

BARTOLOMEUS BOLOGNINUS, Commentary on the Imperial Constitution "Authentica Habita" (1154-1155) [*Repetita commentatio super Authentica Constitutione Habita*]

In Latin, decorated manuscript on paper

Italy, Bologna, dated 12 January 1492

42 ff., preceded by 6 paper flyleaves (in fact a blank quire of 8 leaves less two canceled leaves) and followed by one flyleaf, apparently complete (collation: i^s, ii¹⁰ [of 12, with viii and ix excised between ff. 15-16], iii^s, iv¹², v⁶ [of which last 2 leaves of quire are blank]), on paper (watermarks close to Briquet, no. 11711, Bologna 1480-1490, and Briquet, no. 4754, Bologna, 1484), written in a tight and slightly sloping humanistic cursive minuscule, in light brown ink, ruled in blind (justification 230 x 120 mm), one 3-line high opening initial in blue with red penwork extending in the margin (f. 1), one 3-line high Roman capital initial in pink highlighted with white tracery on a burnished gold ground (f. 2). Bound in a contemporary binding of beige-pink doeskin over pasteboard, leather ties (some wanting), back sewn on three raised thongs, fifteenth-century pastedowns copied in in a littera bononiensis [text on two columns, colored blue or red initials with penwork, a number of manica pointing in the margins of pastedowns, upper pastedown with excerpts from Bonifatius VIII, Liber Sextus Decretalium, Sextus Lib. V. tit. XI. c. XIV-XVII, lower pastedown with excerpts from same work, Sextus, Lib. V. tit. XI, c. VIII-XVII, excerpts published respectively in E. Friedberg, Corpus Iuris Canonici, Leipzig (1881), col. 1103-1104 and col. 1101-1102] (Binding a trifle worn, but nonetheless in its contemporary condition). Dimensions 314 x 214 mm.

This the only known manuscript of a legal commentary on the Imperial Constitution promulgated in 1155 by Frederick Barbarossa in a dedication copy to Giovanni II Bentivoglio dated 1492. Considered a landmark for the development of medieval universities, the Constitution ensured juridical privileges, rights, and protection to students and masters of Bologna. Unedited and written in the hand of a little-studied author Bartolomeo Bolognini, the commentary merits fuller study in the light of the debates that animated the school of law in fifteenth-century Bologna.

PROVENANCE

1. Dedication copy (and in all likelihood autograph) of this commentary, written for Giovanni II Bentivoglio (1443-1509), ruler of Bologna from 1463 to 1506. It is possible that Bentivoglio's arms might have figured in the lower margin of f. 1: this portion of the manuscript has been cut out (see paper restoration on f. 2). The Bentivoglio family was expelled from Bologna in December 1506, their castle was sacked and the library was looted. The colophon placed at the end of the manuscript indicates the work is dedicated to Giovanni II Bentivoglio ("[...] et ad deus perpetuamque memoriam illustrissimi principis domini Jo[hanni] Bentivoli...") and composed by Bartolomeo Bolognini ("inter alios iuris scolares") who copied the manuscript in his own hand ("manu propria scriptam tradidi"). The dedication to Giovanni II Bentivoglio is also stated in the dedicatory preface placed at the beginning: "[...] non ne pre oculis principem nostrum illum Io[hannem] Bentivolum..." (f. 1).

2. Near contemporary inscription copied on upper part of upper pastedown concerning clerics (?): "Nota hic textum clarum quod interdicto clero non intellegitur interdictus populus..."

3. European Private Collection.

TEXT

ff. 1-1v, Bartholomeus Bolognini, Commentary on the constitution "Authentica Habita" issued by Frederick I of Hohenstaufen (1155), Dedicatory Preface, incipit, "Omnes homines natura scire desiderant inquit phylosophorum facile princeps Aristoteles primo metaphysice idque summum eloquentie patrem M.T. In officiis dum de prudentia loquitur scripsisse constat recte igitur Iulianus iureconsultus optimus...sed quid plura non ne preoculis principem nostrum illustrissimem Io[hannem] Bentivolum adesse video patrie patrem recti cultorem virtutisque non minus amatorem quam defensorem fidissimum..."; explicit. "[...] quam diligo servo ac colo colamque dum vita fruare";

"Omnes homines natura scire desiderant" is the incipit of Aristotle's *Metaphysics*, Book I. Aristotle's works were constantly read in the *studia*, and the fact that the present work opens with a quote from Aristotle are evidence to the Philosopher's persistent influence on the culture of Bolognese University.

ff. 2-42, Bartholomeus Bolognini, Commentary on the constitution "Authentica Habita" issued by Frederick I of Hohenstaufen (1155), incipit, "HABITA. Ista constitutio secundum dominum Saly[ceto] hic est no[tabilis] et esset licteris aureis scribenda et doctores eam ellegantissime comentarunt maxime ipso dominus Bartholomeus de Saly[ceto] et dominus Bal[dus]. Et hec constitutio secundum Jac[obo] Butriga et Cynius dividitur in tres partes secundum Saly in quinque secundum Bal[dum]..."; explicit, "[...] sed ultimo et sic finis quero aliquis [...] cum uno scolare secundum quam dispositionem erit questio terminanda et quod secundum ius canonici si fit contra scolares parisienses voluit [hostes] in suum de foro campe [...] et ad eius ibi dicta me remicto"; colophon: "Ad laudem egregie et glorium optimi maximique memoriam dei et ad deus perpetuamque memoriam illustrissimi principe dominum Jo. Bentivoli D. mei sing[...]. Ego Bartholomeus Bologninus [inter] alios iuris scolares minimus solennem hanc et ellegantie aut[entica] habita situatam in t[itulo] C. ne filius pro patre repetii sub anno incarnationis D[omini] .MCCCCXCII. [1492] die vero .xii. ianuarii eamque in signum non simulare benivolentie sed vere ac intergerrime fidei manu propria scriptam tradidi" [published in Ingolstadt by A. Weissenhorn, 1542 (see Literature below), ff. 1v-34v, printed text followed by an *Index in repetitam commentationem B. Bolognini super Authentica Constitutione Habita. C. ne Filius pro Patre...*];

f. 42v, blank.

This manuscript contains a legal commentary [or "repetitio": here a small treatise on a specific passage of the *Corpus iuris civilis*] on the constitution "Authentica Habita" issued by Frederick I Barbarossa in 1155, composed by Bartholomeus Bolognini [or Bartolommeo] (died c. 1498?), and dedicated to Giovanni II Bentivoglio in 1492. The author quotes a great number of *auctoritates* with authors such as Bartolus de Sassoferrato, Baldus de Ubaldis, Cynus de Pistoia, Jacobus Butrigarius, Albericus de Rosate *et passim*. Known in this sole manuscript, the commentary was published in a very rare imprint under the following title: Bartolommeo Bolognini, *Super authentica constitutione habita...*, Ingolstadt, Alexander Weissenhorn, 1542. The work

might also be included in Pompeo Limpio, *Repetitionum in varias iuris civilis leges...* Vol. VII, Lyon, 1553 and Venice, 1608 [to be verified, as listed in G. Fantuzzi, vol. II, 1782, p. 257]. A cursory comparison of the manuscript and printed versions of the work seems to indicate that they differ in numerous passages, our manuscript appearing more complete. The Dedicatory preface found in our manuscript (ff. 1-1v) is not printed and is replaced by a preface composed by Wolfgang Hunderus, the German humanist responsible for the Ingolstadt 1542 edition. In this preface, Wolfgang Hunderus speaks of two manuscripts dedicated by Bartolomeo Bolognini respectively to Giovanni II Bentivoglio (in all probability the present codex) and another dedicated to the D. Felino Sandeo, Bishop of Penne: "[...] tamen cum ipse Bologninus suam commentationem bis emiserit ac primum Io. Bentivolo, principi Bononiensis Reipublicae, deinde adfini suo D. Felino Sandeo, episcopo Pennensi nuncupaverit..." (Wolfgang Hunderus, Preface, ed. Ingolstadt, 1542). Felino Maria Sandeo (1444-1503) or Felinus, was an Italian canonist. We have not found trace of the second codex in a first but succinct inquiry in institutional collections.

The first universities in Europe began as private corporations of teachers and their pupils. Bologna vied with Paris for the honor of being the first European university. The traditional account states that sometime in the late eleventh century students began to gather at the feet of lawyers who looked to Roman law as the guide to creating legal principles for society. A number of men began to teach civil and canon law at Bologna, attracting a growing number of foreign (non-Bolognese) students to the city. Since these masters and students had no legal existence away from their homes, they began to associate themselves (*universitas*). Masters and students realized they needed protection against local city authorities. They petitioned secular power for privileges.

Emperor Frederick Barbarossa of Hohenstaufen (ruled 1152-1190) issued his constitution "Authentica Habita" in 1155 when he first came to Italy to receive the crown. In May 1155, near Bologna, he met the masters and students of the School of Law. According to the anonymous author of the *Carmen de gestis Frederici I*, the scholars asked him to forbid the exercise of the right of reprisal(s) against foreign scholars (seizure of person or property to satisfy debts incurred by their compatriots) and to grant them freedom of movement "so that all men minded to study be free to come and go and dwell in security" [*ut nemo studium exercere volentes impediatur stantes nec euntes nec redeuntes*]. Frederick I Barbarossa immediately issued the celebrated Constitution, in which he affirmed the pre-eminent value of scientific knowledge, and recognized as deserving protection all persons who were obliged to live far from their country in pursuit of higher learning. He granted professors of civil law and students the same rights already enjoyed by canon law students (who as clerics enjoyed a number of privileges *ipso facto*). No one should dare harm or wrong scholars, or try to recover debts contracted by fellow countrymen. Furthermore, any scholar summoned to appear in court should choose to be tried by his own masters or by the bishop's courts (see Stelzer, 1978, pp. 123-165). The constitution *Habita* was inserted in Justinian's Codex, lib. 4, tit. 13, *Ne filius pro patre*, showing Frederick's wish to revive Roman law and his desire to incorporate the new constitution in the legal system of the Holy Roman Empire. This particularly suited the masters of Civil and Roman law of Bologna as teachers and interpreters of Justinian's laws. The constitution of Frederick I *Habita* is referred to in the standard books on medieval universities as one of the great landmarks in the development of the medieval *studia generalia*. It "marks one of the great moments in medieval learning" (M. Powicke, "Three Studia Generalia," in *Prague Essays*, 1949, p. 32).

The text of the constitution of Frederick I "Authentica Habita" is found in a number of manuscripts, the better and earliest manuscript being Cambridge (Mass.), Harvard Law School Library, MS 64 (12th century), f. 129 (see De Ricci, *Census of Medieval and Renaissance Manuscripts...* (1935), p. 1035). The text begins: "Imperator Federicus universis sui regni fidelibus. Habita super hoc diligenti inquisitione episcoporum, abbatum, omnium iudicum et aliorum procerum sacri palatii examinatione..." (published in Stelzer, 1978, p. 165; another edition is published in Koeppler, based on Vatican, Vat. latinus 1427, ff. 92v-93 (Koeppler, 1939, pp. 606-607). The authentic "Habita" was also included at the beginning of the Ingolstadt, 1542 edition of the commentary of Bartolomeo Bolognini, but not in the present manuscript.

Little is known for certain concerning the author of the present commentary, partly because he has not yet been fully studied. Apparently a doctor in law, most likely a civilian given the references of his commentary, Bartholomeus Bolognini could very well be the "legum doctor et miles" quoted in the *Matricola* of lawyers and jurists of Bologna: "D. Bartholomeus Hieronimi de Bolognini, legum doctor et miles," who died in the late 1490s (Trombetti Budriesi, 1990, p. 187). What is known of Bartholomeus Bolognini can be found in G. Fantuzzi, *Notizie degli scrittori bolognesi...* II, Bologna, 1782: "Un altro Bartolommeo Bolognini...fu figliuolo di Girolamo e di Francesca di Bente di Andalo Bentivogli...fu del Collegio de Giudici, fu cavaliere..." (Fantuzzi, vol. II, 1782, pp. 256-257). Still to be determined is whether the present Bartholomeus Bolognini can be related in some manner or other to the famous Bolognese jurist Ludovico Bolognini. There is a fair chance given the similar training and ties to the *studia* of Bologna. Ludovico Bolognini (1446-1508) was a pupil of the distinguished jurist Alessandro Tartagni, doctor in civil law in 1478 and in canon law in 1490. He taught civil law at Bologna from 1469 to 1472, and Roman Law in Ferrara. His name figures amongst the list of Bologna professors until 1507 (see L. Rubod, "Louis de Bologne ou Ludovicus Bologninus," in *Dictionnaire de droit canonique*, Paris, 1957, vol. VI, col. 679-680). Finally there is a Bartholomaeus Bologninus author of an *Epithoma metrica in Lib. XV. Metamorphoseon versibus elegiacis...* (Bononiae, Johannes Jacobus de Fontanesis, 1492; see Sorbelli, A. *Indice degli incunabuli della Biblioteca Comunale dell'Archiginnasio*, Bologna, 1908, p. 19).

We have also traced two other sources to be explored: a letter from Politian (1454-1494) to Bartholomeus Bolognini found in Florence, Bibl. Riccardiana, MS 974, fol. 64 [see Kristeller, I, p. 213] and a collection of *Carmina* and *Rime*, in Sevilla, Bibliotheca Capitulare y Colombina, MS 7-1-38: "Frater Bartholomaeus de Bononia Carmina and Rime. At the end: "Iste liber est mei fratris Bartholomei de Bononia compositum, dictatum et compilatum per me ligatum et minatum anno domini 1491..." (see Kristeller, IV, 623b).

Also still to be elucidated are his ties to the Bolognini family of silk merchants and art patrons of the late fourteenth and early fifteenth centuries (see the Cappella Bolognini in the Basilica San Petronio; the Palazzo Bolognini, both in Bologna; the Bolognini owned manuscripts, such as Vatican, Ottob. Lat. 1933). The question of the exact identity and works securely attributed to Bartholomeus Bolognini remains to be properly studied in light of the documents and the importance of this family in Bologna throughout the fourteenth and fifteenth centuries. The present manuscript constitutes the fullest and most accomplished of his works and is most likely an autograph. It survives as a witness to his close ties with and admiration for Giovanni II Bentivoglio, patron of arts and protector of the Bologna *Studia*.

This text was composed and copied in Bologna where the University and its school of law flourished amid political instability. Bologna underwent a major political change in 1445 when the Bentivoglio family succeeded in becoming de facto "first citizens." Giovanni II Bentivoglio (1443-1508) became "first citizen" in 1463 and remained so until 1506 when papal troops entered the city. During the latter part of the century, Giovanni II Bentivoglio increasingly became patron and prince of the university and drew university humanists into his orbit such as Puteolano, Filippo Beroaldo the Elder, Antonio Urceo (called Il Codro). The great legal traditions were still very much alive in Bologna, and the scholars were a source of advisors and courtiers to the reigning family. The fact that the present manuscript discusses Roman law and rights of lay students and masters, rather than the rights of Canon law clerics, is significant in light of the antagonisms between the papacy and the secular Bentivoglio. The latter would have appreciated the references to Roman and Civil law, as opposed to the declining Canon law so tied to the Papacy. The present manuscript thus merits further study for the light it sheds on the debates that animated the school of law and the various *studia* at the end of the fifteenth century in Bologna.

LITERATURE

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Ady, C. M. *Materials for the History of the Bentivoglio, Signoria in Bologna*, Royal Historical Society Transactions, Series IV, vol. 17, 1934.

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[Exhibition]. Manfron A. and A.-M. Scardovi (ed.). *La stagione dei Bentivoglio nella Bologna Rinascimentale. Le testimonianze librerie* (21 ottobre 2006 – 7 gennaio 2007), Bologna, Minerva Editions, 2006.

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Trombetti Budriesi, A.-L. *Gli Statuti del collegio dei dottori, giudici e avvocati di Bologna (1393-1467) e la loro matricola (fino al 1776)*, Bologna, 1990.

Ullmann, W. "The Medieval Interpretation of Frederick I's *Authentica Habita*," in *L'Europa e il Diritto comune. Studi in memoria di Paolo Koschaker*, I, Milan, 1954, pp. 99-136.

Zeillinger, Kurt. "Das erste Roncagliose Lehensgesetz Friedrich Barbarossas, das Scholarenprivileg (*Authentica Habita*) und Gottfried von Viterbo," in *Römische Historische Mitteilungen* 26 (1984), pp. 191-217

ONLINE RESOURCES

On the Constitution "*Authentica Habita*"

<http://www2.unine.ch/webdav/site/droit/shared/documents/>

Jacques Verger, "La mobilité étudiante au Moyen Age":

http://www.inrp.fr/publications/edition-electronique/histoire-education/INRP_RH050_4.pdf

The University of Bologna:

<http://www.newadvent.org/cathen/02641b.htm>

Special Collections New York City Bar:

<http://www.abcny.org/Library/SpecialCollections.htm>

Amongst its incunables, the site quotes the following reference: Maino, Giasone dal. Jason Maynus super secundo parte codicis Venetiis : per Bernardinum Benalius, 1496 Bound with: (a) Florianus, de Sancto Petro Bononiensis. *Lecture Peregrina et Ravissima ... exacta De finibus regundor* (Bononiae, 1491?; 40 leaves) -- (b) Bartholomaeus Bologninus. *De privilegiis [ecclesiasticis?]* (Bononiae, 1498 Jan 15) -- (c) Accolti de Aretio, Franciscus. *Commentaris de soluto matri* (Henricus de Colonia Senis, Cologne, 1486 July 15) -- (d) Nicolai de Neapoli. *Super tribus libris codicis Paduae* (Christophorus de Canibus, 1491 Oct. 12; 38 leaves) -- (e) Bartholomeus Susinus Senensis. *Solemnis repetitio* (undated, 30 leaves). We have not found trace of this imprint (b).

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