas de Barulo ad C. 12. 16. 3, *Commentaria super tribus postremis libris Codicis*, Venice 1601, p. 273.
[193] per admitionem vel ob receptionem **B**
[194] Primo *om*. **B**
[195] potestas *post* data *del.* **B**
[196] ordinamento ex qua **B**
[197] habunt **B**
[198] secundum **B**
[199] legata *post* de suppell. *add*. **B**
[200] in *om*. **B**
[201] quantum *ex* quancltis (?) *corr*. **B**
[202] conroborat **B**
[203] hec **V**
[204] scilicet om. **B**
[205] Dynus ad D. 30. 1. 8, *Super infortiatio*, Lyon 1513, sf.
[206] E contra *om*. **V**
[207] scilicet *om*. **B**

(25) Ista immunitas fuit impetrata a communi sub certa causa pollicitationis, scilicet facte[208] dominis de Schala[209]. Et ex quo ista causa non fuit per concedentes reprobata, licet non expresse adsumpta compatiens se tamen cum adsumpta, videtur in concessione immunitatis tacite adprobata, ut ff. de suspec. tu., 1. Hae[210] enim (D. 26. 10. 4), ff. de penis, l. Si preses (D. 48. 19. 32), C. de diversis rescriptis, l.i. (C. 1. 23. 1) et quod no., de except. rei iu., 1. Si <quis>[211] ad exibendum (D. 44. 2. 18) et ff. de infamia, l. II, § Ignomine (D. 3. 2. 2. 2). Tunc sive dicamus quod fuerit simplex[212] pollicitatio alteri[213] altero facta verbis in absentem directis obligat in via Dei naturaliter, ut no. in questione VII, Quotiens cordis oculus[214] (C.1 q.7 c9). Sive dicamus pactum verbis in presente recipientis pro absente directis obligatur naturaliter et in via iuris scripti, ut in § Quin[215] ymmo (D. 2. 14. 7. 5). Ymmo videtur quod efficacius, nam pactum principis, id est, populi florentini in sua provincia principantis, est legis auxilio vestitum, ut C. de do. inter virum, 1. penultima[216] (C. 5. 16. 26); ergo et cetera, ut ff. de pactis, 1. Legitima (D. 2. 14. 6). Ridiculum est enim dubitare de eo quod princeps facit, ff. de constitutionibus prin. 1. I. (D. 1. 4. 1), et in 1. fi., ff.[217] ad legem Iuliam pecul.[218] (D. 48. 13. 16[14]). Set naturale vinculum non est verisimile legis conditorem in se nolle servare, cum aliis iubeat adimplere, ut[219] ff. de legibus, 1. Princeps (D. 1. 3. 31), C. de legibus, 1. Digna vox (C. 1. 14. 4) et ibi per Cy.[220], ff. de le. III, 1. Ex imperfecto (D. 32. 1. 23), cum rei publice turbetur status, si iuris publici observantia defecisset, ut ff. de orig. iuris, 1. II, § Et cum placuisset (D. 1. 2. 2. 24), versiculo, “initium <fuisse> secessionis”, et cetera, quod non intenderunt[221] statutentes directe vel indirecte, ut patet in proemiali parte ordinamenti prefati.
(26) Ex secundo, scilicet propter debitam remunerationem[222], arguo sic:
(27) Privilegium istud non emanavit ex mera liberalitate, immo ob causam preteritam et presentem. Unde magis debet censeri remunerationis[223] actus quam mere liberalitatis[224] impensio, ut ff. de don.[225] 1. Aquilius, et 1. Si pater (D. 39. 5. 27 et 34), et iuvari debuit Arriguccius benefitiis impensis[226] et non decipi, ut ff. commo., 1. In commodato, § Sicut (D. 13. 6. 17. 3), ff. de dolo, 1. Si cum mihi (D. 4. 3. 34), de prescriptis verbis, l. Naturalis[227], § Quod si faciam (D. 19. 5. 5. 3).
(28) Ex tertio, scilicet propter adsurditatis et iniurie evitationem, arguo sic:
(29) Primo[228], quia absurdum est ministrum facere quod non est verisimile dominum[229] facturum, ff. man., 1. Si hominem, et 1. Creditor, § Lucius in Greco[230] (D. 17. 1. 30 et 60. 4). Set non est verisimile quod populus florentinus, unde iura in florentina provincia oriuntur, iniuriam intullisset[231] Arriguccio retractando absque causa quod dederat eidem merenti. Est enim hec iniuria

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[208] facta **B**
[209] dela Scella **B**
[210] hoc **B V**
[211] Si <quis> *om*. **B**
[212] simples **B**
[213] pro *post* alteri *add*. **B**
[214] Quotiens cordis oculus *om*. **B**
[215] quid **B**
[216] ut 1. penultima, C. de dona. inter virum et uxorem *tr*. **B**
[217] C. **V**
[218] in ff. ad legem Iuliam pecul., l. f. *tr*. **B**
[219] ut. *om*. **B**
[220] Cynus ad C. 1. 14. 4, cit., Vol. 1, ff. 25v-26r.
[221] intenderent **B**
[222] reverentiam **B**
[223] remuneratio **B**
[224] voluntate **B**
[225] ap q *post* don. *del.* **V**
[226] benefitio impenso **B**
[227] Naturale **V**
[228] primum **B**
[229] non esset dominus **B**
[230] in Greco *om*. **B**
[231] intullissent **B**

magna, ut ff. de aqua cotidiana[232], 1.i, § Permictitur (D. 43. 20. 1. 41), ergo et cetera, ut C. unde vi, 1. Meminerint (C. 8. 4. 6)
(30) Ex quarto, scilicet[233] propter verborum interpetrativam restrictionem, arguo sic:
(31) Privilegio spetiali concesso persone cum causa per provisionem posteriorem, etiam habentem clausulam derogatoriam sub generalibus verbis, nisi specifice ac individue ad privilegium, de quo queritur descendat, non derogatur. Ymmo per privilegium tamquam per exceptionem generalis provisio restringitur[234], ut ff. de le. II, 1. Legatorum, § fi. (D. 31. 1. 33. 1), et ar. in[235] 1. Alimenta, § Basilica , et 1. Stichus nutricis, de ali. vel[236] cib. lega. (D. 34. 1. 16. 2; 1. 16. 20), et de vulg. substitut., 1. Coheredi, § Qui patrem[237] (D. 28. 6. 41. 5), et est expressum in c. Si propter tua, de rescriptis, lib. VI° (VI 1. 3. 10). Ut dicamus quod sic species derogat generi, sic individuum speciei[238] summendo speciem dialectice[239] pro genere subalterno legistarum. Ad hoc facit quod notat Dy. in 1. Si quis, in prin. testamenti, de le. III (Dig. 31. 1. 81)[240]. Nam hoc privilegium habet clausulam derogatoriam, et de ea[241] non est facta specifica mentio, ergo et cetera.
(32) Pro hoc facit quia exigere ab Arriguccio vel posteris eius[242] videtur indebite, cum iam sit remissum et mandatum ad indebitum non extenditur. Nec quo ad exigendum, ut ff. de condict. indebi., 1. Si procurator[243] (D. 12. 6. 6), ut[244] hic; nec quo ad solvendum, ut ff. de solut., 1. Si <is>[245], cui, § Flavius (D. 46. 3. 94. 3).
(33) Item, faciunt ad predicta quedam rationes Guilielmi quas ponit in principio ff. veteris, in questione[246] de donatione facta per Constantinum Beato Silvestro[247], et quod notat Cy. in dicta 1. Digna vox.
(34) Item, facit pro Arriguccio et filiis eius, quia donatio quam confert pater in filium in potestate est revocabilis. Tamen si confert in eo benemerito, non est sic revocabilis[248], ut no., C.[249], de inoffi. te., l. Unde <et> si parens (C. 3. 28. 6 in c.), C. de collat., 1. Si donatione (C. 6. 20. 13), et a similibus. Sic potest dici in privilegio, ut ius revocabile, efficiatur quasi inrevocabile, quando precedunt merita et cause obligatiorie[250], ut hic.
(35) Non obstat quod habent eamdem potestatem isti sapientes quam populus, quia verum est in commisis[251], set istud non venit in commissione, ut in[252] dicto § Lucius, ubi hic modus solvendi probatur in textu.
(36) Item, non obstat si dicatur, ergo clausula derogatoria sic precisa que est in arbitrio eis dato nichil operabitur, quia ymo operatur[253], quia tollit[254] leges contrarias generales quo ad omnes et omnia, et speciales[255] quo ad casus[256], generales quo ad personas. Item, tollit privilegia iuris

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[232] coti. et exti. **B**
[233] scilicet **B**
[234] restriguit **B**
[235] in *om*. **B**
[236] et **B V**
[237] 1. Coheredi, § Qui patrem, de vulg. et pup.*tr*. **B**
[238] dicamus - speciei *om*. **B**
[239] dialetice **V**
[240] Dynus ad D. 31. 1. 81.
[241] eo **B**
[242] quod *pos*t eius *add*. **B**
[243] l. Si procurator: l. f. **B**
[244] ergo **B**
[245] hiis B; *om*. **V**
[246] in questione *om*. **B**
[247] *Prohemium lecturae super Digesto Veteri Guillelmi de Cunio*, ed. B. Brandi, in *Notizie intorno a Guillelmus de Cunio, le sue opere e il suo insegnamento a Tolosa*, Rome 1892, Appendix II, pp. 106-07.
[248] Tamen - revocabilis *om*. **V**
[249] Cy. **V**
[250] allegatorie **B**
[251] commissione **B**
[252] in *om*. **B**
[253] operatur *ex* operabitur *corr*. **V**
[254] tollit *ex* tollis *corr*. **V**
[255] et *post* speciales *add*. **B**

communis, ut si quis vellet se excusare, eo quod ius commune det ei immunitatem. Set non tollit privilegium ipsius statuti[257], quia non videtur concedens factum suum in dubio[258] revocare, ut ff. de condic. et de.[259],l Non[260] ad ea (D. 35. 1. 89).
(37) Item, credo quod forte operetur etiam in privilegiis ambitiosis[261] et absque causa obligatoria qualis est hec[262], que deducta in forma contractus caderet sub[263] causa obligatoria: “facio”, scilicet, “ut eximas”[264]. Si qua ergo per ambitionem extorta reperientur, ista possent per istos sapientes cassari, quia non habent causam subsistendi, ut dicta 1. Ambitiosa, de decretis ab ordine faciendis[265] (D. 50. 9. 4), et in 1. Set reprobari, de excu. tu.[266] (D. 27. 1. 6. 6 in c.), et est simile[267] in clausula, appellatione remota, que est derogatoria appellationibus. Non tamen removet iustas appellationes, set[268] frivolas, extra, de appellationibus, c. Ut debitus (X 2. 28. 59), cum sy.
(38) Et hec vera intelligo[269], nisi domini conditores legis aliter interpetrarentur suam[270] legem, quod possunt, ut l. Ex facto de vulg. et pu.[271] (D. 28. 6. 43), quia eius est interpetrari cuius et condere, C. de legibus. 1. fi. (D. 1. 3. 41), et ff. de reg. iur., l. Verum[272] (D. 50. 17. 31), ubi etiam[273] dicit quod principis est extimare quem modum[274] benefitii sui esse velit.
(39) Quod dicta generalis[275] commissio, facta dicto offitio sedicim et ipsorum provisio, non habeat tollere privilegium et immunitatem dicti Arrigucci[276] et filiorum apparet rationibus infrascriptis:
(40) Quia generalis dispositio non refertur ad spetialiter provisa, ut ff., de penis, 1. Sanctio legum (D. 48. 19. 41), de ver. obli., 1. Doli clausula (D. 45. 1. 119), et lib. VI[o][277], de regulis iuris, c. Generi (VI 5. 13. 34)[278].
(41) Quia generalis potestas intelligitur sine alterius lesione concedi, ff. ne quit in loco pu. fi., 1. II, § Si quis a principe (D. 43. 8. 2), C.[279] de emancipat., 1. Nec avus (C. 8. 48[49]. 4), extra, de ecclesiis. edi. vel[280] re., c.ii[281] (X 3. 48. 2), et de rescriptis, c. Quamvis, lib. VI[o] (VI 1. 3. 8).
(42) Quia in generali concessione non veniunt ea que quis spetialiter concessurus non esset, ff. de pignor. 1 Obligatione (D. 20. 1. 6), C. que res pi. obli. possunt, 1. Alumpnos[282] (C. 8. 16[17]. 1), extra, de iureiurando, c. Veniens (X 2. 24. 16), de offit. vic., c. fi., lib. VI[o][283] (VI 1. 13. 3). Set non est verisimile quod consilia voluerint auferre per eos concessa maxime iuxta causa.

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[256] et *post* casus *add*. **B**
[257] statuentis **B**
[258] factum suum *post* in dubio **tr**. **B**
[259] indebite **B V**
[260] Nam **B**
[261] admitiosis **B**
[262] hic **B**
[263] hic *post* sub *del.* **V**
[264] facias **B**
[265] de - faciendis om. B.
[266] 1. Sed reprobari *post* et de excu. tu. *tr*. **B**.
[267] et simile est **B**
[268] iniustas *post* set *add*. **B**; p. *post* set *del.* **V**
[269] scilicet *post* intelligo *del.* **V** no. de immunitatibus *in marg*. *sin*. **B**
[270] sua **V**
[271] ut - pu. om. **V**
[272] et ff. - Verum *om*. **B**
[273] etiam *om*. **B**
[274] amodo
[275] quod autem generalis **B**
[276] privilegium immunitatis ipsius Arrigucci
[277] Extra **V**
[278] et - Generi om. **B**
[279] extra *post* C. del. **B**
[280] et **V**
[281] extra - ii om. **B**
[282] Amplius **B**
[283] de offit. VI[o] *om*. **B**

(43) Quia concessa per decuriones ex causa, sine causa tolli non possunt, ff. de decretis ab ordine faciendis, 1. Quod semel[284] (D. 50. 9. 5) . Set dicti consiliarii[285] sunt hodie loco decurionum, ut no. C. de decur., l. I[286], lib. XI° (C. 11. 14[13]. 2), et ff. de senat. in rubrica (D. 1. 9) per Odo.[287] Ergo hii consiliarii, qui dederunt dictam potestatem, non potuerunt eorum factum et decretum tollere quod primo fecerant causa non subsistente, que non subsistit.
(44) Quia facta habentia clausulam derogatoriam tolli non intelliguntur, nisi specialiter illius fiat mentio, ut ff. de le. III, 1. Si quis in principio testamenti (D. 32. 1. 22), et no. ibi[288] per Dy.[289], et lib. VI°[290], de regulis iuris, c. Quod semel placuit[291], (VI 13. 21) et de le. I, 1. Si michi et tibi, § In legatis[292] (D. 30. 1. 12. 3).
(45) Quia ius alterius non potest tolli sine causa, quia nec imperator potest, ut no. in constitut., ff. in principio (D. 1. 4. 1) per Glo.[293] et doctores, et 1.II. de preci. imperat. offe., C. (C. 1. 19. 2).
(46) Quia rescripta contra ius elicita[294] non valent etiam ab imperatore, nisi causa iusta[295] intercedat, ut in auct. Ut nulli iud., § Hoc vero iubemus (N. 134. = Auth. 9. 9. 6), et 1. Rescripta, C. de preci. imperat. offe. (Cod. 1. 19. 7), et 1. fi., si contra ius utilitatemve[296] publi. (C. 1. 22. 6), et quod in eis no. per Odo. et Cy.[297]
(47) Quia in generali ordinatione solutionis semper subauditur de iure debentes, ut 1. Omnes, C. sine censu vel reliq. fundum[298] (C. 4. 47. 3), 1. I, ff. de eo[299] quod certo loco (D. 13. 4. 1), 1. Ut gradatim, § Etsi lege, ff. de mun. et ho. (D. 50. 4. 11. 1).
(48) Quia rescriptum ius alterius auferens debet fieri ex certa scientia et de scientia constare, ut 1. II, de rescriptis, C. (C. 1. 23. 2), et quod ibi notatur[300].
(49) Quia non debet quis[301] contra factum[302] suum venire, et cetera, ut C. ne. fi. rem quam. ve. evin. (C. 10. 5. 1 et 2), et[303] 1. Post mortem, de adopt. (Dig. 1. 7. 25).
(50) Quia statutum factum ad privatam utilitatem respiciens tolli non potest, ut per Gandinum in rubrica, de statutis, in ultima questione, et sic no. in questione statututorum II. cart.[304]
(51) Facit ad predictam[305], dictum Host. expresse[306] in summa, de privil., § ultimo, in versi. III° et IIII° in et alii sequentes[307], ubi expresse tenet quod privilegium ex causa concessum revocari non potest, et quod revocans in penam incidit[308].

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[284] 1. Quod semel *post* ff. de decretis ab ordine faciendis *tr*. **B**
[285] consilia **B**
[286] II **V**
[287] per Odo. *om*. **B** Odofredus ad D. 1. 9 *rub*., *Lectura super Digesto Veteri*, Lyon 1552, f. 25va.
[288] et ibi no. et **B**
[289] Dynus ad D. 32. 1. 22.
[290] Extra **B V**
[291] plene **V**
[292] et de le. - legatis om **B**
[293] Glossa *Quod principi placuit* ad D. 1. 4. 1, p. 30.
[294] elicita **B**
[295] secunda iussa **V**
[296] ius vel uti **V**
[297] per Cy. et doc. **B** Odofredus ad C. 1. 22. 6, *Omnes Cuiuscumque*, ed. cit., fol. 49r, n. 3; Cynus ad Cod. 1. 22. 6, cit., Vol. 1, ff. 39v-40v.
[298] facit **B V**
[299] de eo *om*. **B**
[300] et - notatur: no **V**
[301] scilicet *post* quis *del.* **B**
[302] sum *post* factum *del.* **B**
[303] C. - et *om*. **B**
[304] ut - cart. *om*. **B** Albertus Gandinus, *Quaestiones statutorum*. ed. A. Solmi, in *Biblioteca iuridica medii aevi, scripta anecdota glossatorum*, Bologna 1892, Vol. 3, p. 168, rub. XXVII.
[305] Facit - predictam: Ad quod facit **B**
[306] expresse *om*. **B**
[307] Hostiensis, *Summa aurea* 5, 33 (*De privi. et exces. privi.*), Lyon 1537, f. 263rb, § 10.
[308] Sic tenet franciscus ac., spe. et odofre. in extravagantibus (**B**); Sic expresse tenet f. ac., in tit. de extravag., doctores, spec. ad officium iudicis maleficorum (**V**)*post* incidit *add*.

(52) Visis igitur[309] dicta commissione facta dicto officio sedecim et balia et potestate eis concessis[310], et visis dictis[311] immunitate et privilegio concessis[312] dictis Arriguccio et filiis, et visis maturis rationibus et iuribus[313] supradictis[314] et statutis et ordinamentis communis Florentie facientibus ad predicta; et omnibus que videnda et consideranda fuerunt[315], consulunt infrascripti doctores, advocati et iurisperiti, quod generalis commissio facta dicto officio sedecim et verba derogatoria in ipsa commissione apposita non intelliguntur, nec intelligi debent, comprehendere immunitatem et privilegium predictum Arriguccio concessum. Et per hoc ipsum privilegium firmum remanet. Et ideo contra ipsum gravari[316] non potest per dictos sedecim. Unde ad casum propositum, respondent quod ipse Arriguccius et dictus Jacobus eius filius non potest vel debet predictis occasionibus[317] gravari seu cogi ad solvendum dictam prestantiam, de qua supra dicitur.

Ego Franciscus domini Locti de Salviatis utriusque iuris professor predictus, una cum predictis et infrascriptis doctoribus et advocatis et iurisperitis, consulo ut superius continetur.

In nomine domini, amen. Ego Baldus de Perusio utriusque iuris doctor, actu legens in magnifica civitate Florentie ordinarie ius civile, dico et consulo ut superius continetur, deliberato primo dicto consilio cum predicto excellentissimo doctore domino Francisco et aliis superius nominatis et describendis inferius, quorum dicta et oppiniones sequor, ut dicta maiorum validis suffulta rationibus. Et ideo ad fidem me subscripsi propria manu et sigillum solitum mei nominis apposui, salvo consilio cuiuslibet melius sentientis.

Ego Franciscus domini Bici de Aretio consulo iuris esse ut in supradicta conclusione concluditur, et ita puto esse iuris, salva sententia veriori, et ideo me subscripsi.

Ego Niccolas Lapi iudex sentio iuris esse ut superius continetur.

Ego Loysius de Gianfiglazziis legum doctor indignus auctoritatem suprascriptorum dominorum sequutus et rationes supra positas, ut supra consulo. Ideo me subscribo[318].

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[309] Visa ergo **B**

[310] concessa **B**

[311] visa dicta **B**

[312] concessa **B**

[313] supra *post* iuribus *del.* **V**

[314] supradictis *ex* suprap *corr.* **V**

[315] consultus *post* fuerunt *del.* **B**

[316] veniri **B**

[317] ipse Arriguccius - occasionibus: ipse Arriguccius et filii non possunt vel debent dictis occaxionibus **B**

[318] Ego Franciscus domini Locti - subscribo: Ego Franciscus domini Locti de Salviatis utriusque iuris professor, una cum predictis et infrascriptis et cetera. Ego Baldus de Perusio. Ego Franciscus Becti de Aretio. Ego Nicola Lapy et cetera.