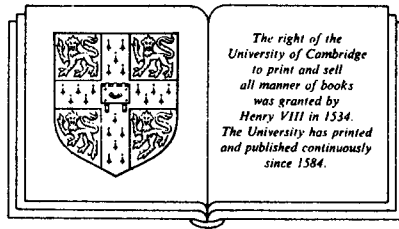


THE POLITICAL THOUGHT OF BALDUS DE UBALDIS

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INTRODUCTION

In a subject as well established as the juristic contribution to medieval political thought the relative neglect of one of its major exponents, Baldus de Ubaldis, may cause surprise. The political thought of his teacher and colleague, Bartolus of Sassoferrato, is so well known that in the pantheon of late medieval political thinkers he ranks with Aquinas and Marsilius of Padua; and indeed no treatment of medieval political thought is complete without a consideration of his ideas.¹ Yet Baldus who was certainly the juristic peer of Bartolus has received a scattered and piecemeal study of his political ideas rather than any systematic treatment aiming at completeness. Indeed Baldus' contribution as a whole to legal history lacks its historian.² This is so despite the fact that Baldus shared with Bartolus the greatest fame and influence amongst the Commentators, the school of jurists which originating in the late thirteenth century dominated Roman law studies in the late Middle Ages, and indeed as the *mos italicus* (Italian manner) remained highly influential throughout the sixteenth century and beyond.³

¹ For Bartolus' political theory see especially Woolf, *Bartolus*, and Ullmann, 'De Bartoli sententia', and also Baskiewicz, 'Quelques remarques', and David, 'Le contenu de l'hégémonie'. For Bartolus' place in general histories of political thought see, for example, Ullmann, *History of Political Thought*, pp. 214-19, and Skinner, *Foundations*, I, 9-12, and 59-65.

² There exists only one published monograph on an aspect of Baldus' ideas, Horn, *Aequitas*, although *L'opera di Baldo* provides a useful collection of essays to mark the five-hundredth anniversary of Baldus' death. As regards Baldus' political ideas Wahl gives some treatment of his theory of monarchy: 'Baldus' concept of state'; 'Immortality and inalienability'; and 'Baldus and foundations'. See also Curcio, 'La politica di Baldo'. Baldus' theory of citizenship has also attracted some attention: see Rummer, 'A fourteenth-century legal opinion' (this concerns an autograph *consilium* of Baldus); Kirshner, 'Ars imitatur naturam'; id., 'Between nature and culture'; and Canning, 'A fourteenth-century contribution'. For Baldus' theory of tyranny see now Quagliani, 'Un "Tractatus de tyranno"'. Bonolis, *Questioni* provides useful material for Baldus' political thought. For a piecemeal treatment of Baldus' political ideas see Gierke, *Genossenschaftsrecht*, III, passim; and R. W. and A. J. Carlyle, *Medieval Political Theory*, VI, 19-22, and 85-7. For aspects of Baldus' political ideas, notably on kingship, see Riesenber, *Inalienability*, and E. H. Kantorowicz, *King's Two Bodies*. For a list of some further articles devoted to Baldus see Horn, 'Legistische Literatur', p. 273.

³ For the importance of the *mos italicus* see Holthofer, 'Die Literatur', pp. 107-14.

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Furthermore Baldus (unlike Bartolus) was also a canonist of renown. This inadequate modern treatment of Baldus' ideas means that it has so far proved impossible accurately to assess Baldus' general stature as a jurist.⁴ Since Baldus in his legal commentaries ranged over the whole gamut of those aspects of contemporary society relevant to juristic treatment, the total picture of his contribution to jurisprudence will surely emerge through specialised studies of specific aspects of his thought; and it is within this larger context that this book, being a study of his political thought in particular, should be located.

For an historical understanding of political ideas knowledge of the historical context in which they were produced is crucial. This is very much an historian's point, and one which provides a key-note for this study;⁵ those solely interested in assessing the philosophical status of a past writer's political theory, or indeed the internal logic of his ideas are free to adopt a different stand-point.⁶ Baldus' political conceptions only surrender their historical meaning if the reader bears in mind the particular institutions, entities and relationships with which the jurist was actually concerned. In this respect Baldus is typical of all medieval jurists: their political ideas are of such a nature that their interpreter, unless he keeps contemporary medieval reality firmly before his eyes, can be led into constructing flights of fancy far removed from a jurist's original meaning.

The political and legal world that Baldus experienced was that of mid and late fourteenth-century Italy. He was born in Perugia, the son of a medical doctor, Franciscus Benvenuti, and a member of the established Perugian family, the degli Ubaldi or Baldeschi. It has become traditional to refer to him as Baldus de Ubaldis; but in his juristic writing he always referred to himself as 'Baldus de Perusio', a practice which it might be better for modern writers to follow. As with so many

⁴ For differing modern assessments of Baldus' work see Calasso, *Medio evo del diritto*, p. 378, where he compares Baldus with Bartolus, 'Rivaleggiò col maestro, e, certo, lo superò per alcuni aspetti. Per esempio, per la versatilità dell'ingegno e l'ampiezza d'orizzonte... È sopra tutto meraviglioso per la intensità del pensiero, che porta costantemente i segni di un travaglio interno non comune... Tuttavia, fu meno profondo di Bartolo'; and W. Ullmann in his review of Horn, *Aequitas*, in *Tijdschrift voor Rechtsgeschiedenis*, xxxvii (1969), 281, 'By any standards, Baldus was a jurist and writer of brilliance, ability, depth and width, and had a mastery of the purely juristic material which made him rank far above his teachers, including Bartolus, and his contemporaries.'

⁵ For a recent exposition of the methodological significance of this contextual approach see Skinner, *Foundations*, I, x-xiv.

⁶ See A. J. Black's review of Skinner, *Foundations*, in *Political Studies*, xxviii, 3 (1980), 453-4.

figures of the Middle Ages we do not know when he was born. The date of 1327 is quite possible. It is, however, certain that he died at Pavia on 28 April 1400.⁷ He studied at Perugia and, possibly, Pisa. Johannes Pagliarensis, Franciscus de Tigrinis of Pisa and Bartolus taught him Roman law;⁸ Federicus Petruccius was his master in canon law.⁹ Baldus was, therefore, the recipient of a form of 'apostolic' succession in legal training by the best juristic authorities: Dynus and Franciscus Accursius taught Cynus; Cynus taught Bartolus; and Bartolus taught Baldus. Domenico Maffei has shown recently that less is now known about Baldus' early career than was previously believed.¹⁰ It had been accepted that Baldus received his doctorate *in utroque iure* (in both laws) in 1344, and that he thereupon took up his first chair at Bologna. This interpretation was based upon a passage in the *Practica iudiciaria* attributed to Baldus.¹¹ Solmi, following up doubts expressed in the sixteenth century, accepted that the work was in fact by Tancredi da Corneto, but maintained that the biographical information had been inserted by Baldus himself.¹² Maffei has now shown that Baldus had no hand at all in the *Practica*, and that the biographical material is a complete forgery which was added by Celse-Hughes Descousu to make it appear that the *Practica* was by Baldus, a clear example of the practice common amongst early modern printers whereby a juristic work was attributed to a famous writer in order to secure more sales.¹³ There is therefore now no evidence that Baldus received his doctorate in 1344, nor that he ever lectured at Bologna at this time.¹⁴ The only secure date is 1351 when he was certainly lecturing in law at Perugia and was made one of the *Savi dello Studio* together with his younger brother, Angelus, who was then given a chair at the same university, the start also of a famous juristic career.¹⁵ The previous acceptance of the date,

⁷ For the reconstruction of Baldus' life see notably Scalvanti, 'Notizie e documenti', and also Cuturi, 'Baldo degli Ubaldi in Firenze', and Savigny, *Geschichte*, vi, 208-48.

⁸ See Baldus ad *Feud.*, 2.26, fol. 52r (ed. Pavia, 1495).

⁹ See Baldus ad C.1.3.48, fol. 40v (ed. [Lyon, 1498]).

¹⁰ 'Giuristi medievali e falsificazioni editoriali', pp. 26-33, and 71-4 (Appendice IV: 'Su alcuni nodi della biografia di Baldo degli Ubaldi').

¹¹ Rubr. 'De questionibus circa appellationem', qu. 1.

¹² Solmi, 'Di un'opera attribuita a Baldo', p. 434.

¹³ 'Giuristi medievali e falsificazioni editoriali', p. 33.

¹⁴ Some writers had always expressed caution about the Bologna professorship. Diplovataccius in his life of Baldus made no mention of the passage in the *Practica iudiciaria*, nor of any professorship at Bologna (see his *De claris iuris consultis*, ed. Schulz, Kantorowicz and Robotti, in which Baldus is treated). Tiraboschi, *Storia della letteratura italiana*, v, ii, 486, doubted the Bologna chair because of lack of evidence at Bologna and was followed by Vermiglioli, *Biografia degli scrittori perugini*, 1, 116-18.

¹⁵ See Scalvanti, 'Notizie e documenti', pp. 191 and 280. For Baldus' and Angelus' lecturing careers at Perugia see also Ermini, *Storia*, pp. 122-31.

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1344, for Baldus' doctorate had caused serious problems of biography. For if the date, 1327, were accepted as that of his birth then he was, really, far too young to receive his doctorate in 1344. This led to the postulation of some date before 1327 as the date of his birth.¹⁶ With the demolition of the 1344 date it is now quite possible that Francesco Baldeschi's date for Baldus' birth (1327) could be correct.¹⁷ Baldus, therefore, as far as we know, began his lecturing career at Perugia in or before 1351. Indeed both Baldus and Angelus may well have commenced in that year because it marked the revocation of the Perugian statute prohibiting the commune from paying salaries to Perugian citizens who taught Roman or canon law.¹⁸ Maffei's discovery illustrates that there is a great deal of biographical research still to be done on medieval jurists. This is a very broad and involved subject, and only those aspects of Baldus' career which are relevant to the study of his political ideas will be mentioned here.

Baldus was a professional teacher of law for the rest of his life. It was a profession which encouraged mobility as cities and *signori*, emperors and popes competed to attract the services of the best jurists; in this respect Baldus' career proved no exception. He remained at Perugia probably until 1357, and then taught at Pisa, probably from 1357 to 1358. On 25 June 1358, the Signoria invited him to a chair at Florence; his appointment was confirmed in 1359 and he taught there until 1364.¹⁹ He then returned to Perugia and lectured there from 1365 until 1376. From 1376 to 1379 he was professor at Padua, whence he again returned to lecture at Perugia. In 1390 he took up the invitation of Giangaleazzo Visconti to lecture at Pavia where (apart from a stay in Piacenza for a few months in 1399) he worked until he died. Thus from the point of view of gaining practical experience of different political systems Baldus through his peregrinations around Italy lived under several forms of city-republic, and at Pavia had first-hand acquaintance with the *signoria* of Giangaleazzo Visconti.²⁰ Furthermore his lecture-room must have acted to some extent as a clearing-house for information about a wide range of political systems, because after the death of Bartolus in 1357 the way was left clear for Baldus to develop

¹⁶ See, for instance, Scalvanti, 'Notizie e documenti', pp. 188-92.

¹⁷ Francesco Baldeschi, writing in the second half of the sixteenth century, mentioned in his *Ricordi* these words which, he claimed, had been extracted from a volume of Baldus' *consilia* transcribed by Zanobius, Baldus' son, 'Oritur Baldus an. dom. 1327, die secunda mensis Octobris' (see Scalvanti, 'Notizie e documenti', p. 188, n. 4).

¹⁸ See Scalvanti, 'Notizie e documenti', p. 280.

¹⁹ For details see Cuturi, 'Baldo degli Ubaldi in Firenze'.

²⁰ See Bueno de Mesquita, *Giangaleazzo Visconti*, p. 183.

his reputation as the most famous jurist in Europe, a reputation which attracted pupils from the rest of Europe as well as Italy. Indeed, some of his students achieved eminence in their own right: they included Pierre Roger de Beaufort (who later became pope Gregory XI), and the jurists, Petrus de Ancharano and Paulus de Castro.

Baldus was not, however, just an academic teacher of law. His opinion was sought on a wide variety of legal cases; and there have survived about two and a half thousand of his legal opinions (*consilia*) – the largest number of any medieval jurist. These *consilia* provide an immensely rich and valuable body of sources for Baldus' application of legal theory to the political conditions in which he lived, as is true for his thought on any subject.²¹ The question arises whether the *consilia* are less speculative than his commentaries and more tied down to existing legal tradition because they are designed for the practical purpose of winning legal cases. No such general trend is discernible in Baldus' *consilia* in so far as his political ideas are concerned; but certainly the *consilia* do contain fuller treatment of some aspects of his political theory than do his commentaries, notably of the topics of kingship and the rule of *signori*. Certainly Baldus' *consilia* on political matters reveal that he was involved in delivering his professional opinion on current questions of government, politics and public law. In the twenty-eight years or more of his public life spent at Perugia Baldus was also involved in the practical affairs of his city in other ways. Perugia was essentially a guild-republic,²² and Baldus was deeply involved in this aspect of the city's life as the retained advocate of the merchant guild.²³ From time to time he held public offices; and most important the city (following the practice common in Italy) used its most famous jurist on crucial diplomatic missions. For instance, in 1370 at the crisis of its war with pope Urban V, Perugia, having in March elected Baldus as one of the *Tre della guerra*, chose him on 3 September as a member of an abortive embassy to Urban at Corneto, and again in November sent him on a successful embassy to Bologna to sue for peace with the pope's brother, Cardinal Albano.²⁴ Likewise from 1379 to

²¹ For the medieval juristic *consilia* see in particular Engelmann, *Wiedergeburt der Rechtskultur*, pp. 243–330; Riesenber, 'The consilia literature'; Kisch, *Consilia*; and Coing, *Handbuch*, I, 249–50, 336–41, 359–60, 379 and 382. On Baldus see Lange, 'Consilien des Baldus'.

²² See especially Blanshei, *Perugia*.

²³ Baldus, *Cons.*, 3.435, fol. 124r (ed. Venice, 1575). See also Scalvanti, 'Notizie e documenti', p. 243.

²⁴ Peace was concluded on 23 November and on 4 December at the cardinal's request Baldus gave before the university of Bologna a *repetitio ad C.2.3.27* which is dated (for full details see Maffei, 'Giuristi medievali e falsificazioni editoriali', pp. 71–2).

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1381 Baldus served on occasions as the city's ambassador to Charles III of Durazzo. Baldus may therefore be seen as both jurist and man of affairs with a considerable practical knowledge of politics.²⁵

That Baldus' political ideas can only be fully understood by seeing their relationship to the political world which he knew of either directly or indirectly, is further indicated by a fundamental characteristic of his works. Baldus' main intention in writing, an intention he shared with the whole school of the Commentators as well as canonists, was the accommodation of legal science to contemporary reality. Baldus saw jurisprudence as being concerned with the works of man:

Every art takes nature for its material... but the jurist takes the works of man for his material... Again, he interprets them; and thus our law is founded upon accidentals, that is on cases which emerge... for laws are born of facts... But the common material [of legal science] is not concerned with the works of nature but of man.²⁶

This was an essentially this-worldly orientation and was an aspect of the form of humanism which can be detected as a characteristic of legal science from the time of Irnerius onwards.²⁷ Baldus considered that in human affairs nothing was immutable, and that the natural world suffered change through time.²⁸ Thus he was acutely well aware that human laws and the conditions which brought them forth also changed with time. He was concerned with studying law and human society as they were in his own day. He had therefore a clear sense of the historical gulf between the ancient world and his own period. But he used this understanding not as an inspiration for trying to examine Roman law of the republican or classical periods in its historical context, but as a reason for turning his back on the past and concentrating on the present.²⁹ Thus his historical sense led him to precisely the opposite

²⁵ For Baldus' public offices and above all his diplomatic activity see Scalvanti, 'Notizie e documenti', especially pp. 197–220, and Ermini, *Storia*, pp. 126–8. For Perugia's relationships with the papacy and other Italian powers in Baldus' life-time see Heywood, *History of Perugia*, pp. 182–283; Fop, 'Il comune di Perugia' (for Baldus' service on embassies to the papacy see pp. 71 and 91); and Partner, *Lands of St Peter*.

²⁶ Ad D.1.1.Rubr., fol. 4r (ed. [Lyon], 1498).

²⁷ See Ullmann, *Medieval Foundations*, pp. 50–2. Cp. Cynus ad D.V., Proem, n.8, fol. 2v (ed. Frankfurt, 1578) on legal science: 'Disponens subiectum sive materia nihil aliud est quam actus hominum... quia et dispositum nihil aliud est quam actus hominum.'

²⁸ Baldus, *Cons.*, 3.278, fol. 86r, ed. Brescia, 1491 (= *Cons.*, 1.328, ed. Venice, 1575).

²⁹ Ad D.1.3.32, fol. 18r (ed. [Lyon], 1498): 'Dico ergo quod iura nostra considerant tempus, et in tempore fundant leges suas. Tempus enim quod valde recessit a memoria hominum, perinde reputatur ac si non fuisset, quoniam deletum est, et diverso usu consumptum. Quid enim attinet nobis Cesar, an Pompeius iustius regnaverit? Certe nihil ad nos. Sub Cesare enim vixerunt maiores nostri; igitur et nos vivamus. Non

conclusion from that drawn by the sixteenth-century legal humanists who attempted to study Roman law in its historical context, and to some extent (but not universally) condemned the Commentators for their interpretation of the Roman law in terms of contemporary society.³⁰

The nature of Baldus' writings furnishes a further clue for their interpretation. He did not set out to write political theory as such: his works are entirely juristic in nature. Unlike Bartolus he wrote no professedly political tracts.³¹ Ideas and arguments which the modern interpreter may consider to come under the heading of political theory have to be sought out in Baldus' treatment of public law. Any resulting construction of Baldus' political thought is thus an interpretation of evidence extracted from discourse which is juristic in nature and purpose. Any such interpretation must give due weight to the specific universe of discourse within which Baldus' works are located. The significance and meaning of Baldus' ideas can only be understood in the context of that specific juristic language which was part of a tradition and was directed towards a particular juristic audience. For this reason his ideas have to be understood in the context of the writings of previous and contemporary jurists. Indeed his works form a kind of debate with jurists living and dead. Only if this is realised can any originality on Baldus' part be discerned, and the significance of any addition he might make to the stock of juristic ideas be assessed. A great attraction of studying the political thought of the late medieval civilians and canonists is that they provide a model case-study of a group of writers sharing a common language-structure, or universe of discourse. The political thought of these jurists provided a major and specific contribution to the traditional role which law played as a vehicle for the expression of medieval political ideas – a dominant one earlier in the Middle Ages but still highly important in the thirteenth and fourteenth centuries.

The sheer volume of Baldus' juristic writings is prodigious (somewhat

sunt radices perscrutande, quoniam omnium dei operum nullam potest homo invenire causam. Tempus quod dat sibi vitam, dat sibi legem. Tempus vero quod semper accedit ad nos, illud dat nobis mores, illud dat nobis legem, illo [jillo ed. Venice, 1616; illa ed. Lyon], 1498] vivimus, nutrimur, et sumus, ut dicit Iulianus in hac lege.'

³⁰ See Maffei, *Gli inizi dell'umanesimo giuridico*, and Kelley, *Foundations of Modern Historical Scholarship*.

³¹ Bartolus' political tracts are *De regimine civitatis*, *De tyranno* and *De Guelphis et Gebellinis*. Quagliioni provides the most recent discussion of the texts of these tracts: 'Per una edizione critica'; 'Il "Tractatus de tyrannia" di Bartolo'; 'Alcune osservazioni'; and *Politica e diritto* (critical edition of all three tracts, pp. 130–213). Bartolus' *Tractatus represaliarum* also contains much which is relevant to political thought.

in excess of seven million words), and may well constitute the largest output of any medieval jurist. As regards the quality of Baldus' work only Bartolus bears comparison with him. Certainly Baldus is unique among the medieval jurists as regards the scope of his works: he wrote commentaries on the Roman law, canon law, feudal law and the Peace of Constance, as well as producing his *consilia* and several tracts.³² As regards Roman law Baldus wrote commentaries on the *Institutiones*, *Digestum vetus*,³³ *Infortiatum*, *Digestum novum*³⁴ and *Codex*, I–XI.³⁵ His commentary on the *Libri feudorum* became the *glossa ordinaria*. As regards the canon law Baldus' major work is his commentary on the *Decretales* of Gregory IX;³⁶ he also wrote a *Margarita* on Innocent IV's commentary on Gregory's *Decretales*,³⁷ and part of Baldus' commentary on the *Liber sextus* is known in manuscript.³⁸ Baldus also composed *additiones* to the *Speculum iudiciale* of Guilielmus Durantis. Our knowledge of when his various works were written remains very imperfect. His commentary on the *Libri feudorum* was, according to

³² The tracts, *De pactis* (dated 1350) and *De constituto*, are bound with Baldus' commentaries on the *Corpus Iuris Civilis* in the Lyon, 1585, and the Venice, 1615–16, editions. For Baldus' famous and extremely lengthy *Repetitio* ad C.1.1.1, which amounts to a tract on the question of statute-law, see the modern edition with an introduction in Meijers, *Tractatus duo*. For the other tracts (*De syndicato officialium*, *De iure protomiseos*, *De substitutionibus et earum apparatu*, *De additione cum inventario*, *De carceribus*, *De tabellone* and *De questionibus et tormentis*) see *Tractatus universi iuris* (Lyon, 1549) or *Tractatus illustrium iurisconsultorum* (Venice, 1584), collections which also include *De pactis* and *De constituto*. There is some overlap between Baldus' commentaries and his tracts. *De syndicato officialium* = D.1.16.4 with some verbal differences. The same applies to *De constituto* (= C.4.18.Rubr.), although in the version of *De constituto* inserted in the commentaries material on *statuta mercatorum* is added which is lacking in C.4.18.Rubr. This overlap is not uncommon among the Commentators: Horn, 'Legistische Literatur', pp. 346–7.

³³ We possess both a final version of his commentary on the *Digestum vetus* and also a *lectura antiqua*.

³⁴ His commentary on the *Digestum vetus* is his fullest: that on the *Infortiatum* ends at D.35.1, and the relatively thin one on the *Digestum novum* at D.46.8.

³⁵ The commentary on I–IX is very full; that on the *Tres libri* (i.e. *Codex*, X–XII) is more scanty, and ends at C.11.5.6. The Commentators commonly neglected the *Tres libri* in similar fashion, the great exception being the Neapolitan jurist Lucas de Penna's lengthy and vastly learned *Commentaria in tres posteriores libros Codicis* (see Ullmann, *Medieval Idea of Law*, and id., *Law and Politics*, pp. 113–14). Bartolus' commentary on the *Tres libri* is much fuller than that of Baldus.

³⁶ This gives a very deep and extensive treatment but ends at X.3.2.8.

³⁷ In the printed editions the *Margarita* is arranged by alphabetical entries. Baldus' *additiones* to Innocent's commentary on the *Decretales* contained in MS, Cod. 187, Biblioteca Feliniana Capitolare, Lucca, are also found in the *Margarita*, but are arranged according to the order of titles of the *Decretales*: it seems most likely that this is the earlier ordering and that the *Margarita* is derived from it.

³⁸ In the Vatican Library (Codex Vat. Lat. 5925, fols. 11–23v): see Izbiccki, 'Notes on late medieval jurists'. It should be noted however that on the fly-leaf of this manuscript a denial of the authenticity of the ascription to Baldus is inserted in another hand.

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the Pavia, 1495 edition, produced while he taught at Pavia. The commentary on the Peace of Constance was also produced at Pavia as in it Baldus refers to his commentary on the feudal law as having been already completed. The commentary on the *Decretales* was definitely written in the later 1390s.³⁹ A number of *consilia* can be dated: many clearly date from Baldus' time at Pavia and refer to Giangaleazzo Visconti as lord. Individual *additiones* and *repetitiones* are sometimes dated.⁴⁰ There are clues to dating elsewhere in Baldus' commentaries, the most notable being found in his commentary on C.6.40.3 at the end of which he refers to leaving Padua on 3 November 1379. The problem is, however, that the appearance of a date or a datable event in a commentary does not necessarily prove conclusively that the dating of the whole commentary can be inferred therefrom,⁴¹ a caveat which

³⁹ Baldus ad X.1.3.25, n. 13, fol. 53v (ed. Lyon, 1551) commences an *additio* concerned with the Great Schism thus: 'Et novissime MCCCXCVII. Rex Francie subtraxit obedientiam domino Benedicto' (this subtraction was in fact finally decreed on 28 July, 1398; Swanson, *Universities, Academics*, p. 134); ad X.2.24.1, n.15, fol. 298r (ed. cit.) Baldus says, 'Cum legebam Florentie iam sunt fere anni quadraginta'; ad X.2.24.5, n.1, fol. 299v (ed. cit.) Baldus refers to his commentary on the Peace of Constance; and ad X.3.1.11, n.5, fol. 378v (ed. cit.) Baldus clearly mentions the Bianchi movement of 1399. He also mentions his surprise that he is almost at death's door with the Great Schism unresolved (ad X.1.6.42, n. 23, fol. 97r, ed. cit.). The impression given is that he composed this commentary in the few years before his death, and that death interrupted him in the middle of it.

⁴⁰ Apart from his *repetitio* ad C.2.3.27 (above, n. 24) see for example Baldus ad D.2.15.11 (additio), fol. 141v: 'Istam legem sic ordinavit dominus Baldus de Perusio cuidam scholari suo qui eam habuit in punctis in regio studio Padue, in Mccclxxviii. [Mccclxxviii ed. Venice, 1616; Mccclxxviii ed. [Lyon], 1498] indictione prima. Amen'; id. ad D.1.14.3 (additio), fol. 48r, dated 1366; and his *repetitio* ad C.2.1.3 given at Padua in 1378.

⁴¹ It would clearly be unwarranted to assume that Baldus composed his commentary on C.1.1.1–C.6.40.3 at Padua, and the remainder of his commentary on the Code on his return to Perugia thereafter: ad C.4.19.23 he says, 'in ista scilicet civitate Perusii', and ad Auth., 'Habita' (ad C.4.13.5) mentions 'hoc territorium perusinum'; furthermore his commentary on C.9.2.7 appears to have been written in Florence – 'Dux Athenarum fuit hic tyrannus'; 'ista civitas ivit in exercitum contra Lucam'; 'dum Pandulphus fuit hic generalis capitaneus guerre' – and that on C.8.1.3 is dated 1365 and could thus have been delivered at Florence. Baldus' commentary ad C.7.39.7 is, however, clearly written between 1378 and 1389 since he refers to the 'schisma quod est inter Vrbanum sextum et Clementem septimum'. Tamassia, 'Baldo studiato nelle sue opere', pp. 4–5, accepts Savigny's opinion that the commentary on the first part of the *Digestum vetus* was the course which Baldus taught at Perugia after his return from Padua (see *Geschichte*, vi, 222–3). There is however no strong evidence to suggest such a precise dating. Vague indications exist: for instance ad D.1.3.3 Baldus remarks, 'si papa Vrbanus hodie resurgeret non recuperaret papatum' (he could be referring to Urban V or Urban VI); and ad D.1.7.15 he mentions 'illi duces infidelium qui iure belli submiserunt se hoc anno regi Vngarie' (all that can be said is that this most likely refers to a campaign of Lewis I [d. 1382]). We do in fact know that there existed several versions of Baldus' commentary on the *Digestum vetus*: apart from his main commentary

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clearly does not apply to his commentary on the *Decretales*. Given the great length of Baldus' academic career, the certainty that there were several versions of the commentary on the *Digestum vetus* and the probability of the same as regards that on the *Codex*, an obvious problem of interpretation arises: to what extent did he change and develop his ideas on political matters? In general our scanty knowledge about the dates of composition of the various parts of his works does not permit acceptable answers to this question. Those few occasions, however, on which the view expressed in a known late work clearly differs from what appears to be an earlier opinion, will be noted. Otherwise the *corpus* of Baldus' writings has to be accepted as something given without considerations of the dating of the various parts.

Baldus' works present a vast textual problem. There exist no modern critical editions of his writings, the only exceptions being those of a few individual *consilia* and his commentary on C.1.2.16.⁴² In this respect Baldus shares the fate of all the Commentators: with tiny exceptions⁴³ their works lack critical editions. As a result modern research on Baldus and other Commentators has been based on early modern printed editions with some small reference to manuscripts. A few autograph *consilia* by Baldus survive;⁴⁴ but there appear to exist no holographs of Baldus' commentaries.⁴⁵ The sheer size of the

the editions contain excerpts from a *lectura antiqua*, a *lectura secunda* and *additiones* (which could have been composed before or after the main commentary and could in part be fragments from other *lecturae*). This illustrates that Baldus produced different versions at various stages of his career. Indeed the main commentary on the *Digestum vetus* may well have been a final one which he produced towards the end of his life – see his concluding remarks in *Cons.*, 1.84, fol. 33r, ed. Brescia, 1490 (= *Cons.*, 2.217, ed. Venice, 1575) which from internal evidence was written after 1388: 'Vltimo rogo vos quod alia vice mittatis mihi tot chartas, quia non occupat me tantum lectura maioris libri digesti veteris quantum scriptura vestrarum chartarum.' We do not however know for certain the dates of composition of the various versions of this commentary. Likewise one possible solution of the internal dating problems of his commentary on the Code would be to suggest that it may be a later composite of parts of different lectures given at a variety of times and places.

⁴² See the works of Rummer, Kirshner, Quaglioni and Bonolis cited above, p. 1, n. 2, and Kirshner and Pluss, 'Two fourteenth-century opinions on dowries'.

⁴³ Notably Quaglioni's work on the text of Bartolus' political tracts (see above, p. 7, n. 31).

⁴⁴ For example that transcribed by Rummer (see above, p. 1, n. 2). See also H. Kantrowicz, 'Introduzione: la vita di Tommaso Diplovattaccio', pp. 43*-44*, and 80*.

⁴⁵ This is only to be expected since it is the case with the other Commentators. For the complicated problem of the extent to which the commentaries of Italian jurists were the *reportationes* of lectures given (most commonly sketched out in advance in writing by the jurist and subsequently worked up by him) or were composed in full by the jurist himself see Horn, 'Legistische Literatur', p. 321. Certainly in the editions of

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problem of establishing a critical text of Baldus' works is indicated by the large number of printed editions in existence ranging from very early ones, such as the Venice, 1474, edition of his commentary on *Codex*, I–III (held by Cambridge University Library) and the Naples, 1476, first edition of his commentary on the *Digestum vetus*, to the Venice printing of all his Roman law commentaries in 1615–16,⁴⁶ and also by the vast bulk of manuscripts of Baldus' works known to be scattered across Europe and America.⁴⁷ The enormous task of establishing a critical text could only be accomplished by a team of scholars. This textual study urgently requires to be done because of the textual discrepancies among the editions⁴⁸ and the manuscripts. The establishment of a critical text of Baldus' works has not been the purpose of this study which is based on fifteenth-, sixteenth- and early seventeenth-century printed editions of the works of Baldus and other jurists, although some reference has been made to manuscripts where printed editions are lacking.⁴⁹ A few textual emendations are here suggested where textual corruption has clearly resulted in nonsense or grammatical error; all such emendations together with the original reading are noted and are introduced as sparingly as possible. C. N. S. Woolf when confronting the same problem in the works of Bartolus considered the variations between editions to be merely verbal and therefore of little account.⁵⁰ Such an attitude must be received with some reservation: a critical text remains highly desirable. Yet there is currently no prospect that such a project is going to be started let alone finished within a foreseeable period. In any case even if a critical text were produced the possibility that there might be some element of *reportatio* in Baldus' Roman law commentaries means that we could not even then be totally sure that his original words had been established. It seems necessary, therefore, to proceed with the major task of examining Baldus' ideas on important topics so long as it is realised that the state of the text

Baldus' commentaries the terms *commentaria* and *lectura* are interchangeable and do not indicate the presence or absence of *reportatores* (I agree with Horn, *ibid.*, p. 321, n. 9). Whatever the possible role of *reportatores* in the transmission of his other commentaries, that on the *Decretales* gives the very clear impression of having been composed by the jurist himself. Baldus' *additio* ad D.2.15.11 (above, p. 9, n. 40) appears to be a *reportatio*.

⁴⁶ For some details see Horn, 'Legistische Literatur', p. 327.

⁴⁷ For MSS of Baldus' works other than his commentaries on the canon law see Dolezalek, *Verzeichnis der Handschriften*, III. No such wide-ranging list of MSS of his canon law works as yet exists; but for some details see Fiumi, 'Alcune ricerche sui manoscritti'.

⁴⁸ This becomes rapidly obvious to any student of Baldus' works: see, for example, the remarks of Maffei, 'Giuristi medievali e falsificazioni editoriali', pp. 72–3.

⁴⁹ Apart from the MS of the commentary on the Sext already mentioned some *consilia* exist only in MS (see below, p. 14).

⁵⁰ *Bartolus*, p. xiii, n. 1.

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puts some distance between us and Baldus. Norbert Horn maintains that the modern scholar, because of the textual problems, studies not the original jurist directly, but the jurist of historical tradition, that is the canon of his works as accepted in early modern editions:⁵¹ this is really a way of presenting the problem stated. The question remains of whether all the works attributed to Baldus are indeed by him. Research at present suggests that only the *Practica iudiciaria* and some *consilia* are by other hands. In this respect Baldus appears to have escaped far more lightly than Bartolus whose name was often ascribed to juristic works in the late Middle Ages to provide them with a more distinguished paternity.⁵²

Unless otherwise stated I have used the [Lyon], 1498, edition of Baldus' commentaries on the *Digesta* and *Codex*, I–IX (held in the Old Library of Queens' College, Cambridge); the Venice, 1615, edition of his commentary on the *Institutiones*; the Pavia, 1490, edition of his commentary on *Codex*, X; the Pavia, 1495, edition of his commentary on the feudal law and the Peace of Constance; the Lyon, 1551, edition of his commentary on the *Decretales*; the Lyon, 1525, edition of his *Margarita* on Innocent IV's commentary on the *Decretales*; and the Frankfurt, 1592, edition of his *additiones* to the *Speculum iudiciale* of Guilielmus Durantis. I have used throughout the Brescia, 1490–1, edition of Baldus' *consilia* (held in the Library of Gonville and Caius College, Cambridge). This edition is in five books: 1, 2 and 4 were published in 1490, and 3 and 5 in 1491. Between 1486 and 1653 there were produced numerous printed editions of his *consilia*. In comparing editions I have noticed considerable variation in the ordering of *consilia* within the overall structure of five books: the same *consilium* can, for example, appear in a different book in different editions. Much confusion exists: *consilia* are, for instance, combined together or separated in a different manner in different editions. To be able to say with accuracy that one edition of the *consilia* corresponds completely with another it would be necessary to compare every word. From 1516 the editions of Baldus' *consilia* were enlarged by the addition of the

⁵¹ 'Legistische Literatur', pp. 318–19.

⁵² For the complex problem of false attributions to Bartolus see Calasso, 'Bartolo da Sassoferrato', p. 645; Paradisi, 'Le glosse di Bartolo da Sassoferrato'; Ascheri, *Saggi*, pp. 28–73; and Horn, 'Legistische Literatur', p. 317. It is particularly relevant to Bartolus' treatment of public law (and hence his political thought) that modern scholars accept that much of the commentary on Book I of the *Digest* attributed to Bartolus in the printed editions is not in fact by him but is put together from the works of several jurists (the commentaries on D.1.1.9 and D.1.3.32 form however crucial exceptions: they are by Bartolus), and that the commentary on the *Institutes* also attributed to Bartolus is in fact by Jacobus de Ravannis.

previously unedited *consilia* which Cardinal Savelli claimed to have obtained from Baldus' great-grandsons: whereas the Brescia, 1490-1, edition purports to contain 2040 *consilia*, the [Lyon], 1543, edition (held in the Wren Library, Trinity College, Cambridge) and the Venice, 1575, edition purport to contain 2518 *consilia*.⁵³ The references which I have seen to Baldus' *consilia* in modern secondary works appear to correspond with the ordering of the [Lyon], 1543, and the Venice, 1575, editions. I have, however, used the Brescia, 1490-1, edition as my basic one because the state of the text is very good (better, for instance, than that of the other editions mentioned), and because it is the one used by Diplovataccius in his life of Baldus.⁵⁴ Modern legal historians attach great weight to the judgment of Diplovataccius. It may be significant that Diplovataccius, whose *De claris iuris consultis* was put into final form after the appearance of editions including Savelli's additions, nevertheless persisted with the Brescia edition.⁵⁵ Diplovataccius maintained that Baldus himself originally divided his *consilia* into five books.⁵⁶ The editors of the Brescia edition claim to have reproduced the *consilia* from Baldus' original manuscript.⁵⁷ The internal ordering

⁵³ For a discussion of Savelli's role see Bonolis, *Questioni*, pp. 4-5: the [Lyon], 1543, edition (but not the Venice, 1575) notes at the beginning of Book 1 of the *Consilia*, 'Inter alias curas Baldi quoque eterne memorie iurisconsulti libros si quod ille occultius scripsisset a Petro Juliotto atque Antonio pronepotibus eius et per lineam hereditibus acquisivit [i.e. Joannes Baptista Sabellus]. Neque magis letari unquam visus est quam cum illius viri consilia in triginta sex amanuenses (ut ita dixerim) libros congesta consequutus est que statim in quatuor volumina exscribi curavit denique inter delicias habuit.' I have also used the Lyon, 1559, edition: whereas this in the main corresponds with the [Lyon], 1543, and the Venice, 1575, editions, it also differs in some respects from these in internal ordering. Lange in 'Consilien des Baldus', p. 18 also notes these variations in the editions of Baldus' *consilia*, although he does less than justice to the Brescia edition: 'Einige Ausgaben enthalten sehr viel weniger Consilien. Z.B. bringt die Ausgabe Brixiae nur 926 Gutachten' (n. 76) - Lange may well only have had access here to Books 1 and 2, which purport to contain 927 *consilia* (the British Library, for instance, possesses a volume consisting solely of Books 1 and 2). Baldus' two *consilia* on the Great Schism are not contained in the editions of his *consilia*, but are printed elsewhere (see below, p. 22, n. 18).

⁵⁴ This is made clear in Diplovataccius, *De claris iuris consultis* (ed. cit.).

⁵⁵ For the dating of this work by Diplovataccius see the full discussion in Ascheri, *Saggi*, pp. 100-9. Another possibility (in the light of Ascheri, p. 103) is that the *vita Baldi* was completed before 1516 and not revised.

⁵⁶ 'Item volumina quinque consiliorum composuit' (ed. cit.), p. 298.

⁵⁷ Books 1 and 3 claim to be 'ex proprio originali suo exemplata', and Book 5 begins, 'Excellentissimi Iuris Cesarei pontificisque interpretis domini Baldi perusini Consiliorum quinta pars: hac prima impressione ab elegantissimo originali suo in lucem edita', and ends, 'Excellentissimi Monarche domini Baldi Perusini iuris Cesarei pontificisque Interpretis: Consiliorum quinta pars nuperime elucubrata ac diligenti castigatione emendata cum ipso originali collatione habita.' It is not however known whether Diplovataccius' statement that Baldus composed five books is derived from the Brescia edition or sources unavailable to us.