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Reflections on Transcribing and Editing a *consilium* by Ivus de Coppolis

Osvaldo Cavallar

Department of Christian Studies, Faculty of Humanities, Nanzan University

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While producing *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* with Julius Kirshner, professor emeritus at The University of Chicago, we have encountered a multitude of texts written by medieval jurists ranging from the architectonic commentaries on the Corpus iuris to the mandatory *repetitiones* and *quaestiones disputatae*, including legal tracts on a variety of pressing issues that could not be satisfactorily addressed within the strictures of the academic framework of a lecture.[1)] Due to the historical relevance of the subject matter, some of the texts that attracted our attention became a self-standing monograph presenting the Latin critical edition, the English translation, a substantial introduction outlining the social and juristic context and a commentary on the edited work.[2)] Here I would like to focus on one aspect of the work that occurred on the background of the production of *Jurists and Jurisprudence* and that the reader may fail to notice: the preparation of the Latin text that we translated into English starting from a manuscript. The purpose is to highlight how we worked, some of the issues we faced and how we attempted to solve them. The selected text is a *consilium* (legal opinion) written by a minor jurist who mostly worked in Perugia and died there in 1441 because of the plague. I will divide my presentation in three parts: first, a short introduction on the *consilium*; second, the issues we faced when we transcribed the text; and third a brief reflection on the case we presented and examined.

The *consilia* (legal opinions) penned by medieval jurists represent an exceptionally rich source granting historians a peek at the everyday disputes and turning points in

the lives of individuals and families across a wide social spectrum. *Consilia* are invaluable in casting a spotlight on the application of *ius commune* in actual cases and the substantive and institutional understandings jurists deployed in adjudicating the conflicts between the *ius commune* and local law (*ius proprium*) of towns, city-states, principalities, and also kingdoms. Local law took the form of customs, official statutory compilations (*statuta*) periodically revised by an ad-hoc commission comprising lay persons, notaries and jurists, and day-to-day enactments (variously called *reformationes, provisiones, ordinamenta*) dealing with highly specific fiscal, military, administrative, and criminal matters[3]. *Consilia* also offer an array of examples of the misalignment and then realignment, via statutory interpretation, of formal law and evolving practices.[4]

As consultors, the jurists' role was reactive rather than prospective or prescriptive. Jurist-consultors did not make law, although they did participate in the mundane process of lawmaking as experts on commissions responsible for drafting and revising municipal statutes and as elected members of municipal councils. Ordinarily, jurists submitted *consilia* at the request of private parties and judges hearing and deciding cases. A *consilium* directly requested by a judge, called *consilium sapientis*, was binding and determined his ruling in the dispute over which he was presiding. It did not, however, constitute a precedent determining future similar occurrences—the *stare decisis* of the common law—and in this sense it did not have prescriptive and prospective force. City officials routinely requested *consilia* when doubts were raised about the legality of administrative acts and policies. Such *consilia*, which provided advice on relevant facts and laws, were technically nonbinding. Yet there is solid evidence that public officials followed the expert legal advice they requested, constituting an early example of accountability.

Consilia affirm the truism that the law does not speak for itself. The meaning, validity, and applicability of local law were not preordained but ultimately rested on the ad hoc exegesis and interpretation of jurists well trained in the intricacies of the

ius commune and dialectical reasoning. This was generally true both in self-governing republics (e.g., Florence, Siena, Lucca, Genoa) and principalities (e.g., Padua, Ferrara, and Milan) where rulers did not hesitate before resorting to law as an instrument for entrenching and extending their prerogatives and political dominance. Rulers relied on jurists to concoct ingenious arguments and exploit loopholes to justify policies and decisions that were borderline legal or directly at odds with the *ius commune*, and, above all, to validate the ruler's title to rule. Nonetheless, it would be a mistake to reduce the jurists' role to "rubber stamps" or "servants of the state". *Ius commune* jurists unapologetically and concertedly reminded legislators to observe the laws they enacted, magistrates to respect the laws they were responsible for enforcing, and rulers to serve as trusted guardians of the legal order. These were not vacant generalities but operative principles. As advocates of the principle of legality, it is not surprising that jurist-consultors intruded on the intent and preferences of legislators and the discretionary powers of magistracies, sparking tensions between the jurists and the governments of both self-governing republics and principalities they served.[5)]

Legal and social historians who work with *consilia* often face the decision whether or not to critically edit the text or texts they have unearthed and labored upon. The importance of having a critical edition does not need to be stressed, especially given the penury of works of the jurists of the *ius commune* that have reached that stage. As stated above, a *consilium* of Ius de Cop polis[6)] aptly illustrates some of the challenges we had to face when we edited it view of its translation into English. This text has some advantages: it is relatively short and thus manageable; it presents a story that can be easily followed; and the argumentation of the jurists, though convoluted, is not discouragingly abstruse. As editors, we were fortunate enough to have at our disposal the original document, not a copy or a late printed edition.

First of all, a brief and not too technical description of the manuscript containing the legal opinion: MS Città del Vaticano, Biblioteca Apostolica Vaticana, Urb. lat.

1132. The actual collocation of the manuscript, "Urbinati latini," indicates both the provenance of the manuscripts, from Urbino, and the main script of the texts: Latin. If one were to trust a note by a late hand on the first folio, the manuscript may have belonged to the Perusine jurist Onofrio Bartolini[7] and, as one can see from the heavily annotated margins, it was a copy made for reference and consultation[8] and we may refer to it as a desk-top reference. The different sets of folio's numbers still visible on the recto of each page indicate that the manuscript was assembled and reassembled more than once and with each reorganization the pagination was updated. The most recent numeration stamped at the bottom in right corner of each folio on the recto will be adopted here. The manuscript was written on paper, in the fifteenth century, by several hands and is quite bulky for it contains 528 folios. It transmits mostly copies of *consilia* authored by jurists who gravitated around the University of Perugia (chiefly Bartolus de Saxoferrato, Baldus de Ubaldis and his brother Angelus) but also a small sample of other juridical writings, such as *repetitiones* and fragments of commentaries on various parts of the Corpus iuris civilis. Though most of the material came from Perugia and the surrounding territory, there is a significant number of cases originating from Florence and its countryside. Similarly, jurists of the generation prior to Bartolus and Baldus are not underrepresented. Moving in the opposite direction and leaving aside Perusine jurists aside, Ludovicus Pontanus and the Abbas Panormitanus (Niccolò dei Tedeschi) are two of the prominent jurists whose *consilia* were collected and transcribed.

A striking feature of this manuscript is that, aside invaluable copies, it has preserved a dozen of original *consilia* with the seal and the signature of the jurist who authored them—for instance, at fol. 428rv there is a *consilium* of Baldus de Ubaldis (+1400) with his own subscription and seal, though the main text was written by a scribe[9]. In view of this, the owner not only was an avid collector of "autographa" but also a diligent one who cared for the provenance and the reliability of his sources to the point of indicating from where the copy was taken. Though in

the copies the original subscription is frequently abbreviated, the authority of the composer is stressed by the graphic prominence given to his name appended at the end of the text. If the jurists wrote their opinions for, and remitted them to, the requesting judge or magistrate, why this dozens of originals ended up in a private collection and not, as one would expect, in the records of the court? Suggesting that it was a mere happenstance it is not a satisfactory answer for there is ample evidence that starting from the late thirteenth century jurists started to collect and prize memorabilia[10]. Given the orientation of the section in which we deployed Ivo's *consilium*—how medieval jurists treated adultery and the different treatment accorded to male and female adultery—the question of why that piece ended up in a manuscript instead of the court records could be put aside. Yet, as historians we had to ask ourselves that question.

The *consilium* starts at fol. 407r (the two older foliation numbers are 406r, in the lower right corner; and 410r, in the upper right corner) and ends at fol. 408v. It is marked on the left margin with its own progressive number: 319[11]. It was oddly inserted in the middle of another *consilium* authored by Andrea de Branchadursis that starts at fol. 406r and continues at fol. 409r. The scribe, or the owner, alerted the reader of the anomaly and on the margin of fol. 406v noted that Andrea's piece would continue after two folios; similarly, at the top of fol. 409r he wrote that the beginning of the piece should be sought two folios before[12]. Inserting a newly acquired item in the middle of a quire was probably easier than anywhere else in-between.

For the immediate needs of the transcription we used a microfilm; thereafter, the first transcription was checked against the original document in the Vatican Library. Inspection of the original document shows that the bifolio was folded in four parts indicating that it was indeed send to the requesting judicial authority. The part that survives, unfortunately, does not show traces of the name and place of the addressee. From the facts narrated in the *punctus* of the *consilium* it is highly probable that that

the request came from the *podestà* (the local judge) or vicar (*vicario*) ruling over Cisterna, a small hamlet in the Marche between Urbino and Pesaro[13]. How the requesting party, or the client, especially if both parties were not living in the same area or town, contacted the jurist, conveyed to him the necessary documentation for writing the *consilium* (e.g., the relevant rubrics of local statutes, court documents, depositions of witnesses and last wills), and how and when the text was returned, as well as the modalities of the payment of the legal fees involved, are aspects on which there is little information and research. Perugia, after all, was the nearest city with an established law department that could provide the judge with unbiased advice. Further, a trip to Perugia was shorter than one to Pesaro.

A glance at the reproduction of Ivo's opinion shows the presence of three different hands: first, that of the scribe or the notary who wrote the body of the opinion in a cursiva; second that of the jurist who added his subscription, as well as some material at the end; and third, that of the owner of the manuscript who on the margins noted relevant legal arguments that could be used on other occasions (e.g., lectures or writing legal opinions). The final document—that is, the text that was sent to the requesting authority—is thus the product of two hands: the scribe who wrote the main text of the opinion and the jurist who then apposed his own seal and subscription—both required for the validity and authentication of the document.

As one can guess from Franciscus de Zabarellis's lecture on *How to Teach and Study Canon and Civil Law*, medieval university professors came late to mastering the art of writing—a menial task left to trained slaves in antiquity[14]. Likely Ivo dictated the text; thereafter he revised it, made some minor corrections and added a some material not only at the end but also twice in his own subscription. Had the text been printed, the printed edition would have eclipsed the participation of both the author and the scribe to the making of the final document and significantly limited our understanding of the text. For the jurist the punishment, the modalities of the punishment for the crime of adultery and the competent authority were just an

afterthought; his main main concern was how under the rules of the *ius commune* the jilted wife could recover her dowry and the other goods she conveyed to her husband (*bona parafrenalia*) at the moment of their marriage—a precondition for her remarriage or entering monastic life.

Before being translated the text had to be transcribed and edited—that is, the citations of Roman law had to be identified and so the authoritative works of the other jurists Ivo alleged, including the ubiquitous Glossa ordinaria of Accursius. For our purposes we decided to keep the transcription closer to the original as possible but without producing an awkward text or one that was too sanitized and would thus conceal the local inflections. The Latin of medieval manuscripts, aside from grammar, style and vocabulary, is known for some of its graphic peculiarities—for instance the omission of all diphthongs, an abundant use of abbreviations and contractions, and the tendency to join the preposition to the following noun, to mention just a few. For the first, we decided not to reproduce the diphthongs; for the second, to give the full word; for the third, to separate both parts of the speech. As faras punctuation and capitalization of proper names were concerned, we decided to follow modern conventions: capitalize names of persons and places, as well as ignoring the capitalization of the manuscript when it departed from contemporary usage. Another peculiarity of medieval legal texts is that the allegations of the Corpus iuris, both civil and canon, are inserted in the body of the text. In the translation if the allegation is relevant for understanding the argument of the jurist, we kept it in the text, otherwise we have placed it in the endnotes[15]. Further, medieval jurists cited their authoritative text by giving the opening words of the relevant fragment and those of the paragraph, if necessary, the title of the book comprising the *lex*, and also that of the collection—for instance, the Digest, the Codex or the Decretals. In the transcriptions we have followed the same style; in the translation we adhered to the modern conventions—that is, by the numbers identifying a single fragment.

Here is the transcription of the *punctus* on fol. 407r line by line:

1. Factum tale est. Quedam domina Bartolomea Francisci Pauli
2. de Cisterna nupxit se cuidam Francisco Pauli, fabro, de eadem
3. terra, cum certa dote iam sibi consignata per eam. Verum quia ante
4. dictum matrimonium dictus Franciscus Pauli, faber, artem eius
5. exercuerat et steterat in Pensauro, dicta domina Bartolomea ig-
6. noraverat ante dictum contractum matrimonium qualiter dictus
7. Franciscus Pauli, faber, retinuerat et retinebat quandam
8. concubinam in Pensauro, ex qua iam habuerat unum filium. Post
9. dictum autem matrimonium dictus Franciscus, faber, duxit ad
10. terram Cisterne dictam concubinam cum dicto filio, cum qua
11. publice praticabat, eam carnaliter congnoscendo. In tantum
12. quod postremo, dicta domina Bartolomea eius uxore derelicta,
13. accessit ad familiaritatem et continuo inhabitando cum dicta eius concu-
14. bina, et nunc adultera, et cum eadem consum[ps]it fructus
15. omnes dotis dicte domine Bartolomee, et etiam ceterorum bonorum para-
16. frenalium dicte domine, ea invita et contradicente. Modo queritur
17. an dicta domina possit repetere a dicto eius marito dictam dotem
18. et eius parafrenalia bona vel fructus eorundem, vel actio quo sibi
19. circa predicta salubri remedio consulatur necne.

Several points should be noted: first, with regard to the jilted wife's baptismal name in the transcription, line 1, we have adhered to the reading of the manuscript (Bartolomea Francisci Pauli), in the translation, however, we have corrected a likely error of the scribe who gave her the same patronymics of her adulterous husband. Second, in line 2, we kept the verbal form "nupxit" (married), though "nupsit" is the standard form. Third, similarly, in line 4, we kept the "eius", though grammar

would require "suam". Confusion between the possessive "suus" and the pronominal demonstrative "is" is typical of medieval Latin. Fourth, note the pastiche in line 13. The scribe initially he wrote "afamiliaritatem" which, misspelling the noun again, was corrected into an awkward "ad familiaritem" probably thinking of the unusable here adverb "familiariter". In our edition we restored the reading "ad familiaritatem" and gave a functional translation: "associated with her in public". In line 14 we have rendered the "consummit" of the manuscript as "consum[ps]it": here the vernacular form "consummare" (have sexual intercourse) affected the Latin. Lastly, for the truncated words at the end of a line that continue on the next we have inserted in the transcription an hyphen that was not used in the manuscript. The banalities of spelling and grammar can be seen as stylistic pointers to the social identity and condition of the person who wrote the *punctus* and his level of cultural preparation.

The transcription, however, did not exhaust our task. The text we have was the document the jurist send to the requesting party and with regard to the *punctus* there was a question we had to ask ourselves: who wrote it? Is the narrating voice that of the local podestà or vicar who presided over Cisterna and asked for advice? Or did the jurist thereafter summarize the original request for it was too long and burdensome to report it in its entirety? The style of the *punctus*, often omitted in the printed editions, provided us with a first indication of the author's identity: a local judge or an administrator with a modest command of Latin who was familiar with court procedure and had a grasp on the juridically relevant elements. The case was not so complex as to require the submission of additional documentation beside the exposition of the factual circumstances—for instance, the relevant rubrics of the statutes on the conveyance of the dowry, the notarial contract on the dowry, and the document attesting the mutual exchange of the "verba de presenti".

The transcription of the text of the body of *consilium* presents more challenges and subtler editorial choices because of the allegations of Roman law and the unique manner in which medieval jurists alleged the authoritative fragments. Here is the

transcription of the first section until the end of fol. 407r line by line:

1. In X.pi Yhesu nomine, amen. Etsi constante matrimonio
2. dos restitui per virum nequeat mulieri, citra casus de quibus in
3. l. mutus, § manente, ff. de iure dotium, et in l. quamvis, cum
4. l. sequenti, ff. so[luto] ma[trimonio], intra quos casus, casus noster minime
5. repertus est. Potest tamen viro ad inopiam vergente, vel aliter disipan-
6. te eius substantiam atque bona, etiam constante matrimonio, peti
7. ut dos in tuto locetur, iuxta disposita in l. si constante, in principio,
8. ff. so[luto] ma[trimonio], et in l. ubi adhuc, C. de iure dotium. Quin immo
9. sy de rerum viri perditione suspicetur et iuste, ut quia forte res suas
10. habeat in loco periculoso, ita quod perditioni acte sint, adhuc etiam

In general and following the Justinian example in the Codex, jurists opened their *consilia* with an invocation, in this case "In Christi Yhesu nomine, amen". In line 4, the scribe gave the title of the Digest, a well-known title, in a truncated form and within square brackets we have supplied the missing parts. In line 5 the scribe corrected his initial "repersus" into "repertus". As stated above, the authoritative allegations of the Corpus iuris are given in the text: e.g., l. mutus, § manente, ff. de iure dotium. Here "l.", often omitted, stands for *lex*; "mutus" is the first word of that fragment, and "manente" the opening word of the paragraph. Now this cumbersome citation has become a series of numbers: Dig. 23. 3. 73. 1—that is, Digest, Book 23, Title 3 (*De iure dotium*), fragment 73, first paragraph. In short, the medieval jurist omitted the number of the book of the compilation. The following allegation, "l. quamvis" belongs to the same title (Dig. 24. 3. 20) and the jurist did not repeat the title of the book; in the case of "l. sequenti", literally the following fragment, the jurist cites the lex according to the order. In line 9, we kept the spelling of the manuscript: "sy" instead of usual "si".

Here is the transcription of the text on the verso of fol. 407:

1. constante matrimonio mulieri provideri potest, iuxta no[tata] in l. ii,
2. in prin[cipio], ff. so[luto] ma[trimonio]. Quando tamen predicta omnia cessarent, quia vir
3. diligens esset fortunasque in copia possideret alicui periculo non
4. subiectas, solumque in dubium verteretur utrum mulier seorsum habitans
5. a viro alimentari debeat ab eadem et qualiter, ad infrascriptam conclusi-
6. onem reducendum est, omnibus supervacuis resecatis, videlicet: Quia
7. aut uxor non est in viri servitio sed ab eo seorsum habitat, viri
8. culpa interveniente. Et tunc ab eodem viro alimentanda est
9. etiam ultra quantitatem dotis, si dos non sufficiat et vir aliunde
10. habeat unde eam alimentare valeat, ar[gumento] l. Labeo scribit si michi
11. bibliotecam, ff. de contrahen[da] emptio[ne]. Prestari ergo debent isto casu
12. alimenta, secundum qualitatem personarum viri et uxoris eiusdem, quam viri
13. patrimonii quantitatem, ut in l. servis urbanis, de le[gatis] 3°, facit
14. optime quod habetur in l. qui bonis, et ibi [est] tex[tus] valde no[tabilis], de cessione
15. bonorum, et in l. cum unus, § fynali, et l. penult[ima], in prin[cipio], de ali[mentis] et
16. ciba[riis] legatis, no[tat] Cy[nus] et ceteri in l. quod in uxorem, C. de nego[tiis]
17. ge[stis], cum sy[milibus]. Pro quo facit quia non debet quis in alio postulare
18. quod in se postulaturus non e[ss]e, l. penul[tima], C. de solut[ionibus]. Sed si fruc-
19. tus dotis superfluerent ad uxoris alimenta, quando viri cederent,
20. nec eos mulieri restituere teneretur, ut in l. creditor, in § si inter,
21. ff. mandati. Merito si deficiunt ad alimenta, de bonis propriis sup-
22. plere tenetur, sic per predicta. Pro quibus etiam facit tex[tus] in sy[mili] in l.

cotem
23. ferro, § qui maximos, ff. de public[iana]. Pro hoc etiam facit quia, si mu-
24. lier esset in servitio viri, et eidem operaretur, ut tenetur per no[tata] in l.
25. sicut, de operis liber[torum], in l. in rebus, § possunt, ff. commodati, et in l.
26. assiduis, [C.] qui po[tiore] in pi[gnore] [et hypotheca] ha[beantur], eadem alimenta, ut supra, recipere teneretur,
27. ut ff. de oper[is] liber[torum], l. si suo victu, et ff. de usufructu, in l. sed
28. et si quid, et no[tatur] in d. l. sicud, et in l. si cum dotem, in §
29. sin autem in sevissimo, ff. so[luto] ma[trimonio]. Ergo et idem in hoc casu,
30. cum non per eam, sed per virum, stet quominus secum habitet sibique
31. operetur, ut debet. Quotiens enim huiusmodi habitandi seu ope-
32. randi condictio deficit per eum in cuius sed[e] debet inpleri seu pro quo
33. quis debet operari aut cum quo quis debet habitare seu morari,
34. talis condictio pro impleta habetur. Casus est in terminis in l. i, C.
35. de legibus. Et idem dicendum est etiam in alia quacumque condictione

For the transcription, in line 1, the authoritative allegation of Roman law is given by the ordinal number not by the opening words of the *lex*—that is the second *lex* of that title. In the same line the term "notata" may refer to the notable points indicated by the glossa or by the commentators of the fragment. Line 2, "in principio" refers to the prooemium, the opening section, of the *lex*. In the same line, "ff." is the idiosyncratic way in which jurists referred to the Digest; "C." for the Codex and "Inst." for the Institutiones are self-evident. Line 10, "ar°." stands for "argumento" and it means that the jurist is applying analogically to his case the same logic of the cited *lex*. In line 13, the correction should be noted: the initial "servus urbanus" became "servis urbanis". In the same line," de le. 3°" refers to the third book of that title in the Digest. In line 16 a citation of the commentary of another jurist occurs, Cinus de Pistorio, and again the opening word of the lex is given. The baptismal

names of the major jurists, since they were well known, are often given in a truncated form. In line 17, "cum symilibus" refers to similar *leges* the jurist did not bother to cite explicitly and often found in the hyperlinks of Accursius's Glossa. In line 18, the allegation of Roman law is given by the order: the one before the last. In line 22, "quotem" is corrected into "cotem"; in line 30 "tamen" into "etiam"; and in line 32 "morari" was corrected from "morare": here the ending of the deponent takes after the vernacular. At the height of the same line, on the margin there is a technical note of the first owner of the manuscript. Though the corrections are minimal, in line 27 we corrected "si eo victu" into "si suo victo" (Dig. 38.1.18) and in the following line, no. 28, "sed et si quis" into "sed et si quid" (Dig. 7.1.25) to bring the text in line with the modern edition of the Digest.

Here is the transcription of fol. 408r:

1. mista, tex[tus]. est in l. iure civili, ff. de condic[tionibus] et demo[nstrationibus], no[tatur]. late in
2. l. in testamento, la seconda, eo[dem] t[itulo], et in l. i, C. de insti[tutionibus] et substi[tutionibus]
3. sub condictione factis. Et predicta quando mulier non operatur pro viro, culpa
4. viri. Sy autem culpa mulieris predicta contingerent, tunc etiam secundum
5. quantitatem dotis vir alimenta prestare non tenetur, a[rgument]o l. Iulianus,
6. § offerri, ff. de actio[nibus] empti. Sed si nullius eorum culpa intercedente
7. seorsum habitet a viro, tunc aut secundum redditum dotis alimentanda
8. est et non in plus, ut tenuit Angel[us] in d. § sin autem in sevissimo;
9. aut dictum Angeli verum intellige quando mulier habet aliunde unde
10. vivere posset. Sed quando aliunde non habet unde vivere possit, tunc etiam ultra
11. dotis quantitatem vir alimentare tenetur, glo[ssa]. est notanda super verbo
12. 'quantitate' in dicto § sin autem in sevissimo, quam ibi Baldus et ceteri

communiter

13. doctores insecuuntur. Predicta tamen omnia vera sunt, si viro dos promissa soluta
14. sit, aut pro ea satisfactum, alias autem non tenetur mulierem mari-
15. tali affectione tractare, tex[tus] est cum glo[ssa] no[tabili] in aut. de non
16. eli[gendo] secundo nubentes, § illud, ad finem tituli, conlatione prima; facit quod
17. habetur in c. sicut ex licteris, de sponsalibus; et no[tat] Bal[dus] et ceteri
18. in d[icto] § sin autem in sevissimo. Cum ergo in proposito propter concu-
19. binam seu adulteram supradictam nequeat dicta domina Bartolomea ho-
20. neste hac pacifice inhabitare cum predicto Francisco eius viro,
21. perinde est quantum ad alimentorum perceptionem ac si secum inhabita-
22. ret, per predicta. Paria enim sunt eam habitare non posse, vel posse
23. sed non honorifice neque pacifice, ut patet ex late dictis maxime
24. per Bal[dum] in d. l. i, C. de legatis, et est tex[tus] et ibi etiam no[tat] in l. illis
25. libertis, ff. de condic[tionibus] et demo[nstrationibus], fuitque dicta dos soluta integraliter
26. dicto viro. Merito concludi necessario debet, dicte domine Bartolomee
27. alimenta prestari debere per prefatum Franciscum, consideratis quali-
28. tate personarum uxoris et viri, ac etiam quantitate dotis, et etiam
29. bonorum viri, si fructuum dotis quantitas ad alimenta non suffi-
30. ceret, per predicta. Nec curo, an tempore dicti matrimonii, vel ante,
31. dicta mulier sciverit dictum Franciscum concubinam habere vel non.
32. Potuit esse, ac facilime credere debuit, dictum Franciscum adfugere
33. [et] melioris vite reversurum esse, ar[gument]o l. si defuntus, C. arbitrium
34. tutele. Et facit quod no[tat] Bar[tolus] in l. si constante matrimonio, ff. so[luto] ma[trimonio],
35. ubi propter scientiam inopie viri existentis tempore contracti matrimonii

In line 2, “la seconda” means the second lex, for in the same title there are two leges beginning with the same word. In line 8, the reference to the commentaries of other jurists is given by the name of the author and the title of the commented lex; here Angelus de Ubaldis to l. si cum dotem, § sin autem in sevissimo (Dig. 24. 3. 22. 8). The same holds for line 12, where the opinion of Baldus de Ubaldis is referred. In line 15, the reference is to Accursius’s Glossa ordinaria to the Novellae of Justinian. In line 17, the reference is to the Decretals. In line 20 we kept “hac” instead of emending it in “ac”. In line 25, again a correction “dote soluu” emended into “dos soluta”. At line 22, on the margin, there is another technical note of the owner. And in line 32, the verb “esse” is inserted above the line.

Here is the transcription of the text on fol. 408v:

1. et tamen non perdit mulier benefitium, d[icte] l. sy constante, cum sy[milibus], licet
2. in dubio semper ygnorantia presumatur, ut l. verius, ff. de proba[tionibus],
3. et maxime eorum que extra territorium in quo quis habitat
4. gesta sunt, ut patet ex no[tatis] maxime per Bar[tolum] in l. hiis potest,
5. ff. de acquirenda hereditate. Tum ergo, quia in casu nostro, maxime propter
6. diversitatem territoriorum, presumitur dictam dominam Bartolomeam
7. ygnorasse dictum Franciscum concubinam retinere, et ex ea filios
8. suscepisse, tum etiam quia, etsi scisset, idem esset, ut supra dixit, pateat quod
9. evidentissime ex culpa viri eam a viro seorsum habitare, ab eodem viro ali-
10. mentari debet, iuxta personarum qualitatem et viri patrimonii
11. quantitatem, dotis quantitate nullatenus considerata, per predicta.
12. De bonis autem parafrenalibus clara est conclusio, quod mulieri, et
13. sic dicte domine Bartolomee, restitui debent cum omnibus fructibus
14. inde perceptis, iuxta late no[tata], maxime per Bar[tolum], in l. maritus,
15. ff. ad legem Falcidiam, et per Baldum in l. fynali, C. de pac[tis] conve[nendis].

Laus X.po.

First, on the left margin there is again a note of the owner. In line 4, “en”, likely “enotatis”, is deleted and the right abbreviation is given thereafter “ex notatis”. In line 8, the initial “cum” is corrected in “tum”. At the beginning of line 9, an “atque” has been deleted and just after that “a viro” is inserted between the lines. Further, at the end of the same line the scribe started to write “ali[mentari]” but he corrected it into “ab eodem viro”. In line 10, “patrimonii” is corrected out of “patrimonium”.

Here is the transcription of the text by Ivo’s hand on the right margin (the manuscript is tightly bound and though not all the text of the addition can be seen in the reproduction, it is not difficult to complete each line).

1. Posset etiam et deberet offitialis [dicte]
2. terre dictos Franciscum Pauli
3. et etiam dominam Mariam, dicti Francisci
4. famulam seu olim concubinam
5. et nunc adulteram, per vim
6. inquisitionis de adulterio puniri,
7. l. ii, § si publico, ff. [ad legem Iuliam] de adulteris,
8. et l. congruit, ff. de officio presidis.

Note that in line 4, the jurist gives the name of Francesco’s concubine (Maria).

Here is the transcription of the subscription of Ivo de Cop polis:

1. Et ita ut supra conclusum est, cum omnibus apostillis mea manu factis, dico et consulo,

2. Ego Yvo de Cop polis de Perusio, minimus legum
3. doctor, in quorum robur ac testimonium propria
4. manu me subscripxi meyque nominis,
5. solito sigillo munivi, iudicio saniori
6. semper salvo. Laus X.to, amen.

For the text of the subscription the two additions should be noted: first, the reference to the additions in his own hand, in the first line. This was done to reassure the judge that the suggestion to punish the smith and his concubine for adultery came from the jurist himself and was not added by someone else. Second, the insertion of "de Perusio" (from Perugia) after his family name in line 2. In line 4, we kept the forms "subscripxi" and "meyque" tough "subscripsi" and "meique" would be the standard forms.

With the transcription and the apparatus completed, the translation was not particularly difficult, except for the contorted style of the jurist. The translation and the likely focus of the readers on the case and the legal argumentation should not eclipse one important aspect of the text: it is a legal document. As such, it requires its own formalities to be valid and effective: chiefly, the subscription by the hand of the jurist and the attachment of his seal. No less than his and his wife's exemptions from sections of the sumptuary legislation (see no. 14) he enjoyed and the ring he received upon getting his degree, the seal is both a symbol of the status of the jurist and part of his identity. It may depict his own coat of arms, if he has one, or another religious figure representing his patron saint—a figure that may also appear in the formal invocation at the beginning of the *consilium*. The size of the seal also matters and jurists often say whether they have affixed the small or the big one. The criteria for this differentiation are not yet entirely clear. Here sigillography, an auxiliary sciences of history, can help to decipher the social meaning of the seal. The subscription, too, should not be underestimated in its constitutive elements and

its formal value. Among the constitutive elements the following should be noted: first, the indispensable formula of endorsement of the content—"this is the way I advise"—that links the subscription to the text of the *consilium*; second, the name of the jurist, as well as his place of origin; third, the title of doctor and whether in civil, canon or both laws; and, last but not least, the cautelative clause—"save for a better advice"—that opens the enclosure of the opinion to a wisdom of an higher degree. Though trite and mechanically repeated, it is also a requirement dictated by the bracketing of the *consilium* between the initial and final invocation of Christ's name. Another element that should not be overlooked is the contrast between the "I"—the "Ego" of the jurist—and the "minimus" ("the least"): the membership in a community that comprises the jurists belonging to the local guild and the "universitas iuristarum" with its past, present, and future.

The *consilium* illustrates the limits of the husband's prerogative to commit adultery without legal consequences. His *consilium* opened with a summary of the affair that he was asked to address. Soon after marrying Francesco di Paolo, Bartolomea, presumably in her late teens and an inhabitant of Cisterna, entered the limbo of abandoned wives. Bartolomea was unaware that before the marriage her husband, while residing in Pesaro, had a servant-concubine, Maria, with whom he fathered a son. Now, having deserted Bartolomea, Francesco and his servant were flagrantly sharing the same bed in Cisterna. Bartolomea rightfully expected that Francesco would support her from the proceeds of the dowry and non-dotal goods that she had conveyed to him, but he had diverted all the proceeds to maintain his extramarital relationship. There is no indication that to keep their family's honor intact, Bartolomea's kinsmen had attempted to pressure Francesco to abandon his concubine and child and begin cohabiting with his lawful wife.

The affair most likely occurred sometime in the1420s or 1430s in Cisterna. Cisterna was subject to the lordship of the Pietramala family until 1440, when control of the town passed to the Malatesta of Rimni. The podestà or *vicarius*, the

community's chief official, was in charge of conducting judicial inquiries. On the party initiating the case, the *consilium* is silent. It is likely that Bartolomea, along with her father or brothers, lodged a formal complaint charging her husband with permanently abandoning her, failure to provide marital support, squandering her dowry, and committing the crime of adultery. In addition, the official was asked to compel the husband, apparently a well-heeled smith, to return to Bartolmea an amount equivalent to her dowry and any proceeds derived therefrom, plus any of Bartolomea's non-dotal properties in the husband's possession.

The *ius commune* and city statutes everywhere recognized the legitimacy of such suits. Judges willingly enforced them against husbands verging on insolvency (*vergens ad inopiam*) and against husbands who abandoned or seriously abused their wives. Since actions over the wife's property and marital support fell under the civil law, they were adjudicated in secular courts, which is what happened here. At the time, Bartolomea was legally entitled to petition a diocesan court for a decree ordering her husband to leave his servant and return to her bed, or, alternatively, for a decree of judicial separation.

Given the absence of a controlling statute, coupled with the complexity of the questions attending the complaint, the *vicarius* sought expert counsel. It is almost certain that he commissioned Ivus's *consilium* for the purpose of resolving the matter. At the time, Ivus was affiliated with the University of Perugia, where, beginning in 1417, he taught on and off and was occupied with municipal affairs. Among the positions he held were those of ambassador and lawyer for the city. In the early 1430s he was called to Rome, where he briefly taught and served as consistorial advocate at the papal curia. Never printed, his *consilia* and lectures on sections of the *Digestum vetus* and *Code* survive in manuscript form only.

Ivus recognized that a wife is entitled to reclaim her dowry from a husband verging on insolvency, but this remedy, he determined, was not applicable here. For one thing, the husband did not appear to be verging on insolvency. For another, the

dowry itself had not been squandered and was not at present imperiled. Plausibly, the dowry mainly consisted of real property that could be alienated only with Bartolomea's express consent. In any case, as long as he remained financially solvent, a husband who abused his wife and abandoned the conjugal household did not forfeit his rights to the dowry. Bartolomea's non-dotal goods were treated differently. They must be returned to Bartolomea, because under the *ius commune* a husband to whom a wife entrusted her non-dotal goods acquires not the right of ownership but usufructuary rights. And his usufruct could be exercised only with his wife's consent, which, having been given, could be revoked.

For the jurist, the salient issue was the amount of marital support due the wife. After establishing that Francesco was clearly the wrongdoer and Bartolomea the wronged party and having considered the available remedies under the *ius commune*, the jurist concluded that Francesco must support Bartolomea "in conformity with the husband's and wife's station and with the size of his patrimony." Ivus's determination brought little consolation to Bartolomea, who sought the return of her dowry so that she would not have to rely on her spouse for support—a galling and stomach-churning prospect. No doubt, if Bartolomea had abandoned her husband to live with another man, she would have forfeited her dowry. Francesco's ability to retain the dowry, despite immoral conduct that caused his wife grievous harm, is yet another instance of the double standard entrenched in law and in the mindset of its guardians. Tellingly, the jurist's recommendation that the husband and his former concubine deserve punishment for adultery was inserted at the very end of the *consilium*—as an afterthought, hinting that Ivus's attitude toward their liaison was not as harsh as one might expect in view of official condemnations of notorious adultery.

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1) Osvaldo Cavallar and Julius Kirshner, *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts* (Toronto: Toronto University Press, forthcoming).

2) See, for instance, Osvaldo Cavallar, Susanne Degenring, Julius Kirshner, *A Grammar of Signs: Bartolo da Sassoferrato Tract On insignia and Coats of Arms* (Berkeley: University of California at Berkeley, Robbins Collection, 1994).

3) The rediscovery of the *consilium* of medieval jurists as a source for social, religious, political and economic history, as well as for that of law, has produced an expanding bibliography; for this reason I limit myself to some entry-points. For the praxis of giving and seeking advice in the medieval world, see Consilium: *Teorie e pratiche del consigliare nella cultura medievale*, edited by Carla Casagrande, Chiara Crisciani, Silvana Vecchio (Florence: SISMEL, Edizioni del Galluzzo, 2004); Guido Rossi, Consilium sapientis iudiciale. *Studi e ricerche per la storia del processo romano-canonico* (Milan: Giuffrè, 1958); an the several essays in *Consilia im späten Mittelalter. Zum historischen Aussagewert einer Quellengattung*, edited by Ingrid Baugärtner (Sigmaringen: Jan Thorbecke, 1995); Monica Chiantini, *Il* consilium sapientis *nel processo del secolo XIII: San Gimignano 1246-1312* (Siena: Il Leccio, 1996); *Legal Consulting in the Civil Law Tradition*, edited by Mario Ascheri, Ingrid Baugärtner, Julius Kirshner (Berkeley: The Robbins Collection, 1999); Sara Menzinger, *Giuristi e politica nei comuni di popolo. Siena, Perugia e Bologna, tre governi a confronto* (Roma: Viella, 2006); Riccardo Parmeggiani, *I* consilia *procedurali per l'Inquisizione medievale (1235-1330)*, (Bologna: Bononia University Press, 2011); and Massimo Vallerani, "*Consilia iudicialia*. Sapienza giuridica e processo nelle città comunali italiane", *Mélanges de l'Ecole française de Rome – Moyen Âge* 123 (2011): 129-49.

4) For the way jurists interpreted statutes and their hermeneutical tools, Mario Sbriccoli, *L'interpretazione dello statuto. Contributo allo studio della funzione dei giuristi nell'età comunale* (Milan: Giuffrè, 1969).

5) Cod. Prooemium: *De emendatione Codicis.*

6) For a biographycal sketch of this jurist, see *Dizionario biografico dei giuristi italiani (XII-XX secolo)*, edited by Italo Birocchi, Ennio Cortese, Antonello Mattone, and Marco Nicola Miletti (Bologna: Il Mulino, 2013) vol. I, pp. 579-80, s.v. Coppoli, Ivo, edited by Stefania Zucchini.

7) For a biographycal sketch of this jurist, *Dizionario biografico dei giuristi italiani*, vol. I, pp. 176-77, s.v. Bartolini, Onofrio (*Honofrius* o *Nofrius Bartolini de Perusio*), edited by Stefania Zucchini.

8) For a brief description of this manuscript, LAURO MARTINES, *Lawyers and Statecraft in Renaissance Florence* (Princeton N.J.: Princeton University Press, 1968), p. 445.

9) For the autentification of *consilia* by signature and seal, starting fron the middle of the thirteenth century, see VINCENZO COLLI, "Autografia e autenticità. La *subscriptio sub sigillo* nei *consilia* dei giuristi del Trecento," *Codex Studies* 3 (2019): 3-63.

10) For some examples, see VINCENZO COLLI, "Collezioni d'autore di Baldo degli Ubaldi nel MS Biblioteca Apostolica Vaticana, Barb. lat. 1398", *Ius commune. Zeitschrift für europäische Rechtsgeschichte* 25 (1998): 323-46.

11) The highest number assigned to a *consilium* is 384; yet not all pieces are numbered.

12) BAV, Urb. lat., 1132, fol. 406v "quere infra post duas cartas" and fol. 409r "principium huis consilii est supra ante duas cartas".

13) Cisterna is now part of the commune of Montecopiolo, and the actual number of inhabitants is about 30. Judging from the size of the hamlet and the cluster of the old houses the number of inhabitants should have been about the same.

14) For the English translation of this lecture that became a selfstanding tract, see *Jurists and Jurisprudence in Medieval Italy*, chapter 4.

15) For the English translation, see *Jurists and Jurisprudence in Medieval Italy*, chapter 25.

ffactum tale est. Quidam dña Bartolomea ffrancisci pauli
de Cisterna impetr[avit] se eidem ffrancisco pauli fabri decedere
sem rem dotis rem sibi constignata pro dote rem qe ei
dem & matrimonii dictus ffrancischus pauli fabri esse eius
ode[m]ciat et stetetur impensauro. Dicta dña Bartolomea ꝓ
notauerat ante dictu rotcartu & matrimoniu qdam dñe
ffrancischus pauli fabri rem uendidit et rendebat quidam
rorubinu impensauro qo qua sum habuerat dicti filiu post
dictu ante & matrimoniu dñs ffrancischus fabri duxit ad
sezam Cisstine dicm Conrubinu rem dicto filio rem qua
publice p[ro]stabat eam rationabi ꝓgnoscendo futurum
q[uo]d postremo dicta dña Bartolomea eius uxor decelauit &
autsit adulterii et rotinuo habitauit rem dicto rorubino
et mu[l]ta adultera et rem eodem rostumit fructus
omes dotis dicte dñe Bolomee et et retro[?] bonor[?] para-
fzenalium dicte dñe ea ratione et rotradicere. Quo ꝙ
qu dicta dña possit repetere adro eius mariro dicm dotem
et q[uo]d parafzenalia bona bt fructus eorundem ut. a[?] c. l.
ita pdro salubri remedio Consulatis & et re[?]

319 In nomine ihu noie & m[en]. Et si constante & matrimonio
dos zelotipi puniz nedum mulieri Citra ratis dcgbr m.
l. mutus. ff. manete ff. de[?] dotis et m. l. quidam m
l. sequi ff. so. ma. Integros ratis ratis ne minime
recipit est. potest tri uiro ad moderandu ardente bt ab dissipa-
te et substantia augm bona et constante matrimonio pos
bt dos mutuo loret pacta dispositia m. l. si constante mutu
ff. so. ma. et m. l. ubi adhuc. c. de pac dotis. Quamuis
sit dezet inti pdilone suspicet et uiste bt qz forte res suas
bene mutuo pitulose ita q[uo]d pdilonis ante sue[?] Adhuc et

Constante matrimonio mulieri p̃ndari pot̃ ẽt̃ no. m. l. q.
mpn. ff. so. ma. Q. uido m. pdo omia reffarcit qui abn
dilgens ess̃ fortunass̃ inopia possideat alium pirulo no
subiectas. solumq; indubiũ h̃eat̃ ut̃ mulier secessum habitat
cum alimenti dicit eadem et quãt admistrassit̃ rationi
one reddendi est omnib; q̃p uanus reperitur. Q. uia
aut h̃o no est minui simo s̃ eo secessum habitat uti
tulpa iniuriose. et tur eadem uti alimenta est
et ultra quantitate dotis si dos no sufficiat et ut alimde
habeat unde cum alimentis valeat. ad. l. labeo scribit si mihi
bibliotecã ff. de fetrahen. empno. psitari s̃. debent usu rei
alimta p̃m qualitate psonar̃ uri et uxoris cuiusq; q̃ uni
patrimoniũ quemadmodũ ut. s. l. p̃ualis bũbam dele. z. fiant y
optime q̃ h̃et m. l. qui bona et l. tex. valde no. de rebus
uenit et s. l. mmbonus. s. fi et l. penul. mpn. debit. et y
ubi. legatis. no. cy et ceteri m. l. q̃ inuenit. c. de negoti
ge. gñ. ss. p̃quo fiant quia no dz quis malit possidere
q̃ nisi possidentibus no. ff. l. penul. c. desolut. z si fuer
tus dotis stipulatus ad uxoris alimta quid uiri redeunt
si eos mulieri restituere teneat ut m. l. debito m. s. si mul
ier. manifestius. Scripto si deficiunt adalimta debitores p̃ p̃s sup
plere tenent sic p̃ p̃dia p̃quib; et fruct. tex. mag. s. l. quotie m
fecit. s. qui maximos. ff. de publica. p̃bet et fiat q̃ si mu
lier eã mariti uiri et eadem operatur ut teneat. p. no. s. l.
simile de opis libert. m. l. rebus. s. possunt. ff. o modum et m. l.
assiduis qui. po. mpi. hã. eadem alimenta ut. ff. recepte teneant
ut. ff. de. q̃. libert. l. si co iussu. et. ff. de usufructu. m. l. fi
et signis. Et no. m. d. l. simul. et s. l. si rem dotis m. s.
soluto autem usq; ultimo. ff. so. ma. q̃ et idem minor reui
ri no p̃t̃ fi p̃ius stet quo minus sciat habuerit fundum
operet ut dz. quotiens tñ huius modi habitandi seu op
randi ordo defuit. seu minus. ff. dz impleri seu p̃quo
quis dz operari cuius rei. q̃ quis dz habitare seu moram
talis ordo p̃ impleta ut̃. Cautis e minimus. s. l. i. c.
delegat. et idem credens e. et multa quandoq; ordinem

Condicto habitandi usq

missa · tex · c · m · l · fin · Civili ff · decedit · e · demo · no · late in
· l · mutuatario · lasciuda · co · ff · et · m · l · v · c · de iust · et ff · fi ·
ff · rodemone finis · et pdā qui mulier nō opat · puto culpa
viri · si autē culpa mulieris pdā formidat tur · et fm ·
quantitate dns hic alimēta ptere nō tenet · ar · l · fili cum
ff · offert · ff · de iure · cupti · sz si nullus esse culpa mutuātis
restituim habuit tuto · tur · aut fm · reddito dns alimenta
ep · et nō mplus · et tenuit Angel · m · d · S · fm aut · ms · imo
aut · ēt Angeli · vel intellige qui mulier hēt alimde vnde
viuere possit · si qui alimde nō hēt vn · viuere possit · tur · et vbi
dns quantitate hic alimētare tenet · glo · c · nouda sup · vbo ·
quātitate · dō · S · fm aut · ms · imo · qui · i · bal · et retra · tūt
dotes · ms · imo pdā si omia bona ps · sibi · dos · promissa soluta
sit aut · pter · sarisfactū · cās aut · nō tenet · mulier · de · mor —
tali · assertione · tractare · tex · ff · rem · glo · no · S · aut · de · nō ·
eli · so · habetis · S · illud · adfine · titu · ff · olandi · prima · sed · q ·
hoc · q · ff · sitne · solutus · dissolub · et · no · bal · et · retra ·
· d · S · fm · aut · ms · imo · Cum · ff · supposito · quē · dā
bina · seu · adultera · sup · ea · nesciat · de · una · Bolomea · ly —
nesse · hac · pausire · nō · habuit · cum · pdā · Francisco · q · bene · y
pmde · q · quātus · adulterio · pceptione · ar · si · sedi · habita
· cū · pdā · pdicta · cū · ff · cum · habitare · nō · posse · et · posse · y posse no · dicam · qd · nō
honestare · nec
si · nō · honestare · neque · pausire · ut · ps · opetare · dns · mas ·
p · Bal · i · d · l · i · c · delectans · et · c · tex · et · i · et · no · ff · l · ille ·
liberis · ff · de · odir · z · demo · fiuga · de · dote · soluto · matrimō ·
de · hac · v · cito · quidā · necessario · dz · de · dne · Bolomee ·
alimēta · ptere · debet · p · ff · finem · Francisci · cōsiderata · quali —
tate · psonar · bonis · et · viri · ar · et · quantitate · dotis · et · ·
bonor · viri · si · fecerint · dos · quantitas · adulterio · nō · fuisse ·
recte · pdā · Dr · nro · cui · tpe · dō · matrimoniū · int · aute ·
de · muliere · structū · int · Francisci · et · rubinā · hēt · vt · nō ·
potuisse · ar · facilime · recedere · debuit · int · Francisci · adstructe ·
melioris · nisi · certissimū · esse · ar · l · si · defuncto · c · arbitriū ·
tutele · et · fac · q · no · hac · m · l · si · ostante · mpm · ff · soluto ·
vbi · pdā · Stephanum · inopie · viri · possessiones · pro · vita · matrimonij ·