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Classroom lectures on JUSTINIAN, *Institutiones* (2.8-2.10; 2.22-3.3) and *Digestum vetus* (12.1.0-12.1.35)

In Latin, manuscript on paper

Italy (Northern or Tuscany), 1481-1490 (c. 1481?)

i (paper) + 134 folios + *i* (paper) on paper, deckle fore-edge, numerous watermarks, Greek (crosslet) cross in a circle, Piccard online 125776, Parma 1483, Scissors, similar to Piccard online 122502, Lucca 1484, and unidentified watermarks: shape (a leaf?), angular shape, Latin cross in a circle, modern foliation in pencil top outer corner recto, apparently complete (collation *i*¹⁰ *ii*¹⁵ [15, f. 25, single] *iii-iv*¹ *v-vii*¹⁰ *viii*¹² *ix*¹⁰ *x*¹² *xi*¹⁰ *xii*¹² [-12, cancelled blank?]), horizontal catchwords, lower inner margin, unruled, but with three vertical folds (middle, and inner and outer margins), (written space 142-138 x 90-80 mm.), written in a quick humanistic cursive script in 18-19 long lines, lemmata at the beginning of sections in decorative capitals (two sizes), some light stains (in particular toward the end), on ff. 121v-122 darker (rust?) stains outer margin, small tears in the outer margins of some leaves, ff. 5-6, detached, overall very good condition. Bound in 17th- or 18th-century card covers, title in ink on spine (illegible and mostly rubbed away). Dimensions 222 by 150 mm.

How did students engage and interact with their books in the Renaissance university? We can address this question through the study of manuscripts such as this one. Contemporary notes ("the end of the second year of my studies" is one example) and numerous pointing hands of all styles (manicules) occur in this carefully but quickly written manuscript that was likely the student's own copy written as he listened to classroom lectures. Commentaries like this on Roman Law from the Middle Ages are much less common on the market than Canon Law manuscripts; the texts preserved here by a yet unidentified legal professor at an Italian university offer rich opportunities for further study.

PROVENANCE

1. Copied in Italy in the later years of the fifteenth century, certainly after 1481, and probably not long after, in Northern Italy or in Tuscany, at a university with a law faculty, based on the evidence of the text, script, and watermarks. A note on f. 25v states, "The end of the lessons in the second year of my studies, 1481," suggesting strongly that the texts were compiled by a student and based directly on classroom lectures. Moreover, the quick but careful cursive script, the lack of any decoration apart from the capitals used for the lemmata, the lack of ruling apart from folds, and the paper from numerous different sources (as reflected by the many different watermarks), all suggest that this was that student's own copy.

The name "Dominicus de Prato," is found at the beginning of the first two quires: f. 1, in small, neat capitals, top margin "domini dominici de prato"; and top margin, f. 11, in larger capitals. Could this be the name of the law professor whose lectures are preserved in this manuscript, or possibly the name of the original owner/scribe? The annotation on f. 1 appears to be in the hand of the scribe, using capitals of the same general style as those used for lemmata (the name on f. 11 might be an addition). It

seems extremely unlikely that this is the Florentine poet, Domenico da Prato (c. 1389- after c. 1432), given the date of this manuscript, and the lack of evidence that he taught law; no legal works by him are known, apart from those connected to his profession as a notary.

2. On f. 26, top margin, "Ego franciscus p[?] Jacobi geminianensis; an early owner of the owner of the manuscript. His name suggests he was from San Gimignano, province of Siena, Tuscany, north-central Italy (or possibly from Gemmano, Emilia-Romagno).
3. Numerous contemporary pointing hands and other marginalia, some added vertically to the main text, suggest active use in the years immediately following the creation of this manuscript.

TEXT

ff. 1-25v, [top margin: Domini Dominici de Prato, followed by a capital 'A'], incipit, "R[ubrica], QUIBUS [NON: EXPUNGED] ALIENARE LICET VEL NON ACCIDIT ALIQUANDO [Inst. 2.8]. Hodie maritus non potest alienare fundum dotalem uel obligare consentiente muliere ... [f. 25v], SED QUEMADMODUM NOS MATRIBUS [3.3, sec. 6]. Mater ad hereditate filii repellitur ...," *Finis lectionum ii anni mei studii, 1481*; [followed by two additional short notes on the same subject];

Unidentified commentary on Justinian, *Institutes*, beginning with Book 2, titulus 8 ("Of those who can and those who cannot alienate"), continuing, f. 3, book 2, titulus 9, and f. 8, 2.10, through f. 12, where the layout changes mid folio, with the remainder of the text on f. 12, and f. 12v possibly added. The text resumes with the usual layout on f. 13, jumping to 2.22 (with a 'B' added in the upper margin), and then continues with f. 14, 2.23, f. 16, 2.24, f. 17, 2.25, f. 18, *Liber tertius feliciter incipit*, tit. 1, f. 22v, 3.2, and f. 24, 3.3.

Book 2.8-2.10 on the *Institutes* discuss the alienation of property and wills; book 2.22-2.25 treat inheritance laws and trusts; and book 3.2-3.3, inheritance when there are no direct heirs (ie. inheritance through agnates), and inheritance of mothers and their children. Each section begins with a citation from the *Institutes*, copied in capitals, but this is not a verbal commentary that discusses the text word by word. Instead, there are a series of relevant points (each beginning "no[ta]"), followed by a section, usually brief, citing relevant passages from the Gloss, the Codex, and other laws.

ff. 26-134v, [top margin, "yhs"; and "Ego franciscus p. Jacobi geminanensis" (now crossed out)], incipit, "RUBRICA. SI CERTUM PETATUR [Digest 12.1.0]. Nota L[ex] quod sic [lex?] de solu ubi dicitur quod qui dat ut statim recipiat nihil facit ex ibi Bar. Querit bar hic numquid [illa?] debes sub condictiam ... quod non uester creditor ...; [f. 27v], L. MUTUUM DAMUS NON RE[CEPTURI] [Digest 12.1.2]. In mutuo ... [f. 134], PERICULUM NO[MINUM] [Digest 12.1.35]. Periculum nominum pertinent ad administratorem ... supra de neg. gestis."

Commentary on the *Digest* of Justinian, book 12, tituli 1 (12.1.0-12.1.35), text begins at 12.1.1, and continues, f. 32, 12.1.2.1; f. 33v, 12.1.4.1; f. 34, 12.1.5; f. 39, 12.1.6; f. 39v, 12.1.7; f. 41, 12.1.9; f. 49, 12.1.9.3; f. 56, 12.1.9.8; f. 65v, 12.1.11; f. 66v, 12.1.11.1; f. 70, 12.1.11.2; f. 72v,

12.1.12; f. 75v, 12.1.13.2; f. 77v, 12.1.14; f. 79; 12.1.16; f. 81v, 12.1.15; f. 95, 12.1.17; f. 96v, 12.1.18; f. 100, 12.1.19; f. 103, 12.1.30; f. 106v, 12.1.21; f. 112v, 12.1.22; f. 118, 12.1.23; f. 118v, 12.1.24; f. 119v, 12.1.27; f. 124, 12.1.28; f. 126, 12.1.31; f. 131v, 12.1.32; f. 134, 12.1.33; f. 134, 12.1.35.

This section of the *Digest*, which includes most of the first tituli of book 12, "Concerning things which are credited where a certain demand is made, and concerning suit for recovery," largely pertains to contracts. (The text of the *Digest* includes a useful explanation of the contents of this tituli (12.1.1): "As the Praetor has inserted under this Title many rules having reference to various contracts, he has, therefore, prefixed to the Title the words "Things which are credited," for this includes all kinds of contracts which we enter into, relying upon the good faith of others; for, as Celsus states in the First Book of Questions, the term "to credit" is a general one, and hence under this Title the Praetor treats of property loaned and pledged."). The structure of the commentary is similar to the preceding commentary on the *Institutes*, but the text is usually lengthier and more complex. Following the lemma (in capitals), there is usually a passage commenting on the words of the text, followed by a series of numbered notes, citing various sources, and concluding with sections beginning with citations from the Gloss and other authors. The discussion is sometimes posed in the form of scholastic *questiones* (questions) and *solutiones* (solutions) (cf. for example f. 68v-69).

The most frequent author cited in the text is, as one would expect, Bartolus de Saxoferrato (1313/14-1357), a prolific writer and teacher on Roman law, who wrote commentaries on the *Digest* and the *Code*, *repetitiones* on passages from both these works, *quaestiones*, and other treatises, which were an essential part of the legal corpus for centuries, as reflected in the saying, "Nullus bonus jurista nisi sit Bartolista" (There can be no good jurist unless he is a follower of Bartolus). Other sources include, for example, Bartolus's teacher Cino da Pistoia (1270-1336/37), Baldo degli Ubaldi (1327-1400), who was Bartolus's student, Iohannes de Platea (c. 1380-after 1427), author of a commentary on the *Institutes* (see f. 22v), and "Raphael," presumably Raphael Fulgosis (1367-1427), a law professor at Padua.

These two commentaries offer fascinating insights into how Roman law was taught in Italian universities in the later decades of the fifteenth century. As discussed above (Provenance), the text is almost certainly one compiled by a student for his own use, directly based on the lectures he was attending; moreover, the physical characteristics of this manuscript suggest this is the very manuscript copied by that student for his own use, which would make it a very rare survival. There are a few sections where blank lines were left (and f. 121v is blank), suggesting the scribe was treating this as a work in progress. Its subsequent use by numerous students, including "Franciscus" who left his name on f. 26, is amply demonstrated by the marginal notes, in a few places written vertically to the main text, and manicules (pointing hands), in several different styles.

Justinian I (Flavius Anicius Justinianus), the nephew of Justin I, was proclaimed sole emperor and crowned along with his wife Theodora in 527. His reign saw notable military successes, but Justinian's greatest legacy was as a legislator and promoter of the codification of Roman law in a collection of texts known in later centuries as the *Corpus iuris civilis* (the Body of Civil law). The writings of the jurists were published as the *Digest* of 533. The *Code* (*Codex iustiniani*), which

compiled all the extant imperial constitutions from the time of Hadrian in 529, was revised in 534. The *Institutes* (535) was intended as a sort of legal textbook for law schools and included extracts from the *Code* and the *Digest*; in the later Middle Ages and Renaissance it was the first text studied by law students. Finally, the *Code* was updated in a later work known as the *Novellae* in 556. These texts were largely unknown in the West until the eleventh century, when they were rediscovered in Northern Italy. By the twelfth century, their study went hand in hand with the origin of the first university in Italy in Bologna, and they were studied in universities throughout Italy for the rest of the Middle Ages, and indeed, to the present day. Alan Watson, the modern translator of the *Digest* calls this legal corpus, "the most important and influential collection of secular legal materials that the world has ever known. The compilation preserved Roman law for succeeding generations and nations. All later Western systems borrowed extensively from it. But even more significantly, that strand of the Western tradition encompassing the so-called civil law systems derives its concepts, approaches, structure, and systematics of private law primarily from the long centuries of theoretical study and putting into practice of the *Corpus Juris Civilis*" (Watson, 1998, p. xxiii).

We have not been able to identify these commentaries through a search of their opening words in the Manuscripta Juridica Database (Online Resources), or through a perusal of the catalogue of law manuscripts in the Vatican Library (Kuttner, 1986-). This may be a unique copy of these texts, which has never been printed, or indeed, studied, and which will undoubtedly repay further research.

LITERATURE

Cavallar, Osvaldo and Kirshner, J. *Jurists and Jurisprudence in Medieval Italy: Texts and Contexts*, Toronto Studies in Medieval Law 4, Toronto, Buffalo, London, 2020.

Kuttner, Stephen, et al. *A Catalogue of Canon and Roman Law manuscripts in the Vatican Library*, Studi e testi 322 and 328, Vatican City, 1986-.

L'Engle, S. and R. Gibbs. *Illuminating the Law. Legal Manuscripts in Cambridge Collections*, London, 2001.

Mayali, Laurent. "The Legacy of Roman Law," in *The Cambridge Companion to Roman Law*, ed. D. Johnston, Cambridge, 2015, pp. 374-395.

Radding, C. M. and A. Ciarelli. *The Corpus Iuris Civilis in the Middle Ages. Manuscripts and Transmission from the Sixth Century to the Justice Revival*, Leiden and Boston, 2007.

Stein, Peter. *Roman Law in European History*, Cambridge, 1999.

Thomas, J. A. C. *The Institutes of Justinian. Text, Translation and Commentary*, Amsterdam and Oxford, 1975.

Watson, Alan, ed. *The Digest of Justinian, Revised English-language Edition*, Philadelphia, 1998.

ONLINE RESOURCES

G. R. Dolezalek, Manuscripta Juridica

<http://manuscripts.rg.mpg.de/>

"Roman Legal Tradition and the Compilation of Justinian," Berkeley Law, Robbins Collection
<https://www.law.berkeley.edu/library/robbins/RomanLegalTradition.html>

"The Medieval Law School," Berkeley Law, Robbins Collection
<https://www.law.berkeley.edu/research/the-robbins-collection/exhibitions/medieval-law-school/>

Justinian, *Institutes*, Latin text online
<http://legalhistorysources.com/Law508/Roman%20Law/JustinianInstitutes.htm>

Justinian, *Institutes*, (Project Gutenberg) English translation, J. B. Moyle, 1913
<https://www.gutenberg.org/files/5983/5983-h/5983-h.htm>

Justinian, *Digest*, Latin text online
<https://droitromain.univ-grenoble-alpes.fr/Corpus/d-12.htm#1>

Justinian, *Digest*, English translation, S. P. Scott, *The Civil Law*, IV, Cincinnati, 1932
https://droitromain.univ-grenoble-alpes.fr/Anglica/D12_Scott.htm

Paolo Viti, "Domenico da Prato," *Dizionario Biografico Italiani*, vol. 40 (1991). Available online, Treccani, https://www.treccani.it/enciclopedia/domenico-da-prato_%28Dizionario-Biografico%29/

"Bartololus de Saxoferrato," report no. t022, Bio-Bibliographical Guide to Medieval and Early Modern Jurists
https://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=t022

Francesco Calasso, "Bartolo da Sassoferrato," *Dizionario Biografico degli Italiani* vol. 6 (1964), available online, Treccani, https://www.treccani.it/enciclopedia/bartolo-da-sassoferrato_%28Dizionario-Biografico%29/

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