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MANUSCRIPT VAT. LAT 14094: «CONSILIA» BY JURISCONSULTS
AND PLEADINGS BY «ADVOCATES» BEFORE THE ROTA ROMANA
(ca. 1500-1542), AND AMONG THEM AN UNKNOWN «CONSILIUM»
BY FELINUS SANDEUS († 1503)

Vat. lat. 14094 contains 543 numbered folios, comprising altogether about 140 items. A detailed survey of contents is available in the data base «Manuscripta juridica», kept online on the server of the Max-Planck-Institute of European legal history, in Frankfurt, Germany¹. I therefore need not list here again all the many items contained.

I came to know Vat. lat. 14094 in 1974 in Berkeley when I worked there with microfilms in Stephan Kuttner's project to catalogue juridical mss. of the Vatican Library². I took notes of conspicuous items in this ms. and told other persons about them, but only in 2011 could I see the original ms. in the Vatican Library – and I was given there the privilege to cautiously peruse this ms. despite its bad state of conservation. Later, in 2014, two magnetic tapes of 1990 from Stephan Kuttner's halted project became available to me. So I could as well see and use what other members of the one-time Berkeley team had found out on Vat. lat. 14094 after I had left³.

1. <http://manuscripts.rg.mpg.de>. Digitised photographs are now available online: <http://digi.vatlib.it/mss/>.

2. M. BERTRAM - G. DOLEZALEK, *The Catalogue of Juridical Manuscripts in the Vatican Library: a Report on the Present State of an Uncompleted Project*, in «Miscellanea Bibliothecae Vaticanae» 20 (2014), pp. 155-98. Only the first two volumes of the project were published in print: S. KUTTNER - R. ELZE, *A Catalogue of Canon and Roman Law Manuscripts in the Vatican Library*, voll. 1-2, Città del Vaticano 1986-1987 [describing mss. Vat. lat. 541-2935]. Draft galley proofs for vol. 3 were published online by BERTRAM-DOLEZALEK: <http://www.uni-leipzig.de/jurarom/manuscr/>.

3. I thank in particular Jeffery Tibbetts and his bemoaned wife Stephanie who, in loyalty and dear memory of Stephan Kuttner, preserved the project's materials in safekeeping for so long a time. I also thank Anders Winroth, now in charge of the Stephan-Kuttner-Institute of Medieval Canon

EXTRANEOUS COMPONENT. N. I

The ms. incorporates one previously separate volume whose sheets have become ff. 331-403. I shall deal with this incorporated volume first. It probably came from the library of a jurist in Florence or nearby. It comprises materials originating from times from 1382 onward to the mid of the 15th century, penned on paper largely from paper mills in Tuscany. The volume had in origin 211 folios, at least. This can be seen from an index on f. 330r. It still refers to the old volume's foliation and provides short abstracts of their contents. Not all the folios from the old volume were taken over into Vat. lat. 14094. The first hundred folios went elsewhere. They had contained the *Allegationes* by Lapus de Castiglione abbas sancti Miniati in Monte. Furthermore, while many items mentioned in the index to the old volume can be found back in ms. Vat. lat. 14094, these have not always maintained their original sequence of arrangement.

The folios taken over from the aforesaid old volume contain 26 *Consilia*. Two items are autograph, with seal. The other items are mere copies. The *Consilia* in the extraneous part of Vat. lat. 14094 were written or adhered to by 36 jurisconsults:

Antonius de Butrio

Antonius quondam Iacobi de Senis [autograph, with seal, ff. 353r-354r]

Baldus de Ubaldis (Perusinus), actu legens in magnifica civitate Florentina ordinarie ius civile

Bartholomaeus [subscriptor]

Bartholomaeus Tommasii de Popoleschis (Florentinus) [twice]

Cerretanus de Cerretanis (Senensis) [autograph subscription, and traces of a seal]

Dionysius de Perusio

Donatus Ricchi

Franciscus de Albergottis (Aretinus)

Franciscus de Aretio

Franciscus de Empoli

Franciscus domini Bici de Albergottis (Aretinus)

Franciscus domini Locti de Salviatis (Florentinus)

Franciscus Zabarella

Iacobus Butrigarius

Iohannes Calderinus

Iohannes de Imola

Iohannes de Lignano

Law, for granting me access to the materials, and the Max-Planck-Institute of European Legal History, for having financed the salvaging of data from the aged magnetic tapes.

Iohannes de Montemagno [probably from the city in Toscana]
 Iohannes de Podiobonitii
 Iohannes de Ricciis (Florentinus)
 Lapus de Castiglione
 Laurentius de Pinu
 Laurentius de Ridolfis
 Loysius de Gianfiliazis doctor
 Nicolaus Antonii de Rabatta, minimus legum doctor
 Nicolaus Lapi iudex
 Paulus de Castro [twice]
 Paulus de Liazariis
 Petrus domini Thomae de Corsinis (Florentinus) [autograph, with seal, ff. 358r-v,
 363r-v]
 Philippus [subscriptor]
 Raphael Fulgosius
 Raphael Raimundi (Cuminus)
 Ristorus Pieri de Canigianis
 Rosellus de Aretio
 Stephanus Iohannis de Bonacursiis (Florentinus) [twice]
 Torellus de Torellis de Prato advocatus Florentinus

One copy of a *Consilium* lacks an indication of the author (f. 391r-393r). Furthermore, the old volume's folios also contain a Repetitio D.46.1.56.3⁴ by Angelus de Perusio, and an excerpt from the Lectura Codicis by Baldus de Ubaldis⁵, and two *Informationes iuris*, here transmitted without wrapper so that there result no names of judge and advocate and litigating parties.

EXTRANEOUS COMPONENT. N. 2

Next I want to present here the section ff. 291-307. It contains seven *Informationes iuris*, submitted in cases before an arbiter, here styled as *Consultor*. The last item ends with a clause which states the arbiter's name: Philippus de Corsinis – a renowned jurist from Florence⁶.

4. Lex 'Si quis pro eo', ff. de fideiusoribus, f. 341r.

5. C.1.14.8, f. 372v.

6. Et ideo reliqua suppleat prudentia consultoris et illustris legum doctoris et militis domini Philippi de Corsinis, domini et patris mei.

EXTRANEOUS COMPONENT. N. 3

Folios 260 and 272 contain pleadings by a trial lawyer who defends a client suspect of having abetted a rebellious plot in the castle of Scorcola, in Trieste.

EXTRANEOUS COMPONENT. N. 4

Folios 248r-254v transmit a criticising commentary to a *Sanctio pragmatica* on church prebends and bishops' appointments in Spain, enacted in 1542 by Emperor Charles V, here acting in his function as King of Spain.

MAIN COMPONENT OF THE MS.: LITIGATION «IN ROTA»

The remainder of Vat. lat. 14094 consists of papers submitted in law cases before the Rota Romana in the early 16th century⁷: namely 26 *Consilia* and circa 60 *Informationes iuris*. The bookbinding makes it difficult to trace which leaves belong to which other leaves. I shall explain this. Most items were in origin penned on loose bifolia, maximally measuring 30 by 23 cm – thus if one bifolium is laid open, it is a single sheet of maximally 46 x 30 cm, with a fold in the middle. The bookbinder merged such sheets into fascicles of four or five or more bifolia. For instance, if the bookbinder took four bifolia from four different law cases and formed from them a fascicle of eight leaves, this interrupted each item's text as follows: item 1 (first half), item 2 (first half), item 3 (first half), item 4 (first half), then the bookbinder's middle thread, thereafter item 4 (other half), item 3 (other half), item 2 (other half), item 1 (other half). This can easily confuse readers.

The *Consilia* and *Informationes iuris* in Vat. lat. 14094, in spite of their precarious state of conservation⁸, must be welcomed as a valuable source for legal historians, and also for historians in general, because they cover a span of time which is not sufficiently covered by the Rota Archives in the Ar-

7. A recent survey on the papal judiciary from 1500 onward is now available in a volume edited by M. R. DI SIMONE, *La giustizia dello Stato Pontificio in età moderna*, Roma 2011.

8. At present the original ms. is still withheld, but photographs can be consulted online: <http://digi.vatlib.it/mss/>.

chivio Segreto Vaticano⁹. There the submissions from advocates and proctors fill the two series *Informationes* and *Positiones*. The earliest documents among *Informationes* date from 1626 onward, and those among *Positiones* date earliest from 1627 onward.

The ms. does not show which person(s) brought the collection of papers together. It shows, however, that the only interest of the collector(s) lay in juridical argumentation – thus the viewpoint of jurists. They did not bother to collect representations of facts of a case, nor protocols of witness hearings, nor copies of documentary evidence submitted. All that would be a concern for *procuratores* (proctors) and would be left to the individual case. The collector(s), in contrast, collected juridical debates, to use them as a sort of quarry from where to pick quotations of legal literature which could be useful in future cases of the kind.

At least the last collector(s) must have been Auditor(s) [= judge(s)] of the Rota Romana, since many items have annotations which must have been penned by a judge. This shows that the papers were thus gathered in a study of a judge – and not in a bureau of an advocate.

Certainly, one needs to be cautious in determining who may have penned a certain annotation onto the margin of a certain text, because often the authors of *Consilia* or *Informationes iuris*, at some later stage of their work, added themselves supplementary argument on the margins of a text passage which they had written before. However, take as an example what is penned on fol. 152r = the inside of the wrapper of an *Informatio iuris*. There are twelve lines in a very personal handwriting, extremely difficult to read, thus not meant to be read by anyone else but the writer himself: «All of us» – so he annotates – «sided with this party, but not on the grounds of the arguments submitted, but because the confirmation is neither addressed to certain executors, nor is it accompanied by a decree of annulment, and so this is not contrary to the opinion of the *Glossa* ... in the rubric 'de praebendis', in the Liber Sextus ...»¹⁰ (and the reasoning goes ahead for other nine lines). This annotation must have been penned by a judge who had taken part in the deliberation session on the case in respect of which this *Informatio iuris* had been written!

9. The Rota Archive contains thirteen series of materials, all with heavy losses over the centuries. Inventories for all series have been prepared by the late Rota judge Hermann Hoberg (1907-1992). They were printed in 1994: H. HOBERG, *Inventario dell'Archivio della Sacra Romana Rota* (sec. XIV-XIX), a cura di J. METZLER, Città del Vaticano 1994.

10. *Fuimus omnes pro ista parte, non ex istis fundamentis, sed quoniam confirmatio non habet exequentores, neque decretum irritans, et sic non facit contra glosam ..., de praebendis, in vi°, quia ibi sunt exequentores dati, etc ...*

The aforementioned annotation reminds me of marginal notes in books owned by Felinus Sandeus in which he refers to the outcome of Rota deliberations in which he had taken part. For instance:

BCF 292, f. 214rb¹¹

Dubitavit Rota, me presente, utrum quod dicitur hic de dormitione expectatarum in istis 4 mensibus habeat locum in reservationibus. Ratio regule favens ordinariis innuit quod sic. Et ita 4 auditores. Verba faciunt in contrarium, ibi, 'ac super illis', 'reservationes'. Con(stitutio) enim exprimat de reservationibus datis super expectativis. Negat de aliis reservationibus. Et ita Givel. et alius et ego. Pendet [= the case is not yet over].

Ibid., f. 215rb

Innocentius 8. statuit quod non dicantur 'familiares' cardinalium nisi qui exactum famulatum actualiter exhibuerunt. Occurrit talis causa in Rota, tempore Innocentii 8. anno 1487 de mense martii. Quo tempore eram de proximo cingendus ad illum ordinem. [Cancelled: Talis casus.]

Unus habebat gratiam expectativam cum clausula 'ad instar verorum familiarium pape in libro descriptorum', etc. Et erat magister in theologia et decretorum doctor.

Alius habebat clausulam 'ad instar' – non per verbum 'ad instar', sed tali modo: possis et debeas gaudere omnibus antelationibus et prerogativis etc. quibus dicti nostri familiaribus descripti gaudent, non ad instar predictorum familiarium descriptorum, sed pariformiter et eque principaliter, ac absque ulla penitus differentia ac si unus ex illis descriptus esses, absque tamen eorum prejudicio. Et iste non erat doctor. In reliquis erant pares.

Nescio qui<d> iudicabitur. Sed respondi reverendissimo Oliverio cardinali Neapolitano me sentire pro isto secundo, quia est ut verus familiaris per omnia. Alius est 'ad instar'. Et succedit regula Pii de qua supra, quod dicti 'ad instar' non preferuntur veris familiaribus. Si non esset dicta constitutio Pii, forte esset dubium propter gradus quos alius habet, propter verba regule huius ultime, penultimo versiculo, ibi: voluit ut inter pariter [cancelled: qualificatos] clausulatos precedunt qualificati. Sed stante dicta regula considero principium huius regule ultime dum prefert familiares pape omnibus graduatis in scientiis. Ergo illa graduatio iuncta cum litteris 'ad instar' non nocet illi, cum due qualitates quarum nulla de per se nocet, simul iuncte non noceant, secundum Lod(ovicum Pontanum) de Ro(ma), consilio 333.

While it is clear that the papers in Vat. lat. 14094 were gathered by a Rota judge (or several Rota judges), it is not possible to specify any particular judge(s). Some *Informationes iuris* bear an address: to Antonius Trivultius, or Iohannes Staphileus, or Camillus Balleoneus, or Marcellus Crescen- tius. However, submissions in Rota were not made to only one judge. All

11. Annotation on the margin of *Additiones ad Regulas Cancellariae Apostolicae*.

Informationes iuris were submitted in several copies, because several judges would partake in deliberations on the case¹². Although each incoming case was commissioned to one specific Auditor (who thus became the *Auditor ponens* of the case, so that all submissions were addressed to him), this *Auditor ponens* was held to consult colleagues for advice before he rendered any judgment. The judges thus formed deliberation groups, called *turnus*. Thus, when Vat. lat. contains an *Informatio iuris* addressed to the Auditor Trivultius, for instance, and this paper has annotations from the hand of a judge, this does not prove that judge Trivultius in person penned this annotation. It could even well have been penned by a colleague who sat in the same *turnus* which debated the cases pending before judge Trivultius.

Usually an *Auditor ponens* submitted his cases to four colleagues (called the *corresponsales*), to deliberate thus in a *turnus* of five. Only the vote of the *corresponsales* counted. If they voted two against two, then two more judges would join them, to deliberate in a group of seven. If in this larger group the *corresponsales* would vote three against three, the matter went to the full round of all twelve judges. When a particularly important juridical point needed to be debated, the Dean could even from the outset convoke all twelve judges for that debate.

The deliberation groups were formed according to the seating arrangement when the judges sat in a round in convocations of all twelve – and this arrangement depended on the rank of seniority in appointment to the Rota. The most senior judge, rank number 1, served as Dean. Rank number 2 sat on the Dean's right side, rank number 3 on the Dean's left side, numbers 4 and 5 again on the right and on the left side, and so forth. The youngest in appointment date, judge number 12, came thus to sit *vis-à-vis* to the Dean. For a deliberation on a case, the *Auditor ponens* would convoke the four colleagues sitting next to him on his left side. In this system, each of the twelve judges was a member of five different deliberation groups (*turni*) which overlapped in part. For instance, judge number 11 as an *Auditor ponens* submitted his cases for deliberation to the colleagues with ranks 12, 10, 8, 6 as his *corresponsales*. But the same judge number 11 also sat as a *corresponsalis* in the *turnus* in which judge number 3 as "*Auditor ponens*" submitted cases to ranks 5, 7, 9, 11. Furthermore, judge 11 sat as well in *turnus* 5 with 7, 9, 11, 12, and in *turnus* 7 with 9, 11, 12, 10, and in *turnus* 9 with 11, 12, 10, 8.

12. Details of procedure before the Rota and the deliberation system are explained in my article *Litigation at the Rota Romana, particularly around 1700*, in *Case Law in the Making. The Techniques and Methods of Judicial Records and Law Reports*, a cura di A. WJFFELS, vol. I: *Essays*, Berlin 1997, pp. 338-73.

From time to time the Rota [= «the Wheel»] ‘rotated’¹³ – in two ways. Firstly, ranks changed when a post became vacant. Secondly, the Rota’s opinion on a specific juridical point changed when a decision from the full round of judges overrode a previous steady line of precedent.

Not all items in Vat. lat. 14094 can clearly be identified as pertaining to a specific case. This may often be due to the fact that it was customary in that time to wrap papers for submission to court into a folded wrapper. As a rule, the items were folded vertically, twice¹⁴. And often the indication of the case, the name of the assigned *Auditor*, and at times also the signature of the advocate, were only written on the wrapper. When the items were then put in storage, however, it happened that their wrapper or envelope was not stored along with them¹⁵. This effected that many items in storage were deprived of their indication of case and judge and advocate’s name.

SPECIFIC LAW CASES PRESENT IN VAT. LAT. 14094

Here is a list of 26 *causae in Rota* which I could identify sufficiently clearly. Many other *Informationes iuris*, however, remain unidentified. In order to find out in which exact years the identified litigations pended, one would need to peruse the respective volumes in two archive series of the Rota Archive: *Commissiones* and *Manualia*. I have not taken this step so far.

An filii parvuli Judaeorum possint invitis parentibus baptizari, coram R.P.D. Marcello Crescentio cardinali (mortuus a. 1552)

Informatio iuris, f. 117r: Iohannes Loysius Aragona advocatus

Barchinonensis beneficii Petri(?)

Informatio iuris, ff. 119r-v, 124r: Iohannes Loysius Aragona advocatus

13. Hence the saying: «Rota quandoque rotat».

14. Folds can clearly be seen because dust has assembled along them in ff. 197r-198v, 206r; 246r-247v, 255r-258v; 260r-v, 272r-v; 275r-v, 285r-v; 293r-295v; 337r-339r; 406r-v, 417r-v; 449r-460v; 466r-477v; 485.

15. Wrappers are preserved in ff. 152, 340, 345 with 350, 417, 458-460, 475-477, 485, 510-511, 540.

Bononiensis bonorum testamenti Iohannis de Lignano coram R.P.D. Antonio Trivultio, deinde R.P.D. Iohanne Staphilaeo [law case to be further considered below¹⁶]

Informatio iuris,

ff. 47r-55r: anonymus advocatus

ff. 406r-v, 417r-v: Iohannes Dossis advocatus (mortuus a. 1524)

ff. 480r-485v: Melchior de Baldasinis advocatus (mortuus a. 1522)

Notae

f. 404v: anonymus iudex vel advocatus.

Consilium

ff. 88r-95v Felinus Sandeus, iuris utriusque doctor ..., ordinariam matutinam sedem iuris pontificii indigne occupans in renovato gymnasio Pisano [autograph with seal]

ff. 95v-100r Bulgarinus de Bulgarinis (Senensis), iuris utriusque doctor, iura civilia de mane ordinarie legens in Pisano gymnasio [autograph with seal]

ff. 101r-106v Iohannes Maria de Riminaldis (Ferrariensis), iuris utriusque doctor ac legens iura civilia ordinarie [autograph signature, with seal]

ff. 405r-v, 418r-v Angelus de Castro, iuris utriusque doctor, miles et comes et advocatus consistorialis, filius quondam Pauli de Castro, ... ordinarie legens iura pontificia in felici studio Paduano [autograph with seal];

ff. 439r-442v Hieronymus de Zanetinis, iuris utriusque doctor nunc iura civilia ordinarie legens in famosissimo studio Bononiensi [autograph with seal]

ff. 443r-448r Hieronymus de Zanetinis, iuris utriusque doctor, iura canonica ordinarie legens in famosissimo studio Bononiensi [autograph with seal]

ff. 449r-460v Iohannes Baptista de Lambertinis (Bononiensis), iuris utriusque doctor, iura canonica in ipso Bononiensi studio legens [autograph with seal]

ff. 461r-465v Antonius de Corsetis de Sicilia, iuris utriusque doctor, iura pontificia in hoc famosissimo Bononiensi studio ordinarie legens [autograph signature, with seal]

16. Discussed in detail by T. BRIX, *Ein unbekanntes Rechtsgutachten von Felinus Sandeus über die Auslegung des Testaments des Juristen Johannes de Lignano* (Biblioteca Apostolica Vaticana, MS Vat. lat. 14094, fol. 88r-95v), Berlin 2016.

ff. 466r-477v Iohannes Baptista de Lambertinis (Bononiensis), iuris utriusque doctor Bononiensis et in studio Bononiensi ius canonicum legens. Autograph final clause and signature, with seal

ff. 487r-497r Agamemnon Marscopti de Calvis, eques et iuris utriusque doctor, iura canonica in almo Bononiensi gymnasio legens. Autograph with seal

[cfr. Bartholomaeus Socinus, n. 227 in printed edition of his *Consilia*, Lugduni 1445 fol. 72vb-76ra]

[cfr. Carolus Ruinus, n. 168 in printed edition of his *Consilia*, Venetiis 1579 fol. 257vb-260rb]

[cfr. Petrus Philippus Corneus, n. 230 in printed edition of his *Consilia*, Tridini 1512-1513 fol. 214rb-217rb]

[cfr. Iohannes Crottus de Monteferrato, n. 48 in printed edition of his *Consilia*, Venetiis 1568 fol. 57ra-59va]

Cardinalis de Bolonia contra Petrum de Belloforti

Informatio iuris, ff. 273r-274v, 283r-284v: Burgundius advocatus [vertically folded, twice]

Causa de Buggiano, pro parte altaris heredis instituti

Informatio iuris, ff. 286r-289r: anonymus advocatus

Casalensis canonicatus et praebendae, coram R.P.D. Antonio Trivultio

Informatio iuris, ff. 141r-146v, 152v: Hieronymus Butigella eques, iuris utriusque doctor, advocatus

Cornouaillensis in Bretonia, ecclesiae parochialis de Bothoba

Informatio iuris, ff. 246r-247v, 255r-258v: anonymus advocatus [folded vertically]

Fesulani episcopatus

Consilium, ff. 331r-336v: Iohannes Calderinus

Firmiana Grani, coram R.P.D. episcopo Brixienso

Informatio iuris, f. 34r-v: anonymus advocatus

Foroiuliensis canonicatus et prae bendae*Informatio iuris,*

f. 149r-v Iohannes Baptista Senen. advocatus

f. 150r Angelus Medices de Cesis advocatus

Hereditatis quondam Antonii Carlotti de Manettis de Ancona*Consilium,*

ff. 21r-26v: Carolus Ruinus (Regiensis)

ff. 27r-33v: Demosphons(?) de Paulonibus; Matthaëus de Vico (Pisau-
rensis)ff. 209r-218v: Bartholomaeus Gratianus de Montemonaco [provincia di
Ascoli Piceno]; Matthaëus de Vico (Pisaurensis); Petrus Iohannis Bucca-
leo (Monticulensis); Simon de Jardinis de Civitanova, civis Maceraten-
sis; Antonius Franciscus de Pellicanis (Maceratensis)**Hildensemensis prebendae Sanctae Crucis***Informatio iuris,* f. 162r-v: anonymus advocatus**Luccana successionis filiorum naturalium Iohannis Cambii***Consilium,* ff. 321r-v, 323r-328v: Iohannes de Imola (mortuus 1436)*Notae,*

f. 329r and margins 320r-328v: anonymus iudex

Magistri Sigisfini(?) de Folenghis contra illos de Capianis*Informatio iuris,*

ff. 169r-170v, 185r-186v: anonymus advocatus

ff. 171r-173v, 183r-184v: Ludovicus Mainoldus advocatus

ff. 174r-v, 182r-v: Iacobus Gonzaga doctor et advocatus

Maguntina Francfordensis matrimonii*Informatio iuris,*ff. 154r-155v, 164r-v: Sanctus de Vivianis; Vivianus filius Sancti de Vi-
vianis; Lelius de Valle – advocati

f. 159v: Paulus Pontanus advocatus

Maioricensis matrimonii

Informatio iuris, ff. 156r-v, 157r-159v, 164r-v, 167r-v: Vivianus de Vivianis

Matrimonii inter Henricum VIII regem Angliae et Catharinam de Aragón

Informatio iuris,

ff. 107r-v, 115v-r, 114r-v, 116r-v: Iohannes Loysius Aragona advocatus consistorialis

ff. 108r-110r: anonymus advocatus

f. 111r-v: anonymus advocatus

f. 112r-v: anonymus advocatus

ff. 219r-232r et 233r-245v: Iohannes Aloisius Aragona advocatus consistorialis

ff. 219r-232r: Iohannes Loysius Aragona (with second copy ff. 233r-245v)

King Henry VIII had married Catherine of Aragón in 1509. Official annulment proceedings started in 1527, then went to Rome, and failed there in 1529. Catharina was the widow of Henry's deceased brother Arthur. Pope Julius II had thus been requested to dispense from the impediment of affinity and had granted such dispensation. On the one side, Henry's jurists argued that God had commanded by strict divine law, written in the Bible (and even stronger: by law of nature), that no man can validly marry the widow of his deceased brother, and a dispensation by the pope could not make such prohibited marriage valid. On the other side, Catharine's jurists tried to make her case even stronger by alleging that she had never become a validly married wife of Arthur because he had died before the two had ever had sexual relations with each other¹⁷.

17. The annulment proceedings were discussed by E. L. SURTZ, *Henry VIII's Great Matter in Italy: an Introduction to Representative Italians in the King's Divorce, mainly 1527-1535*, Ann Arbor 1974 – a very voluminous work. Furthermore V. MURPHY, *The Literature and Propaganda of Henry VIII's First Divorce*, in *The Reign of Henry VIII. Politics, Policy and Piety*, ed. by D. MCCULLOCH, Basingstoke and London 1995, pp. 135 ss., and an article by D. and P. MAFFEI, *Enrico VIII d'Inghilterra, Caterina d'Aragona e un 'consilium' di Giulio Ferretti*, in *Ins Wasser geworfen und Ozeane durchquert. Festschrift für Knut Wolfgang Nörr a cura di M. ASCHERI etc.*, Köln Weimar Wien 2003, pp. 505-22 [Consilium by Iulius Ferretus edited from mss. Vat. lat. 5830 and Napoli, BORatoriana, Sala M, S.XXVIII, P1, N.46].

F. 116r-v enumerates quotations where theologians had stated that the Bible (in Leviticus and Deuteronomy) only prohibits marrying a brother's widow if that deceased brother had left living offspring (which was not the case with Henry's deceased brother Arthur).

Nannetensis de Reys, parrochialis ecclesiae de Tuschis

Informatio iuris, ff. 153r-v, 161r-v, 168r-v: Iohannes de Barocellis advocatus

Patronatus regis Scotiae

Informatio iuris, f. 120r-v: Iohannes Loysius Aragona advocatus

Placentini canonicatus et praebendae, coram R.P.D. Antonio Trivulzio (mortuus 1522)

Informatio iuris, ff. 141r-146v: T. de Sancta Cruce advocatus

Placentini fideicommissi, comitis Danielis Dodisco contra Anguisolas, coram R.P.D. Camillo Balleoneo (mortuus 1532)

Informatio iuris, ff. 9r-20v : anonymus advocatus

Consilium

ff. 36r-46v et 485 Simon Bossius iuris utriusque doctor ex venerando collegio Mediolano

ff. 56r-67v Iohannes Francus Maruffus iuris utriusque doctor de collegio dominorum iudicum Placentinorum

ff. 68r-87v Carolus Ruinus (Regiensis)

ff. 478r-479v Iohannes de Nana iuris utriusque doctor de venerando collegio dominorum iurisperorum Mediolani. Autograph signature, with seal.

The parties disputed whether a '*fideicommissum*', ordered in the testament of count Daniel de Dodisco senior (from Piacenza), has effected that the inheritance now vests in the plaintiff Daniel de Dodisco junior. Otherwise the inheritance would remain with the defendants, namely adopted sons of the deceased count Lazarus. The case pended before the Auditor Camillus Balleoneus (Perusinus), appointed in 1518, deceased in 1532.

Plumbinae hereditatis

Consilium (on a law case from Piombino), ff. 421r-436v: Iohannes Baptista Santzus

Romana fideicommissi De Valle

Informatio iuris, ff. 499r-511v: anonymus advocatus

Successionis in regnum Navarrae post mortem Gasconis regis

Consilium

ff. 261r-269v Iohannes Antonius de Sancto Georgio episcopus Alexandrinus, unius ex sacri palatii auditoribus locum tenens

F. 261r is a title page: Pro Regno Navarre. Mortuo primogenito non succedit ei soror, sed frater patris. Ad idem: Consilium Cacialupi quod est in libro diversorum consiliorum, ff. xxxiii. [= Iohannes Baptista Caccialupus de Sancto Severino, died in 1496]

This *Consilium* originated after the appointment of Felinus Sandeus to the Rota (1487 April 2), but before the Auditor Antonius de Sancto Georgio was transferred to the episcopal see of Parma (1499 September 6). He later became Cardinal (in 1493), and died in 1509 March 14.

The issue of succession to the Kingdom of Navarra may have re-arisen when Pope Julius II (1503-1513) sided with King Fernando II de Aragón (widower of Queen Isabel de Castilla) who conquered Navarra in 1512, in order to unite Spain under one rule. The 'Gastón' mentioned in the *Consilium* (here styled 'rex') was Gastón IV de Foix (1423-1472), husband of Eleonor infanta de Navarra y Aragón (1426-1479). She waged war against her siblings and thus de facto governed the kingdom, but she was only styled "Queen" after the death of all her siblings, thus in the last fifteen days of her life (in 1479).

Incipit: Factum est tale: Illustrissimus Gasco princeps Navarre et Leonore eius uxor procrearunt

Consilium

ff. 270r-271v Felinus Sandeus, Auditor of the Rota Romana (see the clause at the item's end). Merely a copy. Felinus adheres to the opinion of Iohannes Antonius de Sancto Georgio (see above)

Invocatio: Yhesus. Faciem tuam illumina super seruum tuum et doce me iustificationes tuas [Psalmus 119/118 135]

Incipit: Brevitatis semper minister(?), nunc brevissimus

Explicit: de officio consultandi iam prorsus distrix. demito (?). (Follows the final clause:) Sic de iure videtur et michi, Felino de Sandeis, minimo inter auditores causarum Sacri Palatii Apostolici, qui propria manu scripsi et anulo proprio subsignavi. Salvo consilio saniori. Laus Deo

Testamenti Andreae Valerii, coram Sacra Romana Rota

Consilium ff. 407r-v, 416r, 408r-415v Fulphus de Fulphis (Forliviensis), iuris utriusque doctor, autograph with seal.

Toletani archiepiscopatus

Informatio iuris f. 148r-v M. de Bal. advocatus.

ADVOCATES ACTIVE IN LAW CASES IN VAT. LAT. 14094, MAIN PART

Angelus de Perusio

Angelus Medices de Cesis

Antonius Gabriellus

Antonius Galeazzo de Malvasia

Burgundius advocatus

Hieronymus Butigella, eques

Hieronymus Justinus

Iohannes Antonius Fachinellus(?)

Iohannes Baptista Senen(sis?) [twice]

Iohannes Baptista Osius

Iohannes de Baroncellis

Iohannes Bartholomaeus Dossis (mortuus 1524)

Iohannes Loysius Aragona (13x), e.g. ff. 219r-232r in causa matrimonii

Henrici VI regis

Lambertus Sfortia (Niciensis)

Lelius de Valle [twice]

Ludovicus Mainoldus [twice]

Melchior de Baldasinis (mortuus 1522)

Nellus Vin.

Paulus Pontanus

Petrus Paulus Sanguineus [twice]
 Sanctus de Vivianis
 Sigismondus Dondolus
 T. de Sancta Cruce
 Vivianus de Vivianis [thrice]

CONSILIATORES IN LAW CASES IN VAT. LAT. 14094, MAIN PART

Agamemnon Marscopti de Calvis
 Angelus de Castro, filius quondam Pauli de Castro
 Antonius de Corsetis de Sicilia
 Antonius Franciscus de Pellicanis (Maceratensis)
 Bartholomaeus Gratianus de Montemonaco [provincia di Ascoli Piceno]
 Bartholomaeus Martialis
 Bulgarinus de Bulgarinis (Senensis)
 Carolus Ruinus (Regiensis) [twice]
 Demosphons de Paulonibus
 Felinus Sandeus [twice]
 Fulphus de Fulphis (Forliviensis)
 Hieronymus de Zanetinis (Bononiensis) [twice]
 Jacobus
 Iohannes Antonius de Sancto Georgio
 Iohannes Baptista de Lambertinis (Bononiensis) [twice]
 Iohannes Baptista Santzus
 Iohannes Francus Maruffus
 Iohannes Maria de Riminaldis (Ferrariensis)
 Iohannes de Nana (Mediolanensis)
 Leonardus «inter canonum legumque professores minimus»
 Matthaeus de Vico (Pisaurensis)
 Petrus Iohannis Buccaleo (Monticulensis)
 Simon Bossius (Mediolanensis)
 Simon de Jardinis de Civitanova, civis Maceratensis

THE CONSILIUM BY FELINUS SANDEUS ON THE TESTAMENT OF IOHANNES DE LIGNANO

Felinus Sandeus was a great collector of interpretations of legislation: namely he picked summaries and excerpts from interpretative texts of legal literature – which referred

- (1) on the one side to legislation by popes and Church councils, applicable in ecclesiastical administration and jurisdiction (together with opinions of leading theologians of Antiquity which were passed on as if they were legislation),
- (2) and on the other side to legislation by emperor Justinian (6th century), applicable not only in secular matters but also in the Church whenever specific ecclesiastical legislation did not provide otherwise (together with norms in the *Libri feudorum* which were equally observed as if they were legislation).

As Vincenzo Colli has correctly observed and shown in his contribution to the present congress proceedings, the first aim of Felinus was to gather interpretative references to legal literature for his own use. He wanted to have an encyclopaedic survey of law at hand, as a tool for his own work as a legal adviser, law teacher and later also judge (from 1487 onward). In the later decades of his life, however, Felinus also undertook to make his vast collection of references available to the interested general public. He published in print the re-worked versions of his lecture scripts on the *Decretales* of pope Gregory IX – to which he had added vast numbers of references.

Felinus furthermore procured editions of so far unprinted works of famous jurists. He prided himself upon basing such editions on original autographs. For instance, Felinus edited *Consilia* of Franciscus Zabarella on the base of the author's authentic minute book, to which Felinus had access¹⁸.

In order to store his collected data for retrieval, Felinus neither used file cards nor systemised folders. Instead, Felinus just kept adding annotations in the margins of his lecture scripts, and also in margins of many other books which he possessed, be they printed or manuscript. Obviously, his good memory enabled him to get along with such scattered storage. This is evidenced by his *Consilia*: they are all loaded with references to literature. So Felinus found back whatever he remembered to have noted somewhere.

While all books of Felinus (several hundreds of volumes, comprising substantial manuscripts and 1263 items of incunabula¹⁹) were bequeathed by him to the Biblioteca Capitolare in Lucca, and whereas almost all books which are known to have been in his possession are actually still preserved there, we lack however his minute book of *Consilia*. We may take it for granted that he had one, yet it either never reached the library in Lucca or it was taken out from there, later. In the lifetime of Felinus, all renowned jurists kept track – by means of a minute book – of *Consilia* which they had

18. The ms. is still preserved: BCF 258, vd. *Catalogo BCF*, pp. 183-4 scheda 148.

19. See the British Library's *Incunabula Short Title Catalogue* (<http://istc.bl.uk/>), and search there in the field "Location of copy" for incunabula preserved in Lucca, Biblioteca Capitolare Feliniana.

written²⁰, thus so did Felinus. This is apparent from the fact that editors were able to print a volume with 51 *Consilia* by him, published in Lyons 1552²¹. Editions of the kind were always based on a minute book of the author – or on a (perhaps partial) copy from such minute book. Usually, however, printers had the habit to discard manuscripts which they had used²². In all probability this also happened to the minute book of Felinus (or copy of it) which had served for the edition 1552.

The printed edition of 1552 does not comprise the *Consilium* which Felinus gave in the famous controversy about the testament of Iohannes de Lignano – a juridical discussion in which at least a dozen of jurisconsults took part. As mentioned above in the list of *Rota* cases in Vat. lat. 14094, 'causa Bononiensis bonorum', this *Consilium* by Felinus is transmitted there in company of three respective *Informationes iuris* and eight other respecting *Consilia*: by Bulgarinus de Bulgarinis (Senensis), Iohannes Maria de Riminardis (Ferrariensis), Angelus de Castro son of the famous Paulus de Castro, Hieronymus de Zanetinis (two *Consilia*), Iohannes Baptista de Lambertinis (two *Consilia*), Antonius de Corsetis de Sicilia, and Agamemnon Marscopti de Calvis – all of them with autograph subscription (or even completely autograph), and with seal. And all of them were so far unknown. However, four other respective *Consilia* had been printed in the 16th century and were thus known since long: namely *Consilia* by Bartholomaeus Socinus, Carolus Ruinus, Petrus Philippus Corneus and Iohannes Crottus de Monteferrato.

After the discovery 1974, I attempted in various instances to put doctoral students to work on the *Consilium* by Felinus Sandeus – yet for decades to no avail. Finally my student Thomas Brix really undertook this task. He produced a nice doctoral dissertation, in which he edited the text of the *Consilium* and commented on it²³.

The jurist Iohannes de Lignano died in 1383. He left one legitimate son: Baptista – who then left at his death two legitimate sons: Georgius and Guilielmus. Only Georgius left at his death a son: Antonius Maria, plaintiff in the law case. Guilielmus however had no male issue, so he made

20. V. COLLI, *I 'libri consiliorum'. Note sulla formazione e diffusione delle raccolte di 'consilia' dei giuristi dei secoli XIV-XV*, in *Consilia im späten Mittelalter. Zum historischen Aussagewert einer Quellengattung*, a cura di I. BAUMGÄRTNER, Sigmaringen 1995, pp. 225-35 (at pp. 226-7 and 234-5 [reprinted in *Giuristi medievali e produzione libraria. Manoscritti - Autografi - Edizioni*, a cura di V. COLLI, Stockstadt am Main 2005, pp. 437*-47*]).

21. Printed at least six times (BRIX, *Rechtsgutachten*, p. 14 note 7): Lugduni 1552; Basileae 1538; Venetiis 1574; Lugduni 1587; Venetiis 1582 (together with *Consilia* by other authors); and Venetiis 1601.

22. COLLI, *I libri consiliorum*, p. 234, middle.

23. BRIX, *Rechtsgutachten*.

a testament in which he appointed his two daughters Cornelia and Margarita his heirs – the defendants in the law case. Guilielmus was still in life in 1455²⁴. So the controversy can only have arisen later, after the death of Guilielmus.

The dispute arose because Iohannes de Lignano had ordered in his testament that only legitimate sons from him should inherit. He thus excluded his daughter Antonia and gave her a rich dowry instead. And furthermore he also ordered that all his real estate should forever remain “in the family”²⁵. These words are ambiguous. The plaintiff Antonius Maria interpreted them to mean that when a male line of descendants would die out, all the inherited estates which had vested in that line should immediately pass over to any surviving male lines: thus to him, Antonius Maria, as the only surviving descendant in the male line.

In the Lignano case, among the eleven *Consiliatores* (so far known) only three fully sided with the defendant females Cornelia and Margarita: namely Bulgarinus de Bulgarinis, Bartholomaeus Socinus, and Petrus Philippus Corneus. In contrast, seven *Consiliatores* sided fully with the plaintiff Antonius Maria – and among them was Felinus Sandeus. An intermediate opinion was held by the *Consiliator* Iohannes Baptista de Lambertinis. He concurred that ownership of the real estate in question vested in the plaintiff Antonius Maria, but he dissented in so far as he held that the two defendant females had a life-interest in the estate, namely they had a right to dwell on the premises and draw sustenance from them – because the testament had provided that female descendants of the testator (which were disinherited, as mentioned above) should always be allowed to live on the testator’s real estate and draw their sustenance from there, in cases where they would otherwise be left in poverty. This clause, together with other ones which went into parallel directions showed – so argued the jurisconsult – the testator’s general intention that his real estate should function as a rescue-resort for descendants who fell into dire poverty. It appears that the aforesaid argument was critical in the debate before the Rota: namely the plaintiff’s advocate attempted to play this argument down by alleging that the two defendant females were born out of wedlock – so they were but illegitimate descendants of the testator.

24. *Ibid.*, p. 97.

25. *Item prohibuit dictus testator alienacionem quorumcumque bonorum immobilium sue hereditatis, eo quia voluit ipsa bona perpetuo permanere intra familiam dicti testatoris et pro usu infra deputando* (ff. 47r-55r).

The case probably devolved upon the Rota Romana in appeal – and most likely from some tribunal in Bologna. The litigation had probably begun in the lower court in the 1480ies. Angelus de Castro had dated his *Consilium*, so we know that he finished it on January 23, 1485. Iohannes Baptista de Lambertinis also provided dates for his two *Consilia*: January 27, 1485 and July 03, 1485, respectively. The *Consilia* of the other jurisconsults are not dated, but all these were yet or still active in the 1480ies²⁶ – except Iohannes Crottus who must have been a child in that decade. The year 1485 or nearby would as well be a likely date for the *Consilium* by Felinus Sandeus. In his subscription he presents himself as holding the Ordinary Chair of Canon Law in the University of Pisa. He was appointed to that chair in 1474 (*terminus post quem*), and he left Pisa in 1487 to officiate in Rome as a Rota judge (*terminus ante quem*).

The exact years when the case pended before the Rota might probably be found out by means of a systematic search through the respective volumes of *Commissiones* and *Manualia* of the Rota Archive in the Archivio Segreto Vaticano. This has not been done so far, but Thomas Brix made a good attempt to narrow the time span down, with the help of biographical data known from judges and advocates of the time. One pertinent text in ms. Vat. lat. 14094 shows that the Lignano case pended before the Rota Romana at least in years between 1518 and 1522, because Melchior de Baldasinis “advocatus consistorialis” pleaded in the case²⁷. He had only been appointed as *advocatus consistorialis* in 1518²⁸. Both he and the *Auditor* (= judge) before whom he pleaded – namely Antonius Trivultius – died in 1522²⁹.

It is clear, however, that the Lignano case dragged on for at least thirty-three years (1485–1518, at least). In the appeal proceedings before the Rota, the case was committed at one time to the Auditor Antonius Trivultius – as mentioned above. He officiated from 1505 (or 1507) to 1522. At another time, be it before or thereafter, the Lignano case was committed to a different Auditor, namely Iohannes Staphilaeus³⁰. He officiated from 1510 onward, and certainly throughout that entire decade³¹, perhaps even

26. BRIX, *Rechtsgutachten*, p. 99.

27. Pleadings on ff. 480r–485v.

28. BRIX, *Rechtsgutachten*, p. 96.

29. *Ibid.*, pp. 37, 96.

30. Pleadings on ff. 406r–v and 417r–v. The text can earliest date from 1510 when the Auditor started to officiate, and not later than 1524 when the advocate died who had pleaded in the case: namely Iohannes Bartholomaeus Dossis: BRIX, *Rechtsgutachten*, pp. 94–5.

31. BRIX, *Rechtsgutachten*, p. 38. Iohannes Staphilaeus remained in office in Rome although he had since 1512 been promoted to the bishop's see of Šibenik in Croatia. For instance, a Rota judgment pronounced by him in 1517 is preserved in ms. Philadelphia, University of Pennsylvania, Rare Book and Manuscripts Library, Coll. 742.

until his death in 1528. Furthermore, the jurist Antonius Crottus de Monteferrato gave a *Consilium* in the case, most likely in the instance before the Rota – because in earlier times when the case went through its first instance in Bologna he must still have been a child and could thus not have written his *Consilium* so early. Antonius Crottus is reported to have taught in the universities of Bologna and Pisa, and this shall have been – as concluded by Maffei after thorough research³² – “between the end of the 15th century and the first two decades of the 16th century”. Several works by Antonius Crottus were printed in the years 1505 and 1507³³, so he was mature enough by that time to write the *Consilium* in question. However, he might as well have written the *Consilium* much later, because Pancirolus³⁴ had it that Antonius Crottus only died in 1540.

Vat. lat. 14094 does not tell which outcome the law suit had. It may even have ended without a judgment, for instance because the parties came to an amicable agreement.

When we want to search for reasons why the Lignano case dragged on for decades, such reasons must be sought in rules of civil procedure of the time. Under Jus Commune, civil litigation only went ahead from one step to the next step when one of the litigating parties filed an appropriate request to which the judge would then react. It appears that in the Lignano case both parties rather preferred not to hasten procedures. Probably they both waited for circumstances to change, in a hope that this would increase their respective chances to win the case.

Considering the importance of the case and the intricacy of its juridical argument, there arises the question how it may be explained that the printed editions of *Consilia* by Felinus Sandeus lack this item. All editions of *Consilia* of one particular jurist of the 15th century base their text on some minute book of the author, or a (perhaps partial) copy from such minute book³⁵. The editions of *Consilia* by Felinus Sandeus contain but 51 items. It is unlikely that the author – being such a renowned jurisconsult, and well sought after for advice – would have written so few *Consilia* in his entire

32. D. MAFFEI, *Il giovane Machiavelli banchiere con Berto Berti a Roma*, Firenze 1973, pp. 79-82.

33. CERL lists these publications by him (<http://thesaurus.cerl.org/record/cnp01303629>):

Repetitio l. Omnes populi, ff. de iustitia et jure, 1505 [D.1.1.9];

Repetitio l. Nemo potest, ff. de legatis primo, 1505 [D.30.1.55];

Repetitio § Cum quis, in l. Pomponius, ff. de acquirenda possessione, 1505 [D.41.2.13.1];

Repetitio in capitulo primo et secundo, de constitutionibus, 1507 [X.1.2.1-2];

Tractatus de testibus, 1523.

34. G. PANCIROLUS, *De claris legum interpretibus*, Venetiis 1637, liber 2, p. 222.

35. COLLI, *I libri consiliorum*, pp. 226-7.

life. Although we know from other jurists of the time whose minute books are preserved that they used to skip entering *Consilia* which they thought to be of little importance, it is utmost unlikely that Felinus would have omitted to enter in his minute book this obviously very important *Consilium* in the Lignano case. There exist three possibilities. Either the editors in 1552 had the author's complete minutes in their hands, but chose to print only part of them, which they selected at their non-expert whim. Or the minute book had consisted of several volumes and only one of them had come to the editors. Or the editors had found but a partial copy of the author's minute book.

There also exist other manuscript transmissions of individual *Consilia* by Felinus Sandeus. I have not checked whether these other ones recur in the printed edition. For instance, the present ms. Vat. lat. 14094 contains yet another such *Consilium*, on ff. 270r-271v, about the succession to kingship over the Kingdom of Navarra. Furthermore BCF 244, pars I, ff. 11-51 transmits a *Consilium* by Felinus, beginning with the words *Quedam filia ingressa est monasterium sancti Guilielmi*. In the same ms., ff. 41r-45v contain a *Consilium* with prologue *Trita est philosophi sententia: 'Frustra fieri per plura quod potest fieri per pauciora'* – and with incipit words *Opponitur primo efficaciter contra dictas mulieres*³⁶. Paul Oskar Kristeller saw another *Consilium* by Felinus in Pisa, BU 704 (Roncioni 25), f. 329³⁷, but he did not note details. Furthermore, also mss. Padova, BCap. B.37 and Ravenna, BClassense 485 contain *Consilia* by Felinus for which the catalogue does not supply details. Further progress in cataloguing of mss. can be expected to bring more *Consilia* by Felinus to light.

ABSTRACT

Ms. Vat. lat. 14094 is described in the data base "Manuscripta Juridica". Besides its main part, it also comprises extraneous material: for instance ff. 331-403 once constituted a separate volume, with 25 *Consilia* in law cases from 1382 to the 15th

36. *Catalogo BCF*, pp. 174-5 scheda 137.

37. P. O. KRISTELLER, *Iter Italicum*, London 1963-1997 [reprinted Leiden 1995], vol. 2, p. 74.

century. Many authors of *Consilia* in these hundred folios lived in Florence or not further than 100 km from there. The main part of Vat. lat. 14094, however, consists almost exclusively of papers submitted to the Rota Romana in litigations pending there in the first decades of the 16th century. Such papers comprise 26 *Consilia* and ca. 60 *Informationes iuris*. The latter contribute to fill a gap in the Rota Archives where holdings of such materials barely commence from 1526 onward. In the manuscript's main part, fourteen items regard the famous controversy about the testament of the jurist Iohannes de Lignano († 1383). One such item is a *Consilium* by Felinus Sandeus – which is wanting in the printed edition of *Consilia* by this author. There thus arises the question from where the editors of the printed edition 1552 took their text.

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