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Partendo dalle percettive letture e dalla attenta contestualizzazione di *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* proposta dai quattro relatori la presente replica s'incentra sull'ambiente culturale per cui la nostra raccolta di testi, con introduzioni e bibliografia, è stata concepita e intesa: il corso accademico. Consapevoli che i corsi universitari e i curricula accademici non sono gli stessi in giro per il mondo, ritorniamo su due interrogativi che ci hanno guidato nella progettazione ed esecuzione di questo volume: perché e come insegnare il diritto comune (*ius commune*)? A queste due domande si può aggingerne una terza: quali sono i vantaggi o le ricompense di un simile lavoro? La prima parte ripropone le ragioni per la non convenzionale natura del nostro lavoro; la seconda, frammentando l'intero volume in sezioni e sotto-sezioni, esemplifica come i testi vennero usati negli Stati Uniti in un contesto socio-economicamente e culturalmente eterogeneo e con un un gruppo di uditori provenienti da dipartimenti diversi; la terza parte, uscendo da un ambiente anglofono, illustra le reazioni alle traduzioni di un gruppo internazionale di studenti in Giappone che per la prima volta si sono confrontati con il tema della storia del diritto comune.

Starting from and building upon the perceptive readings and careful contextualization of *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* by our four discussants, our reply centers on the institutional setting for which our collection of translations was initially intended: the classroom. Fully aware that classrooms and academic curricula are not the same around the world, we revert to the two questions that were constantly at the back of our minds while assembling the volume: why teach the *ius commune* and how to go about it? To these two questions, one might add a third one: what are the rewards of such a challenging enterprise? The first section recapitulates the rationale for the unconventional nature of our work; the second fragments the whole into sections, exemplifying how the texts were used in a socioeconomically and ethnically diverse classroom in the highly decentralized system of higher education in the U.S. that brought together students from different academic departments; the third, exiting the anglophone world, illustrates the reactions to the translations of an international group of students in Japan.

Medioevo; giurisprudenza; storia e storia del diritto; didattica universitaria.

Middle Ages; jurisprudence; history and legal history; teaching at the university.

1. *Translation*

Deep gratitude goes to the editors-in-chief of «Reti Medievali Rivista», Paola Guglielmotti and Gian Maria Varanini, for sponsoring and orchestrating the critical discussion of our book; and to the four discussants, professors Simona Feci, Diego Quaglioni, Lorenzo Tanzini, and Ferdinando Treggiari (each of whose studies we admire and frequently cite), for their observations and extended comments. The discussants' positive assessments of our book, especially their acknowledgment of its unique scope and innovative approach to the study and teaching of medieval legal history, is a welcome validation of a venture that at times seemed quixotic.

From a cursory glance at the book's table of contents, it is obvious that our collection of translations has little resemblance to a conventional textbook, with its ineluctable march of facts, names, and events arranged in chronological order, effacing ambiguity and contradiction, which is intended for a large student market or competition in the market-driven Amazonverse. By design, our translations are organized by topics and subtopics, with the timeline of origins, developments, decline, and endings traced in the introduction to each translation. Our aim to translate whole texts, not snippets or texts mangled by ellipsis, enabling readers to track and grasp the logic of a text from Justinian's *Corpus iuris*, a city statute, or a jurist's zigzagging arguments from beginning to end, is also unique. Readability is, of course, a worthy goal, but merely a comfortable starting point. Above all else, we wanted readers to share our own experience of wrestling with the compressed intensity and subtle distinctions of medieval legal discourse in historical context. Rather than providing a linear progression of then, then, and then, we contextualize and recontextualize on the basis of the best (not necessarily the latest) research.

Always present in our minds was the implicit and justifiable question of *why* readers in the twenty-first century should spend time and effort grappling with texts written in stilted Latin and produced in a remote past that they feel have no bearing on their lives or livelihoods. While steering clear of anachronism, we show in the introductions to the translations that a realm of medieval civil and canon law principles, methods, and jurisprudence known as the *ius commune* is constitutively embedded in the European continental legal system. We also hope that those readers wherever they may be, who are willing to approach the texts with an open mind and curiosity, will not only increase their knowledge of medieval and Renaissance Italy beyond what they may already know about such iconic figures as Saint Francis of Assisi, Marco Polo, Dante Alighieri, Niccolò Machiavelli, Leonardo da Vinci, and Michelangelo, but more importantly that they will encounter an array of individuals who experienced life-altering events that they can recognize empathically as approximating their own experiences.

For example, the jurist Baldo degli Ubaldi of Perugia, a legal genius whose prolific and generative jurisprudence indelibly shaped the *ius commune*, lived miraculously though the trauma of Black Death of 1348 and successive waves

of plague until his death in Pavia in April of 1400. As far as we know, he did not die from the plague. In contrast, his younger brother Angelo succumbed to the plague ravaging Florence in September of 1400. The fallout from his death while a professor at the University of Florence became the subject of a legal opinion (Chap. 6 in our book). An outstanding jurist, Angelo had earlier dedicated a legal opinion to the loss and reacquisition of citizenship of the inhabitants of a city who fled and stayed away because of the plague (Chap. 32). Leave aside for the moment the wonders of advanced modern medicine that we are privileged to enjoy. Having thus far lived through the COVID-19 pandemic, we have a deep appreciation of Baldo's and Angelo's humanity and resilience as well as their feelings of dread in face of extinction from epidemic plague.

Concerns expressed about the omission of the Latin texts that we translated are understandable and manifest a reaction that we fully anticipated. Teachers and students of medieval law in European universities customarily work directly from Latin texts and other original sources. To do otherwise would be scandalous. Relying on translations is an unmistakable and lamentable sign of ignorance and incompetence. Well and good to have the translations, we are told, but it would have been preferable for scholars and students to have a facing-page translation from Latin into English, as pioneered by the Loeb Classical Library. Other relevant examples are the four-volume-facing-page translation of Justinian's *Digest* under the editorship of Alan Watson, the three-volume translation of Justinian's *Code* under the editorship of Bruce Frier, the two-volume translation of Justinian's *Novels* under the editorship of David J.D. Miller and Peter Sarris, and the one-volume translation of Justinian's *Institutes* by Peter Birks and Grant Mcleod. Another, fine example is the expansive *I Tatti Renaissance Library*, under the entrepreneurial editorship of James Hankins, with Loeb-style facing-page translations. However, the addition of the Latin texts would have increased the size of our volume to an untenable and unwieldy 2,000 pages. Doubling the number of pages would have necessitated splitting the translations into two volumes and consequently doubling its price and defeating our primary aim to provide students, scholars, and libraries with a handy, well-produced volume, already bursting at the seams, at an affordable price. All of which presumes that the University of Toronto Press would agree to this scheme, requiring substantial subsidies that were not forthcoming.

In our view, a facing-page translation was neither desirable nor necessary. We understand that specialists in medieval legal discourse want to check the faithfulness of our translations and that non-expert readers, including graduate students in medieval history with an excellent knowledge of Latin, will wish to follow how we moved from legal Latin into English[1]. The wish to read

[1] Regarding the observation on the utility of our translations for doctoral students in medieval history, our colleague and friend Lawrin Armstrong, profesor emeritus at the University of To-

the Latin texts is laudable and feasible. Found in volumes and journals in major libraries everywhere, the texts we translated from published editions are readily accessible online or scannable. More importantly, as we indicated in the book's general introduction, the texts we translated from our own working editions based on manuscripts and early printed editions can be directly obtained upon request from Osvaldo Cavallar (cynus163@icloud.com).

From the outset we aimed to make available to non-specialist students and scholars a collection of *ius commune* texts, never translated before, covering a wide range of principles, concepts, and problems with which jurists in medieval Italy grappled daily. In theory, the volume could serve as a source book for a distinct course on the medieval *ius commune*, but we cannot emphasize strongly enough that in the U.S. the *ius commune* is approached, if at all, as an extinct and exotic species. The demand for a separate course devoted to disinterring the *ius commune* is minimal to non-existent, not only in the Faculties of Humanities and Social Sciences but even in the Law Faculties. Rather, we are fairly certain and hopeful that teachers would follow the time-honored practice of adopting chapters (the individual translations preceded by their introductions and pertinent bibliographies) as readings for survey courses on the history of the Middle Ages in Europe and the Italian Renaissance. Similarly, we hope the chapters on dowries, marriage, adultery, and abortion will be adopted for courses on women, gender, and sexuality in the Middle Ages; the chapters on university professors, students, and their books adopted for courses focused on higher education; and so on.

2. *Teaching the Translations*

What follows are Kirshner's observations on the general practice of teaching translations in the U.S. and teaching our translations in courses he taught at the University of Chicago, followed by Cavallar's observations on teaching our translations in a radically different cultural and institutional setting at Nanzan University in Nagoya, Japan.

ronto, responds in an email: «When I used your and Osvaldo's draft translations in my graduate course on the common law of medieval Europe between 2003 and 2017, I supplied doctoral students, all of whom had by this stage passed their Latin examinations, with the Latin originals, which we read side-by-side with your translations and annotations. My last and best doctoral student, Jason Brown, who entered the programme with superb classical Latin, initially found juridical Latin something of a challenge. He learned how to read legal Latin with confidence with the aid of your translations. I should add that Dr Brown will be teaching an introduction to the Roman law tradition in the Classics Department of the University of Winnipeg this spring and will be making extensive use of *Jurists and Jurisprudence*».

2.1 *Julius Kirshner*

In the U.S. the practice of assigning and discussing stand-alone translations, thereby avoiding overwhelming students with arcane original texts that they are incapable of reading, is widespread and has proved pedagogically fruitful. Here are three prime examples, which, in addition their serviceability, inspired some students to pursue graduate study in medieval history. The panoramic *Medieval Trade in the Mediterranean World: Illustrative Documents,* translated with introductions and notes by Robert S. Lopez and Irving W. Raymond, which appeared in 1955, and presented anglophone readers with fundamental sources illustrating the rich and innovative practices associated with early capitalism. Brian Tierney's revelatory *The Crisis of Church and State, 1050-1300*, which appeared in 1964, a collection of excellent translations by a leading medievalist that quickly became a staple of medieval history courses. Another staple of courses on Renaissance Florence and the Italian Renaissance was *The Society of Renaissance Florence: A Documentary Study*, edited by Gene A. Brucker, which appeared in 1971. The translations from public records, notarial documents, and family journals-cum-account books (*libri di famiglia/ricordanze*) served to introduce readers to the rich archival sources on which Brucker and other American historians, including Marvin B. Becker, Lauro Martines, William M. Bowsky, and David Herlihy, drew in producing their revisionist and pioneering scholarship.

Before digitization, students read Xerox copies of individual documents that teachers selected from comparable compilations. This was the practice in the courses that I taught at Bard College in the mid1960s and at the University of Chicago from 1970 onward. Digitization has made this process infinitely less cumbersome and lightning fast. Today, a member of a university can find and download a chapter(s) of a recent book in digital format in less than a minute. This assumes that libraries have acquired our book, which in Italy as we write has not yet happened. We envisage that teachers will assign individual chapters of our book that have already been downloaded. And that the vast majority of prospective and digitally fluent readers will consult our book online and via downloaded chapters.

The translations are designed to be a springboard for instructor-led discussions sparking a collaborative, frank, and civil exchange of views, for honing a critical approach to the voices of the past, and more specifically, for exploring the *ius commune* in fresh ways. In this participatory model, in which the instructor engages students more as a facilitator than an expert, posing and pondering unconventional questions and reasoning humanistically can be more productive than finding unequivocal answers. The introductions supply the basic historical background (who, what, when, where, and sometimes, why) and the Roman and canon law rules and doctrines at play in the matter being contested. Imagine an upper-level undergraduate class (an elective course outside the students' required curriculum) on Italy in the Middle Ages and Renaissance, with thirty students enrolled. The students are

diverse. Only four, majoring in classical studies, can read Latin. Eight are majoring in history, five in economics, three in art history, three in comparative languages and literature, two in English, two in sociology, one in visual culture, one in social psychology, and one in marine biology. Although this scenario, which is notable for the absence of law students, may look odd to an instructor at a European university, it accurately reflects the variegated audience one encounters in a classroom in the U.S. Imagine also that the students come from diverse cultural, linguistic, social, economic, religious, and racial backgrounds.

The subject of the class is contracting marriage in medieval and Renaissance Florence as illustrated in the translation of model betrothal and marriage contracts redacted in 1391 (Chap. 38). The discussion ranges from the economics of the marriage market (sorting brides and grooms according to age, size of dowry [a proxy for wealth], social status), to the cultural and social pressures making arranged marriages an imperative, to the importance of protecting a family's honor, to the requirements for contracting a legally binding marriage and proving afterwards that the requirements were fulfilled, to the degree to which lay persons understood the technicalities and ramifications of these requirements, to the difference between medieval betrothals (*sponsalitia*) and modern engagements. Students from classical studies compare an honorable marriage in Florence with examples from ancient Greece and Rome. Art history students discuss artistic representations of betrothals and marriage in the *Trecento* and *Quattrocento*, e.g., *The Arnolfini Portrait* by Jan van Eyck. The students studying comparative literature want to know if the representations of women in Petrarch's poetry and Boccaccio's prose reflect historical reality. History students wonder if the pattern of arranged marriages for teenage girls in Italy is found elsewhere in Europe, and if not, what explains differences in marriage patterns. The student majoring in social psychology asks if gay persons in Renaissance Florence entered into heterosexual marriages and how did that work. A self-professed Catholic student is astonished that marriages were officiated by local notaries instead of members of the clergy. Students with parents whose marriages were arranged by own their parents, grandparents or other relatives, and who themselves are expected to accept a future spouse chosen by their parents, without proactively revealing their family and cultural situation, point out that arranged marriages should not be equated with forced marriages, and then launch what becomes a spirited discussion over the pros and cons of arranged versus love marriages. Ideally, students should come away with a sharper awareness of how abstract legal rules and impersonal procedures informed the pragmatic choices made by Florentine families, from the rich to the poor, struggling to survive in world beset by plague, warfare, and factional strife, and vice versa.

2.2 *Osvaldo Cavallar*

I have taught the texts in *Jurists and Jurisprudence* in an environment that is hard to qualify as "anglophone", namely in Japan, at Nanzan University (Nagoya), chiefly in the Faculty of Policy Studies (総合政策学部) and occasionally in the Faculty of Humanities (人文学部). The student body of the former includes a sizable number of non-Japanese accepted from different Asian countries. The greatest number of them comes from China, followed by Singapore, Malaysia, Thailand, Indonesia, Philippines, and Vietnam – countries where "law" has a much shorter history than the Roman-law-grounded tradition of continental Europe (and its colonies) and that of the common law of the anglophone world.

Resorting to English translations in this environment naturally presented challenges ranging from language to culture, to the best method of showing the relevance of the medieval *ius commune*. On the linguistic level, the use of the translations by a non-anglophone audience was especially challenging, and sometimes tricky, because non-Japanese students are obliged to juggle learning Japanese and English simultaneously. The texts had to be relatively concise, making *consilia* convenient to teach because of their compactness and the focus on an easy-to-grasp factual case (e.g., false testimony, homicide, or adultery). For problems of understanding English grammar and syntax, I encouraged students to ask for assistance from their respective English instructors. If that assuaged most of the initially reluctant students, my foremost concern was whether those English instructors would agree to the arrangement I proposed. Their reaction surprised me. Reasonably, they underscored that the scope of our program has always been to familiarize students with different areas of English usage (politics, economics, trade, international relations, and the like). At the same time, they informed me, «we never thought about the area of law … and we will gladly add it».

The variety of the cultures represented by the students is remarkable. Yet more significant is that just a fraction of the students upon taking the entrance examination for the university had chosen history – history here stands for world history or Japanese history – as one of the three optional fields (Japanese and English are required, while math and geography are optional). So even a vague familiarity with European history could not be assumed.

On a pedagogical level, I really could not expect that cultural diversity would come into play and engender a lively classroom discussion on the assigned readings, especially since professorial lectures are still traditional and questions by the students tend to be raised before or after classes or during office-hours. Asking students to write down their thoughts on an assigned reading and inviting them to make a short presentation during classes were the two other commonly available options in promoting discussion.

Moving from the students to the content of the courses (overwhelmingly in Japanese but a bit in English), I used the translations for two courses: first, "Citizenship in Europe from the Classical Period to the Inception of National

States" and, second, "History of European Civilization", where law was conceived as an indispensable, though often neglected, constituent of that civilization. I devised the two legally oriented courses as a means of fulfilling one of the aims of the Faculty of Policy Studies: creating a "legal mind", or demonstrating that law is an effective instrument for solving problems ranging from the environment to gender disparity and that law shapes and is shaped by society.

Simone da Borsano's elaboration of the privileges of professors and students (Chap. 3) stimulated an unexpected reflection on the benefits (from library privileges to medical care) that today's university students enjoy. In the Japanese system, in which establishing the academic curriculum, hiring new faculty members (self-cloning might be a better term), and administration is the exclusive preserve of professors, and where student freedoms are relegated to club-activities (from tennis to manga), the early history of the university, particularly in Bologna, came as a huge surprise. My deferential students could not even imagine that their medieval counterparts made binding statutes, hired their professors, established the curriculum, and had effective representation in the corporation (*universitas*). History showed them that the university model structuring their own education was not the sole possibility.

In Francesco Zabarella's paternalistic "Guidelines for the New Arrivals" (Chap. 4), in which he asked advanced students for feedback on his own way of lecturing, my students discovered a precedent of what occurs toward the end of every course at our university: an evaluation by the students. They appreciated Zabarella's insistence on clarity when lecturing and avoiding useless digressions and on having a clear scope in mind, while allowing a short break now and then, especially because our lectures are 90 minutes long (sometimes even 120 minutes). Predictably, they agreed on the value of memorization, inquiring whether Zabarella's recommended slips of paper were similar to their memory cards. Yet they disagreed with Zabarella's admonition to avoid consulting material unrelated to their field of studies, which he viewed as a wasteful distraction, for the scope of our faculty required attention to culture, politics, law, and the environment. For the same reason (apropos of Chap. 9) they dissented from Seneca's and Petrarch's advice to limit the number of books in their possession, even though specialization is not uncommon in Japanese society.

Ivo Coppoli's *consilium* on adultery (Chap. 25) came in handy when I attempted, without getting into the structures of different discourses, to show what a strictly legal method is and how it differs from the method taken by other medieval experts (theologians or moralists). Reading the *consilium* together, we began by establishing the "facts": who were the actors, what they did, where they lived, what kind of conflict occurred, and why. Then I asked them to write one page on the case as if they were journalists writing for a newspaper, paying close attention to what they would need or like to know, but did not, to produce an attention-grabbing story. To me, the result was entertaining: out of 120 students, 5 embellished their papers with a down-

loaded picture of Citerna where the action occurred; some attempted a mildly spicy story («Can I write that the adulterous husband had sex?» was one of the questions students asked during office hours), and several female students lamented the disparity of treatment between men and women in cases of adultery. Next, I presented a brief summary of the position of the *ius commune* on adultery and an outline of how the dowry system worked and its raison d'être. Finally, I asked the students to rewrite their papers, this time as if they were lawyers – like Ivo Coppoli – and to keep in mind the rules of law and apply them as best they could. The majority admitted that this was one of the most difficult papers they had ever written. My purpose was achieved.

When reading Florentine sumptuary legislation and the *consilium* prompted by what a notary thought to be a violation of the then current rules (Chap. 14), the students failed to grasp the role played by class consciousness in this case and the rallying of the jurists around the defense of their own privileges. Similarly, they were unaware that sumptuary legislation was in full force until the Meiji Restoration of 1868. What they instead instantly noticed, especially female students, was that from primary to high school they adhered to their own sumptuary laws by wearing the so-called "セラ福 sera-fuku" (sailor-dress), the customary school uniform. The dress has a double function: to distinguish students from different schools and to conceal, if only momentarily, inequalities of wealth by exalting and imposing uniformity. They identified the zealous Florentine notary with their own teachers who every morning at the school-gate made sure that the dress code was properly observed and they glowed with pride in their own collective ability to circumvent, though not defeat, the system by manipulating small details and wearing accessories not yet covered by the rules. Blissfully enjoying the freedom the university accorded them, both male and female students failed to realize that most of them, immediately after graduation, if not before, would return to a new sumptuary law: the dress-code of the office or that of the mega-company they would eventually enter.

The abundance of texts touching on issues of gender allowed me to deal expansively with the topic of gender in medieval Italy. Yet discussing gender in Japan is decidedly fraught. The country, despite its well-deserved reputation for efficiency and sophistication, hovers in the lower part of the list of countries with respect to gender parity (121st out of 156 countries in 2020, and 120th in 2021). Women make up only 7.8% of all company managers, far beneath the target of 30% set by the government. In the political arena, women make up only 9.9% of lawmakers. Following current trends, it will take 24.7 years to achieve the target of 30% women in management positions, and 33.5 years to achieve gender parity among the nation's lawmakers. Real gender parity, moreover, encompasses women as full citizens, including but not limited to their right to vote and to be elected as public officials, and demands the full inclusion of women in public life. The chapters (23 and 24) on women's citizenship became an opportunity to illustrate how to do gender history. First, by inscribing women in the dominant history of law to prob-

lematize what might be termed "lachrymose history" and a narrative centered on women passivity and victimization. To their own surprise, the students discovered that women in medieval Italy could and did play an active role in the male-dominated field of law: they went to court, hired lawyers, consulted notaries, possessed property, and dictated or wrote their own last wills. Second, by asking students to pay attention to the role of gender in the socio-legal order and how gender is inscribed in law.

To students for whom law is bereft of history, and created and then constantly modified primarily for political reasons by the state or ruling party, a course on Italian medieval legal history seemed, at first glance, irrelevant to and incompatible with the established curriculum. Somewhat provocatively, I left the students with a suggestion, borrowed from Paolo Grossi's *L'ordine guiridico medievale*, that they should consider Italian medieval legal history as a paradigm of a legal order that developed without the intervention of a strong "state". Fortunately, my most recent class on medieval legal history concluded just before the outbreak of the pandemic, which again forcefully brought back to the fore the role of the state and its authority.

3. *A Final Reflection*

In view of the centralized structure of public universities in Italy, along with the cultural imperative to work with original languages rather than translations, and notwithstanding the intellectual generosity and farsightedness of both the organizers of this discussion and of the discussants, we do not at all foresee Italian professors and instructors teaching with our translations. In fact, we are mindful that our venture may be taken as a "foreign" intrusion into a field of study eternally under the *tutelage* of Italian scholars. After all, the foremost (though not exclusive, e.g., the school of Orléans led by Jacques de Revigny and Pierre de Belleperche) expositors of the *Corpus iuris* were medieval Italian jurists. Similarly, today's foremost interpreters of the medieval *ius commune* are, to a large degree, Italian scholars. That said, a habitual stance of cultural and disciplinary superiority tends to breed insularity. For instance, Paolo Mari's, *Il libro di Bartolo. Aspetti della vita quotidiana nelle opere bartoliane* (Centro Italiano di Studi sull'Alto Medioevo, Spoleto 2021), in which the author repeatedly refers to Bartolo da Sassoferrato, a jurist apotheosized in Italy, as «il Nostro». Mari's possessive intimacy is meant to foster pride among Italian scholars, while it also signals to outsiders that try as they might, they are incapable of having an authentic understanding of the entangled works and times of «il Nostro». Intended for insiders, Mari's book is the polar opposite of ours. Low on analysis, it is a florilegium of untranslated and loosely connected extracts culled from Bartolo's lectures destined to be mined by a minuscule number of specialists. More than that, the *ius commune* is treated as fenced off property making it inaccessible to a broader and now global postcolonial community of scholars and students.

It is considerably more rewarding, as our own pedagogical experience over three decades has taught us, to strive for inclusivity over exclusivity. In our book we approach the *ius commune* as a cosmopolitan and polycentric *ordo iuris* that can be studied from multiple angles with revivifying insight by scholars and students with diverse cultural competencies anywhere in the world – yes, even in translation.

Osvaldo Cavallar
Nanzan University (Nagoya, Japan)
cynus163@icloud.com

Julius Kirshner
University of Chicago
jkir@uchicago.edu