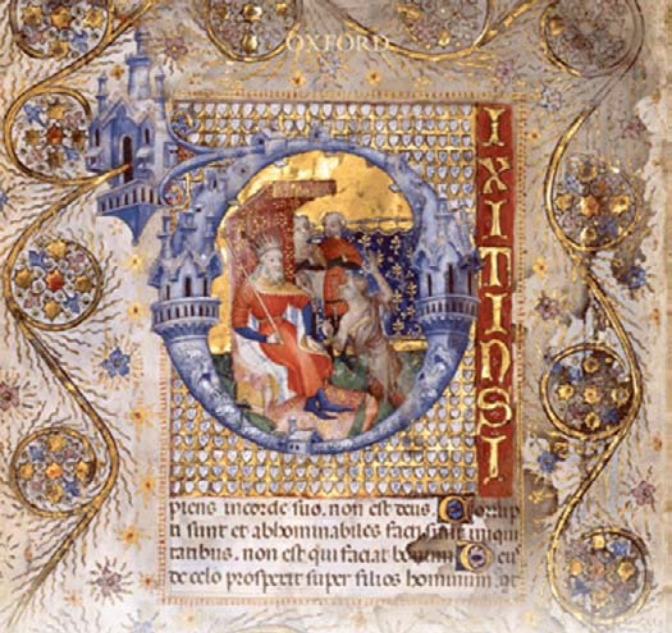

ABSOLUTISM in RENAISSANCE MILAN

Plenitude of Power under the Visconti and the Sforza 1329–1535

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This volume is dedicated to my husband, Robert Black, on whose encouragement and support I have always been able to rely.

Absolutism in Renaissance Milan shows how authority above the law—once the preserve of pope and emperor—was claimed by the ruling Milanese dynasties, the Visconti and the Sforza, and why this privilege was finally abandoned by Francesco II, the last Sforza duke (d. 1535).

As new rulers, the Visconti and the Sforza had to impose their regime by rewarding supporters at the expense of oppenents. That process required absolute power, also known as 'plenitude of power', meaning the capacity to overrule even fundamental laws and rights, including titles to property. The basis for such power reflected the changing status of Milanese rulers, first as signori and then as dukes.

Contemporary lawyers, schooled in the sanctity of fundamental laws, were at first prepared to overturn established doctrines in support of the free use of absolute power: even the leading jurist of the day, Baldo degli Ubaldi (d. 1400), accepted the new teaching. However, lawyers eventually came to regret the new approach, and to reassert the principle that laws could not be set aside without compelling justification. The Visconti and the Sforza too saw the dangers of absolute power: as legitimate princes they were meant to champion law and justice, not condone artbitrary acts that disregarded basic rights.

Jane Black traces these developments in Milan over the course of two centuries, showing how the Visconti and Sforza regimes seized, exploited, and finally relinquished absolute power.

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Preface

The original inspiration for this study came to me many years ago when I saw that the early Visconti were in the habit of issuing acts from their plenitude of power. It struck me as incongruous that mere signori used a prerogative which represented the supreme authority of the pope. The process of discovering how the Visconti could justify their claim to such an august prerogative, what use they made of it, and what lawyers had to say on the subject has led ultimately to the present volume.

The transformation of my first thoughts into these pages was made possible only with much support and encouragement. I should like to thank the British Academy for awarding me a Research Grant and a Larger Research Grant, as well as the Society for Renaissance Studies for their Fellowship: with these grants I was able to spend time gathering material in Milan and Florence. I owe a great debt to Paolo Grossi and all the staff at the Dipartimento di Teoria e Storia del Diritto at the Università degli Studi di Firenze for allowing me to work freely in the library in Piazza Independenza and to explore the underground shelves there. I should like to thank, too, the Sezione di Storia del Diritto Medievale e Moderno, as well as the Dipartimento di Scienze della Storia e della Documentazione Storica of the Università degli Studi di Milano, for giving me access to their unrivalled collections. I do thank most warmly Giorgio Chittolini for enthusiastically supporting an investigation into plenitude of power in Milan and for introducing me to the circle of talented young scholars currently working on Lombard topics. I also owe much to the advice, support, and encouragement of many friends, particularly Lorenz Boeninger, Alison Brown, Luca Ceriotti, Simon Ditchfield, Simon Ellis, George Holmes, Julius Kirshner, John Law, Franca Leverotti, John Najemy, Nicolai Rubinstein, Laura Stern, and Gian Maria Varanini. Finally, I thank Bob for his invaluable help over the years.

Wallingford

30 January 2009

List of Abbreviations

ADMD	*Antiqua ducum Mediolani decreta* (Milan, 1654)
ASL	*Archivio storico lombardo*
ASMi	Milan Archivio di Stato
Barb. Lat.	Barberinus Latinus
BAV	Biblioteca Apostolica Vaticana
BSPSP	*Bollettino della Società Pavese di Storia Patria*
C.	*Codex Justiniani*
Clem.	*Clementinae*
D.	*Digesta Justiniani*
Dumont	J. Dumont, *Corps universal diplomatique du droit des gens,* 16 vols (Amsterdam, 1726–31)
ff.	*Digesta Justiniani*
Inst.	*Institutiones*
l.	lex
Luenig	J. C. Luenig, *Codex Italiae diplomaticus,* 4 vols (Frankfurt and Leipzig, 1725–35)
Osio	L. Osio, *Documenti diplomatici tratti dagli archivi milanesi*, 3 vols (Milan, 1864–72)
RIS	*Rerum italicarum scriptores: raccolta degli storici italiani dal cinquecento al millecinquecento ordinata da L.A. Muratori*
Stilus	*Stilus cancellariae. Formulario visconteo-sforzesco*, ed. A. R. Natale (Milan, 1979)
s.v.	*sub voce/vocibus*
VI	*Liber sextus*
X.	*Decretales Gregorii IX* or *Liber extra*

Rulers of Milan, 1287–1535

Matteo Visconti I	1287–1302
Guido della Torre	1302–11
Matteo Visconti I	1311–22
Galeazzo Visconti I	1322–27
Azzone Visconti	1329–39
Luchino Visconti	1339–49
Giovanni Visconti, archbishop of Milan	1339–54
Matteo Visconti II	1354–55
Galeazzo Visconti II	1354–78
Bernabò Visconti	1354–85
Giangaleazzo Visconti	1378–1402
Giovanni Maria Visconti	1402–12
Filippo Maria Visconti	1412–47
Francesco Sforza I	1450–66
Galeazzo Maria Sforza	1466–76
Giangaleazzo Sforza	1476–94
Ludovico Maria Sforza, 'il Moro'	1494–99
Louis XII, king of France	1499–1500
Ludovico Maria Sforza, 'il Moro'	1500
Louis XII, king of France	1500–12
Massimiliano Sforza	1512–15
Francis I, king of France	1515–21
Francesco Sforza II	1521–35

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Introduction

Writing in the late 1380s, Franco Sacchetti, Florentine author of *Il trecentonovelle*, observed that living under a signore was like life on the high seas: there were immense dangers, but also huge prizes. 'It is a blessing when the sea is calm; the same goes for the signore. But in both cases it is a great thing if you can be sure there is no hurricane on the horizon.'[1] Bernabò Visconti, exercising power beyond the law, was the figure whose bizarre and cruel behaviour inspired Sacchetti's comparison. The message was ominous: with a mixture of power and caprice the signore made or broke his subjects. Bernabò, as Sacchetti suggested, had absolute power, or plenitude of power, meaning he was exempt from law (*legibus solutus*). That law was not what we now understand by the term, for in Bernabò's day there were many more categories of valid law: Roman, canon, and feudal law (*ius commune*), local laws, customary law, the interpretative work of jurists and government acts of all kinds; in addition there were the fundamental principles of law and equity enshrined in divine law, natural law and *ius gentium*.[2] No one, therefore, could be above the law as such; but plenitude of power conferred the right to override any particular law when the need arose.[3] Absolute power in this period had little in common with absolutism as understood by historians of the *ancien régime*, when the crown aimed at legislative independence and control over other institutions.[4] Plenitude of power, meaning authority above the law, was a prerogative the Visconti needed if they were to secure their regime and fulfil the task for which they had been appointed by the communes, namely that of bringing an end to factionalism. Recalling exiles and implementing amnesties meant ignoring court judgments and the rights of injured parties; friends had to be rewarded and enemies crushed, which led to the overturning of established property rights; the granting of immunities and exemptions involved contravening laws of every kind. Such

[1] Franco Sacchetti, *Il trecentonovelle,* Novella 4: 'Dei signori interviene come del mare, dove va l'uomo con grandi pericoli e nei gran pericoli i gran guadagni. Ed è gran vantaggio quando il mare si trova in bonaccia e così anche il signore; ma l'uno e l'altro è gran cosa di potersi fidare, che tosto non venga il fortunale.'

[2] See Grossi (1995), p. 135; in his words 'il diritto è una realtà preesistente che il potere [politico medievale] non crea, non pretende de creare, non sarebbe in grado di creare; che può invece soltanto dire, dichiarare.'

[3] See Nicolini (1952), p. 120: 'L'attività del sovrano alla quale guardano i giuristi italiani quando si chiedono se egli sia *legibus solutus* non è dunque né quella legislativa né l'attività per così dire privata, che non arriva a suoi effetti ad interessare i terzi; è piuttosto una attivita che potremmo *grosso modo* chiamare amministrativa. La quale si explica in singole manifestazioni di volontà, cioè in ordinanze, comandi, divieti, dati per il caso concreto.'

[4] See Bonney (1987) for a useful general discussion of the concept of absolutism. The word itself was not coined until the French Revolution.

pressures meant that from the moment Azzone Visconti established his regime in Milan the Visconti could be found issuing acts on the basis of plenitude of power.

It was not enough simply to use the phrase *de plenitudine potestatis*. The Visconti had to assert an incontrovertible right to absolute power in order for their acts to be accepted as legitimate. The difficulty was that in appropriating plenitude of power, the Visconti were embracing the law and language of the pope and the emperor; for since the end of the twelfth century plenitude of power had come to embody imperial and papal supremacy and majesty. Such a mismatch in status meant that throughout the period from Azzone's first reference to plenitude of power until the final years of Francesco II (the last duke before the Habsburg takeover), the Visconti and the Sforza had problems establishing a right to absolute power. The claim was complicated by the fact that the Milanese regime underwent a series of transformations: Azzone and his immediate successors were signori (*domini generales*), appointed by individual communes; from the mid-fourteenth century the imperial vicariate gave the government a new complexion; but this status was undermined when, in the *coup d'état* of 1385, Giangaleazzo seized all Bernabò's lands without any imperial authorization. With the establishment of the duchy in 1395 a new era began, but the ducal title brought its own problems: the Visconti's authority was now dependent on imperial policy, and yet the emperor's goodwill was mostly denied to the rulers of Milan. This circumstance led the Sforza temporarily to return to the principle of communal authority as the basis of their rule. The claim to plenitude of power was at the centre of these developments: decrees and other acts issued by virtue of that prerogative had to reflect the changing basis of the regime. The present study looks at the foundations, the role, and the force of plenitude of power in Milan with the aim of understanding how the legal world, as well as the Visconti and the Sforza themselves, interpreted their authority and status.

As the rulers of Milan attempted to make good a claim to plenitude of power, legal opinion as to what that phrase meant changed. Jurists of the period of the early Visconti were willing to grant far greater scope to plenitude of power than those working at the time of the last Sforza. The fifteenth century saw plenitude of power lose much of its force as lawyers became ever more willing to stand up for the rights of clients in the face of ducal acts.[5] If the rulers of Milan wanted concessions to stick, they had to take account of developments in legal thought. It was in their own interests to do so, for the wider issue of legitimacy was at stake. The Visconti and the Sforza were preoccupied with their reputation for justice,

[5] Their work was to echo in later systems through to the eighteenth century and beyond: Gorla (1982), p. 667, n. 48, has traced the history of the limits to the power of the prince from the sixteenth to the eighteenth century and sees the fifteenth century as laying the foundations for the idea that 'iura naturalia sunt immutabilia'.

but to be seen misusing plenitude of power risked the accusation of injustice and therefore of illegitimacy. There was a fine line between plenitude of power and tyranny, and it was in the hands of lawyers to judge whether the limits had been overstepped.

The attempts by medieval jurists to referee the clash between the powers of rulers and the rights of subjects have attracted particular interest from historians of law. The way was led by Ugo Nicolini with *La proprietà, il principe e l'espropriazione per pubblica utilità: Studi sulla dottrina giuridica intermedia* (1940). Nicolini examined the work of leading jurists from Azzone in the early thirteenth century to Antonio Perez in the mid-seventeenth in order to assess the limits to rulers' control over private property. Nicolini's investigation, focused as it was on law rather than on history, was organized thematically, not chronologically. Unlike the present study, therefore, the development of ideas against a changing background was not its prime concern. The following decades saw Ennio Cortese's unsurpassed work on the theory of lawmaking, *La norma giuridica: Spunti teorici nel diritto comune classico* (1962–4), where he analysed what he defined as the two key forces behind positive law: one, the subject of his first volume, comprised the underlying reasons for any given law, including the impulses inherent in the laws of nature and natural equity (*ruda aequitas*); the other, covered in the second volume, encompassed the process whereby a law came into being, including the will (*voluntas*) of the ruler or of the people. Cortese's sources were mainly the glossators and commentators on civil law from the twelfth to the fifteenth centuries (concentrating on the earlier period). He considered, on the one hand, the part played by plenitude of power as an adjunct to a ruler's will and, on the other, the role of the just cause as a restraining element. In many ways the work forms the backdrop to the present volume. Cortese's approach was broad and philosophical; his treatment, like Nicolini's, was thematic. My aim, in contrast, is to show how jurists' shifting attitude to plenitude of power both reflected and influenced the practice of government.

Dieter Wyduckel's *Princeps legibus solutus: eine Untersuchung zur frühmodernen Rechts- und Staatslehre* (1979) looked at the relationship between ruler and law in the works of philosophers and publicists, as well as both civil and canon lawyers, throughout medieval Europe. On theories of absolutism Wyduckel's volume was more wide-ranging than the present study, but did not aim to cover the practical implications of juridical thought. Jesus Vallejo, in his fundamental work, *Ruda equidad, ley consumada: concepcion de la potestad normativa (1250–1350)* (1992), deals with the relationship between ruler and law in jurists in the century up to Bartolo da Sassoferrato (1314–57), as part of a wider investigation into the role of jurisdiction in translating the basic principles of justice into legal norms. Again, Vallejo's work is more philosohical and theoretical than the present volume. Kenneth Pennington, in his highly readable book, *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition* (1993), examines how far a ruler was allowed

to infringe cardinal principles, such as property rights and the right to due process. Unlike the other works mentioned, Pennington's study is organized chronologically and, in addition, analyses ways in which juridical ideas were applied in practice (specifically in the dispute between Emperor Henry VII and King Robert of Naples in the early fourteenth century and in the aftermath of the Pazzi conspiracy of 1478 in Florence). On the question of jurists' respect for fundamental rights, Pennington emphasizes elements of continuity from the thirteenth century through to the sixteenth and beyond. The present volume, on the other hand, particularly highlights the change of direction which took place in the fourteenth century when, in the context of signorial regimes, pre-eminent jurists accepted that rulers could arbitrarily overrule property and other rights.

This work relies on two main kinds of source. First there are legal commentaries and consilia (mainly of lawyers whose careers brought them in touch with Milan), showing how the parameters of absolute power changed over the period. Consilia, in particular, demonstrate the effectiveness of plenitude of power. In Milan consilia were a mandatory and binding aspect of court proceedings.[6] Although they were composed in order to elucidate the law as applied to specific cases, they should not be dismissed as too particular or partisan to have general relevance. Collections of consilia were made for practising lawyers and for use in teaching, illustrating as they did legal principles in the context of everyday issues.[7] From the late fourteenth century consilia became ever more important as the vehicle for legal thought: there was a tradition among jurists that these opinions, being instrumental in the outcome of court proceedings, were even more authoritative than commentaries. With the development of printing, collections of consilia became ever more user-friendly, eventually replacing commentaries as the preferred genre for legal thought.[8] Consilia which dealt with plenitude of power became seminal texts, being quoted and requoted by jurists. Angelo degli Ubaldi's consilium 'In causa accusationis' (number 217), for example, and Paolo da Castro's 'Super primo dubio' (number 34 in book two), were used to confirm that rulers of Milan had the right to plenitude of power. Consilia, in other words, were seen as authoritative. I have used printed editions of legal texts, the only exception being Baldo's consilia, for which I have consulted the manuscripts in the Barberini collection of the Biblioteca Apostolica Vaticana, on the grounds that there has been so much recent work on these. While not

[6] See Zorzoli (1981), pp. 58–62; Padoa Schioppa (1996), pp. 19–25; Storti Storchi (1996a), pp. 100–13, describes how in 1341 Giovanni and Luchino Visconti attempted, but without success, to put an end to the need for such consilia.

[7] Belloni (1995a), pp. 19–20. On the development of collections of consilia, see Colli (1995) and (1999b); see also Gilli (2008) and Ascheri (1999).

[8] On this theme and for the views of contemporaries on the merits of consilia, see Lombardi (1967), pp. 140–56, as well as Gorla (1982), pp. 646–7. Consilia continued to be produced in their thousands even in the seventeenth century, whereas new commentaries were no longer composed after the fifteenth century.

necessarily autographs, the Barberini manuscripts were evidently produced under the direction of Baldo himself.[9]

The other main source for this study are the decrees, concessions and other government acts demonstrating the practical use of absolute power. An awareness of the occasions on which the Visconti and the Sforza employed absolute power is crucial: plenitude of power was not an intrinsic aspect of their rule but rather was a prerogative to be called on in specific instances. On the whole it was employed with remarkable precision, its use reflecting changes in legal opinion. Decrees are particularly valuable, apt as they were to reflect government aims and assumptions as well as to bring about practical changes in the law.[10] For decrees I have mostly used the collection published in 1654, the *Antiqua ducum Mediolani decreta*: though not complete, it does contain a large proportion of the most important legislative acts of the Milanese government.[11]

The first chapter of this volume focuses on the history and meaning of plenitude of power, showing that, once canon lawyers had agreed that papal plenitude of power could contradict even fundamental principles, and so overrule property and other rights, it began to be adopted by secular rulers. Jurists at the turn of the fourteenth century made two key contributions to this process: first, they taught that rights guaranteed merely in civil law could be ignored without cause; and second, they watered down the principle that there had to be a just cause before rights protected under higher laws could be overruled. In enhancing the potential of plenitude of power, fourteenth-century lawyers reflected an environment in which signorial rule meant the arbitrary abuse of property and other rights. Baldo was part of this tradition, accepting the overwhelming force of plenitude of power; but his open disapproval of the way plenitude of power was being exploited set a new trend for the next generation of lawyers. In the fifteenth century jurists began to insist, for example, that, before rights could be infringed, the justification had to be genuine.

Chapter 2 focuses on the difficulties the Visconti faced in claiming absolute power. The leading expert on absolute power in the earlier period, Alberico da Rosciate, refused to accept that signori had the right to use plenitude of power; signorial claims were nevertheless supported by other lawyers, for example Signorolo degli Omodei, who in the 1340s had to deal with disputes which involved Luchino's and Giovanni's use of plenitude of power. Azzone, Luchino, and Giovanni Visconti's initial assumption that they had been granted plenitude of power by subject communes was replaced, under their successors, with the belief that it came with the imperial vicariate. Given that many signori lacked

[9] Colli (1991), p. 257; Vallone (1989), p. 80.

[10] Covini (2007), pp. 155–6; see also Cengarle (2007), who has examined the preambles of Visconti decrees.

[11] Ferorelli (1975), p. 272, n. 1, lists the chief omissions. The key elements of the collection have recently been outlined by Covini (2007), pp. 157ff; manuscript collections of decrees have been identified by Leverotti (2003).

a vicariate or had had it revoked (as with Galeazzo II and Bernabò), jurists appeared unsure about the source of rulers' absolute powers in this period, Baldo accepting that most signori had little basis for the claim.

The diploma of 1395, transforming Milan and its contado (or territory) into a duchy and giving Giangaleazzo the title of duke, begins Chapter 3. That document made no reference to plenitude of power, a deficiency speedily rectified with the arrival of a second diploma in 1396, which then became the cornerstone of plenitude of power in Milan. The ducal title was at first denied to Giangaleazzo's successors, but Filippo Maria Visconti's fourteen-year campaign to persuade Emperor Sigismund to confirm his rights as duke ended with success in 1426, acts issued before that date reflecting the Visconti's lack of an official grant of absolute power. The claim to legitimacy of the Ambrosian Republic of 1447–50 was itself based on the diplomas of 1395 and 1396 and, uniquely for a popular regime, that government continued to use plenitude of power. With the establishment of a new dynasty the Sforza had to contend with Emperor Frederick III's determination not to recognize their authority in the duchy. The Sforza's position was reminiscent of that of the early Visconti, with popular sovereignty forming the basis of their rule and their plenitude of power. The constitution of the duchy was transformed again with Emperor Maximilian's concession of a new investiture to Ludovico il Moro.

Chapter 4 turns once again to the solutions offered by the legal profession to the problem of absolute power in Milan. Paolo da Castro's consilium 'Super primo dubio' endorsed the Visconti's claims as a consequence of Giangaleazzo's investiture of 1396. But with the denial of imperial recognition to Francesco Sforza, a new ideology had to be fashioned. Particularly significant were the radical solutions that were put forward by leading lawyers who were not afraid to declare that the duchy of Milan was an independent entity and the duke a sovereign ruler. In terms of what might be called the constitution of the duchy, Ludovico il Moro's imperial diploma of 1494, obtained at great cost from Maximilian, was a mixed blessing, undermining the newly established notion of independence. The resolution of the long search for a legitimate foundation for plenitude of power in Milan was achieved with the idea that the ruler of Milan, whosoever that might be, had an inherent and independent right to his powers.

How the rulers of Milan contrived to disregard laws and rights while still maintaining a reputation for justice is addressed in Chapter 5. Visconti justice was defined in ways which reflected the various stages through which the regime became established, but it always meant respect for individual rights. Plenitude of power, therefore, was supposed to be invoked only for carefully circumscribed purposes. Nevertheless it was a prerogative with a wide range of uses. Absolute power could be exploited to undermine individual rights in order to defend the regime from opposition; it was used to issue pardons, to overrule court judgments, to rectify legal defects in a decree or concession and to repeal existing

laws. This last expedient was particularly useful for dissociating a regime from its predecessor. The fifteenth century saw the use of the phrase plenitude of absolute power which acquired its own strictly applied conventions. The conditions surrounding the use of absolute power could be turned to the government's advantage, the requirement to articulate a just cause, for example, providing an opportunity for the government to parade its championship of justice even as basic rights were being infringed. The principle that plenitude of power should be used rarely was followed more rigorously from the period of Filippo Maria, so that some of the most radical and repressive decrees were issued on the basis of elaborate justificatory preambles rather than from plenitude of power.

Chapter 6 traces the growing antipathy in legal circles to the use of absolute power. Paolo da Castro vainly attempted to deny that the duke of Milan even had the right of absolute power, while others shared a growing disillusionment. Lawyers endeavoured to distance themselves and the regime from plenitude of power, blaming its misuse on unscrupulous petitioners. The most outstanding legal minds working in the duchy in the early sixteenth century were determined to discredit absolute power altogether, arguing that the liberties of small communities had been bought and sold in an outrageous manner under the guise of plenitude of power. The reaction came to a head with Andrea Alciato, whose unrivalled knowledge of antiquity persuaded him to reject the suggestion that the Roman people had ever countenanced the transfer of authority to the emperor (the notional act which lay at the heart of the idea of secular plenitude of power). For Alciato plenitude of power was in itself an abuse.

Chapter 7 focuses on the decline of absolute power as a tool of government, following the long campaign against it by jurists. Francesco II continued to refer to plenitude of power, but he used the device with less care and conviction than his predecessors. All trace of plenitude of power was removed from ducal decrees in the collection drawn up at Francesco's instigation, the *Novae Constitutiones*. The chief legal spokesman for the regime, Egidio Bossi, was at pains to show that absolute power was no longer misused in the duchy. In 1533 at the end of his rule, Francesco II appears to have given up the right to plenitude of power, handing it over to the Senate in the interests of justice. There was a lively debate about whether or not the Senate really did have plenitude of power, an argument which continued for decades. The endless discussion concerning the authority of Senate was yet another illustration of the inevitable problems surrounding plenitude of power: because its purpose was to facilitate the disregard for laws and rights, the use of absolute power was bound to provoke controversy. The Visconti and the Sforza themselves continually felt the need to examine the basis of their plenitude of power, so providing further clues to the elusive nature of the rule of the signori.

Chapter 1

Plenitude of Power: Absolutism in the Middle Ages

THE BEGINNINGS OF PLENITUDE OF POWER

Plenitude of power as a concept had modest beginnings in the fifth century. The expression appears first to have been used, on a single occasion, by Pope Leo I (440–61) when he wrote to Bishop Anastasius, his vicar in Thessalonica, reminding him that his authority was merely delegated and subject to papal supervision: 'For we have granted our office to you in such a way that you are called to a share of the responsibility, not to fullness of power (*non in plenitudinem potestatis*).'[1] Rome's subsequent use of the term has been traced from a decretal of Pope Vigilio in the mid-sixth century and another of Gregory IV of 833 through to its appearance in canonical collections in the eleventh. In this period plenitude of power had none of the grand connotations which it later acquired. Until the twelfth century, the phrase was also applied to high-ranking Church officials, such as papal legates and archbishops, to denote their particular superiority;[2] or it could be used interchangeably with *plena potestas*, having the notion of a proctorial mandate.[3] During the course of the twelfth century plenitude of power began to be associated with the pope's spiritual authority. In 1135 St Bernard wrote to the people and clergy of Milan: 'Plenitude of power over all the churches in the world has been given as a unique grant to the apostolic see; therefore, whoever defies this power is defying God's commandment.'[4] It was

[1] 'Vices enim nostras ita tuae credidimus charitati, ut in partem sis vocatus sollicitudinis, non in plenitudinem potestatis', quoted and translated by Benson (1967), p. 198. There has been much discussion of the exact meaning of Leo I's statement: see Benson (1967), pp. 198–200; Tierney (1955), p. 145, n. 1; Rivière (1925), pp. 210–13; Watt (1965b), p. 161. Benson cited some of the literature on the history of the term and more recent bibliography can be found in Figueira, ed. (2006).

[2] Ladner (1983), pp. 501–3; McCready (1973), p. 654; Pennington (1984), p. 44; Benson (1967), pp. 212ff.

[3] Tierney (1955), pp. 146–8.

[4] 'Plenitudo siquidem potestatis super universas orbis ecclesias singulari praerogative apostolicae sedi donata est. Qui igitur huic potestati resistit, Dei ordinationi resistit', quoted in Ladner (1983), p. 498.

under Innocent III that plenitude of power became the expression par excellence to signify spiritual supremacy, underpinning vast new claims being made for the papacy.[5] In the first major papal exposition of the concept, Innocent III saw the divine commission given to Peter as the central basis of plenitude of power. The key biblical passages, according to him, were those where Peter is singled out to be given the keys of the kingdom of heaven, and where he is commanded, 'Feed my sheep.'[6]

There were two particular strands to Innocent III's understanding of plenitude of power that were to be of interest to secular rulers: first, the connection between fullness of power and the pope's role as chief judicial officer of the Church; and second, the identification of plenitude of power with absolute authority above the law.[7] The importance of plenitude of power in the first of these functions, the administration of justice, had grown up over the years. From the fifth century, popes enjoyed jurisdiction over disputes involving the higher clergy; in the view of Gregory IV this prerogative was to be seen in association with plenitude of power.[8] In the eleventh century, the pope's judicial role was extended to include the lower clergy, the historian and theologian Bernold of Constance breaking new ground in 1076 with the statement that ordinary clergy could be judged not only by their own bishop but by the pope too, thanks to plenitude of power.[9] By the time of Uguccione's *Summa Decretorum* (*c*.1190), it was accepted in canon law that the pope's right of jurisdiction over all cases was also connected to plenitude of power.[10] Of even more practical significance in this context was the papal role as universal judge of appeal, which Gratian in the *Decretum* (*c*.1140) saw as an aspect of plenitude of power.[11] As a means of overseeing justice, as well as a way of centralizing authority in the Church, Rome encouraged such appeals so that the number of cases dealt with greatly increased. The importance of plenitude of power was enormously enhanced, therefore, once it became linked to appeals.[12]

The second aspect of plenitude of power, the pope's supremacy over law, had its roots in the notion of the pope as lawgiver, the *canon vivus* or *dominus decretorum,* who was aware of all Church law and whose will had the force of law.[13] The key function of this side of plenitude of power was to override

[5] For the analysis of Innocent's ideas, see Benson (1967) and Pennington (1984), pp. 43ff. A large literature evolved as canonists, theologians and publicists attempted to explain the complex of functions which plenitude of power came to embody. McCready (1973), p. 654 n. 1, lists some of the many thirteenth- and fourteenth-century theorists.

[6] Matthew 16:19, John 1:42 and John 21:17: see Watt (1965a), pp. 85–6; Ladner (1983), p. 498; Pennington (1984), pp. 48ff.

[7] Benson (1967), pp. 196–8; Watt (1965b), pp. 164ff. [8] Benson (1967), pp. 199, 202.

[9] Benson (1967), p. 212. [10] Watt (1965a), pp. 92ff. [11] Benson (1967), p. 217.

[12] For the significance of this aspect of papal authority, see Padoa Schioppa (1998), pp. 179ff; the principle of papal plenitude of power was soon being cited in appeal cases, Benson (1967), pp. 214–15

[13] Watt (1965b), pp. 164–5.

existing law. In the words of Innocent III: 'With the authority of our fullness of power, we can by right make dispensations above the law.'[14] The connection between dispensations and plenitude of power had been suggested by Rufino in his *Summa* on the *Decretum* dated 1164,[15] the English canonist Alanus in 1202 being the first lawyer 'to invoke expressly *plenitudo potestatis* in support of the pope's unfettered dispensatory power'.[16] Since it gave authority over the law, Innocent III believed plenitude of power encompassed the right to interfere in ecclesiastical elections and, in particular, the ability to remedy any defects which might otherwise invalidate the process.[17] As with appeals, the link between papal dispensations and plenitude of power helped transform a theoretical papal prerogative into an everyday tool of government (as shown by the increasingly common appearance of the phrase in documents of the papal chancery from the 1190s).[18] The capacity to rectify defects in elections was subsequently expanded, so that Enrico da Susa, known as Hostiensis (d. 1271), believed that plenitude of power would cover every legal requirement ('plenitudo potestatis omnia supplet'), pointing out that the phrase had been used by Innocent IV to validate all kinds of judicial and other proceedings.[19] It has been shown that 'by its means curial business could be expedited, delays shortened, litigation curtailed'.[20] Once specific functions had come to be attached to plenitude of power, Hostiensis accepted that the pope had two kinds of authority, *potestas ordinata* or limited power, and *potestas absoluta* or plenitude of power, a distinction he spelt out in his *Lectura* on the Decretals of Gregory IX, completed in 1271.[21]

It had become axiomatic that through plenitude of power the pope could overrule positive law (canon and civil law). More contentious was the delicate matter of whether he had the right to defy the principles of divine and natural law (the two not always clearly distinguished) and *ius gentium* ('those rules prescribed

[14] X. 3, 8, 4 (De concessione praebendae, c. proposuit): 'secundum plenitudinem potestatis de iure possumus supra ius dispensare', quoted in Benson (1967) p. 197, n. 7. It became a point of discussion whether the power to override law included natural law, divine law, the decrees of councils or revealed law. It was generally agreed that papal power stopped short of divine law, but what exactly constituted divine law was in itself the subject of debate: see Kuttner (1961), pp. 409, 416ff.

[15] Cortese (1962–4), ii, p. 212 and n. 105.

[16] Kuttner (1961), p. 426; Cortese (1966), pp.124–30 explains how dispensation was the essence of plenitude of power.

[17] X. 1, 6, 39 (De electione, c. illa quotidiana): 'supplentes de plenitudine potestatis, si quis in ea ex eo fuisset defectus': see Watt (1965b), p. 175 and Benson (1967), p. 197.

[18] Watt (1965b), p. 165.

[19] Hostiensis, *Summa Decretorum* (1253) on X. 1, 6, 13 (De electione, c. quum monasterium): 'et aliquoties ratificat et supplet papa de plenitudine potestatis, si quis defectus est; hac clausula saepe utitur dominus noster', published in Watt (1965b), p. 178, Extract 3.

[20] Watt (1965b), p. 168.

[21] For an explanation of the history and significance of the distinction between absolute and ordinary power in theological terms, see Courtenay (1990), esp. pp. 87–113. Watt (1965b), pp. 166–7, believes that Hostiensis was the first to make the distinction; for the complexities of Hostiensis's ideas, see Pennington (1993), pp. 48–75.

by natural reason for mankind which are observed by all peoples alike').[22] That issue was settled by Innocent IV himself, Sinibaldo de' Fieschi (1200–1254), in his earlier role as canon lawyer. For him breaking fundamental laws could in some circumstances be justified. With regard to plenitude of power, he wrote: 'A law or rescript contrary to natural law is not valid unless a just cause exists.'[23] That meant there was a clear distinction between the use of plenitude of power in matters of fundamental law as compared to positive law, the former requiring just grounds, the latter not. Innocent IV's teaching that higher laws could be overruled only in the presence of a just cause had the effect of reinforcing the doctrine that *ius civile*, by contrast, could be overruled without any justification. His ruling had added, paradoxically, to the force and scope of plenitude of power. It is worth noting that Innocent himself cautioned that 'plenitude of power should not be used habitually, but only for a good reason.'[24]

THE CENTURY OF ABSOLUTISM

The transfer of plenitude of power to a secular context happened once the concept had become the symbol of the pope's judicial supremacy and ascendancy over the law. It was a natural development given that the understanding of papal plenitude of power itself owed much to secular traditions. Canonists had borrowed freely from the idea that the emperor was *legibus solutus* for their analysis of papal powers: at the beginning of the thirteenth century the Roman law maxim 'what the emperor decrees has the force of law' (*Inst*. 1, 2, 6) was being used in support of papal powers.[25] Canon and civil law came together in Hostiensis, who, in discussions of papal plenitude of power, invariably cited the classic passages in the *Digest* and *Codex* which acknowledged that the emperor was exempt from law, albeit willing to comply.[26] One of the earliest instances of the transfer of plenitude of power to the emperor appears in Uguccione's *Summa*, written about

[22] *Inst.* 1, 2, 1. From the time of the glossators *ius gentium* was tantmount to *ius naturale* and included *ius divinum,* as, for example, in the dictum 'natura, id est Deus': see Tierney (1963b). For more detail on the understanding of these laws by jurists of the twelfth and thirteenth centuries, see Gorla (1982), pp. 637–8, Cortese (1962–4), i, pp. 56ff, and Vallejo (1992), pp. 357ff.

[23] Innocent IV on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesia), nr 2: 'et dico non valere legem vel rescriptum in praeiudicium naturalis iuris, nisi iusta causa interveniat.' On the development of this teaching in canon law, see Cortese (1962–4), i, pp. 97ff.

[24] Innocent IV on X. 1, 6, 20 (De electione, c. innotuit), nr 5: 'Papa de plenitudine potestatis illa electione utatur, cum non sit ea utendum generaliter sed tantum ex causa.' See Cortese (2008), p. 121.

[25] Cortese (1962–4), ii, pp. 216ff; Watt (1965b), p.167.

[26] Hostiensis on X. 3, 8, 4 (De concessione praebend., c. si scribitur), s.v. supra ius: 'quasi dicat nullo iure astringimur, immo sumus positi supra omnia iura atque concilia . . . Sed tamen perraro a iure comuni volumus deviare. Hoc enim decet nos, licet non astringat, *ff*. De constitiutionibus principis, l. Princeps [D. 1, 3, 31], C. De legibus et constitutionibus, l. Digna vox [C. 1, 14, 4].' See this passage in Watt (1965b), p. 183, Extract 48.

1190: 'Is it not true that both clergy and people can be compelled to carry out the wishes of the pope and the emperor, since the pope has plenitude of power and all power has been conferred on the emperor?' He emphasized that 'this means that they both have plenitude of power in this respect,' namely the right to found laws or canons.[27] Hostiensis had no hesitation applying plenitude of power to the emperor in the 1250s: 'The emperor is exempt from law and, even in a case disallowed by canonists, he was able to receive an appeal thanks to his plenitude of power, which we would not think to dispute.'[28] Civil lawyers in turn applied the ideas of Hostiensis and Innocent IV to this new secular context. A secular ruler also had two kinds of power, one of which was subject to law (*potestas ordinata*) and one which was not (*potestas absoluta* or plenitude of power). With plenitude of power he could contravene positive law;[29] and according to Innocent, he could challenge the higher laws too, though only in the presence of a just cause. That ruling had been intended to prevent the indiscriminate use of plenitude of power where basic rights were involved. But in the secular context the opposite happened: no sooner had rulers begun to use plenitude of power than leading civil lawyers added further to its potential by neutralizing Innocent IV's stricture on the need for a just cause even when fundamental principles were at stake.

The process started in France. The Orleans jurist Jacques de Revigny (d. 1296)[30] addressed the question whether a ruler had the right to take private property without just cause. The issue was complicated by the fact that only some aspects of property ownership came under *ius gentium*. As explained in the first book of the *Digest*: 'By the law of nations wars were introduced; races were distinguished; kingdoms founded; rights of property ascertained; boundaries of land established; buildings constructed; commerce, purchases, sales, leases, rents and obligations created (with certain exceptions introduced by civil law).'[31] It

[27] Ugaccione on Dict. Gr. ante D. 4 c. 4, s.v. moribus utentium: 'Sed nonne clerici vel populi possent compelli ut impleant quod papa vel princeps vult, cum papa habeat plenitudinem potestatis et omnis potestas sit in principem collata?' and s.v. leges: 'Unde intelligitur uterque plenitudinem potestatis habere quoad hoc, scil. ius condendi leges vel canones', quoted in Watt (1965a), p. 83 and nn. 29 and 30.

[28] Hostiensis on X. 2. 28. 4 (De appellationibus, c. si appellans): 'solutus est princeps legibus: *ff*. de legi. l. Princeps [D. 1, 3, 31], etiam in casu excepto a canonistis, appellationem ad ipsum (scil. imperatorem) factam poterit recipere de plenitudine potestatis, contra quam non intendimus disputare', published in Watt (1965b), p. 179, Extract 14.

[29] Cortese (1962–4), i, p. 105 and n. 17.

[30] For the few known facts of Jacques de Revigny's life, see Meijers (1959), pp. 59–67 and Bezemer (1997), p. vii: he was born between 1230 and 1240; studied and taught at Orleans (precise dates are not known); he was archdeacon of Toul and bishop elect of Verdun in 1289; on his work, see in particular Meijers (1959), pp. 63–80, and Bezemer (1997 and 1994); on the significance of the phrase *princeps legibus solutus* in Jacques de Revigny's work, see Nicolini (1952), p. 130, and Pennington (1993), pp. 86, 113–15.

[31] D. 1, 1, 5 : 'Ex hoc iure gentium introducta bella, discretae gentes, regna condita, dominia distincta, agris termini positi, aedificia collocata, commercium, emptiones, venditiones, locationes, conductiones, obligationes institutae, exceptis quibusdam quae iure civili introductae sunt.' *Ius gentium* came to include the right to self defence and to defence against criminal charges; it granted

would seem that property, as an aspect of *ius gentium*, could not be seized without cause. But jurists, including Jacques de Revigny, drew a distinction between property itself, based on *ius gentium*, and the methods of acquiring it, which came under *ius civile*.[32] Jacques pointed to 'that excellent distinction, namely that [property rights sometimes] come under *ius gentium* and sometimes under *ius civile* (for example, issues of possession); when in doubt it must be admitted, therefore, at least in the latter case where ownership is based on *ius civile*, that the emperor may grant that your possessions should be mine.'[33] In this case, he asserted, the emperor could take private property even without cause (though that was not his habit), 'for his power is not restricted and he can do so from plenitude of power'. Jacques de Revigny's *caveat* was that the emperor was answerable to God: it was the emperor's sense of morality, in other words, that safeguarded these rights.[34]

In addition, Jacques de Revigny was responsible for the striking suggestion that if a ruler passed an act which contravened even such rights as were enshrined in *ius gentium*, he was not obliged to make his reasons explicit: with the emperor there is always a presumption of legality (*presumptio iuris*), he wrote. Jacques explained how divine law, in this instance the commandment 'thou shalt not kill', could be contravened: '[Suppose] the emperor orders a man to be hanged, even though he is generally known to be innocent. If he is hanged at the emperor's behest, despite [his innocence], there would be a presumption of legality and the order would be valid; that is because the act is [presumed to be] underpinned by a

the right to a summons (*citatio*) and a hearing in court; *ius gentium*, in other words, was the guarantee of individual rights.

[32] See Cortese (1962–4), i, pp. 134ff. Pennington (1993), pp. 147–55, points out that in the early thirteenth century all *actiones* were considered to be part of civil law and that the idea that they formed part of natural law developed in the course of the century; see also Pennington (1998), pp. 25ff.

[33] Jacques de Revigny on C. 1, 19, 7 (De precibus imperatori offerendis l. Rescripta): 'cum distinctione divina introducta sunt [dominia] sub iure gentium et quandoque de iure civili, ut *ff*. De rei vend. l. in rem actio. [D. 6, 1, 80] et *Inst*. De re. di. § singulorum [*Inst*. 2, 1, 11], scilicet per usucapionem, ergo saltem in illo casu, in dubiis, ubi dominium est de iure civili, posset concedere imperator quod res tuae essent meae'.

[34] Jacques de Revigny on D. Constitutio Omnem: 'Dominium quod habet privatus potest transferre . . . Et licet hoc possit facere imperator, tamen non est moris sui. Sic loquitur lex C. de emancipationibus liberorum, l. nec avus (Cod. 8, 48, [49], 4). Sua enim potentia non est limitata, de plenitudine potestatis sue potest hoc facere: caveat sibi, minister Dei est, Aut. de fide instrumentorum, § I, coll. VI (Nov. 73 pr., § 1, Coll. VI, tit. 3, Aut 76) cum non minus iudicabitur quam ipse iudicat ut C. De iudiciis, rem non novam (Cod. 3, 1, 14). Et de hoc habuistis plenius C. De precibus imperatori offerendis, l. rescripta (Cod. 1, 19, 7)', published by Cortese (1962–4), ii, app. XII, p. 453. Jacques' colleague, Pierre Belleperche (Petrus Bellapertica), agreed. In his comment on *Inst*. 1, 2 (De iure naturali et gentium et civili), nrs 66–7, he wrote that, with plenitude of power ('de potestate sua cum sit legibus solutus'), 'iura civilia, quae sunt statuta pleborum vel populi Romani, possunt mutari pro motu principis' and that a ruler 'non potest mihi rem auferre sine causa arguit huius §. Sed cum causa probabili potest et ideo ubicunque lex dicit quod princeps potest alicui auferre dominium rei suae, semper causam adicit.' Belleperche (*c*.1250–1308) taught at Orleans from the end of the 1270s until the mid-1290s, thereafter becoming a royal councillor under Philip IV, Chancellor of France, and bishop of Auxerre: see Cortese (1995), pp. 402ff.

just cause, and [therefore] no contrary evidence can be brought forward.'[35] As Jacques explained, 'we must assume the emperor to be above suspicion.'[36] That suggestion had the effect of nullifying the main safeguard upon which Innocent IV had insisted in order to curtail the use of plenitude of power in matters involving fundamental rights. For Jacques de Revigny the emperor's command was *ipso facto* valid.

French teaching on absolute power was imported into Italy by Cino of Pistoia (Cino Sighibuldi, *c*.1270–1336/7), one of the leading jurists of his day.[37] Of all Italian lawyers he was the most deeply impressed by the approach of the Orleans school, his greatest work, the *Lectura in Codicem*, being permeated with their ideas. Cino was impatient with commentators who were slaves to the gloss of Accursio, preferring a fresh analysis. In that spirit he took up Jacques de Revigny's stance 'on that treacherous question' of what constituted a just cause, accepting that the supposed restrictions on a ruler's power were ineffectual. Addressing the same hypothetical instance that the emperor had ordered an innocent man to be hanged, he wrote:

> [The order] should be carried out because, regardless of whether [the accused] did or did not commit the act which merited execution, it has to be inferred that some justification exists; [the emperor's] judgment is always presumed to be correct and not subject to appeal; the prince is above the law and, since he is always assumed to be beyond suspicion, he may decide cases in accordance with his conscience. For that reason the presumption is that whatever he does, he does lawfully, no counterproof being admissable (according to Jacques de Revigny).[38]

[35] Jacques de Revigny on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta): 'Pone quod hic [sic for hoc] sit prohibitum contra legem divinam, quod potest procedere, causa subsistente. Scribit Titium suspendendum, communiter scitur ipsum ignoscentem; si tamen esset per eundem, esset rescripta [sic] presumptio iuris et de iure est, contra quem non admittetur probatio quia causa subsit.' I have transcribed the text as it appears in the 1519 Paris edition of the *Lectura super prima parte Codicis*. Jacques de Revigny's commentaries are notoriously dense and difficult to follow, being student lecture notes rather than finished works: see Meijers (1959), pp. 63–4.

[36] Jacques de Revigny on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta): 'Sed imperatorem presumimus incorruptibilem.'

[37] Cino, a Ghibelline and supporter of Emperor Henry VII, came from a magnate family of Pistoia; Cino did not need to study in France, as used to be thought, to become familiar with the works of Jacques de Revigny and Pierre Belleperche, which were well known in Italy: see Cortese (1995), pp. 411–12. Having been exiled, he found work with Ludovico of Savoy; while teaching civil law in Siena, Naples and Perugia from 1321 to 1333, he changed allegiance and became a Guelf supporter. There are two biographies of Cino, Chiappelli (1881) and Monti (1924); Cortese gives a brief account of his life (1995), pp. 411ff, as does Monti (1942), pp. 1–5; his ideas on absolute power are highlighted by Pennington (1993), pp. 126ff; see also Maffei (1963), pp. 42–7, where the author emphasizes the importance of Cino's work for Baldo.

[38] Cino on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta), nrs 10–11: 'Tunc quantum ad observantiam tenet, quia sive sit verum sive falsum, quod commisit illud per quod debeat occidi, tamen praesumendum est quod causa subsit, et sententia sua praesumitur semper iusta, unde ab eo non appellatur; et princeps est supra legem, adeo secundum conscientiam suam iudicare potest, quia semper praesumitur incorruptibilis. Et est praesumendum pro eo quod facit quod iuste faciat et quod non admittitur probatio in contrarium, secundum Iacobum de Ravenis.'

Cino had no problem with the right of the emperor to confiscate property with just cause. But, and this was a dangerous issue, he went on, 'suppose he decides to take my property without any justification in the world? If we are asking whether he could do so in practice, then there is no doubting it.' Cino was aware of what happened in reality. 'Whether he might do so legitimately, on the other hand, with the authority granted to him through the laws, then strictly speaking he may not. But still, when it comes to complying, whatever the emperor says in his act should be obeyed, because all his decisions are presumed to have proper justification: such an assumption is overwhelming (*praesumptio est violenta*) in the person of the prince.' The emperor's decisions, however unpalatable, were enforceable: his word was sufficient justification in itself for ignoring individual rights. That Cino accepted that the emperor's reasons might not be genuine was clear from the next statement: 'If he does take my property without proper grounds, he is acting wrongly.'[39] He wrote the *Lectura in Codicem* in the years 1312–14, just when plenitude of power was beginning to be adopted in Italy. His assertions were used in support of the absolute power of Italian signori for the next 150 years.[40] Similar use was made of the opinion of Iacopo Butrigario (1274–1348), Bartolo of Sassoferrato's teacher, that 'wherever the emperor expresses his intention, provided there is no error of fact, the decree stands and

In law a *praesumptio* was considered proved unless there was contrary evidence; where there was a *praesumptio iuris et de iure,* as is described here, no contrary proof was admissible. Sandeo, on X. 1, 2, 7 (De Constitutionibus, Quae in ecclesiarum), nr 60, quotes Cino's comment on such an execution.

[39] Cino on C. 1.19.7 (De precibus imperatori offerendis, l. Rescripta), nr 12: 'Ista quaestio periculosa est . . . Quando vult mihi tollere dominium rei meae, sine aliqua causa de mundo, si quaeratur utrum possit de facto? Non est dubium. Sed utrum possit de iure et de potestate sibi per iura concessa, in veritate non potest, ut *Inst*. De leg. agna. tu. § ultimo [*Inst.* 1, 15, 3]. Sed tamen quantum ad observantiam, qualitercunque scribat, debet servari. Nam semper rescriptum suum supponimus ex iusta causa interpositum et talis praesumptio est violenta in persona principis, ut supra dixi in proxima quaestione. Negari tamen non potest quod si mihi rem meam auferat sine causa quod ipse peccat.' See Nicolini (1952), p. 182; on the fourteenth-century acceptance that rights could be removed without cause, see also Cortese (1962–4), ii, pp. 226, 267–70; idem (2008), p. 123, n. 27; Canning (1987a), p. 459, and Vallejo (1992), pp. 341 n. 34, 369 n. 29.

[40] However paradoxical and complex in its original formulation, Cino's argument would be quoted when lawyers wanted to argue that the Visconti or the Sforza had the authority to disregard individual rights. For example, the Milanese jurist Cristoforo Castiglioni, though he ultimately argued for the other side, showed that Cino could be cited in support of a disputed grant of land made by Giovanni Maria Visconti in 1410 (see below p. 151). In 1475 Francesco Corte upheld the rights of the duke: 'Et ideo cum dux Mediolani ita disposuerit motu proprio, semper praesumitur adesse iustitia causae, adeo ut non admittitur probatio in contrarium, secundum Cynum signanter in l. Rescripta (Consilium 65, nr 9).' In another classic example of the way Cino was used, the jurist Ludovico Bolognino (d. 1508) upheld the duke of Milan's grant of lands belonging to the commune of Asti to his supporters: 'Plus dico, et istud videbitur tibi novum, quod princeps potest disponere circa ea quae sunt de iure divino seu gentium cum causa. Ita voluit Cino in l. Rescripta, C. De precibus imperatori offerendis [C. 1. 19 .7] et Bartolus in l. Omnes populi, in iiii quaestionis principio, *ff*. De iustitia et iure [D. 1, 1, 9]; Baldus in l. i in vii col. C. De iur. au. annui. etc. et ut intelligas semper in dubio presumitur causa in principe sive sumus in rescriptis sive in legibus condendis.' *Additio* to Consilium 81 of Giovanni da Anagni, nr 5. See Nicolini (1952), pp. 182ff, and Cortese (1962–4), ii, p. 270.

is assumed to overrule any opposing law which might contradict the command; that is because he is presumed to be aware of all such considerations.'[41] Or, as Bartolo scornfully put it: 'Butrigario used to say simply that the emperor could seize my property without any justification.'[42]

The first express analysis in Italy of secular plenitude of power was by the Bergamask jurist Alberico da Rosciate (1290–1360). Rather than focusing on the circumstances in which *ius gentium* could be overturned, his discussion centred on the legendary interchange between the twelfth-century jurists Martino and Bulgaro on the meaning of the phrase *imperator est dominus mundi*.[43] That approach led to the same conclusion: the emperor was able to undermine basic rights. The dual meaning of the word *dominus*, which could mean either owner or ruler, had given rise to the debate about whether the emperor had rights over all property, as Martino had argued, or was *dominus* in the sense of protection and jurisdiction only, as Bulgaro believed.[44] Not surprisingly, as Alberico pointed out, most jurists sided with Bulgaro.[45] But his own teacher, Ricardo Malombra, supported Martino, believing,'unreservedly that the emperor was owner of all individual property'.[46] It was the idea of plenitude of power which allowed Alberico to reconcile the two schools of thought and make sense of Ricardo Malombra's extreme view of secular power. The emperor was *dominus mundi* only in the sense of jurisdiction, he conceded, but that was enough with plenitude of power to allow him to take private property if he so chose.[47] 'If we are referring to regulated, limited power and what is right, then he may not do so, and this must

[41] Butrigario on C. 7, 37, 2 (De quadriennii praescriptione, l. Omnes): 'Ubicunque ergo ipse vult, dummodo non sit error in facto, tenet rescriptum et videtur tollere legem derogatoriam que contra hoc est, cum scire omne presumatur.' See Canning (1987a), p. 80, and (1998), p. 233, who describes how Bartolo specifically rejected this view. For details of Butrigario, see Cortese (1995), p. 426, n. 8, and the entry by A. Campatelli in *DBI*.

[42] See below n. 51.

[43] The debate about Martino and Bulgaro had been a favourite topos of the glossators, but by Alberico's day had become outmoded: see Cortese (1962–4), i, p. 128.

[44] Alberico on D. Constitutio Omnem, nr 9: 'Et primo ex illis verbis "gratia reipublicae" colligit glossa argumentum pro opinione Martini, qui dixit quod imperator erat dominus totius imperii quo ad proprietatem et totale dominium, non solum quo ad protectionem et iurisdictionem, ut sensit Bulgarus.' The history of the legend and its treatment by the glossators and commentators can be found in Nicolini (1952), pp. 94ff; see also Caravale (1994), pp. 545ff.

[45] Alberico on D. Constitutio Omnem nr 9: 'Primo an sit dominus; secundo an possit alienare. De prima tenet Iacobus de Arena quod imperator non sit dominus rerum singularium, nisi quo ad iurisdictionem et protectionem, approbans in hoc Bulgari opinionem, quam etiam glossator approbat et communiter omnes doctores, unde dicit Bulgarus amisit equum, quia iudicavit aequum.' Martino and Bulgaro were responding to Emperor Frederick Barbarossa's enquiry about the meaning of *dominus mundi*, Martino being rewarded with a horse for his flattering opinion on imperial authority.

[46] Alberico on D. Constitutio Omnem, nr 9: 'Dominus meus, dominus Ricardus Malumbrae, indistincte tenebat imperator esse dominum etiam rerum singularium.'

[47] Alberico on C. 1,19, 2 (De precibus imperatori offerendis, l. Quotiens), nrs 9–10: 'Retenta ergo opinione domini Ricardi pro vera, expedit respondere allegationibus Bulgari quae in effectu tendunt ad duo. Primo quia imperator non sit dominus rerum singulorum, quod satis concedo. Sed ratione iurisdictionis et potestatis, quam habet in subditos, potest auferre res eorum, ut dixi,

be what Bulgaro is driving at; but if we mean *plenitudo potestatis* and absolute power, which is beyond all law, then the opinion of Martino stands, since on that basis the emperor can, in exceptional cases and with just cause, [take property].'[48] As laid down in the *Codex*, imperial acts (or rescripts) were not valid if they were *contra ius* (*ius* meaning not merely law in general, but individual rights), so that 'the emperor was not able to seize a person's property by an act of this kind unless he were willing to use plenitude of power.'[49] Alberico concurred with the standard teaching that rights based on *ius gentium* could only be overturned *ex causa*; but, like Cino, he accepted that there was no need for the emperor to articulate a specific justification; for 'there is no one to decide whether or not there is any just cause, given that the emperor can pronounce on the actions of subjects whereas only God sits in judgment over him.'[50] Between them, Cino, Butrigario and Alberico had imported the two key ideas of Jacques de Revigny on the powers of secular government: that plenitude of power could overrule any rights based on *ius civile*, including related property rights, even without cause; and that even when infringing fundamental rights a ruler did not have to articulate the necessary justification, sufficient grounds being taken as self-evident.[51] In this way legal opinion had come round to legitimizing the everyday acts of Italian rulers.

The doctrine that property rights could be infringed without cause was stated most bluntly by Angelo degli Ubaldi of Perugia (1325–1400), younger brother of

de plenitudine potestatis ubi constat eum hoc velle.' For a discussion of these ideas in Alberico, see Nicolini (1952), pp. 132–7, and Pennington (1993), pp. 113–16.

[48] Alberico on D. Constitutio Omnem, nr 12: 'Aut ergo quaerimus de ordinata et limitata potestate et honestate, et tunc non potest et ita posset intelligi opinio Bulgari; aut de absoluta et plenitudine potestatis quae est supra omnem legem et tunc est vera opinio Martini, nam qua ratione potest in casibus specialibus ex iusta causa hoc facere.'

[49] Alberico on D. Constitutio Omnem, nr 13: 'Aut rescriptum concedendo, et non potest, propter legem derogatoriam, C. De precibus imperatori offerendis. l. Quotiens et l. Rescripta [C. 1, 19, 2 and 7] . . . Et hoc nisi in rescripto vellet uti plenitudine potestatis, dicendo non obstante tali lege vel aliqua lege, ut notat dicta l. Quotiens.' The status of rescripts as law issued for a particular individual or group is discussed by Vallejo (1992), p. 334.

[50] Alberico on C. 1, 19, 2 (De precibus imperatori offerendis, l. Quotiens), nr 9: 'Nec erit qui diiudicet de causa, sit iusta causa vel iniusta. Ipse enim facta subditorurm iudicat; facta sua iudicat solus Deus.'

[51] Bartolo on the other hand, on C. 1, 22, 6 (Si contra ius utilitatemve publicam, l. Omnes), nr 2, firmly rejected the idea that property rights could be infringed without cause 'for the emperor may not issue a law which contains anything dishonourable or unjust: that would contradict the very nature of law itself' : 'Dominus Iacobus Butrigario dicebat simpliciter quod princeps potest auferre mihi dominium rei meae sine aliqua causa. Nam eius potestas et potestas istarum legum quae haec prohibent procedit a pari potentia; ergo sicut potest istas leges tollere, ergo eodem modo possit dare alteri dominium rei meae sine causa; quod puto non esse verum. Nam princeps non posset facere unam legem quae contineret unum inhonestum vel iniustum. Nam est contra substantiam legis. Nam lex est sanctio sancta, iubens honesta et prohibens contraria, ut l. ii *ff*. de legibus [D. 1, 3, 2].' But even Bartolo was cited in the fifteenth century as an authority on the force of plenitude of power, which meant, he wrote, that the emperor could change the terms in which a suit had been presented and judge from the facts of the case rather than from its legal parameters. He was commenting on D. 4, 4, 38 (De Minoribus viginti quinque annis, l. Aemilius), nr 5: 'Voluit istum minorem restituere magis ex aequitate illius clausulae "si alia qua mihi iusta causa esse videbitur"

Baldo.[52] Having witnessed at first hand the confiscation of property by the pope in Perugia during the wars from 1369 to 1376, he stated categorically that plenitude of power gave a ruler the right to seize property even without just cause. It was in his comment on the ancient law *Item si verberatum* (D. 6, 1, 15), whereby the emperor was allowed to transfer private property to servicemen without fair compensation, that Angelo wrote, 'this proves that from plenitude of power the emperor can take our property with no plausible justification and those who deny this are lying.' He went on to describe the effects of the twin laws, *Omnes* and *Bene a Zenone* (C. 7. 37, 2 and 3), guaranteeing the ownership of property acquired from the government where it was stated that 'everything is deemed to belong to the prince'. It was on the strength of these two laws, he proclaimed with some bitterness, that 'the pope confiscated the property of some ordinary citizens of Perugia and made grants to certain nobles which, because they had been made on the basis of certain knowledge and plenitude of power, were binding.'[53] What made Angelo's teaching all the more striking was that he had dropped the differentiation between positive law and *ius gentium* which had served to extenuate earlier doctrines. He had seen that, for all the difference it made, the distinction was futile: in his world such subtleties appeared to have no practical force.

BALDO DEGLI UBALDI AND PLENITUDE OF POWER

Baldo degli Ubaldi (1327–1400) was the main commentator, apart from Alberico, to focus specific attention on the implications of plenitude of power for secular government, becoming the key authority to whom later generations turned for guidance. The Ubaldi were an old noble family; Baldo himself was born in Perugia

quam ex aequitate tituli, De Minoribus viginti quinque annis, quia cum minore nihil erat gestum et hoc potuit facere imperator ex plenitudine potestatis suae; alius iudex non posset quia si petita est restitutio ex edicto, De Minoribus viginti quinque annis, non potest restituere ex edicto, Quibus ex causis maiores in integrum restituuntur [C. 2, 53]. Sed imperator, ut finem litibus imponeret, potuit hoc facere, veritate inspecta potius quam rigorositate.' On Bartolo's teaching, see Vallejo (1992), p. 373. On the belief that 'the *princeps* possessed the capacity to remove an individual's property-rights without cause,' see Canning (1998), pp. 232–3.

[52] See below p. 62 for details of his career.

[53] Angelo degli Ubaldi on D. 6, 1, 15 (De rei vendicatione, l. Item si verberatum), nr 1: 'Hic est casus quod imperator de plenitudine potestatis auferre potest nobis dominium, etiam nulla causa suadente; et qui contrarium dicunt mentiuntur. Casus est in l.ii et in l. Bene a Zenone, C. De quadriennii prescriptione [C. 7, 37, 2 and 3], unde concessiones apostolice dudum in Perusio facte de patrimonio quorundam plebeorum civium quibusdam nobilibus, valent, cum fuerint facte ex certa scientia et de plenitudine potestatis: facit infra de usufructu, § Si quid cloacarii; facit optime qui et a quibus l. si privatus [D. 7, 1, 27].' The pope in question was Urban VI. The two laws, *Omnes* and *Bene a Zenone,* gave the beneficiary of imperial largesse a privileged position since, whatever questions arose concerning his entitlement, he could not be sued by the previous owner. On Angelo's opinion, see Pennington (1993), pp. 217–20.

in 1327,[54] the precocious son of Francesco, a physician and university teacher. He was a pupil of Bartolo da Sassoferrato, receiving his doctorate in Perugia sometime in the late 1340s, where, as Bartolo's colleague, he taught and practised until 1357. After a year in Pisa he transferred to Florence, where he stayed from 1359 to 1364. He was back in Perugia during the period 1365 to 1390, except for a three-year break in Padua from 1376 to 1379. On Giangaleazzo Visconti's invitation, he spent the last ten years of his life, from 1390 to 1400, in Pavia teaching civil law and advising the government. Most of Baldo's commentaries were composed during his time in Perugia; but it was as Giangaleazzo's chief legal expert that he produced some of his most significant works: the *Lectura in usus feudorum*, the *Commentariolum super pace Constantiae*, the commentary on the Decretals, revisions to the earlier commentaries, and important political consilia.

Baldo's concept of plenitude of power incorporated the latest trends. He joined Jacques de Revigny, Cino, and his brother Angelo in dismissing the need for a just cause as a practical restraint on plenitude of power. Later commentators found support in his work for an absolutist position. But it was also true that Baldo laid the foundations for a more critical approach, deploring the effects of plenitude of power when he saw legitimate rights being overturned on a ruler's whim. Baldo's teachings proved to be the watershed between fourteenth-century support for the unfettered use of plenitude of power and its rejection by lawyers of the later period. With both these currents in evidence, and in view of how many times he returned to the subject in the course of his long career, it is remarkable how rarely Baldo's writings demonstrate any inconsistency.

Like his predecessors, Baldo accepted that plenitude of power could be identified with the ancient maxim that the emperor was not bound by law: 'The expression is not found in the *Corpus iuris civilis*, but it is correct to say that it is indicated by the words "whatever the prince decrees has the force of law".'[55] He noted the particular association between plenitude of power and the majesty of the emperor: 'The emperor has total plenitude of power in every land in the empire,' adding, 'in him all power shines; for the providence of God has seen that no one and nothing would better protect the well-being of the republic than Caesar.'[56] But like other lawyers, he allowed

[54] The exact date of Baldo's birth and the details of his early life have been the subject of controversy: see Cortese (1995), p. 437, n. 121, and Lally (1990). For biographical details in general, Scalvanti (1901), pp. 185–275, is still useful; see also Pennington (1997b) and Nico Ottaviani (2000). Further bibliography can be found in Cortese (1995), p. 437, n. 120.

[55] Baldo, *Commentariolum super Pace Constantiae*, s.v. Libellariae, nr. 3: 'De clausula suppletiva "de plenitudine potestatis", scias quod populus Romanus antequam transferret imperium ad Caesarem hac clausula nunquam fuit usus, nec iure civili invenitur haec forma, nisi dicatur, et bene, quod includitur sub illis verbis, "quidquid principi placet legis habet vigorem": *ff*. De constit. principum l. 1 [D. 1, 4, 1]; C. De legibus et const. l. ult. [C. 1, 14, 12].' The commentary on the Peace of Constance appeared in 1393, along with the *Lectura in usus feudorum*: Colli (2000), p. 69.

[56] Baldo, Consilium Bk 3, 359 ('Quemadmodum Imperator'), nr 1: 'Quemadmodum imperator habet totalem plenitudinem potestatis in omni terra quae sub imperio est . . . In imperatore enim

that plenitude of power could also belong to lesser rulers, such as the Visconti.

The key to Baldo's understanding of plenitude of power lay, as ever, in the issue of justification. He supported the established notion that civil law, and any rights based on civil law, could be revoked without cause: 'The question is whether the emperor can issue an act which is against civil law, and I do mean without cause (because where there is a cause there is no doubt that he can). Jurists say that he can issue an act which is against civil law, because that law rests on his sole authority, and therefore he is able to annul it; it follows from this that he can prevent a person's access to legal redress [to protect his rights], because that process is an aspect of civil law.'[57] Since property rights were at least partly based on *ius civile,* it must follow that those, too, could be cancelled without cause: on this point Baldo agreed with his brother Angelo, citing the very same texts. Commenting on *l. Omnes* (C. 7, 37, 2) he wrote: 'This is the enactment that contradicts those who say the emperor cannot transfer my property to another person in a concession and so deprive me of ownership,' emphasizing again, 'and they mean without cause, because with cause there would be no doubt about it.' That law settled the matter, he explained, 'for in this passage we see the emperor confirming all concessions originally made by [imperial] grant.'[58] According to Baldo, that law in itself authorized a ruler to dispose of subjects' property without cause. In his comment on the next law, *Bene a Zenone*, he referred again to his belief that with plenitude of power a ruler could ignore rights even in the absence

omnis potestas corruscat, nam providentiam Dei salutem reipublicae tueri nulli magis credidit convenire, nec alium rei sufficere, quam Caesarem.' (BAV. Barb. Lat. 1409, f. 91^{v})

[57] Baldo on C. 1, 19, 7 (De precibus Imperatori offerendis, l. Rescripta), nr. 12: 'Quarto quaeritur utrum imperator possit rescribere contra ius civile (et loquor sine causa, quia cum causa non est dubium quod potest); dicunt doctores quod contra ius civile potest rescribere, quia ius civile consistit in sola principis authoritate et ideo princeps potest illud ius tollere. Ex hoc sequitur quod potest alicui tollere actionem, cum sit de iure civili.'

[58] Baldo on C. 7, 37, 2 (De quadriennii praescriptione, l. Omnes), nr. 1: 'Hic est casus contra illos qui dicunt quod non potest imperator rem meam per privilegium alteri concedere, et auferre mihi dominium (et subaudirent sine causa, quia ubi causa subesset, nulla esset dubitatio). Et si dices quod non potest per privilegium secundum legem communem concedendo, sicut hic facit, dicas quod imo potest, nam hic imperator confirmat omnes concessiones antea factas per privilegium.' This was true, he went on, despite the *l. Rescripta* and *l. Quotiens,* 'which say that rescripts and privileges by means of which another person's rights are swallowed up are not valid.' For those laws could easily be discounted by means of a 'notwithstanding' clause, or even by including the words *motu proprio* (voluntarily): 'Nec obstat supra l. Rescripta, De precibus imperatori offerendi, ubi rescripta et privilegia per quae absorbetur ius alterius nihil valent et eodem titulo, l. Quotiens, 2 [C. 1, 19, 7 and 2]. Respondeo quia concedo hoc, nisi habeant clausulam derogatoriam "non obstante lege". Tunc ergo non tenent, quia imperator non vult et praesumitur nolle, etiam concedendo rescriptum nisi addat clausulam: *Extra*, De aetate et qualitate, c. eam te et ibi per Innocentium [X. 1, 14, 4]; De constitutionibus, quae in ecclesiarum et per eundem [X. 1, 2, 7]; salvo nisi imperator aut papa concederet motu proprio, quia quando ista exprimuntur in rescripto, tunc nulla est necessaria alia clausula derogatoria.' Most of Baldo's commentary on the *Codex* was composed during his time in Perugia, from 1379–90 but he revised book seven during his period in Pavia: Colli (2005), pp. 65, 74, 79–80.

of a just cause: 'As I said in the above passage, with absolute power the emperor can assign [the property of subjects] as he does his own, especially when there is an underlying cause':[59] just cause is cited as an option but not a prerequisite. 'Natural laws are immutable but discretionary laws are cancelled by a change of mind,' he explained elsewhere with reference to plenitude of power.[60]

Fundamental laws (divine law, natural law, and *ius gentium*), on the other hand, could not be transgressed without just cause. For Baldo, the sanctity of higher laws was axiomatic: 'Nothing defies plenitude of power except two things, immutable divine law and compelling natural law.'[61] Divine law protected life and liberty; *ius gentium* was a key safeguard of property rights and contracts. These laws could not be contravened for no reason, even with plenitude of power. In his lectures on the Decretals, composed at the end of his life, Baldo reiterated the principle that not even the pope could ignore fundamental law: 'When the pope is acting on the basis of plenitude of power, nothing can be adduced which would invalidate the concession, except of course *ius gentium*.'[62] The law of contracts came under *ius gentium* so that Baldo was adamant that contracts were inviolable.[63] He repeated verbatim Cino's 'golden lecture', on the *lex Digna vox*, which spelt out the emperor's obligation to honour his agreements.[64]

And yet despite these emphatic statements, Baldo, too, accepted that where there was just cause plenitude of power could overrule even fundamental laws. So well established was this principle that, at least as far as natural and divine law were concerned, he was able to run through the standard teaching with minimal discussion. The same basic asssumption applied to rights which depended on

[59] Baldo on C. 7, 37, 2 (De quadriennii praescriptione, l. Bene a Zenone), nr 2: 'De his [bona singularum personarum] tamen imperator disponere potest ex potestate absoluta, ut de propriis, ut dixi supra proxime, et maxime causa subsistente.'

[60] Baldo Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 1: 'Iura enim naturalia sunt illa quae sunt immutabilia, sed iura voluntaria contraria voluntate tolluntur, ut *ff*. De legibus, l. Non est novum et l. Sed [D. 1, 3, 26 and 28].' This work, along with Consilium Bk 1, 267 ('Ad evidentiam praemitto') mentioned below, was composed during the last three years of Baldo's life, i.e. 1397–1400: Vallone (1989), p. 121. On this case, see below p. 65.

[61] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nr 9: 'Plenitudini potestatis nihil resistit nisi duo tantum, scilicet ius divinum et immutabile ius naturale et necessarium, ut *Inst*. De iure natur. § sed naturalia [*Inst*. 1, 2, 11] et l. 2, *ff*. De usu fruct. earum. rerum quae usu consum. [D. 7, 5, 2]. Hae enim prohibitiones, de quibus supra, scilicet circa donandum et reliquendum, non sunt de iure naturali, sed de iure positivo, et sic non ligant principem, ut C. De don. inter virum et uxor. l. pen, [C. 5, 16, 26].' The passage is further discussed by Cortese (1962–4), i, p. 162, and Pennington (1993), p. 217.

[62] Baldo on X. Proemium, s.v. Gregorius: 'Dicit collectarius quod quando Papa scribit de plenitudine potestatis, nihil potest opponi quod annihilet gratiam. Sed certe imo potest opponi ius gentium.' Baldo composed the Commentary on the Decretals in Pavia after 1394: Colli (2005), pp. 77ff.

[63] Baldo, *In usus feudorum,* 'De natura feudi', s.v. natura feudi; see below p. 34, n. 110. The doctrine that contracts were inviolable was formulated by Guido da Suzzara (*c*.1225–92); see Cortese (1962–4), i, pp. 155ff. On Baldo's *In usus feudorum*, see Danusso (1991) and (2005). That did not stop the Visconti from overruling them: see below p. 132.

[64] Baldo Consilium Bk 3, 371 ('Verba Cyni'): 'Verba Cyni in sua aurea lectura De legibus et constitutionibus, l. Digna vox talia sunt': see below p. 27.

ius gentium, including ownership of property. But here Baldo was at pains to elaborate. Traditional teaching, he explained, was that '*ius gentium* was inviolable, and so the emperor could not order a person's property to be seized without just cause.' But, he asserted, 'with any kind of cause (*aliquali*) he certainly could do so.' With the use of *aliquali* Baldo emphasized the discretionary nature of the required justification. He clarified what he understood by *aliqualis causa*: 'Any consideration which persuades a ruler (*quaelibet ratio motiva ipsius principis*) is deemed to constitute a justification.' In other words, he explained, a ruler's personal convictions (*causa motiva)* were sufficient justification to allow him to infringe rights based on *ius gentium*; that was very different from the 'credible and appropriate grounds' (*causa probabilis et condigna*) required if a communal government were acting.[65] When it came to the violation of fundamental rights, a ruler was able to judge for himself what constituted a good enough reason.

Baldo had composed these comments on the *Codex* during his period in Perugia from 1379–90. He expressed the same broad view of what comprised valid grounds later in his career. In a consilium composed for Giangaleazzo Visconti sometime after 1397 ('Ad intelligentiam sequendorum'), he said that 'any reason, even a slight one' (*aliquod motivum, etiam leve*) would establish enough of a justification for plenitude of power to overrule fundamental rights.[66] In a short addition to the first version of the consilium he reiterated the point: when it comes to

[65] Baldo on C. 1, 19, 7 (De precibus Imperatori offerendis, l. Rescripta), nr 10: 'Tertio quaerunt doctores nunquid imperator potest rescribere contra ius gentium. Glossa videtur dicere quod non, unde per rescriptum principis non potest alicui sine causa auferri dominium; sed cum aliquali bene potest: *ff.* De natalibus restit. l. Quaeris [D. 40, 11, 3]; De evict. l. Lucius [D. 21. 2, 1]1; De leg. ii, l. Qui solidum, § 1 [D. 31, 78]; et De rei vendicatione, l. Item verberatum [D. 6, 1, 15]. Et habetur pro causa quaelibet ratio motiva ipsius principis; secus est in statuto populi, quia non debet inesse causa motiva, sed debet inesse causa probabilis et condigna, alias non valet, ut *ff.* Qui et a quibus, l. Si privatus [D. 40, 9, 17].' Baldo's statement 'habetur pro causa quaelibet ratio motiva ipsius principis' has been the subject of debate between Joseph Canning and Kenneth Pennington. According to Canning, Baldo believed that a ruler's personal motivation was sufficient cause for the removal of property rights, so that absolute power was not in effect limited by *ius gentium*: Canning (1998), pp. 234–7, and (1987a), pp. 80–2. For Pennington, on the other hand, the words *ratio motiva* imply that Baldo demands more rationally based grounds: Pennington (2005), pp. 8–9. It seems to me that Baldo's distinction between the more compelling reasons required in a communal statute (*causa probabilis et condigna*) and the slighter justification which underpinned a princely decree (*causa motiva* or personal persuasion) meant that in a monarchical regime just cause was determined by the ruler. Canning showed that *ratio* itself could mean cause in the sense of simple motivation and I find his analysis of the phrases *ratio motiva* and *causa motiva* (1998, p. 235) convincing. The passage dates from the period before 1386: see Colli (1999a).

[66] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 1. I have used the edition based on BAV. Barb. Lat. 1408 made by Pennington (1997b). The passage refers to the *Liber feudorum* 1, 12 (13) 'ubi dicit quod non potest disvestire sine causa quia fides est de iure naturali tamen si aliquod motivum etiam leve movet principem, de plenitudine potestatis facere potest': Pennington (1997b), p. 54. The manuscript containing the consilium was produced during the last three years of Baldo's life, from 1396: Colli (1991), p. 260, and Vallone (1989), p. 121. The series of manuscripts of Baldo's consilia in the Barberini collection of the Biblioteca Apostolica Vaticana, i.e. Barberini Lat. 1399, 1401–10 and 1412, were compiled under Baldo's supervision: see Colli (1991), p. 257, and Vallone (1989), p. 80.

treating other people's property as his own, 'a ruler's personal conviction (*motiva*) is considered the surest judgement.'[67] Significantly, Baldo accepted Cino's analysis that, when it comes to the acts of a prince, there is always the presumption of a just cause: 'A ruler's generosity is in itself considered a justification,' he wrote, 'which is not surprising in view of the fact that in the case of a prince certain knowledge is believed to constitute just cause,' adding in the margin, 'as Cino and I both note in our comments on *l. Rescripta*'.[68] This was where Cino had made the famous statement on the just cause, that 'such an assumption is overwhelming in the person of the prince'.[69] Baldo gave an example to show how the recognition of a just cause depended on a ruler's personal judgement. A legitimization awarded to a son after his father's death having the effect of dispossessing lawful heirs would not normally be valid; but a ruler was justified in ignoring the rights of heirs if it was known that the father had wanted his son legitimized.[70] Here was an act in which plenitude of power had been used to undermine fundamental rights, just cause originating in the certain knowledge and judgement of the ruler. As Baldo explained elsewhere, when it comes to using plenitude of power, 'a ruler's own persuasion is considered the surest justification'.[71]

[67] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 1: 'Motivum ipsius habeur pro ratione certissima', Pennington (1997b), p. 60.

[68] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 2: 'Dicit Innocentius quod licitum est regibus et principibus secularibus aliquid statuere ex causa in preiudicium iuris alterius ut ipse eleganter notat *Extra*, De iureiurando c. debitores [X. 2, 24, 6] et sicut nos dicimus quod certa scientia habetur pro donatione in contractu stipulationis, quia ipsa liberalitas est pro causa sufficienti, ut *ff*. de operis libert. l. Campanus [D. 38,1,47] et *ff*. De except. doli l. ii § Circa [D. 44, 4, 2, 3] et *ff*. De verb. oblig. l. Si divortio [D. 45, 1, 21], *ff*. de donat. Aristo [D. 39, 5, 18], ita multo fortius in principe quod ipsa liberalitas habetur pro causa; nimirum, quia in principe certa scientia pro iusta causa habetur ut legitur et notatur in l. idem Ulpianus, *ff*. De excus. [D. 27, 1, 12] et est glossa ordinaria valde notabilis in c. ad hec, *Extra*, De rescript.; X. 1, 3, 10] et facit quod not. Cynus et ego in l. Rescripta, De precibus imperatori offerendis [C. 1, 19, 7] et l. finali Si contra ius vel utilitatem publicam [C. 1, 22, 6]': Pennington (1997b), p. 62. Elsewhere Baldo again made it clear that he agreed with Cino that, whereas lesser rulers were obliged to articulate their grounds, with the prince a just cause should be presumed: see Baldo on C. 6, 23, 10, De testamentis quemadmodum, l. Si testamentum, nr. 2: 'In principe enim satis est quod putet causam subsistere et ex opinione sua statuat seu mandet; sed in inferiore debet de causa liquere.'

[69] Cino on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta), nr 12; see above p. 15, n. 39.

[70] Baldo on C. 1, 19, 7 (De precibus Imperatori offerendis, l. Rescripta), nr 11: 'Si ante legitimationem alii consanguinei adierunt haereditatem, et per consequens erant effecti domini, quod ista legitimatio non praeiudicat eis, quia, cum dominium sit de iure gentium, per rescriptum principis non potest auferri sine causa, et hic nulla subest causa, nisi forte pater hoc praeordinasset.'

[71] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 1: 'Motivum ipsius habetur pro ratione certissima, ut *ff*. De adhim. leg. l. Divi Severus [D. 34, 4, 14] et *ff*. De manumis. test. l. Testamento centurio; [D. 40, 4, 51].' Pennington (1997b), p. 60. Pennington and Canning quote Baldo's example of the legitimization to back different conclusions about the extent of the emperor's arbitrary power: Pennington (1993), pp. 211–12, to show that Baldo believed a ruler could not remove property without cause; Canning (1998), p. 236, to show that the emperor (but not a count palatine) could do so from whatever motive with his plenitude of power. My reading is that Baldo gives an example of the kind of informed decision which validates the use of plenitude of power to overrule fundamental rights.

Baldo appeared to believe that plenitude of power meant arbitrary rule, princes having discretion over higher as well as over positive law. In this he was no revolutionary, his teaching being based on established principles: rights deriving from positive law could be overruled at will; those based on higher law could be disregarded with just cause; and when not spelt out, just cause could be presumed. Nevertheless, Baldo taught that where a ruler set aside fundamental rights, the act would be based not on caprice but on reason. In his most extended definition, written in the period before he took up his post in Pavia, Baldo explained what was for him plenitude of power's central element: arbitrary power coupled with rational judgement; his analysis deserves to be quoted in full:

Plenitude of power means having complete freedom of choice,[72] not being subject to compulsion or bound by the norms of public law. A thing can be described as free in three ways: first, when it is not forced; second, when it is not corrected; and third, an act is said to be free when it results from the application of a law admitting of a free choice. Freedom of choice belongs above all to a ruler: he can opt for a less fair in preference to a fairer [alternative], or a worse over a better one; since a ruler is under no constraints, he can make whatever decision he wants.

Theologians say that when a person has two separate obligations he ought to choose the greater good on the grounds that it contains the stronger reason for being honoured; thus [one's responsibility] to God is greater than to one's neighbour, and to the fatherland greater than to a single individual (though, if he has only one obligation, then he ought to honour that in preference to choosing [another] greater good). But where there are two obligations, a person cannot possibly be bound by both and so he is free to choose the less good over the greater good. This applies to our present discussion [about plenitude of power]: the dictates of reason will bind a ruler to positive law on account of his being a rational animal. For that reason a ruler is not in fact exempt from positive law; for no authority, not even the emperor's or the senate's, can pretend that he is not a rational, mortal animal, or free him from the laws of nature, the dictates of right reason or eternal law.[73]

[72] That this is the meaning of *arbitrium* here is clear from Baldo's citations and from the rest of his comment.

[73] Baldo on C. 3, 34, 2 (De servitutibus et de aqua, l. Si aquam), nr 45: 'Est autem plenitudo potestatis arbitrii plenitudo, nulli necessitati subiecta nullisque iuris publici regulis limitata. Dicitur enim tribus modis aliquid liberum. Primo modo quod non cogitur: *ff.* De receptis arbitris, l. 3, § 1 [D. 4, 8, 3, 1]; secundo modo quod non corrigitur: De Legatis 3, l. Fideicommissa, § Quanquam [D. 32, 11]. Tertio modo dicitur liberum quod aequa lege libertatis feratur: *ff.* De arbitris l. Item si unus § si in duos et § principaliter et l. penult. [D. 4, 8, 17, 5 and 6] et *ff.* Manda. l. creditor § Lucius [D. 17, 1, 60]. In principe sedes libertatis est, et potest praeferre magis aequo minus aequum et magis bono minus bonum, nam cum non sit obligatus ad aliquid, potest eligere sicut placet. Nam dicunt theologi de electione boni, quod obligatus a duo tenetur praeferre magis bonum quia in eo est maior ratio praestationis, ut Deo magis quam proximo et patriae magis quam singulari personae: *ff.* De iust. et iure, l. Veluti [D. 1, 1, 2]. Sed obligatus ad unum tenetur ad illud solvendum, non ad magis bonum eligendum. Sed ubi sunt duo, ad neutrum obligatur et potest praeferre minus bonum maiori bono et hoc facit ad propositum nostrum; quia lege positiva princeps obligatur a dictamine rationis quia est animal rationale. Ideo ea non est princeps solutus. Nulla enim authoritas, neque principis neque senatus potest facere quod princeps non sit animal rationale mortale nec eum absolvere a lege naturae vel a dictamine rectae rationis vel legis aeternae.' Colli (1999a) has established that

For Baldo a ruler's innate intelligence and judgement (*ratio*) was the guarantee against the misuse of power: a prince was a 'mortal, rational animal', so that by definition his acts would be grounded in reason (the traditional basis of all law).[74] Towards the end of his life he put the point more succinctly: 'The emperor is a rational being endowed with supreme power: because he is rational he is bound to act in obedience to reason.'[75] The argument was summarized by a later jurist: 'not even the duke of Milan (not even the emperor indeed) is above the law and the dictates of right reason because he is a rational, political and mortal animal, as Baldo says in his important comment.'[76] Similarly, Baldo wrote: 'With the prince there is plenitude of power.' But, he explained, 'he more than anyone, having made a decision, has to think about what he is doing; and then, providing he is acting from certain knowledge, no one can say to him, why are you doing that?'[77] In focusing on natural reason Baldo was attempting to put the most positive possible gloss on the doctrine that a ruler's will was enough to set aside even fundamental laws and rights. The impulses that would lead a ruler to transgress the rights of one subject in favour of another would be filtered through his innate powers of rational analysis: absolute power must be presumed to be in safe hands.

In the consilium 'Ad intelligentiam sequendorum', Baldo summed up his teaching in a brief statement:

> The emperor commands so much plenitude of power that he is above the law. From plenitude of honour, on the other hand, as the upholder and author of justice, he is bound to stand by concessions and not go back on the word of his predecessors (a point laid down in the *Usus feudorum* where it says that he may not, without just cause, divest [a title-holder] because keeping one's word is part of natural law). Nevertheless, if the emperor is persuaded by some consideration, even a minor one, he may [break an agreement] using plenitude of power; that is because, as the ancient maxim puts it, what

the appearance of the passage in the original version of the manuscript Roma, Biblioteca Nazionale Centrale Vittorio Emanuele II, Varia 108 must mean that it was written in the period before 1386.

[74] A detailed examination of *ratio* as reason for (*causa*) and meaning of (*mens legis* and *aequitas*) in relation to particular laws forms a large part of Cortese's work (1962–4), i, pp. 257–337. The phrase *quaelibet ratio motiva*, quoted above, was an allusion to the process whereby a ruler became convinced of a just cause for defying fundamental laws: see Pennington (2005), p. 9.

[75] Baldo, Consilium Bk 1, 327 ('Pridie enim consului'), nr 2, ed. Pennington (1992), p. 502: 'Item princeps est creatura rationalis habens potestatem supremam, set in quantum est rationalis, debet obedire rationi ut notatur in Autentica De monach. in principio [Auth. 10, 133 (Nov. 133)].' Pennington points out (p. 487) that this consilium was originally composed as the second part of consilium 326 ('Rex Romanorum').

[76] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 3: 'Quarto facit quia nedum dux Mediolani, imo nec imperator, legibus solutus est, nec a dictamine rectae rationis, quia est animal rationale, politicum et mortale: Baldo significanter in l. 2, in Lib. 3 C. De servitutibus et de aqua [C. 3, 34, 2].' For further discussion of the meaning of *ratio naturalis* in the commentators, see Piano Mortari (1958), pp. 88–91.

[77] Baldo, *In usus feudorum,* Proemium, s.v. Aliqua ('Sed pauca de principe dicamus'), nr 34: 'Tertio quod in principe est plenitudo potestatis . . . Tamen ipse super omnes debet cogitare quid agat, postquam vult, et si ex certa scientia vult, nemo potest ei dicere "cur ita facis".'

he wishes to do he may lawfully do. When things happen which have to be judged either good or bad, no one is a better arbiter or testifier than he.[78]

Here Baldo brought together his belief in the unfettered scope of plenitude of power, in the tension between plenitude of power and morality, in the role of the just cause in contravening natural rights, and in the importance of a ruler's sound judgement as a restraint.

The trouble was that in practice the judgements on which everything depended were not always sound. Indeed, the grounds upon which fundamental rights were contravened were likely to be trivial or partial. Baldo criticized contemporary signori for failing to act according to the dictates of reason: 'Modern rulers transgress the order of reason and keep [faith] poorly to the danger of their souls; as Seneca said, [a ruler] can do many things but not everything lawfully.'[79] Elsewhere he commented that, 'though it will be seen as harsh, a law is valid even [if it is issued] without cause and lacks any essential justification (*ratio*).'[80] The explanation for the willingness of Baldo and others to accept that property and other rights could be flouted on the sole basis of a ruler's pleasure lies in contemporary practice. The careers of Cino, Alberico, Angelo and Baldo coincided with the period during which plenitude of power was first used freely by Italian signori. When a ruler issued an act, particularly a concession, 'de nostrae plenitudine potestatis', he felt little obligation to go into details: the *causa,* upon which the validity of the order was supposed to depend, would often be left unexplained.[81] Lawyers were supposed to accept on trust that a ruler had proper justification for overturning even the most cardinal rights. That was why Cino, Alberico and Baldo professed that a *causa* must by definition underlie acts issued from plenitude of power, and why Baldo accepted that the supposed justification might appear to be flimsy. It was not within the competence of contemporary jurists to lay down

[78] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 1, Pennington (1997b), p. 54: 'Et tanta est in eo plenitudo potestatis quod legibus solutus est, ut *ff.* De legibus l. princeps [D. 1, 3, 31]. Et licet de plenitudine honestatis teneatur habere firmas concessiones suas et non debeat venire contra fidem predecessorum suorum, quia debet esse cultor et auctor iusticie, ut in c. si clientulus § Ecclesia [*Lib. Feud.* 1, 12] et in c. i, 'De natura feudi' [*Lib. Feud.* 1, 7, 1] ubi dicit quod non potest disvestire sine causa quia fides est de iure naturali; tamen si aliquod motivum, etiam leve, movet principem, de plenitudine potestatis facere potest quod ei libet, iuxta illud antiquum verbum, "si libet, licet", ut dicta l. Princeps et C. eodem. l. digna vox [C. 1, 14, 4]; quia quandocunque possunt aliqua occurrere que pro bono vel malo sunt extimanda, nullus est melior arbiter et declarator eo, ut *ff.* De annuis legatis l. Mevia § finali [D. 33, 1, 13, 1] et notat Cynus De precibus imperat. offer. l. Rescripta [C. 1, 19, 7].'

[79] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'): 'Moderni exorbitantes ab ordine rationis et in preiudicium anime sue pexime servant. Seneca in libro I *De clementia ad Neronem Cesarem* ostendit multa posse set non omnia licite.' Pennington (1997b), p. 65, points out that the passage was deleted by Baldo as being too offensive to Giangaleazzo.

[80] Baldo on D. 12, 4, 1 (De condictione causa data, l. si ob rem), nr 3: 'Item nota quod lex valet etiam sine causa, tamen dicitur dura, quia caret spiritu rationis, ut infra Qui et a qui, l. Prospexit [D. 40, 9, 12 pr] et adde quod notat Cynus C. De episc. et cleri. l. Generaliter [C.1, 3, 51].'

[81] For further discussion see below pp. 132–3.

the law in ways that would contradict such acts; they accepted, therefore, that the theoretical need for a just cause was not a practical limitation and that plenitude of power gave a ruler supremacy over even the most basic laws and rights.[82]

Baldo's teachings on plenitude of power attempted to place doctrine in the context of day-to-day practice. Paradoxically, his most significant contribution in the long term was that he articulated the belief that plenitude of power meant arbitrary rule in a negative sense. In his eyes moral integrity, far from providing guidelines for the use of absolute power, was at odds with it. To see morality and absolute power as incompatible was not a new idea: all the lawyers who had been instrumental in explaining the nature of plenitude of power believed that rulers had a moral obligation not to transgress the law. It was a principle set out in the famous imperial declaration, *l. Digna vox* (C. 1, 14, 4): 'It is a statement worthy of the majesty of the ruler for him to declare himself bound by law; for our own authority is dependent upon the authority of the law. Indeed the greatest attribute of imperial power is to subject its government to the law.'[83] As Jacques de Revigny had put it, a ruler 'is not bound in the sense of being compelled, but he is morally bound'.[84] Cino had endorsed the principle in his comment on *l. Digna vox*: 'The emperor is exempt from law in terms of compulsion; nevertheless, his sense of morality dictates that he will want to be bound by it; that is because honour is accepted as the compelling force behind our sacred system of law and its benefits.' Honour itself was binding: 'It is a serious offence to break one's word and natural laws urge that agreements be honoured, including those made with enemies, for honour constrains even the prince.'[85] In the light of this, the use of plenitude of power to overrule the law could be considered unworthy of an honourable ruler. With Alberico, the criticism of plenitude of power became overt as he contrasted *plenitudo potestatis* with *honestas* in the opening section of the commentary on the *Digest*; here he compared that 'absolute authority and plenitude of power above the law' with 'the regulated, limited power which goes

[82] Cortese (1962–4), i, p. 138, describes Baldo as 'stranamente preoccupato di ampliare i diritti dell'imperatore nei confronti della sfera dei diritti del cittadino'; but, faced with the kind of acts signorial governments were passing on a regular basis, lawyers were under pressure to find some kind of justification in law.

[83] C. 1, 14, 4: 'Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas. Et re vera maius imperio est submittere legibus principatum.'

[84] Jacques de Revigny on C. 1, 14, 4 (De legibus et constitutionibus, l. Digna vox): 'Vel verius non de necessitate est alligatum, sed de honestate: infra De test. l. Ex imperfecto [C. 6, 23, 3]et *ff*. De leg. iii, l, Ex imperfecto [D. 32, 23] et sic habetis modum ligandi nobilem.' On the views of Jacques de Revigny, Cino and Bartolo on the binding force of *honestas* in this context, see Nicolini (1952), pp. 130–5 and Vallejo (1992), pp. 338–41.

[85] Cino on C. 1, 14, 4 (De legibus et constitutionibus, l. Digna vox), nrs 2–7: 'Dico ergo quod imperator est solutus legibus de necessitate; tamen de honestate ipse vult ligari legibus; quia honor reputatur vinculum sacri iuris et utilitas ipsius . . . Nam grave est fidem fallere, ut *ff.* de constit. pecu., l. 1[D. 4, 18, 1] et naturalia iura suadent pacta servari et fides etiam hostibus est servanda . . . quia honestas ligat etiam principem.'

with integrity (*honestas*)'.[86] It was Baldo who saw the evils of plenitude of power most starkly. In the consilium 'Ad intelligentiam sequendorum', he contrasted *plenitudo potestatis* with *plenitudo honestatis*.[87] In another case, he saw plenitude of power and fairness as opposites, the plaintiff having equity on his side while the defendant's rights were backed by plenitude of power.[88] Plenitude of power was vested in the prince, he wrote, 'but what he does is assumed to be on the basis of what is right not from plenitude of power'.[89] The pope too had been given 'the highest unrestrained power (which is called absolute power), free from all ties of canon law and other restrictive rules (except for those which are biblical and apostolic). Though not an apostle himself, the pope is [called] apostolic and should be a figure of apostolic holiness. But, as Aristotle says, plenitude of power can make a bad king into a tyrant and there are some things which are within his power which are neither honourable nor admirable.'[90] Baldo's exasperation was plain. With regard to the pope, he scorned the way rulings were made from personal conviction rather than in accordance with established norms: 'Decisions should not originate in the breast of the judge and the secrets of his heart, but from the womb and bosom of the law,' he proclaimed, so that 'Innocent IV's declaration [in support of such arbitrary judgments] derives rather from plenitude of power than from proper court procedure. While other lawyers back that assertion out of deference for papal authority, [I believe] that for a truer understanding, consideration has to be given to the actual facts and to the legal process.'[91]

[86] Alberico on D. Constitutio Omnem, nr 12: 'Aut ergo quaerimus de ordinata et limitata potestate et honestate . . . aut de absoluta et plenitudine potestatis quae est supra omnem legem.' On the distinction between morality and plenitude of power, see Nicolini (1952), pp. 137ff, 143, and Cortese (1962–4), ii, pp. 221, n. 131 and 277–8.

[87] Baldo, Consilium Bk 1, 333 ('Ad intelligentiam sequendorum'), nr 1, Pennington (1997b), p. 54; see above p. 26, n. 78.

[88] Consilium Bk 1, 253 ('Illustris dominus noster'), nr 4; see below p. 147.

[89] Baldo, *In usus feudorum,* Proemium, s. v. Aliqua ('Sed pauca de principe dicamus'), nr 34: 'Tertio quod in principe est plenitudo potestatis . . . Ea tamen quae facit praesumitur facere decenter et non de plenitudine potestatis.' See Pennington (2005), p. 10.

[90] Baldo on *Decretales*, Proemium, s. v. Gregorius, nrs 11–12: 'cui data est clavium plenitudo et summa libera potestas quae appellatur potestas absoluta ab omnibus vinculis canonum et ab omni regula arctativa, praeterquam ab evangelica et apostolica. Papa denique non est apostolus sed apostolicus et debet esse vir apostolicae sanctitatis, ut notat C. De sacrosanctis ecclesiis, l. i, De summa trinitate [C. 1, 2, 1], alias, ut dicit Philosophus, malus rex tirannus fit de plenitudine potestatis notat c. pervenit, De cen. in *Novellae* et in capitulo Magnae de voto, in *Novellae*. Tamen quaedam sunt ei possibilia quae non sunt honesta nec laudabilia.'

[91] Baldo on C. 7. 55. 1 (Si plures una sententia condemnati sunt, l. Si non singuli), nr 11: 'Item allegatio Innocentii de conscientia parum valet in iudiciis quia secreta conscientia de sinu iudicis et secretis de pectore ipsius non debet proficisci, sed de utero ac sinu legis . . . Concludo igitur quod dictum Innocentii potius procedit de plenitudine potestatis quam de iudicii rigore, licet alii doctores applaudant Innocentium propter reverentiam et authoritatem papatus. Ad pleniorem autem intelligentiam oportet inquirere de veritate et de iudicio.' On the debate about judging according to conscience in this period, see Padoa Schioppa (2001), pp. 133–49; most lawyers agreed with Baldo that it was a dangerous path.

In practice, honour did not hamper a ruler when he chose to use plenitude of power. That was the central point in Baldo's own comment on *l. Digna vox*: 'This passage says that a ruler should live by the law, because therein lies his authority. Notice that the word "should" in this context means has a moral duty to, and a ruler does need to have the highest sense of morality. But it does not mean he "must" [live by the law] because the supreme and absolute power of a ruler is not subject to law; *l. digna vox* therefore applies to ordinary, not absolute power.'[92] Ordinary power was by definition limited by law (*ordinata*) and so could be considered subject to the rules of morality; plenitude of power, on the other hand, was not so constrained. 'Every day,' complained Baldo, 'we see that princes and signori do whatever they want with their property, and the accepted custom is that their will serves as law.'[93] It was because he was convinced of the overpowering force of plenitude of power that Baldo so distrusted it. Plenitude of power might have been a perfectly legitimate prerogative but it had come to stand for tyranny:

> That phrase, 'from plenitude of power', is supposed to mean plenitude of the kind of power which is good and commendable, not disreputable and tyrannical. After all, the emperor is supposed to do only what he can do legally. Nor does the expression 'from our certain knowledge' have any value; indeed that phrase is more fitting as a declaration of serious wrongdoing. This ill-considered and abusive device, which rulers employ in edicts nowadays, ought to be totally eradicated from royal courts and never resorted to in this way.[94]

THE REACTION AGAINST ABSOLUTE POWER

Baldo had reinforced the theory of absolutism developed earlier in the century so that a large part of his legacy was the idea that plenitude of power had no effective

[92] Baldo on C. 1, 14, 4 (De legibus et constitutionibus principum, l. Digna vox), introduction: 'Princeps debet vivere secundum leges, quia ex lege eiusdem pendet authoritas, haec dicit. Intellige quod istud verbum 'debet' intelligitur de debito honestatis, quae summa debet esse in principe; sed non intelligitur precise quia suprema et absoluta potestas principis non est sub lege, unde lex ista habet respectum ad potestatem ordinariam, non ad potestatem absolutam.' See Cortese (1962–4), ii, p. 229; Canning (1987a), p. 75; Pennington (1993), p. 214.

[93] Baldo, Consilium Bk 1, 248 ('Quaeritur utrum donatio'), nr 4: 'Nos tamen videmus quotidie quod principes et domini faciunt de bonis suis illud quod placet et quod voluntas eorum servatur pro lege de consuetudine generale', BAV, Barb. Lat. 1408 f. 129^{r}. The consilium was possibly composed at Giangaleazzo's request; see Conetti (2005), pp. 486ff, who gives some of the background.

[94] Baldo, Consilium Bk 1, 345 ('Ad evidentiam premittendum est'), nr 1: 'Nec obstat clausula *de plenitudine potestatis* quia illa clausula inteligitur de plenitudine potestatis bone et laudabilis, non vituperabilis vel tirapnice. Nam non dicitur imperator posse nixi quod de iure potest. Item nihil operantur illa verba *ex certa scientia* quia ymo magis sunt apta ad expressionem maioris delicti. Et ideo ista temeraria et abuxiva cautella, qua hodie principes utuntur in suis rescriptis, deberet in totum radicari ab aulla nec ita in uxu frequentari', BAV Barb. Lat. 1409 f. 3r. *Ista cautella* refers to both phrases, including plenitude of power, and not just to 'ex certa scientia' since these expressions were used together in this instance, as in so many: it was the expedient as a whole that Baldo disliked, as the sixteenth-century commentator Aimone Cravetta corroborates (see below p. 175). The manuscript dates from the period 1397–1400.

restraints. That doctrine appeared time and again in the work of his successors. A frequently quoted passage was his statement that if a ruler was deliberately acting from plenitude of power, no one could ask *cur ita facis*, questioning his actions;[95] similarly, the description of plenitude of power as 'complete freedom of choice, not subject to compulsion nor bound by the norms of public law' became a standard definition.[96] Meanwhile, jurists of the next generation, unhappy at the overwhelming scope of absolute power, looked for ways in which its effects could be curtailed.

Younger lawyers refocused attention on the standard doctrine that rights could not be infringed without sufficient reason. Raffaele Fulgosio (1367–1427), for example, a colleague of Baldo's at Pavia,[97] took issue with the teaching that a ruler's command had to be obeyed whether or not it contradicted the law: he himself 'always supported the orthodox view, as put forward in the Gloss [of Accursio], despite the fact that Butrigario took the opposite view'; for Fulgosio 'a ruler may not seize property in the absence of the owner's consent without just cause.'[98] On this central issue Angelo degli Ubaldi's statement that with plenitude of power a ruler could take someone's property with or without just cause became the obvious focal point. The late fifteenth-century Milanese jurist Filippo Decio (1454–1536/7) explained what was by then the accepted view: 'Neither the pope nor the emperor can overrule natural law or *ius gentium* without cause,' he wrote, 'and for this reason present-day jurists think Angelo was wrong when he argued the opposite, i.e., that a ruler could do so even without any justification; the opinion is only sustainable in two instances: if the property is paid for (in which case the prince may act from plenitude of power, as Angelo says); or in the case of benefices over which the pope has unrestricted authority.'[99]

[95] Baldo, *In usus feudorum,* Proemium, s. v. Aliqua ('Sed pauca de principe dicamus'), nr 34 (see above note 77). The definition was quoted, for example, by Francesco Corte in Consilium 49, nr 77; by Filippo Decio, Consilium Bk 3, 373, nr 8; and later by Giovanni Crotto (d. 1540), Consilium Bk 2, 184, nr 8. The phrase appears to have originated in the work of the early thirteenth-century canonist, Laurentius Hispanus: see Pennington (1993), pp. 46–7.

[96] Baldo on C. 3, 34, 2 (De servitutibus et de aqua, l. Si aquam), nr 45 (see above note 73). His definition was quoted, for example, by Francesco Corte in Consilium 49, nr 77; Giasone del Maino in Consilium Bk 4, 101 ('Immunitas'), nr 8; Filippo Decio on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesiarum), nr 98.

[97] For details of Fulgosio's career, see below p. 153.

[98] Fulgosio on D. Constitutio Omnem, nr 7: 'Ego autem semper fui cum communi sententia, que est glossa, licet Iacobus Butrigarius sit in contraria sententia . . . Concluditur itaque quod per rescriptum non potest princeps auferre dominium rei invito domino sine iusta causa. Et ista est communis sententia legistarum et canonistarum.'

[99] Decio on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesiarum), nrs 107–11: 'Secunda conclusio Abbatis [Panormitani] est in hoc secundo membro principali quod iuri naturali vel gentium sine causa papa vel imperator derogare non potest, et idem Bartolus et doctores dicunt in l. fin. C. Contra ius [C. 1, 22, 6] et in locis supra allegatis et in dicta l. Rescripta [C. 1, 19, 7] et idem notat Bartolus in l. 3, C. De fun. patr. lib. xi [C. 11, 62, 3]; Paulus de Castro in consilio 56, "Viso et examinato puncto" in fin . . . Et ex praemissa conclusione inferunt moderni hic quod male loquitur Angelus in dicta lege Item si verberatum, § i, De rei vendi. [D. 6, 1, 15] ubi voluit contrarium quod etiam sine causa princeps hoc possit. Sed opinio Angeli

The sixteenth-century Venetian lawyer and bureaucrat Marco Antonio Pellegrini corroborated what Decio had observed; according to him, Angelo's impassioned opinion was universally rejected, as he proved by the substantial list of citations he included from earlier authorities. The recognized view was that a ruler could not deprive subjects of property even from plenitude of power.[100]

The new generation also campaigned against the doctrine, developed by Jacques de Revigny and Cino and accepted by Baldo, that a just cause should be presumed in princely decrees (the teaching which had emasculated the key restraint on arbitrary power). It was Fulgosio again who restated the principle that a directive which ignored the rights of another was not valid if, having been issued without just cause, it contradicted natural law or *ius gentium*: the act should not be implemented by officials 'despite the fact that Cino, following the teaching of the French jurists, adds that a just cause is invariably assumed with a ruler (and it is a very strong presumption in his favour) so that he should always be obeyed. His teaching in effect contradicts the opinions of the glossators and earlier authorities: if it were true, then any act seizing the rights of another would be valid.'[101] Resistance to plenitude of power continued to grow. Martino Garati writing axiomatically in the mid-1440s agreed that when it comes to seizing property 'a cause is not assumed (even though that is what the French believe): it has to be demonstrated.'[102] The same view was articulated later by Filippo Decio:

videtur substentabilis duobus concurrentibus, videlicet soluto pretio, ut supra dictum est, quod princeps hoc facit de plenitudine potestatis, ut Angelus loquitur et supra dixi. Ex quo habetur unus casus in quo praedicta conclusio non procedit. Secundus casus est in beneficialibus, in quibus papa liberam habet potestatem, ut in c. 2, De praeb. [X. 3, 5, 2].' Bartolomeo Sozzini, Consilium Bk 2, 164 ('Visa bulla Bonifacii'), nr 7, condemned Angelo in similar terms; see below p. 158.

[100] Marco Antonio Pellegrini, *De privilegiis et iuribus fisci*, Bk 1, Tit. 3, nr 65: 'Princeps ex vi suae plenariae potestatis potest subdito suo, absque alia causa, dominium rei suae sibi iure gentium acquisitum auferre . . . per quae iura sic animose dixit Angelus in dicta lege Item si verberatum, nr 1, inquiens mentiri qui contrarium dicunt . . . Verum quia assertio ista communiter improbatur et communis traditio est ut princeps non possit sine causa auferre subdito suo dominium rerum suarum directum vel utile nec etiam de plenitudine potestatis ut dixi supra [nr 26] allegando multos ex maioribus nostris'.

[101] Fulgosio, Consilium 61 ('Domina Catherina'), nr 4: 'Quarto quia rescriptum principis ius alienum prorsus absorbens respuitur, etiam si ibi sit clausula "non obstantium", si contra ius naturale vel gentium et sine iusta causa concessum sit, et ab omnibus magistratibus refutari praecipitur, ut C. De prec. imper. off, l. Quotiens et l. Nec damnosa et l. Rescripta [C. 1, 19, 2 and 3 and 7] et Si contra ius vel uti. pub. l. fin. [C. 1, 22, 6] . . . et Cynus, post ultramontanos, in dicta lege Rescripta; et licet adiiciat [Cynus] semper in principe praesumi iustam causam et pro eo violentam praesumptionem esse et ideo semper ei de facto obediendum, quod effectu contradicit sententias glossatorum et superiorum, quia sic semper valeret effectu rescriptum ius alienum absorbens.'

[102] Martino Garati, *Tractatus de principibus*, nr 85, pp. 110–11: 'Princeps sine causa non potest tollere dominium alterius, secundum communem sententiam: glossa, Jacobus de Arena et Bartolus in lege finali C. contra ius vel utilitatem publicam [C. 1, 22, 6] et Innocentius et Johannes Andreae in c. quae in ecclesiarum, De constitutionibus [X. 1, 2, 7]. Ex causa autem potest, et in dubio causa non presumitur, nisi probetur, secundum Raynerium et Bartolum. Licet ultramontani contrarium, in lege Rescripta, C. De precibus Imperatori offerendis [C. 1, 19, 7] et ibi plene dixi.'

It goes without saying that a ruler may not seize someone's property without cause; hence, if he does so, it is generally assumed that he has acted on just grounds and his claim to this effect should be accepted. But one has to be cautious about this inference—which is the crux of the whole issue—because if in fact a just cause were invariably assumed to exist, it would mean that any directive issued by the prince would be valid, however prejudicial to the rights of another person, because there would always be some justification, either actual or understood. Giovanni da Imola [d. 1436] was aware of this dilemma and his response was to say that a justification could be assumed on the part of a ruler if some such reason could in any way be conjectured, but not if none could be imagined. That is not a satisfactory solution, however, since it is obvious that some sort of justification could always be dreamt up. Because of this, present-day jurists have ultimately decided that a cause is not to be presumed unless it is specified.[103]

Francesco Corte (d. 1495),[104] writing in the 1490s, put it even more trenchantly: 'It is essential that the *causa* be made explicit, or at least clearly apparent; otherwise, if it were to be always assumed, then attempting to understand a ruler's justification would be a pointless waste of time.'[105]

It was re-emphasized too that the grounds for ignoring laws and rights had to be geniune. Baldo's notion that a ruler's personal conviction was sufficient justification for breaking fundamental laws was dismissed. As Raffaele Fulgosio put it: 'Baldo accepts [the law as it stands] in his comment on *l. Rescripta* but adds that any consideration or reason will suffice as a cause, in effect contradicting the Gloss and other authorites.' Fulgosio quoted Baldo's own works against him: 'Baldo himself, in the Prima constitutio of the *Digest,* plainly says that the emperor may not, without cause, abrogate [rights guaranteed by] *ius gentium*.'[106] Fulgosio's contemporary at Pavia, Cristoforo Castiglioni

[103] Decio on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesiarum), nr 129: 'Sic ergo in proposito videtur dicendum quod licet princeps non possit alicui rem suam auferre sine causa; si tamen aufert praesumitur hoc factum fuisse ex causa et principi hoc asserenti credendum esset facit textus in Clem. i, De prob [*Clem*. 2, 7, 1]. Sed circa istam conclusionem, in qua tota vis videtur consistere, advertendum est, quia si verum est generaliter quod causa praesumatur, ergo quaelibet dispositio facta a principe etiam in praeiudicium alterius valebit, quia semper habebit causam veram vel praesumptam et ita Fulgosio dicit in Consilio 61, "Domina Catherina", in 2 col. Istam difficultatem sentit Iohannes de Imola in c. nam concupiscentiam, col. 2, versi. *Extra*, gloss. supra eo [X. 1, 2, 4] et ibi respondet dicens quod causa in Principe presumatur quando aliquo modo imaginari potest; secus si nulla causa potest imaginari. Sed ista resolutio non satisfacit quia semper videtur quod aliqua causa poterit imaginari. Et ideo finaliter moderni hic tenent quod non praesumatur causa nisi appareat.' Decio lectured on canon law at the Florentine studio in the 1480s: for details of his career, see below pp. 107–8.

[104] On Francesco Corte see below p. 102.

[105] Francesco Corte, Consilium 49 ('Memoriae recolendae'), nr 93: 'Oportet vel quod expresse de causa appareat, vel saltem apparenter; alias frustratorium et supervacuum esset requirere causam in principe si semper praesumeretur.'

[106] Fulgosio, Consilium 61 ('Domina Catherina'), nr 4: 'Idem tenet Baldus in dicta l. Rescripta [C. 1, 19, 7] ut non posset princeps contra ius gentium sine causa rescribere; sed adiicit quamcunque motivam causam seu rationem sufficere pro causa quod effectu quodam glossae ubi supra et aliis contradicit. Ipse tamen Baldus in Prima constitutione *Digestorum* dicit simpliciter principem sine causa non posse ius gentium tollere, allegans [quod] notatur in d. l. fin. C. Si contra ius vel

(1345–1425), was even more openly critical: where there is any doubt about a ruler's motives, he wrote, the validity of a decree should be questioned, 'whatever Baldo says in the comment on *l. Rescripta*, where he asserts that any argument whatever that is put forward on the part of a ruler should be considered a just cause; that has to be a fantasy.'[107] Filippo Decio stated baldly that Baldo did not accept any need for justification on a ruler's part: 'Baldo notes in his comment on *l. Rescripta* that from plenitude of power the emperor can seize someone's property even without cause.'[108] He himself argued against that position in the remainder of the consilium. Not everyone interpreted Baldo's words *aliqua causa motiva* in the same way. The Sienese lawyer Bartolomeo Sozzini (1436–1506) put a different construction on Baldo's statement: 'All jurists require a reasonable cause when it comes to taking the rights of another; Baldo states this specifically in his comment on *l. Rescripta,* where he maintains that it will not suffice to have just any excuse; it must be a rational justification, aiming at the public good.'[109] But whichever way Baldo's statement was read, the idea that with plenitude of power a ruler could get round the need for a genuine justification was now rejected.

In addition, lawyers were able to exploit other conditions, besides lack of legitimate grounds, in order to render plenitude of power ineffectual. As noted above, contracts were supposed to be sacrosanct: 'It makes no difference that the emperor has plenitude of power,' Baldo maintained, 'for while it is true that God has subjected laws to him, He has not done so with contracts and [the emperor] is bound by these, as laid down in the *lex Digna vox*.'[110] This meant that in theory no concession which was in the nature of a contract could be revoked even by plenitude of power. As Baldo's pupil Paolo da Castro put it, 'a

utilit. pub. [C. 1, 22, 6].' Fulgosio expressed the same argument against Cino in his comment on D. Constitutio Omnem, nr 7; see below pp. 153–4.

[107] Castiglioni, Consilium 8 ('In facto supposito'), nr 20: 'Et secundum hoc utilissimum est investigare illud dubium, videlicet an valeat rescriptum contra ius naturale seu gentium, quicquid scripserit Baldus super hoc in lege rescripta [C. 1, 19, 7] in eo quod dixit quod in rescripto quodlibet motivum principis expressum pro iusta ratione venit habendum. Nam videtur somnium.' See below pp. 150–3.

[108] Decio, Consilium 198 ('Pro tenui facultate'), nr 2: 'De plenitudine potestatis potest imperator etiam sine causa rem propriam alicui sibi auferre, ut notat Baldus in l. Rescripta, in versiculo tertio quaerunt, C. De preci. imperat. offer. [C. 1, 19, 7] et in l. 2, versi. item nota quod papa, C. De servit. et aqua [C. 3. 34. 2] et idem Angelus [degli Ubaldi] dicit in l. Item si verberatum, § i, *ff*. De rei vendi. [D. 6, 1, 15].' These authorities lend support to Canning's understanding of Baldo's phrase; see above p. 22, n. 65.

[109] Bartholomeo Sozzini, Consilium Bk 2, 164 ('Visa bulla'), nr 12: 'Ex quibus habemus dicere vel quod si fuisset Summus Pontifex motus ex tali causa [i.e.causa falsa], non fuisset motus causa rationabili, et sic ex illa non potuisset ius alterius auferre; quoniam doctores omnes requirunt causam rationabilem ad hoc ut ius alterius auferri possit; et hoc in specie exprimit Baldus in dicta l. Rescripta, ubi vult quod non quaelibet causa sit sufficiens, sed debet esse causa rationabilis, et ad publicum bonum tendens.' Sozzini supports Pennington's interpretation; see above p. 22, n. 65.

[110] Baldo, *In usus feudorum,* 'De natura feudi', s.v. Natura feudi: 'Nec obstat quod imperator habeat plenitudinem potestatis; quia verum est quod Deus subiecit ei leges, sed non subiecit ei contractus, ex quibus obligatus est, ut notatur et traditur in l. Digna vox, C. De legibus [C. 1, 14, 4].'

prince is obligated to stand by a contract entered into with a subject and may not legally break it, even using supreme power, because he would then be acting against primaeval natural rights.' Such, he said, were the obligations common to humanity since the dawn of time.[111] Similarly, due process, particularly a hearing and a defence (*citatio-defensio*), was meant to be inviolable.[112] Wills were another sacred aspect of law. There were other less formal limitations to plenitude of power, particularly where an act was the result of a petition. *Importunitas* or excessive campaigning on the part of the petitioner was one such. As Baldo said, 'if a ruler grants [a concession] based on certain knowledge and from plenitude of power, the recipient is secure. But if [he is acting] in complete ignorance or as a result of the importunity of the petitioner, then he is not protected.'[113] Then there were the defects of *obreptitio* and *subreptitio,* which referred to errors, omissions and false statements on the part of a petitioner. These concepts had existed in antiquity; they had gained currency through canon law, passing thence into secular practice.[114] They could have the effect of invalidating any resulting concession, even one based on plenitude of power.[115] Any kind of grant or privilege affecting the rights of a third party which had been given on the basis of plenitude of power was now the subject of intense critical scrutiny; in this way the idea that a ruler's will was sovereign thanks to his fullness of power was gradually eroded. But it was a long process and it was not until the sixteenth century that the principle of absolute power itself came under sustained attack; it was only then, for example, that Baldo's bitter denunciation of plenitude of power as an abuse came to be quoted.[116]

[111] Paolo da Castro, Consilium Bk 1, 318 (or, in some editions, 156), ('Viso et examinato puncto'), nrs 5 and 3: 'Tum quia communiter doctores tradunt quod ibi etiam princeps contractum initum cum subdito tenetur servare et non potest venire contra de iure, etiam et suprema potestate, quia faceret contra ius naturale primaevum seu legem naturae (quae est), ut fides data etiam hosti sit servanda. Nam servare fidem et promissa fuit inventum de iure gentium primaevo, quod appellatur ius naturale quia fuit eo ipso statim quod gentes esse coeperunt, ut expresse dicit Bartolus in dicta l. Item quod *ff*. De cond. ind. [D. 12, 6, 1] . . . quia tale ius gentium seu naturale princeps de suprema etiam potestate non potest tollere: *Inst.* De iur. na. § Sed naturalia [*Inst.* 1, 2, 11].' Paolo had explained that there were many ways of making a concession: some were freely granted, but some were given as remuneration for services, while others were paid for: 'cum habentes immunitatem possint esse multiplicis generis. Nam quidam habent ex pacto, quidam ex privilegio mere gratuito, quidam ex privilegio non mere gratuito sed remunerativo alicuius operis bene gesti: l. Aquilius reg. *ff.* De donationibus [D. 39, 5, 27], vel interventu alicuius pecuniae commensuratae pretio privilegi.' In these last instances, a concession constituted a contract and had to be honoured. This consilium was one of Paolo's most cited in the context of plenitude of power.

[112] See Gorla (1982), pp. 639–40, and Pennington (1998), especially pp. 148–64.

[113] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'), nr 9: 'Si dominus fecit ex certa scientia et de plenitudine potestatis, tutus est recipiens. Si autem per facti ignorantiam, vel importunitatem petentis, non est tutus', BAV. Barb. Lat. 1409, f. 92^{r}.

[114] On these limitations, see Olivier-Martin (1949), p. 367, and Le Bras (1965), pp. 172–4.

[115] Baldo discusses the issue in Consilium Bk 1, 346 ('Imperator concessit'); see also the discussion with innumerable citations in Pietro Paolo Parisio, Consilium Bk 1, 1 ('Redemptoris'), nrs 72–96.

[116] See below p. 175.

CONCLUSION

The theory of plenitude of power as developed in the fourteenth century had reflected the arbitrary practices of contemporary signori. Many acts, issued in the heat of the battle for power and peppered with references to plenitude of power, were by nature partial and unfair; in such acts the prerequisite justification was either weak and general, or absent altogether. Lawyers called upon to defend such acts in court could not ignore the unambiguous ruling, laid down by Innocent IV, that fundamental rights could be breached only if there were just cause. But the idea emphasized by Jacques de Revigny and Cino that a just cause could be presumed in a ruler's decrees had effectively circumvented Innocent's doctrine. Baldo had attempted to rationalize that principle with the assertion that a ruler could be relied upon to have sound reasons for infringing the rights of subjects, if only because of his innate qualities as a rational being. But once Innocent IV's insistence on a just cause had been surmounted, blatantly unfair concessions had become acceptable in law. The support of the legal profession for questionable signorial acts does not have to be seen as evidence of self-interest or toadying. Any attack on the principle of plenitude of power would have undermined the validity of earlier acts, the upshot being legal mayhem. Baldo had articulated the predicament of lawyers confronted with the indiscriminate use of plenitude of power: 'I do not, nor would I ever, dare defy the heavens by advising against the power of princes. The results of such an approach could be dangerous and damaging, and must be avoided for fear of provoking serious discord.'[117]

Jurists in the fifteenth century had taken a different view, challenging what they perceived to be the misuse of plenitude of power. The move towards restraint did not come from lawyers alone: recourse to plenitude of power in day-to-day government ultimately required compromise and sensitivity on the part of the regime too. Signori for their part had to take into account the uneasiness felt by Baldo and others on the issue of plenitude of power; governing councils in any case included numbers of lawyers.[118] Aggrieved parties were ready to mount an embarrassing challenge if an act fell foul of legal niceties. It was not just the validity of acts that was at stake; there was also the government's reputation for justice: too free a use of plenitude of power would smack of tyranny.

[117] Baldo, Consilium Bk 1, 248 ('Quaeritur utrum donatio'), nr 4: 'Nec audeo [nec] auderem ponere os in celum ad consulendum contra potentiam principum, quia multa ex hac opinione possent sequi valde mala et periculosa, et cavenda quia generarent valde magnum scandalum, ut *Extra,* De prescript, c. 2 [X. 2, 26, 2]', BAV, Barb. Lat. 1408, f. 129^{r}.

[118] See Martines (1968), pp. 458–64; Covini (2007), pp. 106–10.

Chapter 2

The Early Visconti and the Claim to Absolute Power

ITALIAN SIGNORI AND PLENITUDE OF POWER

By the mid-thirteenth century, plenitude of power, as developed in papal government, had begun to have its attractions for secular rulers. The phrase was used by the imperial chancery during the reign of Frederick II.[1] An early example crops up in the decree of 1231 against the Guelf communes, referring to the plenitude of power given to the emperor by God.[2] Later, in 1296, Adolph of Nassau confirmed the liberties of Bresançon 'de plenitudine potestatis regie';[3] Albert I issued two privileges to the bishop of Liège 'de plenitudine potestatis nostre'.[4] Perhaps because of the close connection with Italy and Italian jurists, Emperor Henry VII (1308–13) made much more use of plenitude of power than any of his predecessors: from this period imperial documents of all kinds contained the phrase, again usually referring to plenitude of 'royal' power.[5] The dissemination of plenitude of power to other European monarchs soon followed its use by the emperor, though precise dates are hard to come by.[6] Hostiensis was

[1] For a discussion of the early use of *plenitudo potestatis* at the imperial court, see Schubert (1979), pp. 128–39.

[2] *Monumenta Germaniae historica, Legum sectio* iv, *Constitutiones* ii, nr 156, p. 192.

[3] *MGH, Legum sectio* ii, *Constitutiones* iii, nr 565, p. 532.

[4] *MGH, Legum sectio* iv, *Constitutiones* iv pt i, nrs 27 and 28, p. 23.

[5] A privilege was issued in 1310 to the count of Guelderland 'de plenitudine potestatis regie' to collect tolls, *MGH, Legum sectio* iv, *Constitutiones* iv pt i, nr 429, p. 373; in the same year Henry VII appointed his son John, king of Bohemia, to the position of imperial regent 'de regie plenitudine potestatis', *MGH, Legum sectio* iv, *Constitutiones* iv pt i, nr 444, p. 389; in 1311 he announced laws quashing the reprisals and banishments passed against his enemies in Lombardy and Tuscany 'ex nostre plenitudine potestatis', *MGH, Legum sectio* iv, *Constitutiones* iv pt i. nr 563, p. 523; in 1311 the archbishop of Mainz was restored to certain rights near Dietfurt 'de plenitudine regie potestatis', *MGH, Legum sectio* iv, *Constitutiones* iv pt i nr 678, p. 648. The bishop of Eichstätt was absolved of charges of usury in 1311 'de plenitudine regie potestatis', *MGH, Legum sectio* iv, *Constitutiones* iv pt i. nr 680, p. 649, and after Henry's death John of Bohemia referred to a grant of privileges which the late emperor 'de plenitudine potestatis expresse concesserit', *MGH, Legum sectio* iv, *Constitutiones* v, nr 14, p. 12.

[6] Mochi Onory claimed that Uguccione ascribed *plenitudo potestatis* indiscriminately to all independent monarchs as early as the late twelfth century (1951), pp. 159–60 and 164, but

already complaining in the *Lectura* of 1271 that rulers of all ranks were wrongfully adopting plenitude of power. Having described the position of the emperor as unique, he goes on: 'For this reason we would not think of extending plenitude of power in temporal affairs to just any secular prince; the fact remains, however, that many other rulers, and not only kings but even inferiors, are appropriating this power for themselves; but it is usurpation, and they are wrong.'[7] The use of the term by the French chancery in 1254 lends support to Hostiensis's complaint. Louis IX's reforming ordinance of that year referred to the plenitude of royal power, which gave him the right to 'proclaim, change, improve, add to or curtail' the law.[8] Examples of the use of the term by French kings are not common, but Philip IV issued the 1303 statute against private warfare 'de plenitudine regiae potestatis'[9] and in 1315 and 1316 Louis X created peerages 'de nostrae potestatis plenitudine'.[10]

By the end of the thirteenth century even small-time Italian signori were referring to plenitude of power. As early as 1290 Alberto I della Scala (1277–1301), ruler of Verona, ordered the property rights of Castellano *de Capruris*, 'enemy of the commune', to be cancelled 'ex vigore nostri arbitrii de nostra plenitudinis [*sic*] potestatis'.[11] Similarly, by the beginning of the fourteenth century the Bonacolsi family of Mantua were regularly issuing orders on the strength of plenitude of power. A concession was granted, for example, on 17 April 1300, to Corradino Gonzaga by Guido Bonacolsi, 'ex suo arbitrio et potestatis plenitudine, de certa scientia'.[12] Even so dubious a figure as Guecellone da Camino, who in 1322 had already lost his position as signore of Treviso, can be seen granting a tax exemption from his plenitude of power.[13] By then the della Scala consistently issued decrees and privileges *de plenitudine potestatis.* In 1324 Cangrande della

there appears to be no textual evidence for this: see Tierney (1954), pp. 615–16. For Uguccione's views on imperial plenitude of power, see above pp. 11–12.

[7] Hostiensis on X. 3, 49, 2 (De immunitate, c. tempore), s.v. Generaliter compellantur: 'Hanc igitur plenitudinem potestatis in temporalibus non presumimus extendere ad aliquem principem secularem, quamvis et multi alii, non solum reges sed etiam inferiores, hanc sibi appropriant usurpando: sed errant', published in Watt (1965b), p. 185, Extract 56.

[8] 'Omnia ergo singula supradicta, que pro subditorum quiete duximus ordinanda, retenta nobis plenitudine regie potestatis declarandi, mutandi, vel etiam corrigendi, addendi vel minuendi', Isambert, *Recueil général des anciennes lois Françaises* i p. 274; see also Ercole (1932), p. 183, and Gouron (1997), p. 62.

[9] Isambert, ii, p. 808; Krynen (1988), pp. 57–69, discusses the use of the phrases *certa scientia, auctoritas regia* and *plenitudo potestatis* in French royal ordinances during the fourteenth century.

[10] Isambert, iii, pp. 119, and 151.

[11] Archivio di Stato di Verona, Pergamena 899, quoted by Cipolla (1881), p. 25: 'Alberto della Scala populi *Veronen. Capitaneus Generalis* che agisce *ex vigore nostri arbitrii de nostra plenitudinis [sic]potestatis* ordina *prudenti viro Obizoni . . . iudici, et notariis officii . . . di eximere et cancellare* le possessioni di Castellano del fu Castellano de Capruris, scritte *in aliquibus libris quaternis seu rodulis comunis Ver.*' I am indebted to Gian Maria Varanini for this reference.

[12] Quoted in Torelli (1923), p. 114. The author cites further examples from 1304 and 1305 (p. 115), from 1308 (pp. 116, 118 and 426) and from 1324 (p. 459).

[13] Verci (1786–91), ix, Doc. 950, p. 23; see below p. 44.

Scala wrote, 'ex vigore nostri arbitrii et de nostre plenitudine potestatis ex certa scientia', to the parties involved in a dispute between the commune of Bassano and Niccolò di Rovero.[14] Again in 1328 Cangrande 'by imperial authority, vicar general of Verona, Padua and Vicenza', expressed the wish to grant the castle of Vighizzolo to Spinetta Malaspina in recognition of loyal service, 'from our plenitude of power';[15] and in 1331 Alberto II and Mastino II renewed a grant of tax exemption made earlier by Cangrande to the convent of Santa Caterina,'ex nostri capitaneatus officio et de nostre plenitudine potestatis ac ex certa scientia'.[16] From this point, references to plenitude of power by North Italian signori gradually became more common.

ESTABLISHING THE REGIME: AZZONE, LUCHINO, AND GIOVANNI VISCONTI

Azzone Visconti has a reasonable claim to be considered the founder of the dynasty. But he was not the first Visconti ruler: the family were old-established feudatories who had long held office and commanded special privileges in Milan. Ottone Visconti, archbishop of Milan, had dominated the city from 1277, eventually handing over to Azzone's grandfather Matteo I, who, as Capitano del Popolo, had had two extended periods of rule. During the first of these, from 1287 to 1302, he had taken control of Pavia, Vercelli, Novara and Como, and was appointed imperial vicar general.[17] Ousted by a rebellion of the former ruling family, the della Torre, Matteo had returned to rule again in 1311 as imperial vicar general of Milan and its territories;[18] on the death of Henry VII in 1313, the General Council of Milan appointed him signore (*dominus et rector generalis*) of the city. The regime became caught up in the conflict between contenders for the imperial throne and the new pope at Avignon, John XXII. Hoping (with the help of Robert of Anjou) to reverse the gains made by Henry VII and re-establish the Roman papacy, John XXII issued a bull of excommunication against Matteo himself and other Ghibelline signori, an act which was put into effect in 1320.[19] The Milanese themselves were implicated and placed under interdict, with the result that people began to question their loyalty to the regime. This was the situation that Matteo bequeathed to Galeazzo I in 1322.

[14] Verci (1786–91), ix, Doc. 973, p. 56.

[15] 16 September 1328; the document is published by Biadego (1923), pp. 195–6. It is described and reproduced by Langeli (1988), pp. 77 and 195.

[16] 10 July 1331: Langeli (1988), p. 77; the document is reproduced on p. 78.

[17] Matteo held his position under the auspices of Archbishop Ottone until the latter's death in 1295; his title was granted by Adolph of Nassau in 1294.

[18] The vicariate of 1311 included 'merum et mixtum imperium et [etiam] id quod est simplicis jurisdictionis', Sickel (1859), p. 82; Monza and Treviglio were excluded.

[19] Matteo was accused of heresy and devil worship; but his worst offence, from the point of view of the pope, was continual annexation of church property (necessitated by lack of resources).

Galeazzo was elected *capitanus et dominus*, initially for one year, by the General Council, his forces soon defeating the Angevin-papal army at Bassignana. But the sentence of excommunication pronounced against him in March 1323, coupled with disorder in Milan, weakened his position. Moreover, the city found itself once more at the centre of a wider conflict when John XXII, fearing a reunited empire, refused to recognize Lewis IV as king of the Romans. Together, Visconti and imperial forces defeated the papal army encamped in Monza. Another success followed: the young Azzone proved himself hero of the day when (with the help of Castruccio Castracani) he defeated the Guelf forces at Altopascio and again at Zappolino. In 1327 Galeazzo hosted Lewis's coronation in Milan and his own vicariate was confirmed. But the fragility of the Visconti regime was revealed when, on the death in suspicious circumstances of Galeazzo's youngest brother, Stefano, he and all the leading members of the family were, on Lewis's orders, arrested and imprisoned; Visconti territories were now brought under direct imperial rule. In March 1328 Galeazzo was the last of the family to be released from prison; by August he was dead. Galeazzo left Azzone, his son, a pitiful inheritance: Milan was being governed by an appointee of the imperial vicar and a council made up of Galeazzo's opponents; the Milanese were resentful of the effects of the Visconti regime, which had brought a papal interdict, war and years of heavy taxation. Other communes once tied to the Visconti (Novara, Monza, Como, Bergamo, Lodi, Piacenza, Pavia, Alessandria, Vigevano, Vercelli and Tortona) had re-established independence under local families.[20] In addition, there was the legacy of bitterness among the Visconti themselves, particularly on the part of Galeazzo's brother Marco, who was competing for leadership. Azzone's achievement was that within ten years he had restored the family's position as the most powerful signori in North Italy, with himself as undisputed head; once Azzone had taken over, the Visconti family remained in power until the death of Filippo Maria in 1447.

Azzone's first act was to gain control over Milan itself. With the support of his uncle Giovanni, he outmanoeuvred his other uncle, Marco, by offering 125,000 florins to Lewis IV in exchange for an imperial vicariate, granted 15 January 1329. At the same time Giovanni Visconti was made cardinal and apostolic legate in Lombardy by the imperial anti-pope, Nicholas V. On 10 February the populace of Milan welcomed Azzone and Giovanni back into the city. But the anxiety that these events had aroused in Avignon led to another interdict and excommunication, which, coupled with the threat of a French invasion, induced the two Visconti to submit to Pope John XXII. Although he had been forced to renounce the imperial vicariate, Azzone was now in control of the city. He set

[20] Not all were hostile to the Visconti: Como (under the Rusca), Bergamo (under the Suardi), Novara (under the Tornielli), Vercelli (under the Tizzoni), and Pavia (under the Beccaria) maintained Ghibelline sympathies. Vigevano and Piacenza had supported the Guelf cause; in Lodi a popular revolt had established a new regime under Pietro Temacoldo, 'the old miller'.

about restoring the traditional communal system of government: a committee of experts met to update the communal statutes;[21] the XII di provvisione was re-established, with its extensive powers of legislation, control over appointments and judicial functions;[22] the Ufficio dei Dazi was revived to take charge of tax collection,[23] along with the Sei della Camera, which supervised communal finances.[24] Equally important was the re-establishment of the General Council, now known as the 900, which met 15 March 1330 to approve the new statutes and to elect Azzone himself signore ('perpetuus et generalis dominus rector et gubernator civitatis et districtus Mediolani').[25] Azzone set up Milan's first chancery. To begin with, acts in his name were issued as notarial instruments, but from 1333 they appeared in the form of chancery documents. By 1335 there is evidence of an actual chancery, the words *cancellarius domini* appearing for the first time in that year.[26]

Azzone's next task was to re-assemble the family's territorial holdings.[27] Taking advantage of a reaction against the power of aristocratic families, he promised economic and political stability, offering amnesties and the restoration of property to all exiles. The first city to submit was Novara, where Giovanni Visconti, having been appointed bishop, was affirmed as signore in 1332.[28] Pavia and Bergamo defied Azzone's attempts at conquest in 1333, but more progress was achieved in 1335 when Como accepted him as signore with an assurance of justice and perpetual peace;[29] Vercelli followed, hoping that 'the reasons for the poor state of the commune would thereby be addressed' and peace restored;[30] the year ended with the siege and capture of Lodi, a Guelf stronghold, leading to a general amnesty and reinstatement of exiles.[31] Azzone was then accepted, apparently without opposition, by the other communes which had remained loyal to Avignon (Crema, Caravaggio, Romano, Martinengo, Orzinuovi and

[21] Lattes (1896), p. 1059. [22] Santoro (1950), pp. 29ff.

[23] Santoro (1950), pp. 43ff; the first records of the Dazio di entrata e d'uscita in Milano date from 18 June 1330, Ferorelli (1911), pp. 78–9.

[24] Santoro (1950), pp. 49ff.

[25] Santoro (1950), pp. 11ff; the official account of this meeting is published by Cognasso (1923), Doc. 3, pp. 123–8.

[26] Baroni (1977), pp. 105–7; (1984), pp. 456, 467–8; see also Natale (1976), pp. 267–9. On the impressive output of the early Visconti chancery, see Gamberini (2005), pp. 41ff.

[27] King John of Bohemia's sudden arrival in Lombardy at the behest of the Brescians had been an added complication after the departure of Lewis IV at the end of 1329: most of the cities of Lombardy, including Milan itself, along with Pavia, Bergamo, Novara, Como, and Vercelli, declared for the former. More fighting ensued, Azzone succeeding in occupying Bergamo and Pavia by the autumn of 1332; 1333 saw the defeat of King John at the hands of a coalition of signori. Establishing control even over the contado of Milan itself was difficult: see Gamberini (2005), pp. 164ff.

[28] Cognasso (1955b), pp. 250–1.

[29] 29 July 1335; see Rovelli (1962–63), ii, pp. 15–16; Cognasso (1923), p. 77; idem (1955b), p. 261; see also the anonymous 'Azzone Visconti a Como', where the act of submission is published.

[30] 26 September 1335, *Statuta communis Vercellarum ab anno mcccxli*, col. 1502.

[31] Cognasso (1923), p. 78.

Castelnuovo di Bocca d'Adda). In 1336 he took San Donnino and Piacenza (though only after stiff resistance on the part of the Rossi and Francesco Scotti respectively).[32] In Piacenza the citizens were freed from all taxes imposed by the previous regime; judicial sentences for political crimes were reversed and prisoners liberated.[33] Azzone wrested Brescia from the della Scala in 1337, with a similar package of pacification measures.[34] Each commune had its own ties with him, nothing at this stage binding together Visconti subject towns. The nature of Azzone's rule was demonstrated in the funeral monument commissioned after his death by Giovanni. Azzone lies above a representation of his earthly achievements: in this scene Saint Ambrose is the central figure (protecting two dignitaries of uncertain identity); gathered on either side are ten kneeling figures, offering the symbols of individual subject cities; each is guarded by a patron saint, equal in scale to Ambrose. The communes are portrayed as separate entities, linked only by the presiding genius of Azzone himself.[35]

To provide a sense of cohesion as well as to reinforce his position, territorial expansion was accompanied by a programme of building: Azzone promoted his princely image, with Milan as a magnificent setting for his court.[36] The city was provided with new walls and gate towers, new squares, drains and paving. In addition, Azzone 'took it upon himself with the utmost dedication to rebuild the tower of the cathedral, which had lain in ruins for almost a hundred and eighty years';[37] not least of his achievements was the elaborately decorated chapel of the Blessed Virgin (now San Gottardo) with its imposing campanile.[38] A new palace was constructed in order, according to Fiamma, to impress the populace and deter invaders.[39] Giotto himself was persuaded, in 1335, to decorate the great hall with a fresco representing worldly glory, Azzone being depicted among the great leaders of history.[40] Another aspect of Azzone's princely style, often remarked upon, was his coinage.[41] As soon as he had obtained the imperial vicariate in 1329, he issued his first coin in Milan with the letters A and Z on either side of Saint Ambrose and on the obverse the name of the emperor, 'Ludovicus'.[42] He was to issue at least twenty-four more coins in Milan, the design changing

[32] For all these communes, see Cognasso (1955b), pp. 266–7.

[33] Cognasso (1923), pp. 80–9. [34] Cognasso (1923), pp. 89–91.

[35] Not every figure is identifiable: see Fermi (1930), p. 37. Azzone had taken over Bergamo, Brescia, Como, Cremona, Crema, Lodi, Novara (under the rule of Giovanni Visconti), Piacenza, San Donnino, and Vercelli. On Azzone's monument, see Boucheron (2003) and Welch (1995), pp. 18ff.

[36] On Azzone's building programme, see Boucheron (1998), pp. 108–21, and Green (1990).

[37] Fiamma, *Opusculum de rebus gestis*, p. 20, translated by Green (1990), p. 104.

[38] Green (1990), pp. 101–2; Boucheron (1998), pp. 117–18.

[39] Fiamma *Opusculum de rebus gestis*, p. 16.

[40] Gilbert (1977) has convincingly demonstrated that the fresco described by Fiamma was the work of Giotto; see also Boucheron (1998), pp. 119–20.

[41] Galeazzo himself had issued a *grosso* and a *denaro imperiale* in Piacenza before 1320 inscribed with his own name, 'G. Vicecomes': *Corpus nummorum italicorum,* ix, p. 563 and *tav*. xxxvii, nos. 5 and 6.

[42] Cognasso (1955b) p. 210; Biondelli (1869), p. 111.

to reflect growing confidence: he dropped the imperial reference and spelled out his own name in full, eventually substituting the Visconti viper for the cross of the commune of Milan.[43]

Azzone died on 16 August 1339. He had lived just long enough to see the famous victory of Parabiago, won by his uncle Luchino against a coalition of local enemies and German mercenaries. Of equal importance for the strength of the regime was the fact that his death had been preceded by that of the old archbishop of Milan, Aicardo di Camodegia, who had held the position since 1317. At last the way was cleared for Giovanni Visconti, bishop and signore of Novara, to become archbishop.[44] Since Azzone had no sons, Giovanni and Luchino were appointed joint signori by the general councils of Milan and the other cities. In practice it was the fiery Luchino who took over day-to-day government. With the lawyer Alberico da Rosciate as Visconti envoy, relations with the papacy were restored: by 1341 Pope Benedict XII had lifted all interdicts and sentences of excommunication in return for the promise of obedience and the recognition of papal authority. In comparison with Azzone, Luchino was not much liked by the powerful families of Milan, and in 1341 had to deal with the Pusterla conspiracy, when a group of leading citizens attempted to overthrow the regime. It was the last of the Milanese rebellions against the Visconti, whose position in the city was by now impregnable. Thereafter expansion resumed: Bobbio and Asti submitted in 1342,[45] Parma in 1346,[46] Alessandria and Tortona in 1347.[47] Milan's industrial hinterland was under effective domination and the routes through to the Alps, to Venice and to Genoa were secured. The policy of reconciliation carried on: exiles were encourged to return and private warfare was prohibited.[48] Central administration continued to develop: in particular the chancery, with at least six officials, grew in scope and expertise so that the chancellor was now a trusted member of the inner circle.[49] Written orders became the chief means of communicating government initiatives to the dominions, numbering several thousand a year; many were simply administrative instructions, but others were privileges or concessions with legislative force (the *rescripta* about which jurists had so much to say).[50]

Luchino's death in 1349 left the able and experienced Giovanni as sole ruler and the foremost power in North Italy. In 1350 he bought the city of Bologna from Giovanni Pepoli and his brother and was appointed signore by

[43] Azzone's rule over other cities was publicized similarly: in 1335 Como issued coins which for the first time boasted the name of their signore; there were to be thirteen such in the four years before Azzone's death. *Corpus nummorum italicorum*, iv (Rome, 1913), pp. 183–5.

[44] Pope Benedict XII conceded the archbishopric in 1341 as part of the re-establishment of relations with the Visconti.

[45] Cognasso (1923), pp. 91ff, 96ff.

[46] Cognasso (1923), pp. 95ff.

[47] Cognasso (1923), pp. 101ff.

[48] Cognasso (1955a), p. 488; Cognasso (1966), p. 183.

[49] Baroni (1984), pp. 456ff; Baroni (1977), pp. 121ff, gives details of individuals working in the Chancery under Azzone and his successors, showing the widening scope of their activities.

[50] See above pp. 14–15, 23, 32–3.

the Consiglio del Popolo. Then in 1353, following Venetian and Catalan attacks on Genoa, he established dominance there too. Both takeovers were short-lived; indeed the greatest era of expansion was over. Within the core territories, on the other hand, the merger of ecclesiastical and secular authority under Giovanni immeasurably strengthened the Visconti hold, as papal favours flooded in thanks to the archbishop's influence in Avignon; the regime benefited, too, from the new powers of patronage Giovanni had been granted in the archdiocese.[51] By the time of Giovanni's death in 1354, there had been twenty-five years of relatively stable rule under the Visconti.

Plenitude of Power under the Early Visconti

The first surviving mention of plenitude of power by the Visconti dates apparently from the time of Azzone. The phrase appears in a document of 26 September 1334, when he is seen granting Milanese citizenship and exemption from taxation to a supporter: 'We, Azzone Visconti, signore of the cities and districts of Milan, Bergamo, Cremona and Vercelli from our plenitude of power wish to give you, our beloved Franceschino, son of the late Fineto of Sangallo, a special favour.'[52] It has been seen that the Visconti were not the first signori to use plenitude of power: the della Scala in particular were making frequent reference to the term in the 1320s. But there were revealing differences. The della Scala were more tentative, perhaps uncertain of the validity of their plenitude of power, and were unwilling to rely on it as the sole force behind edicts. In 1324, when Cangrande wanted to sanction an extension to the statutory limits for a particular appeal, he ordered that this should be permitted 'on the strength of our *arbitrium* and from our plenitude of power'.[53] *Arbitrium* was the authority to govern handed by a commune to the signore,[54] Cangrande having been expressly given *arbitrium* by the general councils of Vicenza and Verona back in 1312.[55] To quote another example, in granting the castle of Vighizzolo to Spinetta Malaspina, Cangrande's

[51] Cognasso (1955b), p. 361.

[52] 'Nos Azo Vicecomes civitatum et districtuum Mediolani, Pergami, Cremone et Vercellarum dominus generalis tibi Franceschino nato quondam Fineti de Sancto Gallo de Pergamo dilecto nostro volentes de nostri plenitudine potestatis gratiam facere specialem', published by Santoro (1976), pp. 6–7; there might well have been earlier usages.

[53] 'ex vigore nostri arbitrii et de nostre plenitudine potestatis', Verci (1786–91), ix, Doc. 973, p. 55.

[54] According to Meccarelli's analyses (1998, pp. 161–93 and 2000), *arbitrium* in the context of the medieval communes encompassed the appointment of officials, day-to-day administration, responsibility *super bono et pacifico statu civitatis* (including the provision of food), the preservation of local autonomy, the modification of statutes and the duty to secure and preserve communal rights. *Arbitrium* was understood to operate in accordance with, not above, local statutes. See also Sandri (1932), p. 77; De Vergottini (1977a), pp. 654ff; Ercole (1929), p. 106; Storti Storchi (1990), pp. 78–9.

[55] Sandri (1932), p. 101, and, for the provision of the General Council of Vicenza on 27 February 1312, pp. 113–14.

experienced notary, the famed scholar Benzo da Alessandria, drew up a diploma which was couched in similar terms, 'vigore arbitriorum nostrorum et de nostri plenitudine potestatis';[56] the charter of Alberto and Mastino II della Scala endowing the convent of Santa Caterina in 1331 was made 'on the basis of our office of captain and from our plenitude of power'.[57] In 1338, Mastino confirmed all the privileges given by Bartolomeo, bishop of Verona, to the monastery of S. Cassiano by the plenitude of power and *arbitrium* he was understood to hold.[58] The diploma of Guecellone da Camino, granting a tax exemption to Usbrigerio Fassa, was given 'from the plenitude of his power and from the *merum et mixtum imperium* which his forebears had and which he too now enjoyed'.[59] Guecellone had been given 'merum et mistum imperium et arbitrium generale secundum eius beneplacitum' by the General Council of Treviso in 1313.[60]

The Visconti formula was different. When Azzone, Luchino and Giovanni began issuing grants from plenitude of power, they did so without additional supporting authority. Thus Azzone said in 1334 simply, 'we wish to grant a special favour to Franceschino da San Gallo from our plenitude of power'.[61] In 1339 Giovanni and Luchino conceded exemption from the salt tax to the village of Romano solely 'from our generosity and plenitude of power';[62] and in 1341 they granted a tax rebate to the city of Piacenza 'from our plenitude of power and all our authority'.[63] In decrees, too, the Visconti referred to plenitude of power without any additional support.[64] The Visconti's method of invoking plenitude of power raised difficult questions. The phrase was associated with the supremacy of pope and emperor and the monarchical status of the king of France. The manner in which pope, emperor and king expressed their plenitude of power was a demonstration in itself of how this authority was conceived. Papal plenitude of power was described as plenitude of ecclesiastical power (*plenitudo ecclesiasticae potestatis*),[65] plenitude of apostolic power (*apostolicae plenitudo potestatis*),[66] or

[56] 16 September 1328; Biadego (1923), p. 195. This formula is repeated in the documents of 16 August 1334, 31 October 1335, and 4 February 1338; Langeli (1988), pp. 77–8 and 82.

[57] Langeli (1988), p. 78. Alberto II and Mastino II had been elected Capitani by the General Council of Verona in 1329.

[58] Langeli (1988), pp. 78 and 82; see below p. 50.

[59] 'de sue plenitudine potestatis et meri et mixti imperii quod sui antecessores habuerunt et nunc habet ipse', Verci (1786–91), ix, Doc. 950, p. 23.

[60] Picotti (1905), p. 229, and Doc. 53, p. 301.

[61] 'volentes de nostri plenitudine potestatis gratiam facere specialem' (26 September 1334): Santoro (1976), p. 7.

[62] 'de nostra liberalitate et plenitudine potestatis' (15 October 1339): Santoro (1976), pp. 18–19.

[63] 'de nostre plenitudine potestatis et omni nostra auctoritate' (11 January 1341): Santoro (1976), p. 24.

[64] See, for example, Luchino Visconti's decree of 23 May 1343 (*ADMD*, p. 1) granting all subjects access to courts in any part of his dominions, 'statuta in contrarium loquentia in hac parte cassamus de nostrae plenitudine potestatis'.

[65] Watt (1965b), p. 176; Benson (1967), pp. 197 n. 3, and 210 n. 6.

[66] *Extrav. comm.* 3, 2, 5 (1317), quoted in Krynen (1988), p. 137 n. 25.

plenitude of pontifical and royal power (*plenitudo pontificalis et regie potestatis*);[67] or it could be explained in a short phrase: the plenitude of power which he has because he is vicar of Christ.[68] The emperors spoke of plenitude of imperial power (*imperatoriae plenitudo potestatis*)[69] or, more frequently in the early fourteenth century, of plenitude of royal power (*plenitudo potestatis regie*).[70] The French kings, too, issued laws and privileges from the plenitude of royal power (*de plenitudine regie potestatis*).[71] By contrast, the Visconti, without such recognizable status, had no obvious way of indicating the nature and origins of their plenitude of power. It was a problem of which they themselves were aware.

Baldo later wrote that, just as the emperor had plenitude of power, so lesser rulers 'could well have it if a vicariate had been given to them with plenitude of power'; historians, too, have generally accepted that plenitude of power was an aspect of the imperial vicariate.[72] But that was not Azzone's, Luchino's, or Giovanni's assumption. Azzone's short-lived imperial vicariate had made no mention of plenitude of power: he was given simply 'merum et mixtum imperium et omnem iurisdictionem et exercitium.'[73] The motives for laying out a large sum to Lewis IV to acquire the vicarial title were diplomatic and military rather than legal: Azzone wanted to forestall an imperial invasion and re-enter Milan. There is also the problem that once Azzone had renounced the vicariate in 1329, he, Luchino, and Giovanni had no imperial title.[74] John XXII's renewal of the interdict and sentence of excommunication had necessitated a volte-face and return to the papal fold. Thus it happened that the confirmation of Azzone's imperial diploma on 23 September 1329 took place at the very moment when Avignon accepted his return to obedience (15 September).[75] By 26 November

[67] James of Viterbo, *De regimine christiano*, p. 268. The pope's 'royal power' was a reference to his claim to temporal authority.

[68] 'Plenitudo potestatis quam habet quia est vicarius Christi' appears in Innocent IV's comment on X. 2, 2, 9 (De foro competenti, c. quod clericis), quoted by Ladner (1983), p. 511. See also Ullmann (1946), p. 185.

[69] 'Sententia diffinitiva contra Regem Robertum Siciliae,' 26 April 1313, Doenniges (1839), p. 200.

[70] 'Scriptum de privilegiis concedendis', 9 September 1310, *MGH, Legum Sectio iv, Constitutiones iv pt i,* p. 373; 'Encyclica italicis missa', 13 September 1310, *MGH, Legum Sectio iv, Constitutiones iv, pt i,* p. 389; 'Cassatio repressaliarum', 12 September 1311, *MGH, Legum Sectio iv, Constitutiones iv, pt i,* p. 648.

[71] Louis IX's 'Ordonnance pour la réformation des moeurs dans le Languedoc et la Languedoil', December 1254 (Isambert, i, p. 274); Philip IV's 'Établissment portant défense des guerres priveés', 9 January 1303 (Isambert, ii, p. 808).

[72] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nr 8 (see below pp. 65–6). Besta (1929), p. 299 maintained, for example, that 'Attraverso il vicariato il signore acquistò la facoltà di esercitare la *plenitudo potestatis*'; see also Cusin (1936a), p. 38.

[73] Santoro (1976), p. 1. An imperial vicar was customarily granted 'merum et mixtum imperium et omne id quod est simplicis iurisdictionis': Sandri (1969), pp. 157ff; Ercole (1929), p. 287 n. 2. Matteo Visconti was given those same powers: Sickel (1859), p. 82.

[74] Azzone briefly held a vicariate from John of Bohemia in 1331; Biscaro (1919), p. 208 n. 1.

[75] Biscaro (1919), p. 145; Cognasso (1955a), p. 217.

Azzone had officially signalled to the pope the renunciation of the imperial diploma and his acceptance, instead, of an apostolic vicariate.[76] Azzone did not use the title of imperial vicar after this point: he was not referred to as such in the meeting of the General Council that conferred power on him in 1330, nor in later documents.

The full potential of the vicariate as a basis for authority among Italian signori was not realised until some time later. In the early fourteenth century the practice of granting vicariates to rulers who had already acquired power through the commune as elected signori was still a recent development.[77] There is evidence that imperial endorsement was not especially prized in this period, and that even Ghibelline signori doubted the worth of an imperial diploma. Henry VII died on 24 August 1313 and as early as September 10 Galeazzo Visconti had relinquished the vicariate which he had been given over Piacenza; the Solari of Ivrea had surrendered the title by 24 September; Francesco Malaspina by 3 October; and the same happened in Chieri, Lodi, Crema, Como and Monza.[78] The most eloquent testimony that there was uncertainty about the vicariate's reliability emerges in the record of the debate which took place in the General Council of Milan, summoned on 20 September 1313 to discuss whether the vicariate, granted to Matteo Visconti for life, retained its validity after the emperor's death. Legal experts were consulted but could not come to a consensus, and so it was decided that the best way forward would be for the commune to appoint Matteo *dominus et rector generalis* for life, with the same powers as he had received from the emperor, namely 'merum et mixtum imperium et simplex et omnis iurisdictio'.[79]

Azzone did have a papal vicariate giving him full powers 'to hold, rule and govern' Milan and the other communes on behalf of the pope and the church.[80] Its purpose, however, was not to provide a juridical framework for Visconti rule, but to signal the re-establishment of relations following the excommunication. The vicariate was a temporary title and its terms were not defined.'[81] Moreover, when, after John XXII's death, Pope Benedict XII (1335–42) offered him another papal vicariate, Azzone was markedly unenthusiastic.[82] It is unlikely,

[76] Biscaro (1919), pp. 149–63; Cognasso (1955a), p. 218.

[77] On imperial vicariates granted in these circumstances, see Ercole (1929), pp. 280–90; the argument put forward by De Vergottini (1977b), pp. 614ff, that the imperial vicariate could be sufficient in itself to ensure dominance over a commune was convincingly contested by Capitani (1981), pp. 142–6.

[78] Sandri (1969), pp. 164–8.

[79] 'an dictum privilegium duraret post obitum ipsius domini imperatoris, et dictus dominus Matheus possit exercere iurisdictionem in civitate et districtu Mediolani prout poterat in vita ipsius domini imperatoris': Cognasso (1955e), p. 84.

[80] De Vergottini (1977c), p. 576.

[81] The vicariate was conferred, according to Fiamma (*Manipulus*, col. 753), 'auctoritate apostolica, Romano vacante imperio', for one year only.

[82] Azzone insisted the pope annul the conviction for heresy of 1323 as part of the agreement; most of the discussions concerned abstract issues resulting from John XXII's conflict with Lewis

therefore, that Azzone believed that the title of apostolic vicar would be capable of providing him with plenitude of power.

Rather than relying on a transfer of imperial or papal powers, the early Visconti appear to have accepted that plenitude of power had been granted to them by their subjects.[83] The powers conceded to Azzone as a result of election as signore by the General Council were, in fact, much more fulsome than those given to Matteo I in 1313: the latter had simply received *merum et mixtum imperium et simplex et omnis iurisdictio*.[84] The details of Azzone's powers are revealed in the official proceedings of the meeting of the General Council of 15 March 1330, whose purpose was both to ratify newly compiled communal statutes and to discuss the appointment of Azzone. It was proposed that he should be elected 'perpetual and general *dominus rector et gubernator* of the city and district of Milan' and should be given all the powers and every kind of jurisdiction, rule and power that the commune and people of Milan enjoyed. In executing his responsibilities Azzone was to have the full authority of the commune.[85] Similarly, on 29 July 1335 the General Council of Como gave Azzone *merum et mixtum imperium et gladii potestatem*, as well as *plenum dominium* with the understanding that 'from now on all the powers which the people of Como have by law and by custom are handed over so that [Azzone] is *dominus generalis* of the city and territory.'[86] The people of Vercelli (the only other acquisition for which

IV rather than the terms of the vicariate itself. Azzone's reluctance to accept a papal title was revealed in 1338 when he rejected the the apparently attractive position of a permanent vicariate over cities he had recently added to his dominions, including Piacenza, Lodi, and Crema (where the pope had a historic claim to direct sovereignty), making it clear that he neither acknowledged such papal claims, nor had any desire to rely on the temporal authority of the papacy to validate his rule: Biscaro (1920), pp. 246ff; Cognasso (1955b), pp. 263ff; De Vergottini (1977c), pp. 567ff.

[83] General discussions of the popular basis of authority in the Visconti state can be found in Gualazzini (1953), pp. 184–211, Cognasso (1957), and Ercole (1929), pp. 240ff, 299.

[84] Cognasso (1955e), p. 86.

[85] Azzone was made 'perpetuus et generalis dominus rector et gubernator civitatis et districtus Mediolani,' being given all 'dominium et omnimodam iurisdictionem, potestatem et balyam . . . et habere debeat in perpetuum, merum et mixtum imperium et omnimodam iurisdictionem . . . Et quod prefatus dominus Azo habeat et habere debeat auctoritate presentis consilii omnimodam bayliam et potestatem per se et per quemcumque voluerit et sibi placebit facere, inire pacta, conventiones, ligas, confederationes, obligationes, transactiones et promissiones cum penis apponendis nomine comunis Mediolani et pro ipso comuni et etiam nomine suo proprio et speciali obligando res et bona dicti comunis pro factis suis propriis cum quibuscumque personis, civitatibus, comunibus, universitatibus, collegiis et societatibus . . . Et in predictis et quolibet predictorum faciendis et comittendis, agendis et agi faciendis habeat auctoritate presentis consilii plenum liberum generalem mandatum et plenam liberam generalem administrationem', Cognasso (1923), Doc. 3, pp. 125–7.

[86] *Statuti di Como del 1335*, p. 17: 'Et quod in eundem dominum Azonem, eius officiales et nuncios omnis iurisdictio quam habet populus Cumanus tam de iure quam de consuetudine, ex nunc sit translatum, ita quod perpetuo sit civitatis et jurisdictionis Cumarum dominus generalis', *ASL*, ii (1875), p. 405. The formula was repeated in the Proemium to the new statutes issued in Como later that year: 'Magnificus et excelsus dominus dominus Azo Vicecomes . . . sit et esse intelligatur perpetuo generalis dominus civitatis et episcopatus Cumarum. Ita quod idem dominus

a complete record of submission survives) made Azzone signore of the city for life, to exercise 'dominium, potestatem, et iurisdictionem et merum et mixtum imperium et omnimodam iurisdictionem' and do as he pleased 'with or without cause'.[87]

The transfer of communal powers included the right to make laws and to overrule local statutes: as a result of communal acts of submission signorial decrees took precedence over local laws. The people of Milan granted Azzone all their legislative powers, including the right to 'abolish and cancel them wholly or in part, to add and remove [clauses] and to modify, supplement, correct, interpret or explain them as he sees fit, just as the people of Milan may do.'[88] Azzone was specifically given the authority to disregard existing laws.[89] In Vercelli it was specified that his decrees were to be considered valid statutes and were to be observed there, 'notwithstanding any contradictory local laws or customs'.[90] In Como he was granted 'free and general *arbitrium* and authority to act by himself or through others in imposing sentences and bans, passing laws, disbursing communal funds, drawing up statutes and provisions, granting privileges, disposing of communal assets, and raising taxes'; he was given the authority, in short 'to do everything which the commune and people are able to do with whatever grounds or justification above, against, beyond, or outside the city's statutes'.[91] The provisions confirmed that whatever Azzone ordered was to

Azo per se vel cui comiserit vel comisit in dicta civitate et episcopatu habeat et utti possit merum et mistum imperium gladiique potestatem et iurisdictionem quamlibet, quam et quod comune Cumarum habet de consuetudine vel de iure'.

[87] *Statuta communis Vercellarum,* col. 1503: 'Et qui sit et esse intelligatur dominus generalis et perpetuus seu imperpetuum donec vixerit dicte civitatis Vercellarum et eius districtus, ita et taliter quod dictum dominium potestatem et iurisdictionem et merum et mixtum imperium et omnimodam iurisdictionem facere et exercere possit per se vel per alium vel alios ad suam liberam voluntatem et secundum quod ipso domino Azone videbitur et ipsi melius videbitur expedire et eciam delegare suum merum et mistum imperium alii et aliis secundum quod eidem domino placuerit et ei melius videbitur expedire cum causa et sine causa.'

[88] 'Et habeat et habere debeat omnimodam bayliam, potestatem et auctoritatem condendi, ordinandi et statuendi statuta, ordinamenta, provisiones et leges municipales . . . et ea in toto vel in parte cassandi, irritandi, et eis addendi, minuendi, mutandi, supplendi, corrigendi, interpretandi et declarandi secundum quod ei videbitur expedire et ut posset comune Mediolani et dictum comune et homines Mediolani', Cognasso (1923), Doc. 3, p. 126.

[89] 'omnia facere, dicere et exercere que comune Mediolani facere posset in predictis et circa predicta et quolilbet predictorum, statutis et ordinamentis, provisionibus, consuetudinibus et privilegiis in contrarium facientibus non obstantibus', Cognasso (1923), p. 126.

[90] *Statuta communis Vercellarum,* cols 1503–4: 'Et quicquid decreverit idem dominus Azo . . . fuisse et esse factum et fiendum sit validum et firmum et lex comunis Vercellarum . . . non obstantibus iuribus, consuetudinibus, reformacionibus et omnibus aliis scripturis editis et edendis in contrarium loquentibus. Quibus omnibus et singulis intelligatur esse derogatum eciam si de predictis et quolibet predictis et quolibet predictorum specialem opporteret fieri mencionem.'

[91] *Statuti di Como del 1335*, p. 17: 'liberum et generale arbitrium et bailiam faciendi per se vel alios, ut predicitur, ultra, contra, citra, vel preter formam statutuorum dicte civitatis, imponendi penas et banna, leges condendi, pecunias dicti comunis expendendi, statuta, reformationes et privilegia faciendi, bona dicti comunis alienandi, talias, fodra imponendi, omniaque faciendi que ipsum comune et populus potest qualibet ratione vel causa.'

be regarded as law and observed as such for all time.[92] According to the statutes of Monza, he had the right 'freely to organize, correct, change, or amend anything whenever he wished.'[93] Particularly striking was the proemium to the statutes of Como issued under Azzone in 1335, and later confirmed by Luchino and Giovanni, where it was laid down that all contrary statutes, customs, and decrees were to be abolished, never reinstated and expunged from the statute book.[94] The statutes of Cremona of 1339 included a provision to the effect that communal officials had to obey local statutes, but not if they contradicted the wishes of Luchino and Giovanni,[95] who were declared *lex animata* in their lands.[96]

The power to act 'above, against, beyond or outside statutory requirements' appeared to encapsulate what was understood by plenitude of power: in essence, the authority to act outside the law. The Visconti themselves associated the right to abolish laws with plenitude of power. In 1343 Luchino invoked the authority he enjoyed in order to decree that an outlaw in Milan should be considered such in all his other cities 'notwithstanding contrary statutes or provisions, which by our plenitude of power we order to be of no force'.[97] The link between popular sovereignty and the emperor's plenitude of power had contemporary currency. The canonist Uguccione writing in the 1180s had stated: 'All right to pass laws or canons was handed by the people to the emperor and by the church to the pope and it is inferred that in each case plenitude of power derives from this.'[98] Accursio (1182–1260) had described the *lex regia* as giving the prince 'supreme power' (whereas *Institutes* 1, 2, 6, which he cited, said the people had conceded *omne suum imperium et potestas*).[99] Cino referred to plenitude of power in the

[92] *Statuti di Como del 1335*, p. 17: 'quicquid ipse dominus per litteras vel alio modo, iuxerit vel statuerit sit et intelligatur esse lex et pro lege perpetuo ab eis debeat observari.'

[93] *Liber statutorum communis Modoetiae,* f. 106^{v}: 'disponere, corrigere, mutare et emendare totiens quotiens voluerit ad suam plenam, meram, et liberam voluntatem.'

[94] *Statuti di Como del 1335*, pp. 17–18: 'Insuper in ipsum dominum potestatem omnem quam habet dictum comune et populus transtulerit; cassa ex nunc et irrita, decernentes omnia statuta, consuetudines vel decreta omnia que in contrarium viderentur quomodolibet esse facta; prohibentes ut contra hec aliqua de cetero fieri possint; decernentes ex nunc ipsa et ipsorum quelibet esse nulla et debere de libris quibuslibet aboleri.'

[95] *Statuta et ordinamenta comunis Cremonae*, p. 16, *Rub*. VII: 'Item statutum et ordinatum est quod omnia statuta et ordinamenta condita et inserta in hoc presenti volumine statutorum Cremone . . . debeant inviolabiliter observari per omnes et singullos potestates et rectores et quoscumque allios officialles quocunque nomine noncupentur civitatis Cremone . . . prout litera iacet et sonat sine aliqua interpretatione, et remota omni extraneo intellectu, salva semper voluntate prefatorum dominorum nostrorum'.

[96] *Statuta et ordinamenta comunis Cremonae*, p. 204, *Rub*. CIL.

[97] 6 February 1343, *ADMD*, p. 1: 'Non obstantibus statutis vel provisionibus incontrarium loquentibus, quae nullius esse volumus roboris.'

[98] Uguccione on Dist. 4 c. 3 (De legibus): 'Omne enim ius condendi leges vel canones populus contulit in imperatorem et ecclesia in apostolicum unde intelligitur uterque plenitudinem potestatis quo ad hoc', quoted by Tierney (1955), p. 145 n. 2.

[99] Accursio, on C. 6. 23. 3 (De testamentis: Quemadmodum, l. Ex imperfecto): 'Lex imperii, id est, lex regia, dando supremam potestatem principi, ut *Inst*. De iure nat. § Sed et quod principi placuit [*Inst*. 1, 2, 6].'

same context: in his commentary on the *Codex* he concluded that the emperor enjoyed plenitude of power even before his coronation by the pope on the grounds that his authority derived from the people by whom he was elected. Cino had equated election by the German princes with election by the people in accordance with the *lex regia*; that act had provided him with the authority to legitimize, as well as other rights which depended on plenitude of power.[100] For Marsiglio of Padua, too, writing in the 1320s, the source of plenitude of power was the people (the so-called 'mortal legislator').[101] Other signori stated explicitly that plenitude of power derived from their subjects. On 20 September 1324 Rinaldo Passerino Buonacolsi, signore of Mantua and Modena, allowed members of the Gonzaga family to acquire property in accordance with his *arbitrium* and from the plenitude of power 'given to him by the communes, men and councils of these cities'.[102] Mastino della Scala referred in 1338 to the two prerogatives of 'plenitude of power and *arbitrium* both of which we have the honour to possess in the city, district and diocese of Verona with God's mercy and in accordance with the statutes of the commune and people of Verona.'[103] There is another example from Modena of a commune expressly granting plenitude of power to its new signori. In 1336, when Obizzo and Niccolò d'Este took over the city, a statute was passed stating that 'the area ruled by the commune of Modena, with full mandate, plenitude of power and *arbitrium*, is to be handed over to the two signori by the commune of Modena.'[104]

[100] The discussion opened with the question whether the emperor had the right to legitimize children of unknown parentage 'quia ex plenitudine potestatis dispensatio procedit'. He concluded that the emperor did have such power independently of his coronation at Rome. Cino pointed out that, as stated in *l. digna vox*, the emperor was not bound by law: on C. 7, 37, 3 De quadrennii praescriptione, l. Bene a Zenone, nr 5: 'Sed electo a populo per legem regiam, omne ius utriusque potestas competit merito, et electo a principibus competit, ut *ff.* De orig. iu., l. 2, § Deinde [D. 2, 2, 25] et supra De veteri iure enuc. l. 1, § Si quidem [C. 1, 17, 1]. Et sic cum eadem iurisdictione fungatur quia Iustinianus lege non tenetur, ut lex Digna vox [C. 1, 14, 4]. Et sic patet quod iurisdictionem habet legitimandi et privilegium concedendi cum iurisdictionem et potestatem imperialem obtineat.'

[101] *Defensor Pacis,* Discourse 3, ch. 2, para. 13: 'No ruler, and still less any partial group or individual person of whatever status, has plenitude of control or power over the individual or civil acts of other persons without the determination of the mortal legislator.'(tr., Gewirth); idem (1951–6), i, pp. 257–8, explains that according to Marsiglio, 'the legislator possesses, and hence can grant, such plenitude; so that Marsilius' republicanism as to the source of power is coupled with an absolutism as to the extent of power.' Mayali (1988), p. 162 and n. 50, suggested that the same idea was current in France.

[102] 'ex arbitrio suo et plenitudine potestatis qua fungitur in partibus supradictis eidem collatis per comunia, homines et consilia civitatum predictarum', quoted by G. Cassandro (1970), p. 328.

[103] The statement appeared in the document confirming the privileges given by Bartolomeo, bishop of Verona, to the monastery of S. Cassiano, 'de nostre plenitudine potestatis et arbitrii quod et quam in civitate et diocesi ac districtu Verone, divina disponente clementia et per statuta Comunis et Populi Verone dignoscimur obtinere', Langeli (1988), pp. 78 and 82.

[104] Muratori (1740), p. 97: 'Et sit statutum precixum comunis Mutine cum omni baylia et plenitudine potestatis et arbitrii in ipsos Dominos Marchiones collacta per comune Mutine.'

The assumption that plenitude of power came from subjects paralleled the manner in which the early Visconti exercised authority. Having been appointed signori by individual communes, Azzone, Luchino, and Giovanni governed their territories on a local basis. Their acts never formed a separate legislative code; individual decrees had to be copied into communal statute books and issued locally.[105] Luchino reflected this fact in the decree of 1343 concerning outlaws, which ordered that anyone declared a *bannito* in Milan should be considered such in Piacenza. He was attempting to pass a law which would apply in all his territories, but without the authority to legislate centrally, he had the same letter despatched to each of the subject communes individually.[106] The pattern which came to be followed was that of the decree of 1348 concerning the payment of taxes by outsiders who had acquired property. Luchino ordered the letter 'to be inserted into the book of our statutes and ordinances to be inviolably observed from then on as our law and decree'.[107] A decree copied into a local statute book was valid only in the area covered by those laws; that fact in itself had the effect of undermining the universal force of signorial decrees.[108] The idea that plenitude of power had come to them alongside full legislative powers in the acts of submission of individual cities would, therefore, have made sense to the early Visconti.

THE VISCONTI 1354–95: BERNABÒ, GALEAZZO II, AND GIANGALEAZZO

The problem of who would succeed Giovanni was settled after the death of Luchino, when, on 31 May 1349, the General Council of Milan drew up a statute declaring that the office of *dominus generalis* was to pass to the legitimate male descendants of Matteo Visconti (the father of Galeazzo, Luchino, Giovanni, and Stefano).[109] Milan's example was followed in the other cities.[110] The Visconti were now established as hereditary rulers—it was the first time

[105] Storti Storchi (1996a), pp. 68ff, and (1990), pp. 92ff, points out that this was normal procedure even under Giangaleazzo; Barni (1941a), pp. 52–3.

[106] These were Brescia, Bergamo, Cremona, Lodi, Como, Asti, Vercelli, Bobbio, Borgo San Donnino, Crema, Vigevano, Castelnuovo, Tortona, Pontecurone, Cannobio, Locarno, and Soncino.

[107] 28 December 1348, *ADMD*, pp. 3–4: 'Et has nostras litteras volumus et mandamus in volumine statutorum et ordinamentorum nostrorum inseri debere et inviolabiliter observari de caetero pro lege et decreto nostris.' The usual formula came to be some variation of 'mandantes hoc pro lege et decreto nostro inviolabiliter observari et inseri in volumine statutorum communis nostri Mediolani praedicti', which was the clause included by Giangaleazzo in a decree of 17 October 1385: *ADMD*, p. 89. On this theme, see Storti Storchi (1990), especially p. 92 and n. 49; and eadem (1995), p. 198; Gualazzini (1953), pp. 174–5.

[108] Storti Storchi (1985), pp. 59, 62–3. On the greater strength of statutes compared to decrees, see Quaglioni (1996), pp. 4ff.

[109] Cognasso (1955b), p. 327. The act was included in the Milanese statutes of 1396 (*Statuta iurisdictionum Mediolani*, cols 1071–3).

[110] Rovelli (1962–3), ii, p. 23.

that principle had been recognized. Luchino had planned for his three-year-old son, Luchino Novello, eventually to take over. But that proposal was quickly and permanently sidelined by Stefano Visconti's adult sons, Matteo, Bernabò, and Galeazzo. On Giovanni's death the General Council, in a statute of 11 October 1354, ordered that these three, as Matteo Visconti's only adult male descendants, should rule the city of Milan jointly;[111] the other areas under Visconti rule were divided among them.[112] The three brothers were keen to re-establish good relations with the empire so that they could become imperial vicars. They offered Emperor Charles IV 150,000 florins for a new vicariate, and a diploma was drawn up on 8 May 1355, reflecting the division of authority already agreed among them.[113] (Within five months Matteo Visconti was dead, rumoured to have been poisoned by his brothers.) The pride that Bernabò felt in the new title was reflected in a notorious riposte: at the refusal of Roberto Visconti (archbishop of Milan 1354–61) to accede to his demands he called him an idiot, exclaiming, 'Don't you know that I am pope and emperor as well as signore in all my lands. Not the emperor, not even God, can do anything in my territories unless I wish it.'[114]

Galeazzo and Bernabò continued the effort to extend their dominions. The year 1359 saw the conquest of Pavia, the city submitting to Galeazzo, thereafter to become his headquarters. The traditional policy of pacification followed, with the recall of exiles, and an amnesty for political crimes. Galeazzo began work on a new palace, and in 1361, with a charter from Charles IV, the university was established. Despite the arrangement agreed in 1354 that the government of Milan was to be shared, the city was left under the effective control of Bernabò alone. Attempts to reinstate Visconti rule in Bologna had in the meantime led to conflict with Pope Innocent VI with the result that, like Matteo I and Galeazzo I before him, Bernabò was accused of heresy and excommunicated. The emperor was persuaded to join the condemnation, revoking the vicariate in 1361 only to restore it once more in 1365.[115] The vicariate had been granted to the Visconti brothers and their heirs for life, 'but only so long as they maintained loyalty and obedience to the emperor and the empire'.[116] Further conflict ensued

[111] ASMi, Registri ducali, 2, pp. 256–8.

[112] Cognasso (1955b), p. 362; Gamberini (2005), pp. 173ff. After Matteo's death in 1355, Bernabò controlled the eastern territories (including Bergamo, Brescia, Lodi, Cremona, and Parma), and Galeazzo the western (Monza, Como, Novara, Vercelli, Tortona, Alessandria, Alba, Vigevano, and Bobbio).

[113] The vicariate of 1355 is published in Santoro (1976), pp. 97–101; see Somaini (1998), pp. 715–16.

[114] 'Nescis, pultrone, quod ego sum Papa et Imperator ac Dominus in omnibus terris meis, et quod nec imperator, imo nec Deus, posset in terris meis facere, nisi quod vellem ac intendo quod faciat?' Cognasso (1955a), p. 537. On Bernabò's pride in his title, see Baroni (1984), p. 471, n. 84.

[115] Cognasso (1955b), pp. 413 and 431, n. 3.

[116] 'dum tamen in nostra et sacri imperii fide et obedientia persistatis' Santoro (1976), p. 98. Ercole (1929), p. 292, n. 3, gives a long list of similar instances of the revocation of vicariates. Deprivation, on the other hand, did not mean any fewer references to the vicariate or to plenitude of power in Bernabò's acts.

in the 1370s. War broke out in 1372 over the possession of Asti, gateway to Piedmont, but Galeazzo's hopes of recovering the city were opposed by the count of Savoy. Bernabò had more success in the conflict against Modena and Reggio, but the result was to enlist Pope Gregory XI as the ally of Savoy. This time both Bernabò and Galeazzo were condemned as heretics and in 1372 both were deprived of the imperial vicariate. The war waged by Florence against Gregory XI from 1375 to 1378 (the War of the Eight Saints) led to an alliance with the Florentines on the part of Bernabò, who assumed the role of mediator at the peace conference in 1378. A decade of crisis was ending with Bernabò in the ascendant.

Within days of the 1378 conference Galeazzo Visconti had died (4 August 1378) and Giangaleazzo, his only son, was accepted as signore in all his father's lands. Following Charles IV's death four months later, Giangaleazzo lost no time in sending a delegation to Prague to request his own vicariate, which was granted by the new king of the Romans, Wenceslas, on 17 January 1380.[117] The importance that Giangaleazzo attached to the status of imperial vicar can be measured by his willingness to make multiple payments for its continuance.[118] The vicariate was granted on the understanding that Bernabò's rights in the city of Milan would not be affected. Having experienced more than one humiliating deprivation, Bernabò himself did not bother to seek a new imperial diploma. He was said to have been too arrogant to feel the need for any such external support.[119]

By the time Giangaleazzo succeeded his father, Bernabò was at the height of his status and power. Having towered over North Italy for more than twenty years he would now dominate his nephew. Widowed and with only one child (Valentina), Giangaleazzo had arranged a marriage alliance with Maria, heir to the Sicilian monarch Federico III, with the idea of becoming king of Sicily himself. Instead, Bernabò pressured him, along with his sister Violante, into marrying two of his own children (Caterina and Ludovico).[120] There followed rumours that Bernabó's sons were plotting to take over Giangaleazzo's lands. It was against this background that Giangaleazzo pulled off the most spectacular *coup d'état* in Italian medieval history. On 6 May 1385 he invited Bernabò with his sons Rodolfo and Ludovico to meet him outside Milan for an exchange of greetings; all three were captured and imprisoned; none was ever released. Bernabò died only seven months later (amid the predictable rumours of poisoning).[121] Giangaleazzo quickly made good his grip on his uncle's dominions: the following day, given the chance to loot Bernabò's palaces, and with the

[117] The diploma is reproduced in Dumont, i, pp. 145–7. [118] De Circourt (1889), p. 81.

[119] 'Bernabò . . . ben sapendo che per tale morte cessava il mandato di governare col mero e misto impero la città e il distretto di Milano e le altre città in precedenza a lui sottoposte, mosso da superbia ed arroganza. mai non si curò di chiedere la investitura anche dell'imperatore Venceslao', *Annales mediolanenses ab anno MCCXXX usque ad annum MCCCCII ab anonymo auctore*, col. 788.

[120] Giangaleazzo's first wife, Isabella of Valois, had died in 1372; Violante's first husband, the duke of Clarence, in 1368, and her second, Secondotto Paleologo, marquis of Monferrato, in 1378.

[121] Rodolfo lived until 1388, Ludovico until 1404.

promise of tax cuts, the Milanese submitted without opposition. By 14 May Bernabò's other cities had capitulated.[122] As a result of the coup Giangaleazzo had added Bergamo, Brescia, Lodi, Cremona, Parma, Crema, and Soncino to his dominions.

Giangaleazzo now had control of the entire Visconti inheritance. But the rival claims of Bernabò's sons were soundly based on the communal acts of 1349 and 1354 (establishing the system of inheritance and apportioning the Visconti lands between the three brothers); their claims had been further guaranteed in his own vicariate, so that Giangaleazzo's position was far from secure.[123] Imperial recognition would be needed to negate the effects of these acts so that for the next ten years, from 1385 to 1395, Giangaleazzo campaigned for an official title. Surrounded by rebels and rivals at home and without allies in Italy for the projected coronation in Rome, Wenceslas was finally persuaded to legalize Giangaleazzo's position: in 1395 he granted the diploma which made him duke of Milan.[124] The duchy covered Milan itself and its contado which, divided under Bernabò and Galeazzo II, had been reintegrated by Giangaleazzo.[125]

Plenitude of Power and the Imperial Vicariate

The imperial vicariate granted by Charles IV to Matteo, Bernabò, and Galeazzo in 1355 had been more detailed than earlier privileges. Whereas Azzone had been given simply 'merum et mixtum imperium et omnem jurisdictionem et exercitium', the new vicariate gave the Visconti brothers 'plenam, meram, et liberam ac omnimodam liberalem et gladii potestatem et iurisdictionem nec non merum, absolutum et mixtum imperium vice et auctoritate nostris et sacri imperii in eisdem civitatibus, terris, comitatibus etc.'.[126] The emperor was referring here to *iura reservata*, prerogatives which his predecessors had kept for themselves even after the Peace of Constance.[127] Most of the rights specified were connected to judicial processes: the punishment of criminals, imposition of fines, hearing of civil cases and of appeals that normally went to the emperor, and punishment of rebels against the empire, as well as the authority to raise imperial taxes. The diploma included the authority to legislate, that is, the right of 'confirming,

[122] Cognasso (1955b), p. 520, n. 1. The new regime was welcomed locally: Gentile (2007b), pp. 39–40.

[123] To support their claims Bernabò's sons had military and diplomatic backing. Ludovico and Rodolfo were in prison; Mastino was still a child; but Carlo, aged thirty and married to Beatrice, the daughter of the Count of Armagnac, ruling prince of Languedoc, was a serious threat.

[124] Wenceslas's position was threatened by the Habsburgs and by his brother Sigismund. During one of the Milanese missions he was imprisoned in Prague by rebels: Cognasso (1955c), p. 20.

[125] See Gamberini (2005), pp. 177–9.

[126] Santoro (1976), p. 99.

[127] On the significance of the powers handed over to the Visconti in the vicariates of 1355 and 1380, see Favreau-Lilie (2000). On the issue of *iura reservata* and the imperial vicariate, see Ercole (1929), pp. 311–30.

enacting, and revoking communal laws and customs'. Decrees continued to appear in communal statute books, but, according to Baldo the imperial vicariate gave signorial decrees validity independent of local statutes.[128] In line with the statute of 1349, the title of vicar was hereditary.[129] Giangaleazzo's vicariate of 1380 was couched in the same terms as that of 1355, granting an identical list of rights. In neither diploma was plenitude of power mentioned, but both included 'all the higher jurisdiction in those territories which the emperor himself enjoyed', including the suggestive phrase 'merum, absolutum et mixtum imperium'.

In official documents Bernabò and Galeazzo continued at first to employ the conventional style, *dominus generalis,* the title that had been conferred by their subjects, reflecting the traditional relationship between signore and commune.[130] But it was not long before they began referring to the imperial vicariate. There was a grant of 29 December 1357 from 'Nos Bernabos et Galeaz fratres Vicecomites civitatum Mediolani etcetera, sacri Romani imperii vicarii generales'.[131] On 22 February 1359 Galeazzo wrote to the podestà of Bobbio as 'Nos Galeaz Vicecomes Mediolani etc. imperialis vicarius generalis'.[132] As in these instances, the title was usually used on its own, but occasionally the two styles appeared together, for example in the statute of 1369 facilitating the sale of property, which referred to 'domini Bernabos et Galeaz fratres Vicecomites Mediolani etc. imperiales vicarii et Domini generales'.[133] Bernabò and Galeazzo now made increasingly frequent use of plenitude of power in conjunction with one or other title. References to both aspects of authority, communal and imperial, suggest an element of ambiguity in the acknowledged source of plenitude of power in the early years of the vicariate. In November 1355, six months after it had been granted, Bernabò, referring to himself as *dominus generalis*, granted tax relief to the people of Cremona 'de nostre potestatis plenitudine'.[134] Similarly, in 1357, under the traditional title *generales domini*, he and Galeazzo indicated that they still associated plenitude of power with the people of Milan: they annulled a grant of land made by Matteo I, giving it instead to one of their supporters 'ex nostre plenitudine potestatis tanquam domini Mediolani'.[135] Writing as both

[128] Baldo, Consilium Bk 1, 248 ('Quaeritur utrum donatio'), nr 1: 'Dicitur etiam quod erat privilegiatus in vicariatu ab imperatore, ex quo omnibus constare videtur quod poterat legem statuere'; BAV Barb. Lat. 1408, f. 129^{r}; the reference was to Bernabò.

[129] 'consuetudinum et iurium municipalium stabilitio, constitutio et revocatio', Santoro (1976), p. 100.

[130] Examples from the years 1355–60 can be found in Santoro (1976), pp. 103, 106, 108, 109, 110, 116; Cognasso (1922), p. 157.

[131] Santoro (1976), p. 113. [132] Santoro (1976), p. 115.

[133] 1 November 1369, *ADMD*, p. 34. Where there was no proper name *dominus* continued to be used, as in *dominus Mediolani etc. Imperialis Vicarius generalis.*

[134] 29 November 1355: Santoro (1976), pp. 106–7.

[135] Santoro (1976), p. 109.

dominus and *imperialis vicarius generalis* in a proclamation of 1359, Galeazzo reinstated exiles from Pavia 'de sue plenitudine potestatis'.[136] In January 1362, on the other hand, Galeazzo wrote simply as 'imperialis vicarius generalis' to confirm 'de nostre potestatis plenitudine' the new tax arrangements requested by the people of Pavia.[137]

It was only gradually that Bernabò and Galeazzo suggested a different interpretation of plenitude of power—that it was an imperial rather than a communal concession. In an act of 1366, Bernabò, writing as 'imperialis vicarius generalis', decreed that his wife, Regina della Scala, should be granted assorted lands 'de nostre et imperialis potestatis plenitudine'.[138] In this instance, Bernabò was suggesting that he had his own plenitude of power and, in addition, that which he owed to the emperor. The double claim mirrored the nature of the concession: Bernabò was granting lands to his wife which he had already given on an earlier occasion,[139] but now he wanted to establish her rule in these territories, spelling out the extensive powers to be transferred, 'merum et mixtum imperium et gladii potestatem et omnia regalia sive in aqua sive in terra', including the right to make laws, impose penalties, and levy taxes.[140] These were the rights conferred on him in the vicariate of 1355. Bernabò was also aware that the lands belonged to him in various ways: some were his own in freehold; some had been held by communes subject to him as *dominus*; some belonged to communes over which he had authority as imperial vicar.[141] He referred, accordingly, both to his own plenitude of power, presumably acquired from the communes, and to that of the emperor. A few years later, in 1370 Bernabò conferred more lands on Regina, this time acting 'on our certain knowledge and from plenitude of power as well as by the emperor's authority which we enjoy as imperial vicar general';[142] here he was making a distinction between plenitude of power and the vicariate. When it came to the source of Visconti plenitude of power, ambiguities were a feature of the period, the confusion being reflected in the opinion of jurists as much as in that of chancery officials in charge of drafting the documents described above.

[136] 24 November 1359: Cognasso (1923), p. 158. Perhaps the reason Galeazzo used both titles here was that he had not yet received his imperial diploma for Pavia.

[137] 28 January 1362: Santoro (1976), pp. 137–8.

[138] 12 February 1366: Santoro (1976), p. 160.

[139] Bonelli (1903), p. 132, points out that most of the lands are described as belonging to Regina in May 1365 (see Doc. 5, p. 140). See also on this donation Comani (1902), pp. 232ff.

[140] Santoro (1976), p. 160: 'ac etiam in eis vel altero eorum statuta et ordinamenta facere, leges condere, penas, datia, pedagia, tollonea, onera realia et personalia et mixta imponere et exigi facere, mutare, addere et minuere prout eidem placuerit.'

[141] Santoro (1976), p. 160: 'damus, concedimus et traddimus quicquid ad nos sive tamquam nostrum alodium sive iure dominationis dignitatis vel vicariatus pertinet, sive etiam ad aliquas civitates et terras vel loca nostro dominio subiecta vel ad imperialem celsitudinem, cuius vices gerimus in partibus istis.'

[142] Osio, i, p 146: 'Et statuens etiam et decernens ex certa scientia et de plenitudine potestatis etiam auctoritate Ceserea imperiali qua fungitur ut generalis vicarius imperialis'.

THE LEGAL VERDICT

Alberico da Rosciate

The formal traditions of civil law, based on the twin bedrocks of commune and emperor, provided the structure for legal commentaries in the first half of the fourteenth century, and the relationship between the two had become a major preoccupation of jurists. The phenomenon of the signori in northern Italy was an added complication: with authority granted by the communes and, less durably, by the emperor or the pope, signori had no independent status.[143] Alberico da Rosciate[144] composed his commentaries on the *Digest* and *Codex* sometime before 1345; the *De statutis* was finished by 1358.[145] He had spent most of the 1330s working for Azzone Visconti, helping to re-establish the latter's position and to reorganize the Visconti dominions.[146] His role as trusted adviser was most obviously revealed in delicate missions to the papal court in 1335, 1337–8 and again in 1340–1. The connection between Alberico's theories and Visconti practice is complex. Well before Alberico articulated his ideas on plenitude of power, the Visconti had begun to adopt that phrase in official acts, and yet Alberico's discussions of plenitude of power persisted in focusing wholly on the emperor and the pope: if the Visconti expected him to offer a direct endorsement of their claim to plenitude of power, they would have been disappointed.[147]

Nevertheless, Alberico did echo the legal and constitutional framework of the regime.[148] For him the commune was the nearest equivalent to the Roman province: 'It is agreed that the cities of Italy, especially those in Lombardy who were part of the Peace of Constance, have a claim to fiscal rights, and that jurisdiction is divided into cities, as it was at one time into provinces.'[149]

[143] Alberico's contemporary, Bartolo, is well known for classifiying signori as tyrants, i.e. usurpers; but his anti-Visconti stance was one which Alberico could hardly have shared.

[144] For details of Alberico's life and legal work, see the entry by L. Prosdocimi in *DBI*, and Prosdocimi (1956); Cremaschi (1956); Storti Storchi (1979); Pennington (1993), pp. 113–16; Maffei (1964), pp. 179–85.

[145] Cremaschi (1956), pp. 54–5. [146] See Capasso (1907), p. 81.

[147] The issue under consideration in the Constitutio Omnem or Prima constitutio of the *Digest,* providing the occasion for Alberico's major discussion of plenitude of power, was the universal authority of the emperor. Similarly, in his comment on *l. Quotiens,* where he discusses the ability of imperial rescripts to override individual rights, he uses the more ambiguous term *princeps* but makes it clear that the *princeps* is the emperor, coupled as he is with the pope ('princeps vel papa'). In his citation of this passage, the fifteenth-century lawyer Paolo da Castro, on C. 1, 19, 2, (De precibus imperatori offerendis, l. Quotiens), nr 2, pointed out that Alberico conceded plenitude of power only to emperor and pope: 'Nam dicit hic Alberico quod tollere totum ius alterius non pertinet nisi ad supremum principem qui non habet superiorem, ut est papa vel imperator.'

[148] Storti Storchi (1996a) p. 60 n. 26, and p. 62; Quaglioni (1979/80), pp. 89–90, 101–2.

[149] Alberico, *Commentariorum de statutis*, Bk 3, *questio* 2, nr 9: 'Constat autem civitates Italiae et maxime Lombardiae quae fuerunt in pace Constantiae, sibi vendicare iura fiscalia, et iurisdictiones

The Peace of Constance was the settlement agreed between the communes and Frederick I in 1183, in which the emperor had recognized the communes' rights over their city and contado. Alberico also said that the jurisdiction of the imperial fisc 'had been usurped de facto by cities because these days cities, especially in Italy, enjoy the authority of provinces'.[150] When it came to the Visconti, given the popular basis of their rule, he believed that, in status, they were more like communes than sovereign rulers. He argued that the Visconti's right to legislate had the same foundation as that of the communes; it was based, he believed, on the the law *Omnes populi* (which gave 'all peoples' the right to make their own laws).[151] Alberico's concept of signorial authority was revealed in his *De statutis* through the analysis of the controversial decree issued by Luchino Visconti forbidding the alienation of land to non-subjects.[152] The law was one of the rare early examples of an attempt to legislate for the inhabitants of all the dominions collectively. Luchino's authority to do so was acknowledged by Alberico in his description of the decree: 'Luchino Visconti, signore of Milan and many other cities, wanting to prevent these kinds of losses, issued a statute that no subject was allowed to alienate [property] to a non-subject.'[153] For Alberico, Luchino's prerogative depended not on his position as proto-sovereign, but on the authority of the communes and the law *Omnes populi*. Instead of concentrating on Luchino's position as signore, he focused on the authority of the city of Milan itself, examining specifically who was, or was not, subject to its jurisdiction.[154] Similarly, in the discussion concerning whether 'kings, princes or signori' enjoyed imperial fiscal rights (including confiscation of property), Alberico concluded that, when it came to those cities and signori who had been granted *merum et mixtum imperium*, 'it is generally acknowledged that the

per civitates esse divisas, sicut olim erat per provincias, ut C. De praescrip. longi temporis, l. fin. [C. 7, 33, 12] et ibi notavi et dixi.'

[150] Alberico, *De statutis*, Bk 3, *quaestio* 19, nr 4: 'Videtur communiter eis concessisse publicationem bonorum; de facto tamen usurpatum est in omnibus civitatibus quia hodie civitates, maxime Italiae, utuntur iure provinciae, ut notatur in glossa in C. De praescript. longi temporis, l. fin. [C. 7, 33, 12].' The discussion again concerns the right of confiscation.

[151] Alberico, *De statutis*, Bk 2, *quaestio* 2, nr 30: 'Idem probatur ex potestate concessa civitatibus super statutis condendis, ut l. Omnes populi, De iustitia et iure [D. 1.1.9]'; see Storti Storchi (1990), pp. 81–2.

[152] A later version, issued from his plenitude of power by Galeazzo II, 14 March 1370, is published in *ADMD*, pp. 39–40. Alberico believed the decree could be considered 'objectionable, pernicious, injurious, unjust, and contrary to canon and civil law' on the grounds that it contravened the liberty of the church. The decree had already been the subject of Consilium 21 ('Statuto civitatis Mediolani') by Signorolo degli Omodei. See Lattes (1899), pp. 1038–9, on the debate between Alberico and Signorolo.

[153] Alberico, *De statutis* Bk 2, *Quaestio* 2, nr 6: 'Dominus Luchinus Vicecomes, dominus Mediolani et multarum aliarum civitatum talibus fraudibus et obviare volens, fecit statutum quod nullus subditus posset alienare in non subditum.'

[154] Alberico, *De statutis*, Bk 2, *Quaestio* 2, nr 26: 'Per illa enim verba quae dicunt de non subdito communis Mediolani sufficienter excludebantur et alii forenses non subditi.' At issue was whether the decree applied to clergy as well as laity.

emperor included the right of confiscation when he granted them authority and statute-making powers through the law *Omnes populi*.'[155] Alberico appreciated the implications of the Visconti's acquisition of power through acts of submission by subject cities, their right to legislate coming from the people. But for him plenitude of power remained an imperial prerogative.

Signorolo degli Omodei

The Milanese jurist Signorolo degli Omodei (d. 1371) was as much involved in local affairs as his contemporary, Alberico, in the early years of the Visconti regime.[156] For more than three decades, from 1330 to 1362, he was a member of the College of Jurists in Milan; in 1351 he was appointed by Giovanni Visconti to help revise the Milanese statutes. Unlike Alberico, he was also an active teacher: after lecturing in Bologna, Vercelli and possibly Padua, he was invited by Galeazzo II to assume a chair at the University of Pavia when the latter was first re-established in 1361.[157] Few of Signorolo's formal lectures have survived but his consilia suggest how the aspirations of the Visconti first began to be reflected in legal thought. Whereas Alberico was unwilling to break the traditional imperial-communal mould, Signorolo embraced the new world of the signori, apparently the first Milanese lawyer to give the Visconti the role of emperor or prince within their own dominions. His interpretation surfaced in a consilium concerning a dispute in the 1340s between the commune of Milan and a certain salt-tax farmer. Part of the evidence consisted of entries in the account books of Giovanni and Luchino Visconti, whom Signorolo describes as 'public persons for the reason that power has been granted to them *a publico*'.[158] He can be found putting Luchino in the emperor's shoes when he said, 'in the present case there is no fundamental reason why the evidence of witnesses should be discounted by the signore', arguing that 'we ought not to see the prince [i.e. Luchino], from whom the laws are handed down, as the author of injustice.'[159]

[155] Alberico, *De statutis*, Bk 3, Quaestio 19, nr 4: 'Et idem dicerem de quibuscunque civitatibus et dominis habentibus merum et mistum imperium ab imperio; et crederem quod ex statuto vel consuetudine possent bona applicare civitati inter subditos. Nam imperator concedendo eis merum imperium et potestatem condendi statuta per l. Omnes populi, *ff*. De iustitia et iure [D. 1, 1, 9] videtur communiter eis concessisse publicationem bonorum.'

[156] On Signorolo, see Lattes (1899) and Belloni (1985). Cavina (1992) points out that Signorolo was an arch-imperialist; Müller (1995) has explained Signorolo's approach to the relationship between *ius commune* and statute law.

[157] Lattes (1899), pp. 1017–21.

[158] Signorolo, Consilium 22 ('In quaestione vertente inter commune Mediolani'), nr 15: 'Qui libri ex quo sunt prefatorum dominorum censentur esse publicarum personarum quibus a publico potestas est concessa, ut l. i, § cum eius, C. De vend. rebus. civ. [C. 11, 32, 1] et l. ii, D. De orig. iur. [D. 1, 2, 2].'

[159] Signorolo, Consilium 22 ('In quaestione vertente inter commune Mediolani'), nr 15 (last column): 'Item cum principem a quo iura descendunt, non debeamus intelligere esse actorem iniuriarum, ut l. meminerint, C. Unde vi [C. 8, 4, 6]. Et in casu nostro nulla subsit ratio quare per prefatum dominum dictorum testium attestationes debeant annullari.'

Furthermore, Signorolo did not hesitate to apply to the Visconti the fullest interpretation of imperial authority, as became clear in a consilium concerning a dispute between Parma and Cremona over customs duties on the River Po.[160] One aspect of the case had been decided by their common signore, and Signorolo, supporting his judgment, concluded that, when it comes to enforcing the will of the signore, 'what pleases the prince has the force of law, as it says in the *Institutes*.'[161]

Signorolo's interpretation of Luchino Visconti's status emerged again in the discussion of the decree of 1343, noted above, whereby any person outlawed by a Milanese court was to be considered similarly condemned in Piacenza.[162] Luchino had not, in this instance, attempted to legislate for all his territories as a unit but showed respect for the traditional independence of the communes by notifying each city separately. Signorolo, on the other hand, sympathized more with the Visconti's desire to be considered princes than with the communes' fear for their individual identities. In the consilium, composed some time after Luchino's death, he debated the nature of the decree. 'The order,' he insisted, 'should be seen as a general law,' not merely as a communal statute. After all, he argued, one has to take into account the authority of the lawmaker himself; then there is the form in which the law was promulgated: it was actually called an edict; and finally, Signorolo declared, it was issued as a measure that applied to all Visconti subjects.[163] He saw the territories as a principality, the ruler being the central legislative authority. In the case under discussion, a citizen of Crema who had been found guilty of murder in his own commune was then killed by a gang in Bergamo. The perpetrators claimed immunity on the basis of the 1343 edict, which did not absolutely cover persons condemned in any city apart from Milan; but, as Signorolo argued trenchantly, 'when it comes to someone who has been proclaimed guilty but does not submit to our signore nor to the officers who are attempting to carry out the sentence, I declare that he has committed a crime and, no matter where he lives in the dominions of the signore, he can

[160] Signorolo, Consilium 70 ('In quaestione vertente inter comune Parme'). The details of the dispute are explained by Dolezalek (1984), p. 63, n. 14. The Visconti took over Parma only in 1346 but, since the date of the case is unclear, it is not known which Visconti was involved.

[161] Signorolo, Consilium 70 ('In quaestione vertente inter comune Parme'), nr 22: 'Sed his non obstantibus, dicendum est contrarium. Primo quod ex tenore commissionis facte per prefatum dominum cuius forma fuit secuta comparitio predicti sindici et dictam comparitionem fecit, et ad executionem sue commissionis seu voluntatem predicti domini que inter suos subditos est servanda, ut *Inst.* De iure nat. gen. et civi., Sed quod principi [*Inst*. 1, 2, 6].'

[162] *ADMD*, p. 1; see a discusson of this decree and Signorolo's interpretation in Barni (1941a), pp. 53-4.

[163] Signorolo, Consilium 89 ('Presupponitur infrascriptum statutum'), nr 8: 'Nec fiat ratio de istis litteris ad similitudinem iuris municipalis, cum reputari debeant tanquam lex generalis; primo propter auctoritatem condentis, ut l. iii, § divus, *ff*. De sepul. vio. [D. 47, 12, 3, 5]; secundo propter eius formam et hoc dupliciter, primo quia nomine edicti est insertum, secundo quia per cunctos subditos fuerunt promulgate, ut l. ii, C. De legi. [C. 1, 14, 2].'

expect retribution.'[164] In the final paragraph he concluded: 'It is clear that the late revered Luchino determined that lands subject to his rule, which in other respects enjoyed separate jurisdiction, should form a unit at least in cases of banishment and have the benefit of union with each other,' adding, 'It would not be surprising if, among the [territories] joined and connected with each other under the rule of this signore, proscriptions were to be extended from one place to another.'[165]

Along with conceding a quasi-royal position to the Visconti went Signorolo's acceptance of their claim to plenitude of power. Consilium 82 ('Presupponitur infrascriptum statutum') concerned two conflicting privileges issued by Giovanni Visconti, Signorolo having to decide which took precedence. The first had been granted on 13 August 1350, indicating Giovanni's approval of the sale by the commune of Parma of an excise farm on wine produced in the city's *contado*. A further privilege from Giovanni, on the other hand, confirmed the claim to immunity from taxation of a certain religious house within the jurisdiction. Signorolo had no hesitation in backing the first privilege. The letter in which Giovanni originally approved the sale of the tax farm was issued 'ex certa scientia et ex plenitudine potestatis sue', a phrase which Signorolo was happy to quote.[166] This concession overrode the rights of the religious house because it was based on the public good ('necessitas utilitatis publice'). With this suggestion Signorolo demonstrated the existence of a just cause. Here peace and security had to be protected in unhappy times by troops who needed to be paid; it was only fair that, as prime beneficiaries of defence expenditure, religious houses should contribute.[167] In drawing on the maxim 'quod principi placuit legis habet vigorem' to show that Giovanni's concession had the force of law, Signorolo conceded that the Visconti enjoyed princely power.[168] Similarly, by referring to

[164] Signorolo, Consilium 89 ('Presupponitur infrascriptum statutum'), nr 4: 'Ita dicam in hoc bannito qui non obtemperat domino nostro, ex quo non obtemperat eius officialibus ut bannum ipsum sequatur, et morando in quocunque loco territorii domini, delinquit et per consequens posset pene subici.'

[165] Signorolo, Consilium 89 ('Presupponitur infrascriptum statutum'), nr 9: 'Appareat bone memorie dominum Luchini [sic] voluisse terras dominio suo subditas, et alias separatam iurisdictionem habentes, in hoc venire, et ut ad invicem unitatem habeant videlicet respectu banni . . . Non erit novum si in his habentibus unitatem et connexitatem ad invicem sub dominio prefati domini respectu banni, extensi fiat de uno loco ad alium.'

[166] Signorolo, Consilium 82 ('In questionibus versantibus'), nr 12.

[167] Signorolo, Consilium 82 ('In questionibus versantibus'), nr 6: 'In quorum loco miserrimis nostris temporibus subrogati sunt stipendiarii, ut simul in simili habetur l. iiii, § nemo, *ff*. De offic. proconsul. et leg. [D. 1, 16, 4, 1]. Cum ergo sit verum et notorium in quacunque parte Lombardie quod pacificus status cuiuscunque civitatis conservatur armorum podio et intuitu ministrorum ipsorum armorum qui sunt stipendiarii necessario concluditur huiusmodi onera in civitatibus vigentia et que tendunt ad solutionem talium ministrorum imminere ob necessitatem utilitatis publice et pro tanto ab ipsis iuxta occurrentia temporibus nostris religiosas domos non esse immunes maxime quia propter talium ministratorum solicitudines status religiosarum domorum in civitatibus conservatur. Equitas ergo dictat ab ipsis in ipsorum stipendiis debere conferri, ut l. i et ii post principium, *ff*. Ad leg. Rod. de iact. [D. 14, 2, 1 and 2].'

[168] Signorolo, Consilium 82 ('In questionibus versantibus'), nr 12: 'Venio ad sextum principale ubi dico quod hoc etiam probatur in litteris dominicis eius declarata voluntas apud

laws governing imperial rescripts[169] (C. 1, 19, 2, *l. Quotiens* and C. 1, 22 6, *l. Omnes*), he attributed the same authority to Giovanni Visconti: as he pointed out, it had been established by the glossators that the emperor might grant such a privilege, provided any conflicting rights (in this case the claim to immunity of the religious house) were discounted with the phrase *notwithstanding*.[170] In this way the Visconti's claim to plenitude of power first began to be acknowledged in the legal profession. The notion that Giovanni Visconti's plenitude of power was analogous to that of the emperor was not, for Signorolo, connected with Charles IV's vicariate, since that was not granted until after the deaths of Luchino and Giovanni; it was simply that the authority of signori demanded to be acknowledged.

Angelo degli Ubaldi

Angelo degli Ubaldi (1325–1400), the hot-tempered younger brother of Baldo, taught and held public office in Perugia for many years, but was exiled and had property confiscated on account of his opposition to the papal regime and support for the popular faction led by the Michelotti (into whose family his son had married).[171] Following the intervention of his brothers, permanent exile was reduced to five years. In the meantime, Angelo, along with other Perugian sympathizers, had found a welcome in Florence, where, apart from brief periods in Padua and Bologna, he continued with a teaching career. Despite not having any direct connection with the Visconti, Angelo's ideas on the source of plenitude of power proved to be of major significance. Whereas for Signorolo the analogy between imperial and signorial authority was implicit, Angelo was prepared to go further: in the seminal consilium 217 ('In causa accusationis') he stated outright that the Visconti enjoyed the same powers as the emperor, including plenitude of power. The circumstances in which he had been called to give an opinion seem insignificant—a murder committed in 1380 in Milan was being tried in Lodi. The accused himself being Milanese, the defence contended that the podestà of Lodi and his assessor were not competent judges (despite having been specially

subditos eius pro lege habetur, ut l. prima, *ff*. De constitutionibus principum l. quod principi [D. 1, 4, 1,].'

[169] The *rescripta* of Justinian's day became the *literae, gratiae, concessiones, privilegiae* and *immunitates* of the Visconti and the Sforza.

[170] Signorolo, Consilium 82 ('In questionibus versantibus'), nr 12–13: 'Mandavit enim d. Mediolani, MCCCL, die xiii Augusti, ex certa scientia et ex plenitudine potestatis sue qualiter approbabat venditionem seu locationem factam de datio vini imbotati Ga. Pa. cum omnibus pactis et conventionibus factis et debere sortiri roboris firmitatem, aliquibus iuribus in contrarium loquentibus non obstantibus, per que verba est derogatum omni iuri si quod in contrarium loqueretur, ut l. Si quis in princ. *ff*. De lega iii [D. 32. 1, 5] et quod notatur in l. 2, C. De preci. impera. offer [C. 1, 19, 2] et quod notatur in l. fin. Si contra ius vel uti publ. [C. 1, 22, 6].'

[171] Angelo's career is described by Scalvanti (1901), pp. 279–97, and by Nico Ottaviani (2000); see also Frova (2005), pp. 525ff. It has been seen how Angelo's antipathy for papal government surfaced in his commentary on the *Digest* (see above pp. 17–18).

commissioned by Giangaleazzo to hear the case). In this context Angelo was prompted to consider the powers of the Visconti. In his opinion the defendant's postion as Giangaleazzo's subject counted for more than his particular citizenship. Abandoning the traditional framework of communal autonomy, Angelo maintained that Giangaleazzo's authority transcended established boundaries:

> He is ruler in his lands and enjoys the power of a prince. Therefore, just as the emperor delegates all judicial hearings from plenitude of power on the grounds that whatever he commands is law, so too may the count [Giangaleazzo]: he rules over the commune of Milan and its territory, from where the accused himself says he comes, and so he is a subject of the count who, because he is prince in his own lands, may entrust and commit this case to whomever he wishes.[172]

Giangaleazzo's vicariate was not seen as the basis of his plenitude of power: Angelo did not refer to any specific diploma, believing instead that plenitude of power belonged to Giangaleazzo as a princely prerogative. The strength of the comparison made the passage a defining text on Visconti plenitude of power.[173]

Baldo degli Ubaldi

In 1390 Giangaleazzo Visconti enticed Baldo degli Ubaldi to leave Perugia and take up a teaching post in Pavia. He must have hoped that the presence of Italy's most famous lawyer would add prestige to the university that had been established by his father thirty years earlier. Another motive was evidently that he would have Baldo on hand for advice on matters of government and to examine and define the nature of his own authority as imperial vicar and as duke. In 1393, just as Giangaleazzo was campaigning for the investiture, Baldo wrote the *Lectura in usus feudorum*, a guide to the complexities of the feudal relationship, dedicated to (and possibly requested by) Giangaleazzo himself.[174] At Giangaleazzo's behest, he composed a series of highly original consilia on the Visconti regime;[175] he began his work on canon law, the *Lectura Decretalium*, after

[172] Angelo, Consilium 217 ('In causa accusationis'), nrs 1–2: 'Dominus comes in terris suis princeps est et principis fungitur potestate. Unde sicut imperator omnem causam delegat ex plenitudine potestatis eo quod quicquid sibi placet est lex, ut l. 1 *ff*. De constitutionibus principum [D. 1, 4, 1], ita et dominus comes potest. Sed dominus comes preest civitati Mediolani et eius territorio de quo ipsemet accusatus se asserit oriundum; ergo est subditus ipsius domini comitis. Et sic dominus comes tanquam suarum terrarum princeps potest hanc causam sui subditi ad libitum delegare vel committere.' The proceedings evidently took place after Lodi had passed from Bernabò's rule to Giangaleazzo's in 1385, since Angelo refers to the death of Bernabò.

[173] See pp. 97, 103, 111, 149 and 166 below.

[174] Danusso (2005), pp. 291–2; see also Danusso (1991), p. 9, and Colli (2000), pp. 69–71.

[175] The closeness of the relationship between Baldo and Giangaleazzo has recently been analysed by Conetti (2005). The studies by Vallone (1989), Pennington (1988, 1992, 1997b, 2005), and Colli (1991, 1995, 2005) have provided invaluable insight into the dating of these works, into Baldo's working method, and into the evolution of his ideas as he felt his way towards an acceptable

1394;[176] and in this period, too, he revised the commentaries on book seven of the *Codex*.[177] These were the works in which Baldo explored plenitude of power's ability to overrule even basic laws and rights, where he explained that the necessary justification was entirely in the hands of the ruler himself and where he accepted that a ruler's patently unreliable judgement and integrity were its sole guarantee against misuse.

Like Signorolo and Angelo, Baldo found the question of the source of the Visconti's absolute power difficult to unravel. Unlike Angelo, he was inclined to go along with the Visconti's own interpretation that, even though neither the diploma of 1355 nor that of 1380 made specific mention of plenitude of power, the prerogative stemmed from the imperial vicariate. As background to a dispute which turned on Giangaleazzo's use of his absolute powers,[178] Baldo had quoted at length from the 1380 vicariate; then, having praised the emperor's plenitude of power, he wrote that, 'as a result of that plenitude of power, our glorious and illustrious prince [Giangaleazzo Visconti] enjoys in many cities and provinces [the position] which his imperial highness not only entrusted but truly and completely consigned and literally handed over to him', explaining that, 'the transfer by the emperor was all-inclusive (*plenissima*).' He argued that, 'from this two consequences follow: one, that our glorious ruler, after the emperor himself, has all the same powers as the emperor . . . The second consequence is that, when the powers of both have been added together, the power of the person making the grant and the power of the recipient—that of the bestower on top of that of the receiver—a concession of the magnificent [Giangaleazzo] will enjoy the same privileges as a concession of the emperor,' emphasizing that, 'that is because he wields Caesar's sword and enjoys the maximum authority in concessions; I believe this cannot be questioned'.[179] It was because he had been given the

model for Giangaleazzo's authority. Some of these works (e.g. Consilia, Bk 1, 326–7, 328–9 and 333) were not consilia in the usual sense, having no connection with any particular court case, but were rather essays analysing problems connected with the new ducal title, a point made by Conetti (2005), pp. 478–9.

[176] Colli (2005), pp. 77ff. [177] Colli (2005), pp. 74 n. 36, 79–80.

[178] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'); Conetti (2005), pp. 488 and 496, gives an account of this consilium. On Baldo and Visconti plenitude of power, see Canning (1987a), pp. 221–4; Conetti, ibid., pp. 493–9.

[179] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'), nrs 1–2: 'Gloriosus et illustrissimus princeps habet de illa plenitudine in nonnullis civitatibus et provinciis illud quod imperialis serenitas eidem non solum commisit sed vere ac plene concessit, quinimo transtulit, ut *ff*. De origine iuris, l. 2, § novissime [D. 1, 2, 2] . . . Ex his sequuntur due conclusiones: una quod gloriosus dominus noster post principem habet omnem potestatem quam imperator . . . Secunda conclusio est quod propter coniunctionem utriusque potestatis, scilicet concedentis et concesse, influentis et influxe, eadem privilegia habet concessio magnifici quam concessio Caesaris, ita quod l. Omnes et l. Bene a Zenone, De quadriennii praescriptione [C. 7, 37, 2 and 3], ita vendicant sibi locum in magnifico nostro, sicut in Caesare, quia vibrat ensem Caesaris et summo imperio gaudet in concessis; nec de hoc puto dubitandum', BAV. Barb. Lat. 1409, f. 91^{v}. On this passage, see also the comments of Gilli (2001), p. 1.

imperial vicariate that the law *Bene a Zenone* (C. 7, 37, 3) applied to Giangaleazzo's grants of property so that, 'provided the signore acted in full knowledge [of the circumstances] and from plenitude of power', the recipient's rights were secure.[180]

On the other hand, the idea that plenitude of power came with the vicariate meant that Bernabò Visconti's claim was problematic: having been deprived of the title in 1372, any acts he issued on the basis of plenitude of power could be open to challenge. Baldo examined the matter in detail in three consilia, having been asked, possibly by Giangaleazzo himself, to give advice on whether, after his death, Bernabò's mistresses and illegitimate daughters had secure title to the property he had given them on the basis of plenitude of power.[181] 'It is asserted,' he said, 'that the late signore Bernabò maintained that he was an imperial vicar general.'[182] Baldo's doubts surfaced as he discussed Bernabò's prerogatives: in the absence of a valid vicariate, he was 'in quasi possessione' of plenitude of power.[183] *Quasi possessio* was the phrase specifically employed in connection with intangible assets, with no implication that the possession was less than geniune. But possession was different from actual ownership. In Baldo's text the emperor, by contrast, had a proprietorial right to plenitude of power rather than merely having possession of it.[184] Baldo was inclined to support the transfer of property, 'always trusting not to prejudice the absolute truth', but added in the margin, 'assuming Bernabò was in fact imperial vicar, given that in the document he did refer to himself as vicar'.[185] But returning to the question in a further consilium, he decided that the issue of Bernabò's vicariate was not relevant: 'To have plenitude of power in secular affairs belongs to the emperor alone or to a sovereign monarch in his kingdom. Lesser rulers, though they do not have it by right of ordinary powers, can certainly claim it on the grounds of a special privilege, for example if a vicariate with plenitude of power has been granted',

[180] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'), nr 8: 'Solutio: si dominus fecit ex certa scientia et de plenitudine potestatis, tutus est recipiens; si autem per facti ignorantiam, vel importunitatem petentis, non est tutus', BAV Barb. Lat. 1409, f. 91^{v}.

[181] The Consilia Bk 1, 248 ('Quaeritur utrum donatio'), 262 ('Recolo me consuluisse'), and 267 ('Ad evidentiam praemitto') are described by Conetti (2005), pp. 488ff.

[182] Baldo Consilium Bk 5, 455 sets out the background to the controversy: 'Asseritur quod quondam magnificus dominus, dominus Bernabos, asserens se imperialem vicarium generalem, donationis titulo contulit plerisque suis amasiis solutis, cum tamen ipse tunc coniunctus foret, plurimas res'.

[183] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 1: 'Bernabos potuerit de plenitudine potestatis, in cuius quasi potestate [sic for possessione, as in the other version, Consilium Bk 5, 456] tunc erat, donare concubinae', BAV Barb. Lat. 1408, f. 137^{v}.

[184] Baldo, Consilium Bk 3, 359 ('Quemadmodum Imperator'), nr 1: 'Imperator habet totalem plenitudinem potestatis', BAV Barb. Lat. 1409, f. 92^{r}.

[185] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 1: 'Concludo igitur, semper salva substantia veritatis, dictam donationem tenuisse, presupposito quod dictus dominus Barnabos fuisset vicarius imperatoris, quia sibi scribebat literas tanquam vicarius etc.', BAV, Barb. Lat. 1408 f. 137^{v}.

believing that 'since plenitude of power beyond normal territorial jurisdiction is based on entitlement, it must have some such privilege to stand on'; but Baldo conceded that it could equally be based on long-standing custom.[186] Bernabò was not the only signore to use plenitude of power without express imperial authorization, for the fact was that plenitude of power was a phrase employed by all and sundry: 'All Lombard signori, in accordance with normal usage and on the grounds of some sort of theoretical claim and established practice, employ the phrase *de plenitudine potestatis,* and make use of the expression and the prerogative itself, and, without compromising the truth, I do consider that their words should be accepted. After all it is hardly likely that they would use an expression which had no foundation.'[187] Not that Baldo could dismiss all reservations: 'With regard to these problems we have not altogether escaped the difficulty that there will remain a lingering doubt in some minds, given that the issue of plenitude of power has not been settled.'[188] But for all his scruples, Baldo knew that after years of usage there was no alternative: 'Otherwise, lawsuits from long ago could be stirred up again and cases that have been successfully settled at whatever cost or by whatever means reopened, and that would be wrong.' Not only that, but 'the decrees of a great many signori would be rendered meaningless.' Thus, for his own part, he said, 'I have always accepted plenitude of power and regarded the assertions of such a signore as valid.'[189]

Alberico had refused to attribute absolute power to the Visconti, but from the second half of the fourteenth century, faced with so many concessions made on the basis plenitude of power, lawyers accepted the Visconti's claims. Signorolo and Angelo had drawn a general analogy between the Visconti as ruling princes

[186] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nrs 8–9: 'Secundo, premitto ad evidentiam quod habere plenitudinem potestatis in temporalibus competit soli imperatori vel libero regi in regno suo, ut *ff.* De captivis, l. Hostes [D. 49, 15, 24]. Inferioribus autem non competit iure ordinarie potestatis, sed bene possunt habere ex speciali privilegio, puta si vicariatus est eis collatus cum plenitudine potestatis . . . Quia igitur plenitudo potestatis extra omnem iurisdictionem territorii consistit ex privilegio, oportet de talibus privilegiis constare per privilegium principis vel inveteratam consuetudinem', BAV, Barb. Lat. 1408 f. 142^{r-v}.

[187] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nr 9: 'Sed tamen quia omnes domini Lombardie de consuetudine usuali et quasi de quadam theorica et pratica apponunt haec verba *de plenitudine potestatis* et sunt in quasi possessione verbi et facti; puto, salva substantia veritatis, credendum eorum sermoni quia non est verisimile quod falsa voce uterentur', BAV Barb. Lat. 1408 f. 142^{v}.

[188] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nr 11: 'Sed adhuc non sumus extra difficultatem punctorum, quin remaneat in animo scrupulositas, dato quod non constaret de plenitudine potestatis', BAV, Barb. Lat. 1408 f. 143^{r}.

[189] Baldo, Consilium Bk 1, 267 ('Ad evidentiam praemitto'), nr 9: 'Alioquin multis preteritis possent lites excitari, et quecunque et quantumcunque bene sopita resolvi, quod est iniquum, ut C. De summ. Trinitate, l. 3 [C. 1, 1, 3]. Et illusoria fierent decreta tantorum dominorum, ut *ff.* De iud. l. si praetor, in principio [D. 5, 1, 75] . . . Semper enim presupposui plenitudinem potestatis, putans sermones tanti domini esse veridicos', BAV, Barb. Lat. 1408 f. 142v. See Canning (1987a), p. 224, and Conetti (2005), pp. 498–9.

and the emperor himself. Baldo, even though he could not point to any explicit clause, was willing to concede that the Visconti's imperial vicariate was enough of a justification. When it came to Bernabò and other signori who lacked a valid vicariate, he accepted on purely practical grounds that plenitude of power had to be supported in those circumstances too.

Chapter 3

Giangaleazzo's Investiture and its Legacy

GIANGALEAZZO AT THE HEIGHT OF POWER: 1385–1402

Not content with having reunited the existing Visconti dominions under his own rule with the annexation of Bernabò's lands, Giangaleazzo embarked on a further programme of expansion: in 1387 he seized Verona and Vicenza from Antonio della Scala; Padua fell into his hands the following year. These achievements were crowned in 1388 by the birth of a son, Giovanni Maria, and by the marriage a year later of his daughter Valentina to the duke of Turenne. Giangaleazzo's next target was to retake Bologna, gateway to Tuscany; with the Florentines having at last been roused from their customary reliance on leagues and diplomacy, war broke out in 1390 (Bernabò's sons Carlo and Mastino and their brother-in-law, the count of Armagnac naturally siding with Florence). An inconclusive peace was signed in 1392. Giangaleazzo meanwhile continued the programme of reorganizing the administration.[1] The Consiglio Segreto and the Consiglio di Giustizia were established with broad administrative and political functions.[2] The diversion of communal revenues into the central treasury, or camera, begun in the 1350s, was extended by the act of 1384 to all Giangaleazzo's dominions.[3] The office of Maestri delle entrate was created to administer revenues.[4] Judicial reforms were attempted in 1384–5: summary procedure and the appointment of lay adjudicators (*tres boni viri*) would, it was hoped, make civil cases less expensive and time-consuming. These reforms proved impossible to implement because of opposition from the legal profession.[5] Criminal justice, on the other hand, came increasingly under signorial control with the appointment of the Capitano di giustizia, responsible for judicial and policing matters in Milan and the surrounding area.[6]

[1] On Giangaleazzo's reforms, see Gamberini (2003), pp. 259–69.
[2] Cognasso (1955a), pp. 489–90.
[3] March 1384, *ADMD*, pp. 59ff and Santoro (1976), pp. 421–5.
[4] On these changes, see Tagliabue (1915), pp. 37–50; Cognasso (1955a), pp. 295–6.
[5] Storti Storchi (1996a), pp. 152–65.
[6] The first reference to the Capitano di giustizia appears to be in 1399, but the office had probably existed for some years before that; see Santoro (1956), pp. 537–8; Spinelli (1993), pp. 31–3.

The Ducal Titles

Azzone's ambition to establish the Visconti as a princely dynasty appeared to have been realized when Giangaleazzo at long last received the ducal investiture on 11 May 1395. The magnificent and elaborate coronation ceremonies in the presence of representatives from all the leading powers were designed to demonstrate the significance of the new status.[7] As might be expected, Giangaleazzo received the crown from the imperial *luogotenente*, Benesio Cumsinich. One of his principal aims had been to legitimize the seizure of Bernabò's territories, a purpose which was now partially fulfilled. The diploma itself encompassed two different acts: the promotion of Giangaleazzo and his successors to the rank of dukes, and the conversion of the city of Milan and its contado (roughly the area between the Adda and Ticino rivers) into a duchy.[8] The investiture did not include any other Visconti territories; nevertheless, with Milan now a duchy over which Giangaleazzo had exclusive control, the awkward clause in the vicariate of 1380, whereby Wenceslas had recognized Bernabò as joint ruler in the city, had been effectively nullified.

There was still the problem of Giangaleazzo's claim to Bernabò's lands beyond the duchy. To continue reliance on the vicariate of 1380, covering only his own inherited territories, called attention to the weakness of his title in the territories he had seized. To get round this, Giangaleazzo petitioned for a second investiture, dated 13 October 1396, in which all the cities and territories under his control, both his own and Bernabò's, were listed together to create another duchy, official documents thereafter referring to the 'duchies' of Milan.[9] As Baldo explained with reference to the second investiture, 'it is proper for a republic [that is, the empire] to have legitimate rather than improperly appointed subjects and so it was an advantage [for Wenceslas] to have a duke as subject rather than a tyrant.'[10] At last the rights given to Bernabò

There were reforms too in the administration of subject cities: on changes in Reggio, for example, see Gamberini (2003), pp. 259–69.

[7] On the symbolic importance of Giangaleazzo's coronation in the Basilica of Sant'Ambrogio, see Moly (2008).

[8] 'Te . . . hodie . . . in ducem civitatis et diocesis Mediolani . . . ereximus . . . Terras quoque tuas . . . in verum principatum et ducatum ereximus . . . tibi Illustri Johanni Galeas duci Mediolanensi ducatum . . . de benignitate regia conferentes', Dumont, ii, pt i, p. 237. The duchy did not encompass all the Visconti dominions; as the 1498 Statutes of Milan explained, 'Ubicunque in praesentibus statutis fit mentio de Ducatu Mediolani, intelligitur de locis et terris quae alias erant de comitatu Mediolani ante habitum titulm ducatus, et ulterius non extendatur ad alia loca nec ad alias terras', *Statuta ducatus mediolanensis*, ed. Carpani, *c*.335.

[9] ASMi, Registri ducali, 2, pp. 194–200, contains a copy of the diploma; another version is published in Luenig, i, cols 425–32. Giangaleazzo was now duke of Brescia, Bergamo, Como, Novara, Vercelli, Alessandria, Tortona, Bobbio, Piacenza, Reggio, Parma, Cremona, and Lodi, to list just the major towns. The 1397 diploma creating the duchy of Lombardy was a forgery; the Visconti were known as dukes of Milan 'etc.' not as dukes of Lombardy: see Gamberini (2005), pp. 157ff.

[10] Baldo, Consilium Bk 1, 333, 'Ad intelligentiam sequendorum', Pennington (1997b), p. 58, nr 1: 'expeditque reipublice potiori habere iustos subditos quam perversos, et sic expedit habere potius

in the vicariate of 1355, and expressly acknowledged in that of 1380, had been altogether superseded. This was made clear in the new investiture, which was bestowed 'notwithstanding other titles which have been created, conceded or granted to other people in the above [lands] by us or our predecessors in the empire'.[11] To avoid any acknowledgement of Bernabò's rights, the vicariates no longer appeared in official records.[12] In addition, 'lest in the future any question arise concerning the succession', the diploma of 1396 addressed the problem of the hereditary rights of Bernabò's sons. It was laid down that, in spite of any contrary municipal laws or customs (a reference to the communal acts of 1349 and 1354 upon which Bernabò's family based their claims), the ducal titles created in 1395 and 1396 should go exclusively to Giangaleazzo's eldest son.[13]

Another disadvantage of the 1395 investiture was that it had not spelt out what powers came with the ducal title. Whereas the vicariates had included specific prerogatives, that is, 'pre-eminence and comprehensive jurisdiction and power' to be exercised on the emperor's behalf, the new diploma had merely stated that Giangaleazzo and his heirs were to enjoy the same rights as other imperial princes.[14] In that respect Giangaleazzo was in danger of being left worse off as duke than he had been as imperial vicar. The 1396 investiture addressed this complication too: Giangaleazzo was again granted all the powers in his lands which the emperors enjoyed. But there was another prize. The diploma of 1396 included for the first time the express right to plenitude of power. It was understood that Giangaleazzo and his heirs were entitled to organize the government of the duchy as they saw fit and 'carry out, perform and fulfil (*gerere, facere et expedire*) the other functions in the duchy of Milan which we and [other]

subditum ducem quam tirannum.' These words were added in the margin in Baldo's own hand.

[11] 'Et praedicta omnia et singula valere volumus et obtinere effectualem roboris firmitatem, non obstantibus quibuscunque legibus, iuribus, constitutionibus, clausulis derogatoriis et aliis concessionibus, infeudationibus aliisve titulis per nos, sive per praedecessores nostros in Imperio, aliis factis, concessis vel collatis super praemissis ', Luenig, i, cols 431–2.

[12] Neither the 1355 nor the 1380 vicariate was included in the otherwise exhaustive collection of documents pertaining to Visconti rights that was drawn up by Francesco Sforza's chancery: ASMi, Registri ducali, 2, pp. 191–260. Francesco himself scorned the offer of a vicariate: see below, p. 88.

[13] 'Caeterum ne circa successionem huiusmodi ducatuum aliqua in posterum dubietas oriatur sed certius et clarius succedendi modus detur, edicimus et sancimus quod aliquibus iuribus municipalibus factis vel fiendis aliqualiter non obstantibus aliquibus, primogenitus masculus natus ex legitimo matrimonio tui Johannisgaleaz ducis Mediolani etc. dumtaxat succedat in ducatibus predictis et aliis fratribus preferatur': ASMi, Registri ducali, 2, p. 196. The wording differs slightly in Luenig, i, col. 428.

[14] Dumont, ii, pt i, p. 237: 'tanquam caeteri imperii duces et principes teneri et honorari et utique ab ominbus reputari, omnique tunc privilegio, honore, gratia, dignitate et immunitate absque impedimento perfrui quibus alii sacro sancti imperii duces et principes in dandis sive recipiendis juribus, in conferendis seu suscipiendis feudis et omnibus aliis illustrem statum et conditionem ducum sive principum concernentibus fruiti sunt hactenus seu quomodolibet potiuntur.'

kings of the Romans and emperors may carry out, perform and fulfil *even from plenitude of power*.'[15] With the 1396 investiture Giangaleazzo appeared to have achieved a long-standing goal: a solid right to absolute power.[16]

Giangaleazzo was keen to broadcast the special authorization that he now had to use plenitude of power. In the charter issued to the university, temporarily transferred to Piacenza, on 1 January 1399, he wrote, 'since we naturally wish to enrich our ducal monarchy with learning and virtue', he was minded to have the university set up 'from our plenitude of power, as given to us and our heirs by the emperor'.[17] The following month he issued a decree against corruption 'from the plenitude of our power conceded to us in accordance with God's will by his imperial highness'.[18] The 1396 diploma marked the end of the process begun in the 1330s, when Azzone Visconti had first claimed plenitude of power; at that point there had been no clear indication of the basis for the claim, apart from a generalized notion of popular sovereignty. By mid-century it

[15] Luenig, i, col. 429 'et alijs quibuscunque regimen, gubernationem et conservationem eorum status et ducatuum predictorum concernentibus providere, prout vobis videbitur et placuerit valeatis, et alia gerere, facere et expedire in ducatibus Mediolani etc. predictis, que nos et Romani Reges et Imperatores gerere, facere et expedire possemus etiam de plenitudine potestatis.'

[16] The exact powers transferred in the diploma of 1396 with regard to dependent cities is the subject of debate. In an article published in 1988 I drew attention to Martino Garati's previously undiscovered *Disputatio*, one of the few contemporary analyses of the nature of Visconti authority, in which he explained that the investiture of 1396 did not provide Giangaleazzo with full powers of jurisdiction over the cities because such powers had been granted to the communes in the Peace of Constance in 1183. In her work on the feudalization policy of the Visconti, Federica Cengarle has devoted further study to the *Disputatio*: (2006), pp. 70–8. Cengarle points out that in his *Lectura in opere feudorum* Martino supported Baldo's assertion (in *In usus feudorum*) that the emperor's promise to observe the Peace of Constance was not binding beyond thirty years (2006), pp. 71–3. As a consequence, asserted Martino in the *Lectura*, Wenceslas had been able to grant the second investiture 'cum omni imperio et regalibus', so that, Cengarle argues, Giangaleazzo became 'sole possessor of *mero e misto imperio*' within the duchy. But it is unlikely that Martino changed his mind on such a central issue (in fact he was still citing his *Disputatio* just before he died). Baldo's assertion that the emperor was no longer bound by the Peace occurs in the context of enfeoffments: the Visconti wished to create fiefs in the territories of their subject cities, possessions which had indeed been guaranteed in the Peace of Constance. Martino (along with other commentators on the Milanese system of fiefs in the period) argued that the emperor's oath having lapsed, Wenceslas had been able to transfer to the duke all the rights (*regalia*) of his subject cities over their own territorial holdings. Nevertheless, Baldo maintained, even though the emperor was not bound by it, the Peace itself was still intact. Elements of the Peace that the emperor had not reversed, in other words, remained as agreed. It was on this basis that, according to the *Disputatio*, cities in the duchy still commanded jurisdiction in respect of their own affairs, so that local statutes, podestà and councils, albeit under strict ducal control, continued to function. I discuss this issue at greater length in a forthcoming article 'Giangaleazzo Visconti and the ducal title', to be published in J. Law and B. Paton (eds), *Communes and Despots in Late Medieval and Renaissance Italy*, 2010.

[17] Campi, *Historia ecclesiastica*, iii, p. 307: 'Nos qui ducalem sane nostram monarchiam desideramus scientiis ac virtutibus facundare et huiusmodi veris ornamentis fulcire, non immerito, motu proprio, de nostrae plenitudine potestatis a Caesarea dignitate nobis, et nostris successoribus attributa, Deo auctore, et de certa scientia, et omnimodo quo melius possumus, duximus in civitate nostra Placentiae generale studium instaurandum.'

[18] 14 February 1399, *ADMD*, p. 225 : 'motu proprio, ex certa scientia et de nostrae plenitudine potestatis, nutu divino a Caesarea dignitate nobis'.

was evident that the Visconti themselves were aware of the need to clarify their prerogatives, so that the imperial vicariate became the accepted basis for absolute power. Unfortunately, vicarial diplomas were not explicit on the question of plenitude of power, and experience had shown that they could easily be revoked. In addition, the 1380 vicariate had left Giangaleazzo's status in his uncle's lands ambiguous. Giangaleazzo had therefore been prepared to pay generously for privileges which would put his authority on a firmer footing.[19]

Giangaleazzo's investiture in 1395 had marked the high point of his career, but the plan to expand his rule beyond Lombardy was yet to be realized. From 1397 he again resorted to open warfare, exploiting the widespread distrust of Florence in order to assume control of Pisa (February 1399), Siena (September 1399), and Perugia (November 1399); Assisi, Spoleto, and Nocera soon followed, and Paolo Guinigi, the new signore of Lucca, accepted Milanese protection. These were dazzling successes, but Bologna was still Giangaleazzo's prey. The Florentines again made common cause with Carlo and Mastino Visconti and also with Rupert, who had been elected king of the Romans now that Wenceslas had been deposed for having granted Giangaleazzo's ducal title. Giangaleazzo was more than a match for his enemies: at Brescia on 21 October 1401 he overpowered Rupert; at the battle of Casalecchio, on 26 June the following year, he defeated the Florentines and Bolognese. Bologna had at last been recovered for the Visconti: the way to Florence was now open. But Giangaleazzo hesitated, fell victim to the plague that was spreading through Lombardy, and on 3 September 1402 he died.

GIOVANNI MARIA VISCONTI 1402–12

Visconti ascendancy would now be tested almost to destruction. On 3 September 1402 the fourteen-year-old Giovanni Maria, in accordance with Giangaleazzo's wishes, assumed the ducal title; the ten-year-old Filippo Maria became count of Pavia, while the legitimized Gabriele was left in charge of Pisa. A regency council was set up under the duchess, Caterina.[20] For a variety of reasons Giangaleazzo's sudden disappearance had immediate and disastrous consequences for the Visconti dominions: the title itself was being challenged by the new emperor; Giangaleazzo's position was under threat from within his own family by Bernabò's heirs; subject cities saw the chance to re-establish independence; Giangaleazzo's recent extension of his rule to include parts of Umbria, the Romagna and Tuscany provoked a backlash from neigbouring states; rivalries within Visconti subject cities were still active; and for military support, Caterina

[19] 100,000 florins was said to be the sum paid for the first diploma: Cognasso (1955c), p. 21; Bueno de Mesquita (1941) p. 172 and n. 6.

[20] On Giangaleazzo's testamentary arrangements, see Valeri (1935), pp. 470–3.

Visconti had only her self-aggrandizing condottieri, Facino Cane, Pandolfo Malatesta, and Iacopo dal Verme, to rely on.

Internal hostility resurfaced in every city as leading families struggled for ascendancy (in Como, the Rusca and the Vittani; in Cremona, the Cavalcabò, the Ponzoni and the Fondulo families; in Lodi, the Fissiraga and the Vignati; in Bergamo, the Colleoni and the Suardi; in Parma, the Rossi and the da Correggio). As a result of her approach to the Guelfs for help, the duchess Caterina herself, in August 1404, was captured and imprisoned at Monza, where she died a few weeks later.[21] Carlo Malatesta, Giangaleazzo's one-time councillor, took charge of the government, but the Visconti inheritance disintegrated.[22] Bologna, Perugia, Spoleto, and other Umbrian cities, had to be restored to the pope; the Milanese were driven out of Siena; Padua and Verona came under Venetian control; the Pisans freed themselves from Gabriele Visconti only to fall into the hands of Florence; Facino Cane took Piacenza and carved out for himself a *signoria* round Alessandria; Vercelli fell to Teodoro II of Monferrato, Parma came under the rule of Ottobuono Terzi and Brescia and Bergamo under that of Pandolfo Malatesta (formally in the name of Giovanni Maria, but in practice for themselves). Mastino Visconti and other descendants of Bernabò re-established themselves in other parts of Giangaleazzo's former territories. The new treason law issued in 1407 against invaders and occupiers did no more than demonstrate the collapse of authority.[23] In 1408 Carlo Malatesta attempted to concentrate support in Milan by reducing the nine hundred members of the General Council to seventy-two, chosen by himself;[24] but by then Giovanni Maria had come of age, and so Malatesta left the city and relinquished the reins of government. There was little hope that Giangaleazzo's inheritance would be restored by Giovanni Maria's erratic impulses. Taking advantage of the duke's isolation, Facino Cane, in November 1409, marched on Milan and seized power, forcing Filippo Maria to accept his rule in Pavia too. Facino Cane died on 16 May 1412; on the same day came the news that Giovanni Maria himself had been assassinated by supporters of the Bernabò faction. Neither was mourned by the long-suffering Milanese.

FILIPPO MARIA VISCONTI 1412–47

When he succeeded his brother in 1412, the plight of Filippo Maria was, if anything, worse than Azzone's in 1329: Bernabò's family was once more ruling

[21] The resurgence of faction in the name of Guelfs and Ghibellines was a notable feature of the period immediately following the death of Giangaleazzo: Somaini (2005), p. 151.

[22] For a vivid description of the disintegration of the duchy, see Chittolini (1979), p. 95. The collapse and restoration of Visconti control has recently been described by Cengarle (2006), pp. 17ff.

[23] 17 August 1407, *ADMD*, p. 238–9.

[24] Santoro (1950), p. 14; Verga (1915), p. x.

in Milan; he had neither an imperial investiture (on account of opposition from the German princes) nor any territorial base. His authority would have to be reinstituted and officials reappointed in every individual town and city; feudal contracts would have to be re-established. It was a process that was to take the best part of ten years. As a result of his betrothal to Beatrice Lascaris, widow of Facino Cane, Filippo Maria had instant access to Facino's fortune and armies, including those under the command of the redoubtable Francesco Bussone, il Carmagnola.[25] With these resources he was able, on 16 June 1412, to retake Milan from Estorre and Gian Carlo Visconti, Bernabò's heirs, who had been proclaimed signori by the citizens. On 27 June the Vicario and XII di Provvisione were ordered to appoint the full nine hundred members of the General Council, who were to choose representatives to swear loyalty to Filippo Maria.[26] Through his wife, Filippo Maria had control of Facino's own dominions, including Tortona, Novara, and Vigevano (Alessandria itself had to be taken by force). Preliminary treaties were then signed with the Vignati in Lodi and the Rusca in Como and by 1417, with French help, these towns had been brought under direct rule. In return for a pledge of loyalty, Gabrino Fondulo was formally enfeoffed with the county of Cremona. In 1419, on payment of an indemnity, Parma and Reggio were restored by Niccolò III d'Este of Ferrara to be followed by Pandolfo Malatesta's surrender of Bergamo. In 1420, on similar terms, Gabrino Fondulo relinquished Cremona and in 1422 a large sum was agreed with the duke of Orleans to procure the vital restoration of Asti. The core Visconti territories had now been brought under Filippo Maria's authority; in addition, Genoa had submitted in 1421, the first time the city had been in Visconti hands since the days of Archbishop Giovanni.[27] In the meantime Filippo Maria had embarked on a policy of centralizing and systematizing the administration.[28]

Neighbouring states watched the reintegration of the Visconti territories with alarm, so that when Filippo Maria drew up plans to retake Bologna and move into the Romagna they prepared to resist. With forces now under the command of Carlo and Pandolfo Malatesta, Florence was the first to oppose the Milanese advance, only to be defeated by Carmagnola at Zagonara in July 1424. Yet the remainder of the 1420s were desperate years for Filippo Maria. The victory at Zagonara encouraged an alliance between Florence and Venice, the latter of whom saw its power greatly enhanced by the defection of Carmagnola, Filippo Maria's most able commander, and by the acquisition in 1426 of Brescia. The accession of Amadeo VIII of Savoy to the anti-Visconti coalition tipped the balance, and on 12 October 1427 Filippo Maria lost the battle of Maclodio.

[25] Filippo Maria's marriage brought many advantages but not the birth of an heir; Beatrice was executed on the grounds of adultery in 1418.

[26] Osio, ii, Doc. 1, pp. 1–3.

[27] For Filippo Maria's takeover of Genoa, see Musso (1993), pp. 65–75.

[28] Filippo Maria attempted, for example, to introduce a more uniform revenue system: see Bianchessi (2001), pp. 255ff.

Ultimately, these military disasters sowed the seeds for the new dynasty in Milan. Deprived of Carmagnola's services, Filippo Maria now turned to the talented young commander Francesco Sforza (the illegitimate son of the condottiere Muzio Attendolo). Filippo Maria himself had only one child, the legitimized Bianca Maria, daughter of his long-term mistress, Agnese del Maino. Bianca Maria was now betrothed to Francesco Sforza with a dowry which promised to include the *signoria* of Cremona. In 1432 Francesco was adopted into the Visconti family, [29] going on to conquer, on his own behalf, the March of Ancona.

The victory of Genoa, still resentful of Visconti rule, over Alfonso I of Naples in 1435 led, improbably, to the alliance between Milan and Naples, which was to be chief axis of Italian diplomacy until 1480. Another outcome was rebellion in Genoa against Visconti domination and the revival of the anti-Visconti alliance, now led by Francesco Sforza. Three years of conflict in the later 1430s resulted in the final surrender of Brescia and Verona to the Venetians and Filippo Maria's defeat by the papal-Florentine army at Anghiari in 1440. Humiliated and without funds, Filippo Maria now had to face the dreaded wedding of Bianca Maria and Francesco Sforza, finally celebrated at Cremona in 1441. The union was meant to signify Francesco's return to loyalty; but he and Filippo Maria took opposing sides in the internal conflicts in the kingdom of Naples, Francesco for the rebels, Filippo Maria for the king. To return the favour, Alfonso joined Filippo Maria against Francesco, whom they succeeded in expelling from his stronghold in the March of Ancona in 1443; but by 1446 he was back. Filippo's last months were overshadowed by invasion: Venetian troops overran his western territories and threatened Milan itself; on 19 June 1447 they overwhelmed his forces at Monte Brianza. Filippo Maria now had no choice but to come to terms with Sforza, who gave up the claim to the March of Ancona (for a considerable sum) and agreed to give help against Venice. He was on the way to Milan when news came of the duke's death on 13 August 1447. By now he and Bianca Maria had two children, Galeazzo Maria and Ippolita, and Francesco was in a position to press his claims to the duchy.

The Fragility of the Ducal Diplomas

It had been said at the time that the advantage of the ducal title for Giangaleazzo was that he now possessed enduring authority.[30] As the Florentines famously put it in the letter of congratulations of 1395: 'This title has given a permanent basis to a position previously revocable and held at the discretion of an outsider.'[31]

[29] The diploma which purported to make Francesco Sforza a member of the Visconti family in 1432 is published in *Stilus,* Doc. 47, p. 76.

[30] See Cognasso (1955a), p. 538; Bueno de Mesquita (1941), p. 174; Cantù (1887), pp. 465–7.

[31] 'Factum est hac tituli concessione perpetuum quod prius habebat alieni iuris et revocabilis officii fundamentum', Archivio di Stato di Firenze, Missive, 1ª Cancelleria, 24, f.145^{v}, 20 July 1395. See Black (1988), p. 149, n. 4. See also the comments of Paolo da Castro, below, p. 96.

And yet, as it turned out, there was little security for Giangaleazzo's heirs. The duchy itself proved to be permanent, surviving numerous changes of regime; possession of the title, on the other hand, was found to be wholly precarious, as so many of the Visconti and Sforza dukes were to discover.[32] There were setbacks even before the death of Giangaleazzo. Wenceslas's deposition by the German princes in 1400 was deliberately encouraged by the Florentines as a way of undermining Giangaleazzo's position.[33] The crown of the new German king, Rupert, was predicated on his denial of all recognition to the duchy, so that when Giangaleazzo died in 1402 his heir was left entirely without imperial backing. Giovanni Maria Visconti claimed the title, in accordance with the 1396 diploma and with Giangaleazzo's will, but there was no imperial endorsement. Rupert's death in 1410 and the accession of Sigismund, a long-time ally of the Visconti, brought some hope that the diplomas would be confirmed. Filippo Maria undertook a long-drawn-out series of negotiations with Sigismund; after the collapse of the regime under Giovanni Maria, imperial recognition was vital to restoring Visconti authority.[34] Filippo Maria's requests were initially denied, Sigismund continuing to refer to Milan as a *civitas*,[35] and to Filippo Maria himself simply as *illustris,* or as Count of Pavia. In the discussions a distinction was made between the lands and the title: in 1413 Sigismund promised to confirm that Filippo Maria 'could and should hold [these lands] and govern them as he has hitherto', but he would not agree to recognize him as duke without the consent of the electors.[36]

The presence of both sides at the opening of the Council of Constance in 1415 provided an opportunity for Filippo Maria to give an oath of fealty in exchange for the recognition of territories without a renewal of the title.[37] By 1418 Filippo Maria had so far strengthened his own position that Sigismund gave a promise, subject to the approval of the electors, that he would at some future point confirm the title.[38] Confirmation was finally granted in 1426. There are two versions of the crucial document.[39] The first, dated 1 July, was a fake. With its emphasis on Filippo Maria's hereditary rights and its confirmation of

[32] Giovanni Maria did not secure a renewal of his title; Filippo Maria had to wait almost fifteen years for his; Francesco Sforza, Galeazzo Maria, and Giangaleazzo Sforza had to make do with a de facto title; Ludovico il Moro eventually received a diploma in 1494; French occupation followed soon after.

[33] Lindner (1875–80), ii, pp. 332ff; Ercole (1929), p. 303, n. 2; Cusin (1936a), p. 85; diplomatic relations between Giangaleazzo and the rival claimants for the imperial crown (Wenceslas, Rupert and Sigismund) are covered in Bueno de Mesquita (1941), pp. 262ff.

[34] The course of negotiations are detailed in Romano (1896), pp. 258ff, 264ff, 272ff, and (1897) pp. 69–70, 111ff.

[35] Romano (1896), p. 259, n. 1; Schiff (1909), pp. 153–4.

[36] Schiff (1909), p. 154: 'civitates ipsas et omnia alia supradicta habere et tenere possit et debeat ac in et de eis disponere prout hactenus.'

[37] The ceremony took place on 14 May 1415: Romano (1897), p. 69, n. 3.

[38] *Atti cancellereschi viscontei*, ii, pt ii, Doc. 780, p. 138; Romano (1897), pp. 111–2, n. 2.

[39] Both are published in Giulini (1854–7), vii, pp. 292–3 and 293–6.

Wenceslas's original investitures, the instrument represented what Filippo Maria would have liked to have had from Sigismund.[40] The genuine act, dated 6 July 1426, was a paltry affair by comparison: not a confirmation of Filippo Maria's title as such, it merely endorsed the agreement of 1418 by which Sigismund had promised Filippo Maria the privileges and territories which had been granted to his father, provided the electors consented. There was no specific reference to the rights contained in the earlier diplomas. Moreover, the instrument was to be kept entirely secret during the period of Sigismund's life.[41] Nevetheless, this document was far better than nothing.

Like their predecessors, both Giovanni Maria and Filippo Maria had continued to use plenitude of power even in the absence of imperial recognition. In response to circumstances, they dropped Giangaleazzo's practice, following the 1396 diploma, of referring to plenitude of power as having been conceded *a Caesarea dignitate*. Now there was a new phrase, 'from the plenitude of his ducal power (*de eius ducalis plenitudine potestatis*)', signifying a home-grown authority. The phrase appears in Giovanni Maria's sale in 1411 of all rights over Abbiategrasso.[42] Similarly, Filippo Maria's most important acts in this period employed the new formula: it crops up in the grant of the governorship of Monza to his wife Beatrice[43] and in the investiture of the fiefs of Melegnano, Bescapè, and Belgioioso to members of the family in 1414,[44] besides in the act establishing Cremona as a Visconti fief under Gabrino Fondulo in 1415[45] and in the confirmation of the independence of Abbiategrasso of 1418.[46] The nearest Filippo Maria came to referring to an imperial connection was the phrase 'from his ducal absolute power and also from the authority granted to him by his imperial majesty' used in Gabrino Fondulo's investiture, drawn up after the initial rapprochement with Sigismund in 1413.[47] Once he had received Sigismund's acknowledgement of his titles in 1426, Filippo Maria appears to have stopped referring to 'plenitude of ducal power'. But nor did he want to draw attention to the lack of an express grant of imperial plenitude of power such as Giangaleazzo had received in 1396. He did not, therefore, revive

[40] On this diploma, see Cusin (1936a), p. 53, n. 67, who notes the incongruous 'ac Lombardia', referring to the false diploma of 1397.

[41] See Osio, ii, Doc. 180, p. 299, for the letter to Sigismund of 27 May 1427 in which Filippo Maria promised to keep the diploma secret.

[42] The sale was made to a private consortium in order to raise funds and was done 'de suae ducalis potestatis plenitudine etiam absolute', Morbio (1846), p. 95.

[43] 2 January 1414, Osio, ii, Doc. 23, p 29: 'supplens prefatus dominus dux de sue ducalis plenitudine potestatis, etiam absolute'.

[44] 10 April 1414, Osio, ii, Doc. 24, p. 38: 'de eius potestatis etiam ducalis, etiam absolute'.

[45] 1 January 1415, Osio, ii, Doc. 27, p. 42: 'et cum plena cause cognitione de eius ducalis potestatis plenitudine et absolute'.

[46] 24 November 1418, *ADMD*, p. 246: 'ex certa scientia, ac de nostrae ducalis plenitudine potestatis approbamus'.

[47] Osio, ii, Doc. 27, p. 43 'de eius absoluta ducali potestate, et etiam ex auctoritate eidem ab imperiali maiestate concessa.'

Giangaleazzo's allusion to *Caesarea dignitas* as his source of authority, preferring in general the simple phrase 'from the plenitude of our power'.

THE AMBROSIAN REPUBLIC

Filippo Maria's death, leaving no legitimate heir but only his natural daughter, Bianca Maria, might well have spelt the end of the territorial conglomerate put together by the Visconti. Filippo Maria, who had avoided any discussion of his own demise, left no testament or other indication of what should happen to his lands and titles after his death.[48] The survival of the Visconti inheritance is largely attributable to the military and diplomatic energy of Francesco Sforza, who managed to win control over many of the Visconti territories during the chaotic period of the Ambrosian Republic (1447–50).[49]

It would be wrong to see the interregnum itself as playing no role in preserving the ducal title: ironically the Sforza claim to the duchy, and to plenitude of power, depended largely on the ideology of the new Milanese republic.[50] The key moment for the claim to legitimacy of both the republic and the Sforza regime for almost the next fifty years, until Emperor Maximilian I finally granted a new diploma to Ludovico il Moro in 1494, occurred on the day Filippo Maria's death was announced. On 14 August 1447, as soon as the news broke, talk began to spread of a restoration of the commune.[51] A small group of leading citizens, mostly lawyers, orchestrated events: the Vicario and XII di Provvisione declared the Visconti dynasty extinct and summoned the General Council.[52] The Council, describing itself as representing the commune, once more played a central role in the affairs of the city.[53] Its function was in keeping with tradition: it was the General Council which had formally conferred power on Azzone and authorized the statutes of 1330; it had recognized Archbishop Giovanni and instituted the hereditary *signoria* in 1349; Matteo, Bernabò, and Galeazzo had sought its confirmation of their powers, as had Giangaleazzo when he took the

[48] The will which gave Alfonso I of Aragon a right to the duchy, and the document which gave Francesco Sforza all Filippo Maria's authority, both widely publicized at the time, were forgeries: Cognasso (1955d), pp. 390ff; Cusin (1936a), pp. 6ff and 54.

[49] Martines (1979), pp. 140–8 gives a lively account of the Ambrosian Republic.

[50] For a positive assessment of the constitution devised for the Ambrosian Republic, see Spinelli (2001), pp. 409–23.

[51] In the hours before Filippo Maria died, on 13 August 1447, Sforza's agent, Niccolò Guarna, wrote, 'Sento da alcuni boni et notabili cittadini che la dispositione di questa citade è, dopo la morta de costui, fare consiglio generale fra loro et de proponere et invocare la libertà', Cognasso (1955d), p. 397.

[52] Colombo (1902), p. 323; the members were formally appointed by an act of 17 and 18 August. The act appointing the 900 and the Capitani, etc., is published in Colombo (1903), Doc. 1, pp. 449–66. The XII di Provvisione had enjoyed the prerogative of summoning the General Council since 1388: Santoro (1950), pp. 13 and 33.

[53] See Natale (1986), pp. 59–60.

city in 1385 after the overthrow of Bernabò. Not least among the acts of the General Council had been its acceptance of the ducal investiture of 1395.[54] The Council now appointed the new governing body, to be known as the Capitani e Defensori della Libertà.[55] The choice of name, consciously harking back to the early fourteenth century,[56] was a further indication that the government relied for its legitimacy on the traditional liberties of the commune. The same communal sentiment is revealed in the constant references to Saint Ambrose, patron and protector of the city (any supporter of the government, for example, was described as a 'bonus mediolanensis et ambrosianus').[57]

On the other hand, the regime was not just the commune reborn: the authority claimed by the new republic derived largely from Giangaleazzo's first investiture as duke. The 1395 diploma had comprised not just the investiture of Giangaleazzo, but the creation of the *ducatus Mediolani*. The duchy survived the death of Filippo Maria and the citizens now took charge of it.[58] The continuance of the duchy became the central ideology of the new republic, the Capitani relying upon its status in negotiations that took place with Emperor Frederick III.[59] They refused to swear the oath of obedience demanded by Frederick, declining to acknowledge his claim that, on Filippo Maria's death, the duchy had devolved back to the empire.[60] Instead the Capitani requested 'confirmation of the ancient privileges of their celebrated city and for new rights of dominance over the city and duchy of Milan and elsewhere'.[61] They believed they had an inalienable right to rule: acts of the Capitani refer consistently to their control of the duchy of Milan or of 'the territory of the duchy of Milan especially between the Adda and the Ticino' (that is, the city of Milan and its contado), as specified in Giangaleazzo's original diploma.[62] Their next aim was to retain as many of Filippo Maria's dominions as possible,

[54] Verga (1915), p. viii.

[55] The council also appointed the other key officials: the XII di Provvisione, the six Maestri delle entrate, and the 24 Sindici. On the role of the Capitani, see Spinelli (1987), pp. 32–43.

[56] Spinelli (1990), pp. 54–5.

[57] See, for example, the 'Liberatio a bannis Jacobini de Forlivio,' 21 May, 1449 (*Acta Libertatis*, p. 144); Cognasso (1955d), p. 397, emphasizes the Ambrosian Republic's communal nature, believing that, as far as the founders of the Ambrosian Republic were concerned, 'i Visconti rappresentavano una parentesi.'

[58] Cusin (1936b), p. 313; Cognasso (1955d), p. 414.

[59] The negotiations are detailed in Cusin (1936b), pp. 311ff.

[60] The relevant letter was dated 1 September 1447; Frederick's purpose was to add the duchy of Milan to Habsburg territories: Cusin (1936b), p. 311. Aeneas Silvius Piccolomini explained in his dialogue, *Pentalogus*, written in 1443 and dedicated to Frederick III, that such should be his aim: 'At si, Rex optime, id curaveris, ut Austriae viribus Imperium augeatur, id profecto eveniet, ut et tu vivens semper ditissimus sis, Italiae atque Alemanniae imperans, et filiis tuis amplissimas terras latissimaque dominia possis relinquere, alium Imperatorem tibi substituens, aliis civitates Ducatusque ad Imperium devolutas concedens', quoted in Cusin (1936b), p. 310 n. 57.

[61] 'antiquorum privilegiorum huius inclite civitatis confirmationem et nova privilegia et superioritates tam in dictis civitate et ducatu Mediolani quam alibi', quoted in Spinelli (1990) p. 37. The 'ancient privileges' meant, presumably, the Peace of Constance.

[62] For the latter description, see *Acta libertatis Reg*. 6, Doc. 207, p. 378; Doc. 213, p. 384; Doc. 230, p. 402; see also Spinelli (1990), pp. 31, 54.

and so in turn they requested an imperial diploma in recognition of the right to rule all Visconti possessions.[63] While these negotiations continued, subject cities as well as local feudatories were invited to swear allegiance to the new government, though most of the former preferred to proclaim freedom and autonomy.[64]

In essence, the new regime was still a duchy; that at least is what the documents of the period imply. The Capitani assumed the role of collective duke, and issued, not *riformagioni* or *provvisioni,* like other communal or republican governments, but decrees, the hallmark of signori. They modelled these and other acts on those of the Visconti, closely following established chancery practice. Significantly the Capitani issued acts, again like signori, in the first person: 'we decree', 'we enact', 'we absolve', or 'we declare' (*decernimus, statuimus, absolvimus* or *declaramus*). Finally, in complete contrast to other republican regimes, the Capitani referred to plenitude of power, the phrase appearing regularly in decrees and concessions. On 24 December 1447, for example, Raffaele and Ottone Mandello were absolved of convictions for offences against Filippo Maria, including the crime of *laesa maiestas*, the order being issued 'ex certa scientia et motu proprio ac de nostre plenitudine potestatis'; on the same grounds confiscated property and all previous rights were restored to them, even if found to have been sold or consigned to others. The act concludes by overruling in these terms all contrary decrees, statutes, letters and orders.[65] In December 1448 Giorgio de' Campari of Mantua was granted citizenship 'ex certa scientia et de nostre plenitudine potestatis' to include all rights and immunities normally enjoyed by native born citizens.[66] The Capitani even referred to plenitude of absolute power: Antonio di Busti and his brothers were authorized to act as agents of the Republic to raise money by selling off public assets despite contrary laws of all kinds; those were derogated 'de plenitudine potestatis etiam absolute'.[67] The old idea of popular sovereignty, which had existed in the early days of Visconti dominance, was revived in the service of the new republic: the Capitani's plenitude of power was

[63] Three embassies were sent from the imperial court between 1447 and 1449 to try to reach an accord; there was clearly some scope for an agreement, given that the Capitani were prepared to pay 50,000 ducats for a suitable diploma but before any agreement could be reached with Frederick, the regime had collapsed: Cusin (1936b), p. 315.

[64] Milan was not the only city to proclaim itself a republic. Pavia, for example, had the short-lived Repubblica di San Siro: see Roveda (1992), p. 83. On Milan's relations with other cities, see Cognasso (1955d), pp. 403ff. The act of 19 October 1447 inviting submissions declared: 'Capitani et Deffensores Libertatis illustris et excelse Communitatis Mediolani. Dillecte noster, mittentes vobis hic inclusum proclama, quod pro recipienda fidelitate et juramento ab omnibus nobilibus Mediolani Ducatus compillari fecimus, volumus quod statim illud in hac civitate divulgari faciatis, necminus postea intendatis recipiende fidelitati a nobilibus ipsis in ea que discribitur [sic] ibi forma, quemadmodum feceritis nobis deinde rescribendo', *Acta libertatis*, pp. 12–13.

[65] *Acta libertatis, Reg.* 5, Doc. 18, pp. 30–2; see also *Reg* 5, Doc. 55, pp. 86–8; Doc.110, pp. 144–5; for similar pardons granted from plenitude of power, see *Reg*. 5, Doc. 74, pp. 105–6; Doc. 75, pp. 106–8; Doc. 85, pp. 117–8; Doc. 102, pp. 132–3; Doc. 109, pp. 142–3.

[66] *Acta libertatis*, *Reg*. 5, Doc. 119, p. 153.

[67] *Acta libertatis*, *Reg*. 5, Doc. 33, p. 52. Other examples of the use of *plenitudo potestatis* can be found in *Reg.* 5, Doc. 22, p. 36; Doc. 29, p. 46; Doc. 48, p. 80.

evidently regarded once more as originating with the people. The new ideology combined the traditions of the first half of the fourteenth century with the ducal constitution of the 1390s.

FRANCESCO SFORZA 1450–66

The people of Milan, divided, isolated and hungry, were no match for the forces of Francesco Sforza. By the time he reached the outskirts of the city in February 1450, he had already conquered many of the former Visconti possessions, at first in the service of the Milanese themselves, and then on his own behalf.[68] When he entered Milan on 26 February, a new regime began. At first Francesco was mainly occupied with winning acceptance within the Visconti territories and dealing with the Venetians. His aim was to re-establish control over Bergamo and Brescia, as well as Verona and Vicenza. He still had the support of Florence, but Alfonso of Aragon, king of Naples, intent on expanding northwards had broken ranks, joining forces with Venice. War dragged on until 1453, when financial expediency and the capture of Constantinople provided all sides with the occasion for a settlement, Francesco Sforza being forced to cede Bergamo, Brescia, and Crema in the Peace of Lodi in 1454. In 1464, having helped the Genoese free themselves from the French, he was himself was elected signore of Genoa. Within the duchy, the new duke was careful to demonstrate continuity with the government of Filippo Maria, reappointing Visconti officials to key positions and re-establishing the Consiglio Segreto and Consiglio di Giustizia.[69] He was fortunate in having the able assistance of his wife Bianca Maria and of his secretary, Cicco Simonetta. By the time of his death on 8 March 1466, Francesco had achieved his main ambition: he had preserved the Visconti inheritance and made it mostly his own. On the other hand, he had signally failed to win the imperial recognition for which he had yearned.

GALEAZZO MARIA 1466–76

Galeazzo Maria was in France serving Louis XI at the time of Francesco's death, but thanks to the authority achieved by his father, the succession was uncontested: Bianca Maria had made preparations for a magnificent entry on 20 March 1466 when he was warmly received. The new duke continued to rely on the support of Cicco Simonetta, his old tutor, who became chief secretary, chancellor, and Consigliere segreto. From the beginning, Galeazzo Maria aimed to strengthen control over central government, sidelining the larger and more diverse councils

[68] An outline of Francesco Sforza's assumption of power is given by Ianziti (1988), pp. 20ff.

[69] Leverotti (1992), pp. 59ff. Francesco was particularly keen to maintain continuity in the chancery: see Natale (1961), p. 228.

(the Consiglio Segreto and Consiglio di Giustizia), and dismissing many of his father's appointees in favour of a second Consiglio Segreto, an intimate body of advisers and administrators from which old-established Milanese families were excluded.[70] Another means of concentrating power was to extend the role of the Maestri delle entrate to take control not only of revenue, but also of judicial matters, previously the preserve of the large councils. This body now focused on exploiting the justice system as a source of income for the duke.[71] To ensure a measure of independence from Bianca Maria, Galeazzo Maria took up residence with chosen counsellors in the Castello di Porta Giovio (the Castello Sforzesco), now reconstructed to become a sumptuous private residence. An elaborate protocol was maintained at court which simulated the regal status to which the duke aspired.[72] To seal peace with Savoy, he married Bona, sister of Amadeo IX. Relations with Florence remained amicable and in September 1474 a new alliance was agreed to include Milan, Venice, and Florence. But when in 1475 Galeazzo Maria abandoned the relationship with Louis XI in favour of an alliance with Charles the Bold, duke of Burgundy, Milan was left marginalized. Galeazzo Maria's assassination on 26 December 1476 by three young aristocratic conspirators (Giovanni Andrea Lampugnani, Girolamo Olgiati, and Carlo Visconti) was prompted by private grudges, but reflected wider discontent.

THE RISE OF LUDOVICO IL MORO

Galeazzo Maria's death left Giangaleazzo, his 7-year-old son, duke with a regency council under Bona. The obvious precedent, when government had been in the hands of a minor under the regency of his mother, was the period following the death of Giangaleazzo in 1402. Similar tensions threatened the new government: the emperor was refusing to recognize the ducal title; there were rivals from within the Sforza family, particularly from Giangaleazzo's uncles; Parma was ready to rebel and Genoa longed for independence. Bona had the incomparable Simonetta by her side and won support by making tax concessions, issuing pardons for various infringements, and repaying creditors.[73] But her government was doomed. In March 1477 a rebellion was organized in Genoa by the powerful Giangaleazzo Luigi Fieschi. The uprising was suppressed, but Francesco's other sons, Giangaleazzo's uncles, now in charge of Milanese forces, were encouraged to seize power; they attempted a coup in Milan in May 1477. The plot's discovery led to the exile of the three brothers, Sforza Maria (duke of Bari), Ludovico il Moro, and Ascanio Sforza, to Bari, Pisa, and Perugia respectively, whence they continued

[70] Galeazzo Maria's innovations are described by Fubini (1994) and Leverotti (1994), pp. 10ff.
[71] Leverotti (1994), pp. 5–6 and 16; Gamberini and Somaini (2001), pp. 43–4.
[72] On Galeazzo Maria's ambitious designs for the Castello, see Welch (1995), pp. 203ff.
[73] 26 December 1476, 1 January 1477, two on 15 January 1477, *ADMD*, pp. 383–5.

to conspire against the regency. The following year, while Milanese troops were occupied defending Florence in the aftermath of the Pazzi conspiracy, the Genoese seized the opportunity to declare independence (8 May 1478). That blow spelt the end of the regency. The death of his older brother, Sforza Maria, meant that it was Ludovico il Moro who, in September 1479, accompanied by Roberto Sanseverino and his troops, formally entered Milan, drawing up terms with Bona to take over the government. Bona fled the city; Simonetta was tried and beheaded.

Ludovico's regency began well enough. His own betrothal to the five-year-old Beatrice d'Este, as well as Giangaleazzo's to Isabella, granddaughter of Ferrante and daughter of the future Alfonso II of Naples, was agreed in the summer of 1480. Ludovico's close relationship with Ferrante was further strengthened when Milanese forces intervened in the revolt of the Neapolitan barons in 1485 and 1486; but Ludovico's greatest triumph was to re-establish Milanese rule over Genoa in 1487.[74] Bit by bit he secured his grip on the organs of state, favouring his own supporters in official positions and in grants of lands and fiefs.[75] But control of the government and diplomatic success did not satisfy him, and from 1488 he was conniving at a complete takeover.[76] His own marriage to Beatrice d'Este and Giangaleazzo's to Isabella of Naples finally took place in February 1489 and January 1490 respectively. But the birth in 1491 of Giangaleazzo's son, Francesco, was a setback, for it meant that Ludovico might never rule in his own right. Giangaleazzo's position had been strengthened by the support of King Ferrante of Naples, who made Ludovico aware that he was unhappy at the way his daughter and son-in-law were being excluded from power. Ludovico's long-standing friendship with Ferrante cooled—a principal reason for the fateful alliance with Ferrante's rival, King Charles VIII of France, in January 1492.

The death of Innocent VIII and the election in the summer of 1492 of the Sforza family's preferred candidate, Rodrigo Borgia, as Pope Alexander VI gave Ludovico confidence. The decision of Piero de' Medici to back Ferrante completed the diplomatic revolution that preceded the French invasion. Florence and Naples were now in alliance against Milan and the French. The year 1493 saw Ludovico's hopes fall into place. On 25 January his first son Massimiliano was born; that same month Maximilian, king of the Romans, let it be known that once he became emperor he would be willing to consider an investiture for Ludovico. For Maximilian, still involved in war against France, immediate considerations far outweighed Frederick III's dream of acquiring the duchy for the Habsburgs: he knew Ludovico would be willing to pay well for formal recognition.[77] Ludovico's status as permanent ruler of the duchy was now recognized. The new league, comprising Milan, Venice, and Alexander VI, was

[74] Milanese domination was to last until 1499.

[75] Arcangeli (2003), pp. 126ff.

[76] Covini (2002), pp. 120–2.

[77] The stated justification for granting the investiture to Ludovico, rather than to the duke himself, was the bizarre argument that Ludovico was the only surviving son to have been born to Francesco I after he had been proclaimed duke.

drawn up in April 1493 with the promise that Ludovico's controlling position in the duke's government would be upheld.[78] At that point Maximilian, too, was eager to press ahead with a Sforza alliance. Having made peace with Charles VIII at Senlis (23 May 1493), he was keen to launch his own crusade, which in turn would depend on his marriage to Giangaleazzo's sister, Bianca Maria, not to mention her dowry of 400,000 ducats. In exchange Ludovico would receive the investiture, which was secretly agreed in June 1493. The first full draft was dated 5th September 1494, the moment when Charles VIII arrived in the duchy on the way to Naples. During that visit Giangaleazzo's health began to fail and within weeks, on 20 October 1494, he died.[79] Over the head of Giangaleazzo's son Francesco ('il duchetto') Ludovico was proclaimed duke, at which point the imperial investiture was made public. There were apparently no shouts of 'duca, duca' or 'Moro, Moro' from the populace on the day of the investiture:[80] the shadow of illegitimacy would hang over Ludovico to the end.

THE SFORZA AND PLENITUDE OF POWER

The People's Duchy

Francesco Sforza's claim to the duchy was hardly straightforward.[81] His justification for the takeover was, in the first instance, the 1446 'donation', supposedly drawn up by Filippo Maria in his favour, a document which has been shown to be a forgery.[82] That instrument, doubtless composed by Sforza's own legal advisers,[83] referred to Francesco's marriage to Bianca Maria and to his adoption into the Visconti family; it transferred to him all Filippo Maria's cities and lands 'to enjoy and rule of his own accord, taking over his [Filippo Maria's] position, authority and regime'; Francesco Sforza was appointed the one and only true prince and signore (*verus, unicus et singularis princeps et dominus*). But the document could not be his mainstay: even if the donation had been genuine, its force was unproven. Francesco's chief title rested in fact on the well-established principle of a transfer of authority from the populace: he was described in official accounts has having been acclaimed true duke and signore

[78] Catalano (1956), p. 402: 'in administratione et gubernio status ducis Mediolani'.

[79] It was assumed by Guicciardini and Machiavelli and others (though not by Bernardino Corio) that the duke had been poisoned by Ludovico: see Soldi Rondinini (1984), pp. 175, 178, 187.

[80] Soldi Rondinini (1984), p. 191.

[81] Ianziti (1988) provides the most helpful recent account of Francesco Sforza's claims, showing how Lodrisio Crivelli's *De vita rebusque gestis Francisci Sfortiae* (pp. 106ff) and Giovanni Simonetta's *Rerum gestarum Francisci Sfortiae commentarii* supported his title (pp. 177ff).

[82] The donation is published in Giampietro (1876), pp. 641–5; all debate about its authenticity was settled by Cusin (1936a), pp. 54–8; Ianziti (1988), pp. 27ff has explained the role of the donation in the Sforza campaigns for imperial recognition.

[83] Giampietro (1876), p. 645.

of Milan and the duchy by the entire citizenry.[84] According to these sources, demonstrations of popular support erupted spontaneously on 26 February 1450; leading citizens then appointed delegates mandated to transfer *dominium* and *ducatus* to Sforza and receive him into the city.[85] On 3 March Francesco was duly offered the *signoria* of the city 'with the whole of the attached duchy (*cum adnexo eo toto ducatu*)'.[86] An arengo, or general assembly of all heads of household, then gathered to pass the formal act of election. In those proceedings Francesco's various claims were given as reasons for his appointment. The act quoted his spectacular military achievements, as well as his marriage to Bianca Maria; Filippo Maria's donation, too, 'had persuaded some very knowledgeable citizens as well as the people as a whole.'[87] The process was described as a re-enactment of the process whereby the Roman people were said to have transferred authority to the emperor: the citizens of Milan in the Council 'passed a *lex regia,* or rather a *lex ducalis,* and so handed to Francesco Sforza and his descendants authority and rule [over Milan] and its duchy.'[88] Francesco Sforza's accession was markedly different from that of his predecessor, Filippo Maria: in 1412 the Vicario, the XII di Provvisione, and representatives of the 900 had simply sworn to obey the new duke on behalf of the citizenry; Francesco's title, by contrast, would come from an act passed by the General Council.[89] Francesco's election in

[84] 3 March 1450, Colombo (1905), Doc. 3, p. 83: 'Oratores . . . sese personaliter presentaverunt coram illustrissimo et excellentissimo principe domino Francisco Sfortia Vicecomite, Mediolani duce novello, sponte, libere, sine metu ac letis animis die vigesimo sexto preteriti proxime mensis electo, clamato, in civitatem pro vero duce et domino Mediolani etc. introdocto, et in possessionem inducto per omnes cives et totum populum unanimiter, nemine eorum discrepante.' There were at first differences of opinion among Francesco Sforza's advisers about the relative merits of his having been chosen by the people and other arguments: see Ianziti (1988), p. 143, n. 35. But in the end, as Bueno de Mesquita pointed out, 'it was the acclamation and acceptance of the people that afforded the most secure alternative . . . So the close bond between the duke and the people became part of the special mythology of Sforza rule' (1988), p. 163. In legal tradition there was a strong connection between election and the conferral of jurisdiction at every level: see Vallejo (1992), pp. 60ff.

[85] Colombo (1905), Doc. 4, p. 88: 'In singulis portis et parochiis congregati cives et populares, sponte, libere, omni impressione cessante, rebus et casibus discussis, convenerunt in magno numero ad Sanctam Mariam de la Scala et viginti quatuor primarios et principaliores cives elegerunt et deputaverunt . . . cum plena potestate et balìa transferendi dominus et ducatum in eum et introducendi et suscipiendi in civitatem Mediolani tanquam verum dominum et ducem optimum.'

[86] Colombo (1905), pp. 333, published as Doc. 2, pp. 80–2; here p. 81.

[87] Colombo (1905), Doc. 4, p. 87: 'Moverunt certe prudentissimos Mediolani cives et universum populum illa clarissima iura donationis defuncti ducis, que ad hanc electionem afferrebantur; impellebantur etiam splendore et fama invictissimi et fortissimi bellorum ducis Sfortie patris; alliciebantur etiam contemplatione et reverentia illustrissime domine Blance Marie, filie unigenite solemniter legiptimate prefati quondam illustrissimi domini domini Philippi Marie, olim ducis Mediolani memorati, illustrissimi domini Francisci Sfortie consortis optime.'

[88] Colombo (1905), p. 89: 'Statuerunt nobilissimi cives populares et plebei, legiptime congregati, lata lege regia sive ducali in prefatum illustrissimum Franciscum Sfortiam, eiusque descendentes et posteros imperpetuum, omnem transferre potestatem, dominium et ducatum annexum.' See also Cusin (1936a), p. 71, n. 114.

[89] In fact, Francesco Sforza had been known as duke since November 1448: see Chittolini (1996), p. 39.

Milan was accompanied by scores of submissions agreed with cities, towns and villages throughout the duchy, even the most insignificant rural communities making separate agreements.[90] Lists of demands were negotiated with the new duke, commonly including independence from neighbouring cities in terms of jurisdiction and taxation.[91] These *dedizioni* were much more than simple oaths of obedience and loyalty: Francesco Sforza had overwhelming military superiority, but the agreements were couched as voluntary arrangements on the part of individual communities with numerous conditions attached.[92]

Francesco Sforza came to power, therefore, as an elected duke.[93] The prerogatives given to him as a result of this process were unprecedented in scope. The Milanese assembly granted him all communal powers, including *merum et mixtum imperium*, every form of jurisdiction, all rights of taxation, and every other privilege, including regalian rights. The nature of the powers transferred was specified: they were the rights that Milan enjoyed 'as a result of the Peace of Constance, from inveterate custom, from the passage of time and from diplomas [granted by] emperors and kings of the Romans'.[94] It was the first time the people of Milan had explicitly transferred the privileges they had long enjoyed as a result of the Peace of Constance. Moreover, Francesco's election was based on the assumption, which had been at the core of the Ambrosian Republic's claim to legitimacy, that the people of Milan possessed the rights that Wenceslas had granted to Giangaleazzo in the investitures of 1395 and 1396. The election procedure itself consciously drew upon the diploma of 1395 in which Wenceslas had set up the true principality and duchy of Milan: that diploma was the basis upon which the General Council elected Francesco Sforza true prince, duke, and signore.[95] Francesco Sforza's publicists condemned the Ambrosian Republic as corrupt and incompetent.[96] Yet the model for the new duke's authority had been

[90] Chittolini (1996), pp. 47–8; he cites sixty such submissions with the proviso that his list is by no means comprehensive.

[91] Chittolini (1996), pp. 41-55, analyses the content of these submissions.

[92] Chittolini (1996), pp. 42ff.

[93] Ercole (1929) denied that the Sforza assumed power in a process of election; his thesis that Giangaleazzo's investiture had represented a change in the entire basis of authority perhaps led him to downplay the elective element.

[94] Formentini (1877), p. 186: 'cum mero et mixto imperio et omnimoda jurisdictione cum omnibus intratis ordinariis et extraordinariis, cum regaliis, venationibus, honorantiis et quibuscumque ad dictum dominium et ducatum pertinent plene, libere, et realiter et sine exceptione et omnibus iure, via et forma et quibus melius et validius potuerunt et possunt irrevocabiliter et sine diminutione pro omni eorum facultate et iure competenti, tam ex pace Constantiae quam ex inveterata consuetudine et ex praescriptione completa et ex privilegiis dominorum Imperatorum et Regum Romanorum.'

[95] *Dominus* was added as the position given by a commune to its signore. The title extended only to the actual *ducatus*, i.e. to the area round Milan itself, not to the whole of the Visconti dominions. Sforza was already count of Pavia, having been elected in September 1447, and *dominus* of Cremona, Parma, Piacenza, Lodi, Alessandria, and Novara: Colombo (1905), p. 88. The document subsequently describes the election 'ut talis electio ac dominii cum annexo ducatu translatio', Colombo (1905), p. 90.

[96] See Ianziti (1988), pp. 181ff.

created by that regime. The Ambrosian Republic, albeit divided and militarily weak, was, in legal terms, a sophisticated invention: by combining vestigial communal rights with imperial privileges, the citizens of Milan had succeeded in establishing a credible government. Their achievement was now passed on to Francesco Sforza as the basis of legitimacy and plenitude of power. The coronation ceremony was organized on that basis, Sforza receiving the sceptre, sword, ducal seals, and other symbols of office, along with the diploma of election, from representatives of the city.[97] It was all very different from Giangaleazzo's enthronement, where imperial agents had taken centre stage.

Recourse to popular sovereignty had provided Francesco with a solid basis for his rule. But in order to secure the same powers as the Visconti had enjoyed and to unify his authority, Francesco was determined to acquire, in addition, an imperial investiture. Emperor Frederick III, on the other hand, wanted to establish his own rule in the duchy, continuing to advance the argument that, on the death of Filippo Maria without an heir, the duchy, as an imperial fief, had devolved back to the empire. He saw the end of the Visconti line as a perfect opportunity to enhance the Habsburg patrimony.[98] In March 1451 Francesco instructed his envoy to the emperor to explain that he himself was already duke, not just de facto but by right, insisting that the title and key prerogatives did not depend in any respect on imperial recognition. Francesco referred in particular to the powers enjoyed by the people of Milan under the Peace of Constance, all of which had been transferred to him as duke.[99] Like the leaders of the Ambrosian Republic before him, Francesco too made use of the imperial diplomas themselves to claim a right to the duchy independent of the emperor.[100] The 1396 investiture, he argued, had validated the 'donation', made

[97] Giovanni Simonetta, *Rerum gestarum Francisci Sfortiae*, p. 345: 'Dux jam Mediolanensium electus, Guarnerio Castilioneo magni consilii, magnaeque doctrinae et eloquentiae viro dicente, ducali dignitate insignitur et una omnium voce consalutatur; mox deinde cives a portis singulis urbis electi jurejurando deditionem, fidemque perpetuam confirmarunt; imperii sceptrum, ensem, vexillum, portarum claves et sigillum quo priores Mediolanendium duces usi fuerant, ad verae imperii ipsius translationis documentum tradiderunt.'

[98] Devolution had been Frederick's aim even before the death of Filippo Maria: see above p. 79, n. 60. The standard account of the legal and constitutional position of Francesco Sforza vis-à-vis the empire is by Cusin (1936a); see also Vianello (1937), pp. 223ff and Ianziti (1988), pp. 26ff.

[99] Cusin (1936a), p. 100 'le quali in prima non è dubbio havere possuto in nuy trasferire et havere transferito tali suoy driti che sono secundo la pace de Constantia tute le intrate, mero et mixto imperio et omnimoda jurisdictione et totale dominio excepti quelli driti di de superiorità reservate.'

[100] The clearest explication of Sforza's case in this period can be found in the instructions he sent on 30 March 1451 to Sceva da Curte, his ambassador at the imperial court, published in Cusin (1936a), Doc. 1 pp. 97–104; see also pp. 82–3. The arguments were that Sforza's adoption by Filippo Maria made him a member of the family (see above p. 75); that Filippo Maria had indicated his last wishes in the donation, as allowed for in the 1396 diploma; 'tertio è valida et potuta essere fatta la predicta donatione per lo preallegato versiculo poy sequente: "et alia gerere" ecc, per dove el Signore Duca nostro patre haveva *plenitudinem potestatis*, et poteva far como lo Imperatore havria possuto et chiaro è che lo Imperatore havria possuto' (p. 99)—certainly the supposed 'donation'

on Francesco's behalf by Filippo Maria, because it had given the Visconti dukes the requisite plenitude of power to dispose of territories as they wished. More importantly, that investiture had further legitimized Francesco's recent election by the citizens of Milan, the reason being that the duchy had been created as the patrimony of the people:

> As can be seen in the second privilege [of 1396], the title was not conceded just to the duke himself and his descendants, but was granted also to Milan and the other cities, transforming them into a duchy; the title is therefore joined to the territory itself and it follows that the duchy did not cease to exist with the death of the duke. In accordance with this settlement, the title was either transferred to us or, failing that, will in the nature of things remain an integral part of the homeland.[101]

Francesco explained what he now wanted from Frederick III: possession of the duchy being a fait accompli, 'the emperor has left to him only those *iura reservata* which are attached to his "superiority".' Those were prerogatives that remained in imperial hands after the Peace of Constance, which had been included in the Visconti's vicariates and in the 1396 diploma. His majesty must realize, the duke explained, 'that he does not actually have full dominion; therefore, apart from his overall superiority, he can and must hand over the rights that are still reserved to him in the duchy; this is the effect of our having been elected and appointed by the people'.[102] For his part, Frederick was willing to grant Francesco the title of imperial vicar, but to accept such a position would be tantamount to admitting that the duchy had devolved back to the empire. As he explained to Frederick, a vicariate would undermine his rights, the people would be outraged at the loss of status and the empire itself would suffer a diminution of dignity.[103]

was peppered with references to ducal *plenitudo potestatis etiam absolute*; that Filippo Maria was over twenty-five when he drew up the donation, as specified in the diploma; that there was a custom by which, in the absence of a male heir, a fief should be passed on to a daughter or son-in-law; then there was Francesco's 'electione et translatione di suoi driti che de nuy et in nuy hanno facto solennemente la Cità e Comunità de Milano' (p. 100).

[101] 'La septima raxone si è perchè questa dignitate fo concessa, come haveti nel predicto privilegio secondo, non solo a la persona desso Duca, et suoi descendenti, ma fo concessa etiam a la Cita de Milano cum le altre Citate, errigendo in Ducatum, et sic coheret rei; et per conseguente non è estincta tale dignitate per la morte del Duca ma o che l'è in nuy translata, per le raxione predicte, o al manco remane in rerum natura coherente a la patria, et per consequente esso ne può, et dè pervenire a nuy como più propinquo e per quello allegato di sopra', Cusin (1936a), p. 100 and pp. 83–5.

[102] 'Havendo esso Imperatore solo quelle de superiorità reservate adciò che non credesse de havere el pieno dominio, non è dubio che la Maestà sua po et dè in nuy transferire etiam el drito de le cose a lui reservate in Ducatu, salva sempre la sua magiore superiorità, havendone electi et postulato essi popoli', Cusin (1936a), Doc. 1, p. 100.

[103] This was the reply Francesco made to Frederick III in 1451: 'In vicariatu non receveremo, perchè prejudicaressemo a le nostre raxione cum perpetua nostra infamia, saresseno malcontenti tanti nostri populi mostrando di privarli de la dignità ducale et che de più forte fariamo gran iniuria al Sacro Impero transferendo tanta dignità Ducale, per la quale tanto resplende el Sacro Impero, havendola sotto de sè in semplice vicariato', Cusin (1936a), Doc. 1, p. 102. See also Lazzeroni (1940), p. 243.

In 1457, having still received no imperial recognition, Francesco offered Frederick three different versions of the diploma he sought.[104] The first and most elaborate model, reflecting the arguments first put forward in 1451, included references to his having been elected duke by the people of Lombardy. In this version Francesco's strategy was to claim that his title was valid even without imperial recognition and that a diploma was requested simply 'as an extra precaution and to allay any doubts'.[105] If that proved unacceptable, a second model was offered which made no mention of popular election. In both these versions Francesco was to be given imperial plenitude of power. In fact, he was already exercising plenitude of power as a result of the transfer of authority from the communes, but it was assumed that no such handover could include *iura reservata* belonging specifically to the emperor.[106] The investiture now being suggested went further than the simple formula contained in Giangaleazzo's original diploma of 1396 in specifically mentioning *iura reservata*: Francesco would be given, not just plenitude of power, but 'plenitude of power without any exception or diminution, to cover [rights] reserved to the supreme prince, this meaning that even the more difficult [judicial] cases are understood to be included'.[107] If neither of these forms of investiture proved acceptable, there was a third, tamer version that avoided reference to popular election and also kept to the original wording of 1396, including simple plenitude of power with no mention of the emperor's *iura reservata*.[108] But despite Francesco's determined campaign, nothing would persuade Frederick III not to take advantage of the possibility of devolution implicit in Wenceslas having transformed the Visconti holdings into an imperial fief. He would never therefore consider offering a new ducal diploma. Without it Francesco had to prove his title and his right to plenitude of power and imperial *iura reservata* by other means.

The key principles upon which Francesco based his claims are revealed in an impressive compilation of records assembled by the Sforza chancery and completed in 1461.[109] The first two documents in the collection are

[104] ASMi, Sforzesco Alemagna 569, pp. 34ff, 42ff and 51ff; the three versions are partially published in Cusin (1936a), Docs 2 and 3, pp. 104ff and 106.

[105] 'ad abundantem cautelam et ut omnis dubitatio cesset', Cusin (1936a), p. 90 and Doc. 2, p. 106.

[106] See below pp. 210–11 on the difference between *iura reservata* and plenitude of power, and pp. 95–6 for Paolo da Castro's account.

[107] The proposed diploma followed the original wording: 'et alia gerere, facere et expedire in predictis ducatu, civitatibus et terris in omnibus et per omnia que nos et Romani imperatores gerere, facere et expedire possemus etiam de plenitudine potestatis,' but added 'sine ulla exceptione vel diminutione et extendendo manum ad reservata suppremo principi, ita ut omnes casus etiam duriores hic pro expressis habeantur', ASMi, Sforzesco Alemagna 569, pp. 39 and 47. Cusin (1936a), pp. 91–2, mistakenly said that there was no mention of plenitude of power in either version.

[108] ASMi, Sforzesco Alemagna 569, p. 57.

[109] The collection is ASMi, Registri ducali, 2, pp. 191–260, the final document of which was described as having been copied in 1461.

Giangaleazzo's investitures of 1395 and 1396, followed by the two instruments, one fake and one genuine, granted to Filippo Maria by Sigismund in 1426; then there is the forged diploma of 1397 (ostensibly establishing the duchy of Lombardy) and documents relating to the county of Angleria. Next come Filippo Maria's alleged donation of the duchy to Francesco in 1446, followed by the latter's election by the people of Milan of 11 March 1450. There are also earlier documents: a copy of the proceedings of the General Council of 15 March 1330 confirming new statutes and authorizing the submission of Milan to Azzone Visconti; and the statute of 1349 establishing a hereditary *signoria* on behalf of the descendants of Matteo I. A striking aspect of the collection are the documents relating to the ancient privileges of the city of Milan, unearthed, it says, as a result of research in chronicles, official registers and statute books.[110] These include the Peace of Constance of 1183; the recognition by Henry, king of the Romans, of the privileges of the Lombard League during the rebellion against Emperor Frederick II in 1234; confirmation of the liberties of Milan by Emperor Otto IV in 1210, by Adolph of Nassau in 1295, and by Emperor Henry VII in 1306. The message contained in the compilation was clear: Francesco Sforza was a legitimate ruler even without imperial recognition. Connection with the Visconti was one aspect of the claim, but election by the Milanese themselves was the central feature and remained the basis of ducal authority under Francesco's immediate successors. Galeazzo Maria's instructions to his envoys in the quest for imperial recognition in January 1469, for example, referred to his having been 'elected and created signore and duke by all our people in this territory'.[111] The popular element rested in turn on the ancient privileges of the communes: Sforza legitimacy ultimately depended on the Peace of Constance and other cornerstones of communal independence.

As a result of its popular basis, the regime had a new attitude to the communes: until Emperor Maximilian finally invested Ludovico il Moro with the ducal title in 1494, it was in the Sforza's interests to support the authority of the larger cities. This represented a change of direction from the policies of the Visconti, who, in order to bolster their own influence, had long supported the desire of smaller centres to be emancipated from the jurisdiction of the great cities and to come under direct rule.[112] The Visconti approach had been harmful to the interests

[110] The research processes are referred to in ASMi, Registri ducali, pp. 226, 229, and 259.

[111] 'electo et creato signore et duca da tutti li nostri populi di questo dominio', quoted by Santoro (1968), pp. 130–1. The quest for recognition went on: on 20 July 1475 Galeazzo Maria asked the apostolic legate in Germany to find out whether Frederick III would be willing to 'erigere questo nostro ducato in reame et creasse nuy re condarne la corona,' for which he was prepared to pay 300,000 gold ducats; after Galeazzo Maria's death, Bona of Savoy, as regent, requested Frederick to recognize her son, Giangaleazzo, as 'legitimo herede in questo ducato et dominio de Milano', Paganini (1981), p. 37.

[112] For general observations on the fragmentation of the territorial rights of cities under the Visconti, see Chittolini (1979) and Cengarle (2006), pp. 121ff. Gamberini (2005), pp. 178–9, points out, on the other hand, that there had been some reversal of the process under Giangaleazzo.

of the chief cites: Pavia lost control over Vigevano; Parma, Borgo San Donnino; Cremona, Soncino; Bergamo, Martinengo; and Milan, Treviglio and Monza.[113] The programme of encouraging these so-called *terre separate* had been pursued on a massive scale, extending even to small rural communities. The process had reached its peak with the arrival of Francesco Sforza, when the vast number of individual submissions symbolized a dangerous fragmentation of authority, as small communities seized the opportunity to free themselves from the jurisdiction of larger towns and cities. On the other hand, lacking the transcendent status claimed by the Visconti ever since the vicariate granted by Charles IV in 1355, the authority of Francesco and his immediate successors derived wholly from communal sources. As a way of consolidating their power base it was therefore to their advantage to enhance rather than curtail the influence of the larger cities.[114] Privileges of separation therefore fell steeply in number under the Sforza. There were few new acts, communities without independence in the last years of Filippo Maria's rule were refused concessions, and reference to *separazione* or *terre separate* was generally avoided.[115]

Much as he would have liked an official diploma, Francesco Sforza did not have to wait for the emperor's imprimatur before invoking plenitude of power. Unlike rulers such as the Este, he had no large patrimony, so that in order to establish the regime people would have to be dispossessed on a large scale, their property and privileges being transferred to his own officials, councillors, soldiers, and other supporters.[116] Francesco was already making free use of plenitude of power even before becoming duke. He had been signore of Cremona since 1440, he had been been elected count by the citizens of Pavia in September 1447, and he had been accepted as signore by other cities over the following months.[117] His status was already more than enough to allow recourse to plenitude of power, the implication being that it had been handed over by his subjects, as it had been to the Visconti in the previous century. On 23 February 1449 Francesco accepted the submission of Parma on terms which he ratified 'ex certa nostra scientia de plenitudine potestatis';[118] on 6 August 1449, describing himself as 'Franciscusfortia Vicecomes Marchio, Papiae etc. Comes, Cremone Parme Placentie Novarie etc. dominus', he granted the people of Vigevano the right to liquidate communal assets 'ex certa scientia et de nostre plenitudine potestatis'.[119] Similarly, on 1 February 1450 he granted a privilege to Iacobino and Giovanni Rebugo, confirming their fief, with all its immunities and

[113] On Treviglio, see Gamberini (2005), p. 181. For a full discussion, see Chittolini (1983).

[114] Varanini (1996), p. 119, points out that government officials took advantage of rights enjoyed by subject cities over their own territory as a way of imposing ducal authority.

[115] Chittolini (1983), pp. 63ff; Cengarle (2006) p. 128.

[116] See Covini (1998), p. 58.

[117] Piacenza submitted 7 November 1448; Novara, 23 December 1448; Parma, 16 February 1449; Tortona, 28 February 1449; Lodi, 25 September 1449; Vigevano, 13 October 1449. Chittolini (1996), pp. 56–60.

[118] Pezzana (1842), Appendix, p. 59.

[119] Colombo (1903), Doc. 21, p. 511.

prerogatives, as bestowed by Filippo Maria 'ex certa scientia et de plenitudine potestatis nostre'.[120] Once he became duke, Francesco adopted the methods established by Filippo Maria for the use of plenitude of power. Following the burning of the archive housed in the Castello di Porta Giovia, Francesco's close adviser, Lancellotto Crotti, previously secretary to Filippo Maria, compiled the *Stilus cancelleriae*, consisting of examples taken from Filippo Maria's own acts, to provide models for the new duke's chancery.[121] It was convenient for Francesco that Filippo Maria had generally employed the simple phrase 'de plenitudine nostrae potestatis' or 'de nostrae potestatis plenitudine, etiam absolutae' rather than reviving any reference to the empire in connection with plenitude of power.

Ludovico il Moro's Return to the Imperial Fold

The years of negotiations regarding an imperial investiture were successfully concluded by Ludovico il Moro, on whose behalf Emperor Maximilian finally agreed a new diploma. There were two versions: the first, drawn up on 5 September 1494 even before the death of the reigning duke, Giangaleazzo Sforza, was to be kept secret;[122] that document was superseded by the published diploma issued on 5 April 1495.[123] Both were adaptations of Wenceslas's investitures; the first, fuller and more effusive in tone, betrayed the duke's own hand and included an extravagant account of Ludovico's character and career,[124] as well as reference to Francesco Sforza having achieving his position 'with the inestimable support of the whole people', a process that Frederick III had not been prepared to acknowledge.[125] There were other differences too. The first diploma included an explicit grant of plenitude of power and *iura reservata*, the prerogatives which Francesco Sforza had been so keen to possess. The key passage of the 1396 investiture was repeated, granting the duke the same powers to 'carry out, perform, and fulfil (*gerere, facere et expedire*)' as the emperors themselves possessed. But in place of the oblique 'etiam de plenitudine potestatis', the new diploma elaborated: Ludovico was authorized 'to use plenitude of supreme and absolute power, and any other such phrases, however momentous, without exception or diminution and to carry out all other acts, even if those include

[120] ASMi, Reg. Visconteo-Sforzesco, Cart. 39.

[121] On the origins of the collection, see *Stilus,* pp. ix–x, xivff, and Ianziti (1988), p. 25.

[122] Vianello (1937), pp. 259ff; the diploma is published in Luenig, i, cols 483–94.

[123] Vianello (1937), p. 265; Luenig, i, cols 493–8.

[124] The investiture includes the statement, for example: 'Praeterea, eorum omnium qui ex Italia ad nos veniunt testimoniis edocti sumus, te admirabili aequitate, justitia inviolabili, tanta moderatione et continentia, subditas tibi gentes gubernare, ut iure merito populi tibi commissi ab omnibus beatissimi appellentur', Luenig, i, col. 486.

[125] 'Post adeptum principatum, accedente admirabili populorum omnium consensu', Luenig, i, col. 485.

the *reservata* of the supreme prince'.[126] Plenitude of power had been effectively employed by successive regimes in Milan for the previous century and a half, with or without imperial authority. It seems remarkable, therefore, that Ludovico il Moro was still so keen to have plenitude of power expressly granted. By contrast, the second diploma, which had the consent of the imperial electors, was a more jejune document: there was no encomium or reference to popular support for the Sforza; it was largely a repetition of the 1395 diploma, with a reminder of the oath of fealty which the duke was to swear. Here there was no mention of plenitude of power. Fortunately jurists were willing to quote from the earlier, fuller diploma when necessary, to show that the Sforza finally had an official basis for plenitude of power. Ludovico's investiture appeared to fulfil his aim of acquiring unquestionable authority. Yet the efforts of those lawyers who had struggled to provide a sound basis for Sforza rule in the interim had succeeded to the extent that the new diploma was regarded by some as a retrograde step.[127]

[126] 'et uti suprema et absoluta plenitudine potestatis et quibuscunque aliis clausulis cujuscunque ponderis et qualitatis existant, sine ulla exceptione vel diminutione, et alia quaecunque facere, etiamsi essent de reservatis supremo Principi', Luenig, i, col. 490.

[127] See below pp. 106–8.

Chapter 4

Lawyers and the Absolute Powers of the Duke

PAOLO DA CASTRO AND THE INVESTITURE OF 1396

Since the mid-fourteenth century lawyers had been prepared to acknowledge the Visconti's plenitude of power; but whereas before the duchy there had been no consistent explanation for absolute powers, there was now a specific focus. The ducal title in itself could be seen as an additional warrant for plenitude of power. Such was the thrust of Giovanni da Anagni's consilium 81 ('Viso instrumento'). Giovanni, who taught at Bologna in the 1420s and 1430s,[1] gave this opinion in a dispute, whose origins went back some decades, concerning the nature of the duke's authority over subject cities. The local Visconti vicar had given away lands in the territory of Asti as part of a clientage agreement; the grant had later been confirmed from plenitude of power by Giangaleazzo himself after he had become duke.[2] The city council wanted these properties back, claiming that the duke had had no right to sign away the lands. But Giovanni da Anagni fully endorsed the grant: even as signore, Giangaleazzo had no less authority in the city than a king in his kingdom, 'and a king can definitely make grants which diminish the kingdom by means of plenitude of power.' But as duke, 'his rights over Asti must be regarded as even stronger and more powerful than those of the emperor himself over the empire in that, unlike the emperor, the duke passes the title to his heirs.'[3] Giovanni cited

[1] Giovanni da Anagni was both a civil and canon lawyer; he combined his academic career with professional legal work and public life in Bologna, before going into the Church in 1443. Andrea Barbazza and Alessandro Tartagni (who became his son-in-law) were among his pupils: see Schulte (1875), ii, pp. 320–2.

[2] The vicar was Giangaleazzo's brother-in-law, Secondotto Paleologo. Paleologo had died in 1378 and so the original grant must have been made even before Giangaleazzo became ruler of Milan. Giangaleazzo is referred to by various titles, Count of Virtue and imperial vicar as well as duke.

[3] Giovanni da Anagni, Consilium 81 ('Viso instrumento'), nr 3: 'Praeterea non est dubium quod non minorem potestatem et iurisdictionem habet dictus dominus in civitate Astensi quam habet rex in suo regno et tamen dicimus indistincte quod rex propter plenitudinem potestatis donare potest et minuere regnum, ut firmat Bartolus in dicto § plane [D. 43, 24, 3, 4] et in dicto Consilio [196], "Civitati Camerini." Praeterea est etiam considerandum quod ius quod habet dictus dominus dux in civitate Astensi est potentius et fortius quam ius quod habet imperator in imperio; patet quia

Bartolo's support for a comparable grant made by the future Innocent IV when he was governor of Ancona, which he later confirmed as pope: the initial grant might not have been valid, but his later confirmation of it as pope made it so.[4]

In falling back on general arguments based on Giangaleazzo's status as hereditary prince, Giovanni da Anagni appears to have been unaware of the significance of the 1396 diploma. That task fell to Paolo da Castro (*c.*1360–1441), the most distinguished lawyer of his generation, whose career took him to Avignon, Pavia and Florence, and who was known for his austere integrity.[5] In his consilium 'Super primo dubio,' destined to become a defining text, Paolo considered the legitimization granted to a Bergamask citizen by Giovanni Maria Visconti.[6] The question was more difficult in this kind of case, where legitimization would prejudice the prospects of legitimate heirs. 'It is accepted,' Paolo said, 'that the right to legitmize is one of the prerogatives of the emperor; that is obvious from the fact that [a concession of this nature] has to be applied for and obtained from him rather than from any lower authority.'[7] With regard to lesser rulers Paolo believed that 'powers which are the special preserve of the emperor do not come with the ordinary investiture of a duke or count but require a specific privilege.'[8]

dictus dominus dux transmittit illud ad suos heredes sed non imperator.' Giovanni da Anagni continued with the imperial analogy by declaring that, as communal property in Asti, the lands actually belonged to Giangaleazzo, ibid, nr 4: 'Ista bona publica seu fiscalia que detinet comunitas Astensis, in publico et non in particulari, possunt dici propria ipsius ducis per ea quae habentur in dicta l. Bene a Zenone, De quad. praescrip. [C. 7, 37, 3].' The last mentioned was the law which said that all such property was deemed to belong to the emperor.

[4] Bartolo, Consilium 196 ('Civitati Camerini'), nr 1: 'An concessio facta per dictum dominum Sinibaldum [the future Innocent IV] dum rectorem Marchiae valeat, dico quod non, quia rectores provinciarum tales concessiones facere non possunt: casus *ff*. Quod vi aut clam, l. Prohibere, § plane [D. 43, 24, 3]; facit C. De transactionibus, l. Praeses [C. 2, 4, 12], De pactis, l. Pactum curatoris [C. 2. 3. 22] . . . An confirmationem postea factam roboretur, dico quod sic, ut dicta lex Prohibere, § plane vers. sed si a principe'.

[5] Paolo da Castro was a pupil of Baldo; he received his doctorate in 1385 from Avignon and thereafter had a peripatetic career. He first taught in Avignon; he spent the years 1390 to 1394 in Visconti territory, at Pavia, returning to Avignon in 1394 before a stint in Florence from 1401 to 1403; he taught again in Siena from 1404 to 1411. From that year until 1414 Paolo was in Florence, undertaking various duties including the revision of the Florentine statutes, besides doing some teaching, returning there yet again from 1422 to 1424. In 1424 he went to teach in Bologna, staying until 1429; he spent his remaining years in Padua. He took an active role in public life as podestà in Viterbo and Florence and in revising other statutes including those of Siena, Lucca, and Fermo: see Romano (1990), p. 620. For details of his career, see the entry in *DBI* (s.v. Castro, Paolo di) by G. D'Amelio; Belloni (1986), pp. 283–92; Del Re (1970a); Romano (1990).

[6] Paolo da Castro, Consilium Bk 2, 34; the consilium can also be found cited as 255, 227 or 215. The legitimization in question had been confirmed by Filippo Maria Visconti.

[7] Paolo da Castro, Consilium Bk 2, 34 ('Super primo dubio'), nr 1: 'Constat autem quod potestas legitimandi est de reservatis principi, quod patet quia ab ipso debet postulari et impetrari, non ab inferiore.'

[8] Paolo da Castro, Consilium Bk 2, 34 ('Super primo dubio'), nr 1: 'Constat autem quod ea quae sunt specialiter reservata principi generali concessione ducatus vel comitatus non transeunt sed requiritur specialis: *ff*. De offi. eius cui man. est iuris, l. 1 in principio [D. 1, 21, 1]; *Extra*, De offic lega. c. quod translatione [X. 1, 30, 4].'

Paolo's conclusion was that Wenceslas's second investiture had conferred the requisite *iura reservata*:

It appears probable that, even if no specific legitimizing powers are found to have been granted to the duke, he was nevertheless given the duchy of Milan, along with other cities (including Bergamo); in this way he was made a permanent rather than a temporary ruler. From that fact alone, given that the emperor has no one else apart from the duke through whom to exercise jurisdiction in those parts, it follows that all imperial power has been transferred to him to be employed on behalf of the emperor; and so in his own lands the duke can grant legitimizations, even when detrimental to the interests of other relatives.[9]

Paolo was referring to the 1396 diploma, which he quoted verbatim:

And in this respect there are two passages in the diploma which clinch the argument: the first is where it says 'to carry out and perform in the duchy of Milan the functions which we and other kings of the Romans and emperors are able to carry out, perform and fulfil (*gerere et facere et expedire*) even from plenitude of power'; and then where it says 'decreeing that your heirs and successors are to enjoy every dignity, rank, right and power as guardians and protectors like the other princes' as set out in the diploma.[10]

Paolo da Castro's consilium 'Super primo dubio,' publicizing the crucial clause in the 1396 diploma, became the key source in support of the solid basis of ducal plenitude of power. Thereafter the second diploma was considered at least as significant as the investiture 1395. When, in his commentary on the Decretals, the canonist Felino Sandeo (1444–1503),[11] a major authority on papal plenitude of power, wanted to analyse the status of the dukes of Milan, he quoted not the 1395 investiture, but that of 1396, citing Paolo's consilium: 'When a diploma of permanent investiture, which the enfeoffment of the duke of Milan certainly was, contains these words "he may do in the

[9] Paolo da Castro, Consilium Bk 2, 34 ('Super primo dubio'), nr 5: 'Plus videtur probabiliter dici posse quod, etiam si alia potestas legitimandi specialiter data non apparet duci Mediolani, ex eo tamen solo quod concessus fuit sibi ducatus Mediolani cum aliis terris (inter quas est civitas Pergami), et sic factus est in dictis terris princeps perpetuus, non temporalis, censetur in ipsum translata, in consequentiam, omnis potestas imperialis in terris praefatis, ut ea possit uti vice imperii, cum imperator ibi nullam iurisdictionem exerceat per alium quam per ipsum dominum ducem. Et sic videtur quod, quantum ad dictas terras et bona ibi sita et subditos suos, potuerit legitimare cum praeiudicio agnatorum.'

[10] Paolo da Castro, Consilium Bk 2, 34 ('Super primo dubio'), nr 5: ' Et ad haec bene faciunt verba privilegii praefati D. Ducis in duobus locis: primo dum dicit "et gerere et facere in ducatibus Mediolani etc. praedictis quae nos et Romani reges et imperatores gerere et facere et expedire possemus, etiam de plenitudine potestatis" etc. Et etiam ibi "decernentes quod tui haeredes et successores tui etc. omni dignitate et nobilitate, iure, potestate, ut tutor et curator subditorum, quibus alii principes," signati in dicto privilegio.' The second passage appears in the section giving Giangaleazzo the title of count of Pavia: 'decernentes quod tu, haeredes et successores tui praedicti, comites Papiae perpetuis in antea temporibus, omni dignitate et nobilitate, iure, potestate, libertate, iurisdictione, imperio, honore, et consuetudine gaudere debeatis et frui continuo, quibus alii imperii principes et nominati comites illustres fruiti sunt hactenus et quotidie potiuntur': Luenig, i, col. 430.

[11] Sandeo taught in Ferrara from 1466 to 1474 and thereafter in Pisa, becoming an auditor of the Roman Rota from 1487 to 1501. He was bishop of Penna, Atri, and Lucca in the 1490s.

duchy of Milan what we and other kings of the Romans and emperors can do from plenitude of power", then I agree with Angelo degli Ubaldi [in the consilium 'In causa accusationis' mentioned above] in saying that the duke of Milan has plenitude of power, and that whatever he commands is law.'[12] For Sandeo, as for Paolo da Castro, the 1396 diploma gave the Visconti special status, raising them above the ranks of other rulers who acknowledged imperial authority.

THE SFORZA AND INDEPENDENCE FROM THE EMPIRE

Francesco Sforza's status, on the other hand, presented the legal world with grave difficulties. With no investiture and not even an imperial vicariate to fall back on, the Sforza position had more in common with that of Azzone, Luchino, and Giovanni, than with the status of the later Visconti. A new framework for ducal authority and plenitude of power had to be constructed. Luckily there was no shortage of committed lawyers capable of producing an ideological basis for the new regime. The link between plenitude of power and popular sovereignty was re-examined; Bartolo da Sassoferrato's work on the authority of the independent commune was employed in the service of the duke; Paolo da Castro's consilium 'Super primo dubio,' explaining the significance of the 1396 diploma, not at first glance a useful prop for the Sforza, was reinterpreted. In the course of debate, far from a device merely to be used in day-to-day administration, plenitude of power became the bedrock of independence.

Andrea Barbazza

The problems posed by the Sforza's lack of an imperial investiture were confronted at an early stage by Andrea Barbazza (*c*.1410–79).[13] Barbazza, born in Messina, was one of the handful of southern lawyers who had chosen the difficult option of a career in the north. He was an impoverished student of Giovanni da Anagni in Bologna, and it was there that, apart from a short spell in Ferrara (1445–6), he spent his whole career as a teacher of canon law. Having built his reputation, Barbazza was approached from all over Italy for his often forthright

[12] Sandeo on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesiarum), nr 33: 'Primus est quando in privilegio perpetuae investiturae essent illa verba, quae refert fuisse in privilegio ducis Mediolani, videlicet quod "possit ea facere in ducatu Mediolani quae nos et Romani reges et imperatores gerere possemus de plenitudine potestatis" . . . Hoc modo intelligo consilii Angeli 214 [alias 217], quod incipit "In causa accusationis," dum dicit quod dux Mediolani habet in suo ducatu plenitudinem potestatis et quicquid sibi placet est lex.' Sandeo said Paolo had given his opinion 'late et solemniter'. On Angelo degli Ubaldi's consilium, see above pp. 62–3.

[13] In addition to the *DBI* entry by F. Liotta, see Trombetti Budriesi (1985) and (1990), pp. 200–11.

opinions.[14] In one of these he dealt with a case that had come up in the duchy concerning one Gabriele Balduchini, who had gone to a count palatine to legitimize his young sons, to whom he wanted to bequeath property. The legitimization was challenged by other members of the family; they argued that a count palatine was not competent to grant such a damaging legitimization without special authority from the emperor.[15] Barbazza was scathing: 'It would be absurd to suppose there was no other way for children to be legitimized besides having to send to Germany; to my mind the idea that imperial authorization is required betrays a complete lack of understanding.'[16] Gabriele, the father, took further action by appealing to the duke and, as Barbazza explained, 'with regard to the uncertainty about whether the count was able to legitimize those boys, I have today been sent a dispensation, issued by the illustrious duke of Milan, decreeing that the count did have that power; the document was issued to the count palatine precisely as if it had come from the emperor himself, the duke making good any deficiency *ex certa scientia*; so there is no doubt whatever about the validity of the legitimization.'[17]

Asserting that the duke's support validated the count palatine's legitimization led to the next hurdle, whether the duke could grant authority to legitimize in the first place. Here the circumstances were similar to those that had been dealt with by Paolo da Castro in his consilium 'Super primo dubio' declaring that Wenceslas's diploma of 1396 provided the duke with the necessary plenitude of power in matters of legitimization. Barbazza took the obvious course and parroted Paolo's work, word for word in many places. It could be argued, he wrote, 'that the dispensation is not valid on the grounds that the duke lacks the requisite authority, the right to legitimize being a particular prerogative (*de reservatis*) of the emperor, so that any concession has to be applied for and obtained from him and not from any lower authority.' Moreover, he went on, 'it is a fact that powers which are the special preserve of the emperor do not come with the ordinary investiture of a duke or count, but require a specific privilege.' Nevertheless, Barbazza asserted, 'as to whether the duke was able to [grant this authority], it is my contention that he could do so. It must be considered first of all whether the

[14] His advice was given in the service of 'privati e di comunità cittadine, di abate, di inquisitori, di re e di papi, di mercanti, armatori, giocatori ed eretici', Trombetti Budriesi (1985), p. 319.

[15] Barbazza, Consilium Bk 2, 34 ('Praeclare optimus'). The plaintiffs argued that the act was invalid because it lacked their consent and that of Gabriele's sons, who were too young to agree to their change of status.

[16] Barbazza, Consilium Bk 2, 34 ('Praeclare optimus'), nr 32: 'Item sequeretur absurdum quod nullo modo legitimarentur communiter infantes si oporteret mittere nuncios Alemaniam, et iudicio meo est quaedam ingenii infirmitas, dicere quod requiratur rescriptum imperiale.'

[17] Barbazza, Consilium Bk 2, 34 ('Praeclare optimus'), nr 57: 'Postremo circa primam dubitationem, an potuerit legitimare infantes iste comes, fuit mihi hodie transmissa quaedam dispensatio facta per illustrissimum dominum ducem Mediolani, in qua decrevit et declarat dictum comitem potuisse legitimare istos infantes, perinde ac si esset expresse concessum ex privilegio imperatoris ipsi comiti palatino ut infantes legitimare posset et ex certa scientia suppleret illum defectum, quo casu non est aliqua dubitatio circa validitatem dictae legitimationis.'

illustrious dukes of Milan have had the privilege of legitimizing expressly granted to them by the emperor.'[18] All this came straight from Paolo da Castro. And yet Barbazza was not able to acknowledge his source, nor follow Paolo through to his conclusion because Paolo's consilium hinged on the 1396 investiture, now no longer applicable. Barbazza repeated Paolo's points where he could, playing down the imperial connection (without being able to disavow it altogether).[19] For Paolo a legitimization would be valid on the basis of the duke's ordinary power, but not where the rights of other members of the family would be prejudiced. That kind of measure would require plenitude of power. Lacking the imperial investiture, Barbazza was left with the much less specific and compelling argument that the duke acted in place of the emperor in his own lands.[20]

Alessandro Tartagni

Circumstances required a more radical reappraisal of the Sforza's status than Andrea Barbazza had been able to produce. Frederick III's refusal to grant a diploma, meaning that the regime had to depend for its authority on the principle of popular sovereignty, led to the pronouncement that dukes of Milan did not recognize the authority of the emperor. For the first time the duchy was declared completely independent, the duke no longer governing, even in theory, on behalf of the emperor, but as a fully sovereign ruler. The lawyer who first came up with this solution was the renowned Alessandro Tartagni da Imola (1424–77).[21] Tartagni was known for his huge number of consilia (which, as a genre, he

[18] Barbazza, Consilium Bk 2, 34 ('Praeclare optimus'), nrs 57–8: 'Et dicatur quod non valet ista dispensatio ex defectu potestatis ducalis; est enim potestas legitimandi de reservatis sacro imperatori; ab ipso enim debet postulari et obtineri, et non ab inferiori, ut habetur in Auth. Quibus modis nat. effic. legit. § si quis [Nov. 74 (Coll. VI, 1)] . . . Sed certum est quod ea quae specialiter sunt principi reservata in generali concessione ducatus vel comitatus non veniunt nec transeunt sed requiritur specialis: l. i, in pr. *ff*. De offic. eius cui mandata. est iurisdictio. [D. D. 1, 21, 1] . . . Utrum dictus dux potuerit, ego dico quod potuit. Et primo est investigandum utrum illustrissimi duces Mediolani habeant privilegium legitimandi concessum eis ab imperatore specialiter.'

[19] Paolo had referred to the emperor's exercise of jurisdiction 'through permanent vicars such as counts, dukes and similar barons' who enjoyed the position of prince in their own lands ('Super primo dubio' nr 2). Barbazza omitted the reference to permanent vicars ('Praeclare optime' nr 62); similarly Paolo's reference to 'the lands which were conceded to him' (Super primo dubio' nr 1) became 'the lands which were subject to him' ('Praeclare optime' nr 59).

[20] Barbazza, Consilium Bk 2, 34 ('Praeclare optimus'), nr 62: 'Aut imperator in territorio illo exercet iurisdictionem per se ipsum, aut per officiales temporales a se ipso missos de tempore in tempus et istis casibus procedat dicta lex i [De natalibus. restit. D. 40, 11, 1], aut illam iurisdictionem exercebat per duces aut comites perpetuos, et tunc tales duces sunt loco principis in dictis locis, ut notat Cynus in l. ea lege, ante fin., C. De condictione. ob causam [C. 4, 6, 3] et in l. Ambitiosa, *ff*. De decret. ab ordine fac. [D. 50, 9, 4]; et in talibus locis potest dux aut comes facere omnia quae potest imperator in toto orbe.' This passage was lifted from Paolo except that Barbazza had to omit Paolo's third example—places where the emperor had in practice no jurisdiction ('aut nullam iurisdictionem ibi de facto exercebat, ut in civitatibus non recognoscentibus superiorem').

[21] Tartagni, civil and canon lawyer, was a pupil of Paolo da Castro and Giovanni da Anagni; it is possible he taught civil law at Pavia during the academic year 1449–50; he was certainly at Ferrara 1457–8 and 1460–1, Bologna 1461–7 and 1470–7, and Padua 1467–70. Tartagni's

believed to be 'more considered and disseminated' than commentaries).[22] He specialized in advising noble and ecclesiastical clients throughout Italy, who paid highly for his services. He put forward the revolutionary idea of the duke's independence in a consilium composed in connection with the same dispute about legitimization which had troubled Andrea Barbazza.[23] Gabriele Balduchini, the father in the case, had now died and the family had taken steps to retrieve the inheritance: in response to the duke's directive in support of the legitimization of Gabriele's sons, they had appealed to the emperor for its annulment, which, given the sour relations between Frederick III and the Sforza regime, had been readily granted. Tartagni dismissed the imperial intervention: once the duke himself had decreed the legitimization valid, the emperor's ruling was irrelevant.[24] He went further: the emperor could not use his plenitude of power in this instance because

> the legitimized sons are not his subjects; rather they are subjects of the most illustrious duke, who does not acknowledge a superior; nor, in fact, for as long as anyone can remember, have his predecessors, as is well known in the area. The duke enjoys imperial prerogatives in his lands and exercises the same jurisdiction as the emperor does in the empire; moreover as the confession, actual or implied, of Francesco and Marco Antonio Balduchini shows, they are subjects of the duke, and, at least with regard to what they do in the duchy, are not considered subordinate to the emperor but to the duke, just as the duke himself is not regarded as the emperor's subject.[25]

Unlike Barbazza, who had persisted in acknowledging the emperor's overlordship, Tartagni took the view that duke and emperor ruled in parallel, both equally sovereign. He revealed this novel approach in the citations with which he supported his assertion. He referred, in particular, to the series of passages

career has been examined by Belloni (1986), pp. 110–18; Sabattani (1972); Ascheri (1971); and Maffei (1964), pp. 291–3.

[22] Sabattani (1972), p. 98.

[23] Tartagni, Consilium Bk 7, 11 ('Alias consului'). Barbazza and Tartagni were bitter rivals, commonly appearing on opposite sides in court proceedings: see Pieri (1999), p. 280.

[24] Tartagni, Consilium Bk 7, 11 ('Alias consului'), nr 16: 'Ante dictam declarationem praefatus dux, auditis et intellectis partibus et causae cognitione interveniente, decrevit dictam legitimationem valere.'

[25] Tartagni, Consilium Bk 7, 11 ('Alias consului'), nrs 8–9: 'Contra non subditum clarum est quod non potest tollere citationem nec uti plenitudine potestatis, ut notant Baldus et Salecitus in dicta l. ne causas [C. 7, 62, 15] et patet per d. Clem. Pastoralis [*Clem*. 2, 11, 2]. Quod autem dicti legitimati non sunt subditi imperatoris patet quia sunt subditi praefati excellentissimi ducis qui non cognoscit superiorem, neque antecessores sui recognoverunt a tanto tempore citra cuius in contrarium non est memoria, ut est notorium in territorio suo: habet enim praefatus dux iura imperialia in terris suis et in eis exercet illam iurisdictionem quam facit imperator in terris imperii, ut etiam extat confessio vera vel tacita dicti Francisci et Marci Antonii de Balduchinis, et per consequens subditi praefati ducis, saltem quo ad ea quae geruntur in terris ducis, non dicuntur esse subditi imperatoris sed ducis, sicut etiam ipse dux non dicitur subditus imperatoris, stantibus praedictis, per id quod habetur in c. per venerabilem, Qui filii sint legitimi etc. [X. 4, 17, 13], super quibusdam, § praeterea, De verbo. sig. [X. 5, 40, 36] et notat Bartolus in l. Infamem, *ff*. De pub. iudic. [ad D. 48, 1, 7, nr 14]: et in l. Hostes, *ff*. De captivis. [D. 49, 15, 24] et in l. Relegati, *ff*. De poen. [D. 48, 19, 4].'

in which Bartolo da Sassoferrato had set out his theory of the independent status of the Italian city-state, the *civitas sibi princeps*; but now it was the duke who had the status of independence. With reference to the duke himself, he cited Bartolo's argument that 'cities in Italy, and especially in Tuscany, acknowledge no overlord and therefore comprise a free people with full control over their own affairs and as much authority in respect of their population as the emperor has universally';[26] again with reference to the duke, he pointed to Bartolo's description of 'those cities in Italy which with regard to their own interests are prince[s] to themselves';[27] and to those 'which do not recognize the emperor as ruler so that the people are independent.'[28] Tartagni asserted that the duke's status was equivalent to 'the king, prince or people who do not acknowledge the emperor as overlord,'[29] and to the pope and the monarchs of France and England.[30] Finally, again in relation to the duke, Tartagni referred to Innocent III's bull, *Per venerabilem*, the magna carta of French sovereignty, in which the pope had declared that the king of France 'hardly recognizes a superior in temporal affairs'.[31]

Remarkably, Tartagni attempted to combine the idea of the duke's sovereign independence from the empire with the imperial diploma of 1396. The fact that Giangaleazzo's diploma had not been renewed had been a major obstacle for Barbazza. But Tartagni saw this document once more as the key: just as France had the papal bull *Per venerabilem* as a guarantee of independence, so the duchy of Milan had the ducal diploma of 1396. All that was required was some deft reworking of Paolo da Castro's consilium 'Super primo dubio'. Paolo had quoted Wenceslas's second diploma exactly: the new duke would be able to undertake the functions 'which we and [other] kings of the Romans can carry out, perform and fulfil even from plenitude of power.' Tartagni, by contrast, wrote, 'just as carried out by the emperor even if they are part of his particular prerogatives (*iura reservata*).'[32]

[26] Bartolo on D. 48, 1, 7, (De publicis iusdiciis, l. Infamem), nr 14: 'Dicerem cum quaelibet civitas Italiae hodie praecipue in Tuscia dominum non recognoscat, in seipsa habet liberum populum et habeat merum imperium in seipsa et tantam potestatem habet in populo quantam imperator in universo.' On the concept of *civitas sibi princeps*, see Woolf (1913), pp. 155–62 and 380; Ercole (1932), pp. 73–161; Ryan (2000), esp. pp. 77–85.

[27] Bartolo on D. 48, 19, 4 (De poenis, l. Relegati), nr 4: 'Et idem intelligo in istis civitatibus Italiae, quia ipsae sunt princeps sibi ipsis.'

[28] Bartolo on D. 4, 4, 3 (De minoribus viginti quinque anni, Pr.), nr 1: 'Civitates tamen quae principem non recognoscunt in dominum et sic earum populus liber est.'

[29] Bartolo on D. 3, 1, 1, 10 (De postulando, Pr. § de qua.), nr 2: 'Si esset rex, princeps vel populus qui imperatorem in dominum non recognosceret'.

[30] Bartolo on D. 49, 15, 24 (De captivis et et de postliminio l. hostes), nr 4: 'Quidam sunt populi qui non obediunt principe, tamen asserunt se habere libertatem ab ipso ex contractu aliquo, ut provinciae quae tenentur ab ecclesia Romana quae fuerunt donatae ab Imperatore Constantino ecclesiae Romanae;' and nr 6: 'Et idem dico de istis aliis regibus et principibus qui negant se esse subditos regi Romanorum, ut rex Franciae, Angliae et similes.'

[31] Decretal Per venerabilem, Qui filii sint legitimi (X. 4, 17, 13), issued in 1202.

[32] Tartagni, Consilium Bk 7, 11 ('Alias consului'), nr 9: 'Et expresse in duce Mediolani quod valeant gesta ab eo sicut gesta ab imperatore, etiam si sint de reservatis principi, consuluit Paulus de Castro in consilio 225, incipiens "Super primo dubio".'

In Tartagni's reinterpretation the *iura reservata*, rights which Francesco Sforza had been so keen to acquire,[33] had been granted as an inalienable ducal prerogative back in 1396. To reinforce the point, Tartagni referred to the authority granted in 1396 as the duke's 'suprema potestas' rather than as his 'plenitudo potestatis'.[34] Supreme power was a special attribute of pope, emperor, and kings, and so was another way of using the imperial diploma as evidence of the duke's sovereign status.[35] Paolo da Castro had accepted that the duke acknowedged the emperor as overlord, arguing that he was empowered 'to act *vice imperii*, on the grounds that the emperor exercises no jurisdiction there through anyone other than the duke himself.'[36] It was Tartagni's contention, on the other hand, that the effect of the investiture had not been to tie Giangaleazzo to the emperor, as imperial prince and feudatory; rather he saw the 1396 diploma as a charter of independence, granting Giangaleazzo imperial *iura reservata* and *suprema potestas*, and making him a sovereign ruler owing allegiance to no one.[37]

Francesco Corte

Even a clever reinterpretation of the 1396 diploma, such as Alessandro Tartagni had suggested, could not provide a satisfactory foundation for Sforza plenitude of power and autonomy. Tartagni's model had too many logical inconsistencies: Giangaleazzo's diplomas recognized Milan as an imperial fief and therefore it was difficult to pretend that they could also mean that the duchy had no ties with the empire. It was left to the highly respected Francesco Corte (Franciscus Curtius senior, d. 1495), who had occupied the chair of civil law at Pavia since 1453, to come up with the most radical answer in support of the duke.[38] In a famous

[33] See above pp. 88–9.

[34] Tartagni, Consilium Bk 7, 11 ('Alias consului'), nrs 16–17 wrote of 'dicta declaratione ducis habentis in se transfusa iura imperialia et supremam potestem in terris suis' and described how 'in dictis locis Dux habet supremam potestatem ut est dictum', and how 'decreta domini ducis inviolabiliter observabantur in terris suis tanquam decreta domini habentis supremam potestatem.'

[35] Accursio on C. 6, 23, 3 described the power transferred to the emperor in the *lex regia* as 'suprema potestas'; see Tierney (1963a), p. 389. Baldo, too, spoke of the pope's plenitude of power as his 'suprema potestas', on C. 6, 23, 10 (De testamentis quemadmodum testamenta ordinantur, l. Si testamentum), nr 1: 'Potest tamen si vult de plenitudine potestatis qua nunquam videtur uti contra ius nisi apponat clausulam non obstante etc., ita clare quando apparet de eius mente quod intendit uti supremo iure potestatis supreme'. He explained in Consilium Bk 1, 248 ('Quaeritur utrum donatio') nr 3, BAV Barb. Lat 1408 f. 129^{r} that 'excepto Caesare et liberis regibus vel similibus nullus videtur habere supreme originem potestatis'. Canning (2000, p. 294) points out that Baldo occasionally used supreme power as a synonym for plenitude of power but stopped short of attributing supreme power to signori.

[36] Paolo da Castro, Consilium Bk 2, 34 ('Super primo dubio'), nr 5: 'ut ea possit uti vice imperii, cum imperator ibi nullam iurisdictionem exerceat per alium quam per ipsum D. Ducem.'

[37] Tartagni made the same points about ducal independence in Consilium Bk 5, 30 ('Ponderatus narratis'), nrs 8–11.

[38] Surprisingly little is known of Francesco Corte, considering how celebrated he was in his day; Panciroli's entry (Book 2, cap. 119) gives few details.

consilium, number 65 concerning the *castello* of Montechiaro,[39] he defended Bartolomeo and Gianfrancesco Anguissola, whose rights had been endorsed by Duke Galeazzo Maria in an act of 8 August 1475, against the claims of cousins, Filippo Maria and Antonio Maria, whose case rested on an act of legitimization from the emperor. Both the duke's confirmation and the emperor's legitimization had been granted *de plenitudine potestatis*: it was another clash between ducal and imperial authority.[40] Corte stated at the outset that the duke was an independent ruler. Unlike Tartagni, he did not attempt to reinterpret the diploma of 1396, nor did he refer to Paolo da Castro's 'Super primo dubio'. Instead, he re-examined Giangaleazzo's status before the creation of the duchy, arguing that the autonomy of the rulers of Milan predated the imperial investiture. 'The duke of Milan does not acknowledge the emperor in the duchy but enjoys independent jurisdiction and is considered a supreme prince possessing plenitude of power; he can do whatever the emperor can do in the empire and he can decree anything; this is what Angelo says in the consilium "In causa accusationis," where he is referring to the Count of Virtue, signore of Milan.'[41] This was more than Angelo had claimed: he had not attempted to argue that Giangaleazzo was independent of the emperor, just that he had full powers within his subject territories.[42]

Like Tartagni, Corte had turned to fourteenth-century sources to find a rationale for the authority of the Sforza. Moreover, like Tartagni, he called the duke 'supreme prince' and used the phrase *suprema potestas* when referring to ducal plenitude of power; for him, as for Tartagni, plenitude of power implied independence.[43] In Corte's judgement, it was 'a rock solid conclusion that the duke of Milan does not accept the emperor as overlord in the hereditary duchy

[39] Montechiaro formed part of the extensive Anguissola holdings around Picenza which had been granted by Filippo Maria in 1438 and confirmed by Francesco Sforza in 1459; on the original concession, see Chittolini (1979), pp. 149–50, 159–60, and Cengarle (2006), p. 38, n. 11.

[40] The case for Filippo Maria and Antonio Maria Anguissola and their imperial legitimization had been taken up by Giasone del Maino, whose Consilium book 2, 177, nr 1 ('In praesenti consultatione'), contained a disdainful attack on the duke's acts; he referred to Galeazzo Maria's letter of 8 August 1475 as 'iniustae et nullae cum sint ex causis notorie iniustis concessae'; see below pp. 163–5; see also Black (1994), pp. 1164ff.

[41] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 5: 'Et in primis ad istud ostendendum occurrit quod dux Mediolani non recognoscit in suo ducatu Imperatorem, set utitur propria iurisdictione et censetur supremus princeps habens plenitudinem potestatis et omnia potest sicut potest Imperator in suo imperio et potest quicquid sibi placet. Ita Angelus, consilium 93 incipiens "In causa accusationis", ubi loquitur de Comite Virtutum domino Mediolani.'

[42] Angelo had said: 'Dominus comes in terris suis princeps est, et principis fungitur potestate. Unde sicut imperator omnem causam delegat ex plenitudine potestatis eo quod quicquid sibi placet est lex . . . ita et dominus comes potest' (see above pp. 62–3) Like Tartagni, Francesco Corte cited Bartolo on D. 48, 1, 7 (De publicis iudiciis, l. infamem) and on D. 49, 15, 24 (De captivis et de postliminio, l. hostes).

[43] For example, Corte wrote later in the consilium (nr 11): 'Quando apponit clausulam "non obstante" apparet clare de eius mente quod intendit uti suprema potestate, dixit signanter Baldus in l. Si testamentum, C. De testamentis [C. 6, 23, 10].' Significantly, Baldo was discussing the authority of the pope in that passage. Similarly, referring to the letter of 8 August 1475, Corte wrote (nr 14): 'Deinde postea etiam in ultimis verbis literarum adiecit etiam clausula "supplentes

and other territories but is himself emperor and duke, enjoying free and absolute power in the ducal dominions.'[44] It followed, with regard to the case in hand, that it was not within the emperor's competence to issue a concession legitimizing the two cousins: 'It is indisputable from this principle that the *castello* of Montechiaro is held in fief from the duke of Milan, not as a subordinate of the emperor, but as a fully independent ruler of his own principality; therefore the emperor could not grant a legitimization in respect of this fief, nor circumvent either ducal decrees or local statutes and customs. The reason is that, because the duke's authority is separate from Emperor Frederick's, he does not recognize him in the principality.'[45] Corte pointed out that,

> when principalities are partitioned, one ruler cannot issue laws or commands in the territory of the other; therefore the laws, decrees and statutes of the duke of Milan, as an independent prince not subject to the emperor, cannot be annulled by him. That fundamental principle undermines everything the other side can put forward. The emperor can do nothing in the duchy of Milan, except insofar as he is given permission by the duke, any more than he can in the lands of the Turkish sultan or of any other ruler who de iure or de facto does not recognize him.[46]

Imperial authority itself counted for nothing; on this point Corte did not mince his words: 'The emperor cannot interfere in the affairs of non-subjects where the principalities are separate; hence with regard to the duchy of Milan the

de plenitudine potestatis omnes et singulos defectus iuris et facti,'' quo casu non est dubitandum quod princeps voluit uti suprema potestate.'

[44] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 5: 'Et sic stat conclusio marmorea habens nervum quod dux Mediolani in suo territorio et ducatu haereditario non habet imperatorem superiorem; sed ipse est princeps et dux, liberam et absolutam potestatem habens in predicto suo dominio ducali, in quo omnia potest sicut imperator in civitatibus et terris imperio subiectis.' Corte rehearsed the same arguments in Consilium 49 ('Memoriae recolendae') nr 50, in support of the authority of Galeazzo Maria to give a newly conceded fief the particular rights of an old fief by means of his plenitude of power, asserting that, 'rex in regno suo habet tantam vel maiorem potestatem quam imperator in imperio, qui non transmittit imperium ad haeredem, sed rex regnum suum: sic c. licet, *Extra*, De voto [X. 3, 34, 6]. Rex enim in suo regno dicitur imperator regni, qui potest per se iudicare et scripturam suo sigillo ad probandum roborare, qui habeat supremam iurisdictionem in suo regno.'

[45] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 15: 'Ex qua doctrina apertissime infertur quod cum castrum Montisclari recognosceretur in feudum a duce Mediolani non recognoscente imperatorem, sed in propria libertate sui principatus dominando, non potuit imperator legitimare quo ad ipsa feuda, nec derogare decretis et statutis seu consuetudinibus praelibati domini ducis et sui principatus; quia divisum imperium habet dux Mediolani cum Federico Imperatore, cum eum non recognoscat in suo principatu, iuxta illud.'

[46] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 15: 'Distinctis enim principatibus, nemo potest in principatu alterius aliquid statuere seu mandare: l. fin *ff*. De iuris. c. ut animarum, § tempestivum; De rescript [sic for De constit.] Lib. 6 [VI, 1, 2, 2]. Et consequenter leges, decreta et statuta ducis Mediolani, liberi principis et non subiecti imperatori, non potuerunt per ipsum imperatorem tolli et removeri, ut l. Nam et magistratus, *ff*. De [receptis qui] arbitr. [D. 4, 8, 4], l. Ille a quo, § tempestivum, *ff*. Ad Trebell. [D. 36, 1, 13, 4]. Et sic istud fundamentum enervat omnia quae adducere possent adversarii; quia nihil potest imperator in terris ducatus Mediolani nisi quatenus sibi permitteretur a praefato duce, sicut nec posset in terris Soldani vel Turci vel alterius non recognoscentium imperatorem de iure vel de facto.'

emperor is no more than a private person, having no jurisdiction or authority to grant privileges, especially not when it comes to legitimizing the base-born offspring of a wrongful union.' He exclaimed with a final flourish: 'What is said of the South Pole applies equally to the emperor—he is no prince in our hemisphere.'[47]

The duchy of Milan was not part of the empire. Once more, the central focus was plenitude of power: 'The emperor cannot use plenitude of power for the benefit of, or against, non-subjects.'[48] Corte referred to the account Baldo had given of the phrase's origins: 'About the supplementary clause *de plenitudine potestatis*, you know that the Roman people never used that expression before transferring their power to the emperor, nor is the phrase found in civil law, unless it is said, and rightly, that it is implied by the words "what the prince decrees has the force of law." '[49] But rather than quoting Baldo exactly, Corte gave the passage his own slant: 'The Roman people never actually used the phrase *de plenitudine potestatis*, though they implied the same idea with the words "quod principi placuit legis habet vigorem". But once authority was handed over to Caesar, the emperor and other independent rulers quite justifiably used, and still use, the expression "from our plenitude of power" as Baldo notably says.'[50] Baldo had only been pointing out that the phrase was unknown in antiquity; but Corte claimed that the Roman people had enjoyed what amounted to plenitude of power, that it was subsequently passed on to all independent rulers, and that therefore the duke's absolute power came from the people of the duchy. Here was a vindication of Sforza plenitude of power which accorded with events and with the Sforza's own interpretation of their status: Corte saw plenitude of power as an aspect of the authority conferred on Francesco Sforza in 1450 by the citizens of Milan and other cities. The concept was reminiscent of the theory of plenitude of power which had prevailed even before the imperial vicariate, in the days of Azzone, Luchino, and Giovanni Visconti.

[47] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nrs 15–16: 'Quoad non subditos non possit imperator se intromittere, cum distincti sint principatus. Nam imperator respectu ducalis dominii Mediolani censetur redactus ad instar privati, qui non potest iusdicere nec privilegiare et potissime in legitimatione illorum spuriorum natorum ex damnato coitu . . . Et ideo dici potest de imperatore quod solet dici de polo antartico, "qui non est nostri emisperii princeps".'

[48] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 16: 'Quia ea omnia procedunt quo ad sibi subditos, non autem quo ad eos populos qui non sunt subiecti imperatori et gerentes se pro liberis, sive de iure sive de facto, ne quo ad alios principes gerentes se etiam pro liberis, prout facit dux Mediolani; quia in eis et contra eos non subditos non potest Imperator uti aliqua plenitudine potestatis cum illam tantum exercere possit in subditos.'

[49] Baldo, *Commentariolum super Pace Constantiae,* s.v. Libellariae, nr 3; see above p. 19, n. 55.

[50] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nr 17: 'Nam populus Romanus nunquam fuit usus specifice dicta clausula "de plenitudine potestatis", sed implicite sub illis verbis "quicquid principi placuit legis habet vigorem": l. prima *ff*. De constitutionibus principum [D. 1, 4, 1]. Tamen post translatum imperium ad Caesarem bene Imperator et caeteri principes non recognoscentes imperatorem usi sunt et utuntur dicta clausula "de plenitudine potestatis", ut dixit signanter Baldus *In pace Constantiae*, in verbo libellariae.'

LUDOVICO IL MORO'S INVESTITURE

The consequences for Ludovico il Moro of accepting a diploma from Maximilian were not wholly positive: after the investiture it was sometimes pointed out that he had forfeited the sovereign status which had just been constructed in legal circles. Pietro Antonio Anguissola of Piacenza, writing much later,[51] summed up the possible implications for ducal plenitude of power: 'Since Duke Ludovico acknowledged the emperor, who had invested him with the duchy of Milan, he could not and should not, in the absence of judicial proceedings, have used plenitude of power. Moreover, as someone who recognized a superior, Ludovico should have spelt out the just cause, [for in his case] such a cause is not to be presumed.'[52] In Anguissola's view, the theory of ducal sovereignty no longer applied. 'Whenever they referred to the duke of Milan,' he continued, 'jurists used to say he could do anything that the emperor could in the empire (Corte maintained this position in consilium 65, number 5); but they base that opinion wholly on the fact that the duke did not acknowledge the emperor: since that situation ended with Ludovico, their particular view of his [authority] ought also to have been given up.'[53]

Several contemporary jurists took advantage of the potential weakness of the Sforza position. Among them was Francesco Corte's nephew, Franceschino Corte, who, in the 1490s, was teaching at Pavia as well as sitting on Ludovico's Consiglio Segreto.[54] In yet another dispute about imperial authority in the duchy, Franceschino Corte concluded that the legitimization which Maximilian had granted to Count Ercole Rusca was valid, allowing his grandson to succeed to the family fiefs, instead of their devolving back to the duke.[55] Franceschino

[51] Pietro Antonio Anguissola of Piacenza (b. 1520), was, like his father before him, a soldier as well as a lawyer: in 1546 he became a member of the Collegio dei giudici in Piacenza; in 1552 he was condemned to death and subsequently pardoned for his part in the war of Parma. It is not known when he died, but he published seven volumes of consilia in 1571–2: Mensi (1899), p. 32. I should like to thank Luca Ceriotti for his help on Anguissola's biography.

[52] Pietro Antonio Anguissola, Consilium Bk 7, 3 ('Ut propositae quaestionis'), nr 4: 'Respondetur primo ducem Ludovicum, cum recognosceret imperatorem et ab eo de dominio Mediolani fuisset investitus, non potuisse nec debuisse uti plenitudine potestatis absque causae cognitione, ut post alios quos refert traddit Decius, consilio 373, numero 15. Et in duce Ludovico tanquam recognoscente superiorem debuisse de iusta causa liquere, nec eam praesumi: Baldus, Castrus et Iason in l. si testamentum, C. De testamentis [C. 6, 23, 10] et alios quos recenset Decius, consilio 288, num. 8.'

[53] Pietro Antonio Anguissola, Consilium Bk 7, 3 ('Ut propositae quaestionis'), nr 4: 'Et quamvis Doctores, quandoque dixerint ducem Mediolani omnia posse quae imperator in imperio: Curtius senior, Consilio, 65 nr 5; tamen fundant se ex eo solo quia non recognoscebat imperatorem, quae ratio, cum cessaret in Duce Ludovico, in eo etiam cessare debuit doctorum sententia.'

[54] The younger Corte taught canon law in Pavia from 1490 and then civil law from 1492; he transferred to Padua in 1528 until his death in 1533. He was made a senator by Francis I. Brief details of his career can be found in di Renzo Villata (1982), p. 111.

[55] After Ludovico's fall Rusca became a supporter of the French, so that the Sforza were bound to be hostile to his feudal rights: Bognetti (1957), p. 48.

referred to the concept of ducal independence put forward in consilium 65 by his 'uncle and teacher, Francesco Corte, who amassed a great deal of evidence with regard to the authority of the duke of Milan, including the assertion that the duke did not de facto recognize any superior, which had the effect of undermining the position of the emperor'.[56] But that consilium belonged to another era; now the emperor's own plenitude of power had free rein in the duchy. Following the investiture, Maximilian had the right to issue legitimizations, including one which was directly detrimental to the interests of the duke: 'When taking into consideration the emperor's absolute power, which, as has been shown, he used in this particular legitmization,' it had to be conceded 'that the emperor was able to overrule any positive law even when his act prejudiced the rights of a third person.' Therefore, 'since Count Ercole was declared legitimate and able to hold fiefs, we can assume that the emperor had the clear intention of undermining the feudal overlord, that is, the duke of Milan; he certainly could do so, particularly in an act issued *ex certa scientia et plenitudine potestatis*.'[57] In this consilium at least, Franceschino Corte cast doubt on the advantages to be gained by re-establishing links with the empire.

Filippo Decio

Admittedly some commentators were hostile to the Sforza for political reasons. This was true of Filippo Decio (1454–1536/7), famous contemporary of the younger Corte. As a result of his teaching canon and civil law at Pisa, Siena, and Padua, Decio had gained a reputation for his aggressive temper as well as for his legal acumen: he had had confrontations with colleagues in all three universities (especially with Bartolomeo Sozzini and Giasone del Maino in Pisa, and Felino Sandeo in Siena).[58] Decio's lectures had, nonetheless, been well attended and he

[56] Franceschino Corte, Consilium Bk 2, 157 ('Praesupponitur in facto'), nr 7: 'Istam opinionem sequitur et comprobat recolendae memoriae avunculus et praeceptor meus dominus Franciscus Curtius consilio sexagesimoseptimo [i.e. consilium 65], ubi multa cumulat de potestate ducis Mediolani ad derogandum potestati imperiali.' Franceschino goes on to dismiss his uncle's opinion.

[57] Franceschino Corte, Consilium Bk 2, 157 ('Praesupponitur in facto'), nr 24: 'Sed considerata potestate absoluta qua constat imperatorem usum fuisse in legitimatione de qua agitur . . . imperator possit tollere omnia iura positiva etiam cum praeiudicio tertii . . . Cum igitur Comes Hercules fuerit legitimatus ad feuda, possumus dicere constare quod imperator voluerit praeiudicare domino feudi et sic duci Mediolani, quod quidem potuit per praedicta, et maxime stantibus clausulis ex certa scientia et plenitudine potestatis ut supra diximus.'

[58] Decio taught in the Studio Fiorentino from 1476 to 1501 (except for the years 1481–7 when he taught at Siena, spending a brief time also as an auditor at the Roman Rota); in 1502 he transferred to Padua. He was excommunicated by Julius II after attending the Council of Pisa (1510–11); the Swiss campaigns following the battle of Ravenna saw the destruction of his house and library and Decio fled to France, teaching for a period in Valence. He was absolved by Leo X, his former pupil, and his career in Italy was resumed at Pisa where he remained until 1528, spending his final months back in Siena. For his career and bibliography, see the entry in *DBI* by A. Mazzacane; di Renzo Villata (1982), pp. 98–100; Belloni (1986), pp. 190–3.

had had some notable students including Giovanni de' Medici (the future Pope Leo X), Cesare Borgia, and Francesco Guicciardini. After Ludovico il Moro's fall, Decio had become a supporter of the French in Milan, having been persuaded by Louis XII and the offer of a huge salary to take the chair of canon law in Pavia in 1505. He had no compunction, thereafter, in undermining Sforza acts, using the political upheavals of the French invasions to provide arguments on behalf of clients. According to Decio, Ludovico lacked authority both before and after the investiture. The condemnation was a way of supporting the rights of one Gabriele, who had been given a fief by Louis XII (when he was duke of Milan), against the claims of another, Ambrogio, to whom the fief had previously been granted by Ludovico il Moro before his investiture. Normally the first concession would take precedence; but Decio argued that Ludovico's act was not valid because it was made before 1494, 'and so the grant was made by a person who did not have the authority to give it, since he had not been legitimately appointed duke. What had been wrongly done was therefore rightfully undone by his sovereign majesty, on the grounds that every act passed during a tyrannical regime should be cancelled once a legitimate ruler arrives.'[59] In Decio's eyes, Ludovico's authority was no more legitimate after the investiture, a view which allowed him to reject a conviction and punishment for treason which Ludovico had decreed after 1494. The sentence of *damnatio memoriae* that the latter had proclaimed against Leonino Biglia under the law of *laesa maiestatis* was unsound because, 'where [that law] speaks of the "prince," it means the emperor, and the concept of *damnatio memoriae* is not applicable to the duke of Milan, who owes his *maiestas* to the emperor, whose authority he acknowledges.'[60] According to Decio, Ludovico's investiture had deprived him of full princely status.[61]

Pietro Paolo Parisio

Sforza supporters, by contrast, took full advantage of the new investiture. Most importantly, they were not prepared to accept that, by securing an imperial diploma, Ludovico had reduced the duchy to a position of inferiority; for them full ducal sovereignty was in no way compromised. This was the clear message

[59] Decio, Consilium 191 ('In causa quae agitatur'), nr 5: 'Donatio fuit facta magistro Ambrosio ab eo qui non habebat potestatem donandi cum non esset legitime dux Mediolani constitutus; et ideo quod ab illo illegitime factum fuit iuridice per regiam maiestatem retractatur, quia omnia facta tempore tyrannidis, adveniente iusto domino, debent cassari, ut notat Bartolus per illum textum [i.e. on D. 45, 1 137, 2] et idem Baldus ibi, Salecitus et Paulus de Castro in l. Decernimus, C. De sacrosancto eccl. [C. 1, 2, 16]; ut notat Bartolus in tract. suo *De tyrannia*, col. ix.'

[60] Decio, Consilium 410 ('In causa mota Mediolani') nr 27: 'Et facit textus in dicta lege penultima, *ff*. Ad legem Iuliam maiestatis [D. 48, 4, 9], ubi dictum de principe de ipso imperatore intelligitur; unde talis damnatio memoriae non videtur habere in duce Mediolani, qui maiestatem ab imperatore habet et ipse imperatorem recognoscit.' *Damnatio memoriae* was the disgrace inflicted on the memory of a person guilty of treason.

[61] The act by which Ludovico had given another man Biglia's confiscated property, albeit 'ex certa scientia et de plenitudine potestatis', was therefore not valid.

of Pietro Paolo Parisio (1473–1545), bishop, cardinal, and Uditore di camera in Rome, who taught civil law in Padua, Rome and Bologna.[62] His concept of the relationship between duke and emperor emerged when the Rossi family attempted to use imperial authority to reverse Ludovico's confiscation of their major fief (Pietro Maria Rossi had been deprived of San Secondo in 1482, when he joined the Venetians after falling out with Ludovico). In 1501 Pietro Maria's grandson, Bertrando, obtained a concession from Emperor Maximilian reinstating this fief.[63] Among the arguments put forward on Bertrando's behalf was that, because he had no just title, Giangaleazzo Sforza had not been a proper duke but a tyrant; therefore Pietro Maria could not have been a rebel.[64] But Parisio pointed out that for decades the Sforza had been openly and publicly recognized, not only within the duchy, but by popes, kings, and other powers, and with the knowledge and tacit consent of the emperor himself; moreover the emperor did eventually grant the Sforza the title. Another of Bertrando's arguments was that the emperor had annulled Ludovico's confiscation in the widest possible terms 'motu proprio, ex certa scientia et de plenitudine potestatis'.[65] But, countered Parisio, Maximilian

did not have the authority to intervene in the affairs of the state of Milan, in which the duke himself is supreme prince as I have clearly shown. The emperor may not interfere with fiefs or vassals situated in the duchy and if he does so then the act is not valid; on this issue there is Francesco Corte's consilium number 65 ('Super praemissa narratione'), column 13, in which, after citing numerous cases and authorities, he concludes that, even *ex certa scientia, motu proprio et de plenitudine potestatis* and with a not withstanding clause, the emperor cannot authorize anything to do with people or places within the duchy.

The fact that Ludovico had entered into a new relationship with the emperor as a result of the investiture did not, in Parisio's view, affect his independence, or in any way invalidate Francesco Corte's concept of ducal autonomy.

[62] Parisio studied under Bartolomeo Sozzini, was ordained in 1514 and worked in the curial archive as well as teaching civil law in Rome before taking up teaching posts in Bologna, Padua (1521–31), and Bologna again (1531–7); he then took up the wide-ranging duties of Uditore generale under Pope Paul III, becoming also bishop of Nusco (1537) and cardinal (1539); he attended the Council of Trent. For details of his career and works, see Del Re (1970b).

[63] On the recovery of lands and titles by the Rossi family, see Arcangeli (2007).

[64] Parisio, Consilium Bk 1, 1 ('Visa facti narratione'), nr 56: 'Secundo principaliter adversantes contra dictas declarationes et literas ducales et privationem et confiscationem bonorum adducunt inhabilitatem personarum a quibus factae fuerunt eo quoniam Sfortiadae et dux Mediolani, Ioannes Galeatius, non erat iudex competens, quinimo tyrannus nec verus dux, eo quo nullum habebat titulum iustum dicti ducatus et per consequens rebellio dicti Petrimariae contra dictum tyrannum facta non potest dici, nec propria rebellio.'

[65] Parisio, Consilium Bk 1, 1 ('Visa facti narratione'), nr 68: 'Tertio principaliter adversantes contra dictas literas et declarationes, confiscationem et rebellionem, adducunt privilegium ipsis actoribus concessum per Maximilianum regem Romanum in quo ipse princeps in forma amplissima "motu proprio, ex certa scientia et de plenitudine potestatis, supplendo omnes defectus et derogando facientibus in contrarium", remittit ipsis adversantibus rebellionem suorum maiorum et de novo eos investit de feudis praedictis, ut constat privilegio concesso anno 1501.'

If we take into account the period when the Sforza were dukes and also consider the investiture they were thereafter to receive from Maximilian himself, the emperor could not, by the privilege issued recently [to the Rossi], undermine the investiture he had just given to the Sforza, nor reverse any decrees, as Corte makes clear in the consilium. For the emperor gave the Sforza all his own authority in that investiture and would not be able undermine it in the concession subsequently granted to the plaintiffs. Insufficient authority renders the concession invalid, as Paolo da Castro explains in the last section of consilium [34] 'Super primo dubio'.[66]

Parisio supported the independence of the dukes before the new investiture on the grounds that they had not recognized the emperor, and afterwards because the emperor had handed over all his powers, citing Francesco Corte and Paolo da Castro, respectively.

Franceschino Corte

Even the younger Corte, who has been seen marshalling arguments for Ludovico's subservience after the investiture, was more often to be found on the other side. In the dispute between Francesco Sforza II and his cousin Bona over the duchy of Bari,[67] Corte tried hard to win the fief back for the duke and here he was responsible for steering ducal plenitude of power in a new direction. Ludovico had conferred the duchy on Francesco, his son, with the consent of Federico of Naples (reigned 1496–1501). After Ludovico's fall, Federico settled it instead on Isabella of Aragon and on her death in 1524 it passed to her daughter Bona. According to Corte, Maximilian's investiture had the advantage of allowing the Sforza more freedom than ever to dispose of territories as they pleased. Once the duchy of Milan had devolved back to the emperor on Filippo Maria's death and been reassigned by Maximilian, it had taken on the characteristics of a new fief. That meant that the stringent rules surrounding

[66] Parisio, Consilium Bk 1, 1 ('Visa facti narratione'), nrs 97–8: 'Non habet potestatem se intromittendi in his quae pertinent ad statum Mediolani in quo ipse dux Mediolani est supremus princeps ut supra plene ostensum fuit. Et in puncto quod non possit se intromittere de feudis et vasallis existentibus in dicto ducatu, et casu quo se intromitteret et aliquid disponeret quod eius dispositio nulla sit, est consilium Francisci de Curtio, in ordine mihi 65 "Supra praemissa narratione" et col 13 [nrs 14–17] et duabus sequentibus ubi ipse allegando varias et plures decisiones et auctoritates concludit Imperatorem etiam ex certa scientia, motu proprio et de plenitudine potestatis et cum clausula non obstante non posse aliquid disponere seu ordinare circa subditos, castra et loca dicti ducatus. Unde si nos volumus considerare tempus quo erant duces ipsi Sfortiadae qui postmodum habuerunt investituram ab ipso Imperatore, Imperator ipse non potuit per hoc ultimum privilegium derogare privilegio primo concesso ipsis Sfortiadis nec decretis factis ab ipsis, ut dicit Francesco Curtio in dicto consilio. Nam per primam investituram et privilegium ipse Imperator transtulit in ipsos Sfortiadas et successive habentes causam ab ipsis omne ius suum, unde per secundum privilegium et investituram factam ipsis actoribus non potuit praeiudicare primae investiturae. Ex quo ista secunda ex defectu potestatis nihil valet ut dicit Pau. de Cast. in consilio suo 225 "Super primo dubio".'

[67] Francesco II, the last of the Sforza dukes, was Ludovico's younger son; he was born in 1495 and was a child when he was made duke of Bari (a title which Ludovico had held since 1479).

long-established fiefs did not apply, so that the duchy of Bari, which Corte considered an integral part of the Sforza patrimony, could be freely bestowed by Ludovico.[68] The basis of Ludovico's plenitude of power was Maximilian's investiture, but that investiture was seen in a broad context as one of a series, each of which had relevance for Ludovico.[69] Corte cited a miscellany of authorities on Milanese plenitude of power from all periods, including those dating from before the duchy was created, as well as from the time when the Sforza themselves had no diploma. He no longer saw plenitude of power as a personal privilege:

All the arguments which at first sight might seem to undermine [the claims of the duke of Milan] are confounded and this is confirmed by what Paolo da Castro says in the consilium 'Super primo dubio', cited by Tartagni, namely that dukes with permanent investitures are understood to be princes in the duchy and to have all the powers over subjects that the emperor enjoys. Barbazza said the same thing in consilium 34, 'Praeclare', and all these jurists were referring explicitly to the duke of Milan; in the same context Angelo, in consilium 193 'In causa accusationis', said that the Count of Virtue, duke of Milan, was considered a supreme prince who was able to delegate any case from plenitude of power. The exact reason for this was explained by Sandeo, who, having put forward the contrary assertion, then upheld [the authority] of the dukes of Milan because of the very extensive investitures which they had received from their imperial highnesses, including royal rights (*regalia*)[70] and plenitude of power; Martino [Garati] of Lodi confirms this in the first chapter of his work on fiefs, where he asserts that he had seen the ducal investiture which granted full authority and *regalia*. I too have seen all the investitures for the duchy of Milan and the provisions are extensive, including the grant of *regalia* and plenitude of power.[71]

[68] Franceschino Corte, Consilium Bk 3, 219 ('In controversia vertente'), nr 11: 'Cum igitur in persona illustrissimi Ducis Ludovici dicatur novum, prout constat ex tenore ipsius investiturae, in qua dicitur feudum ipsum fuisse devolutum ad regiam maiestatem et tamquam devolutum de novo concedere illustrissimo Duci Ludovico; etiam est attenta hac concordia valebit donatio seu refutatio facta in favorem secundi geniti. Attento maxime quia intervenit consensus regis Federici.'

[69] In the 1494 version of the diploma Maximilian himself had listed as precedents all the earlier investitures, i.e. 1395, 1396, the forged one of 1397 and Filippo Maria's of 1426. Luenig, i, col. 487.

[70] Here Corte understands *regalia* to mean royal rights, rather than the rights of communes over surrounding territories. Both meanings are possible, though from the context it is clear that the *regalia* originally referred to in the ducal diploma of 1396 are communal rights.

[71] Franceschino Corte, Consilium Bk 3, 219 ('In controversia vertente'), nrs 69–70: 'Ex praemissis igitur constat clarissime fundatam esse intentionem illustrissimi ducis Mediolani et resoluta omnia quae prima facie in contrarium adduci posse videbantur. Ad quorum confirmationem accedunt quae scribit Paulus de Castro, consilio 225, "Super primo dubio", quod refert Alexander [Tartagni], consilio 2 in primo volumine ["Visis codicillis"], versiculo "enim vero plus reperio" (quod est repetitum in secundo volumini, consilio 87), ubi dicunt quod Duces, perpetuo investiti, censentur principes in suo ducatu, et omnia possunt in subditos eorum quae potest imperator in imperio. Idem dicit Barbazza, consilio 34, "Praeclare" in penultima columna, in secundo volu. Et loquuntur praefati doctores in duce Mediolani; et ita etiam in terminis dicit Angelus, consilio 193, "In causa accusationis," quod Comes Virtutum, dux Mediolani, censetur supremus princeps, qui potest delegare ex plenitudine potestatis omnem causam. Qualiter tamen hoc sit intelligendum declarat Felinus in dicto c. "quae in ecclesia", in 13 col.versiculo "Quae declaratio"

Franceschino Corte was referring to the diploma of 1396 as well as to that of 1494, Maxmilian's first, fuller investiture, which gave the duke 'supreme and absolute plenitude of power'. 'With that kind of authority,' he concluded, echoing Baldo, 'all the normal rules of law cease to apply.'[72] Corte adopted the same approach in support of a proscription decreed by Francesco II. Francesco Pontani of Tortona, a captain who had worked in Milan for Francis I, was banned and his property confiscated when he fled the duchy after committing a murder. When he died his heirs claimed the inheritance on the grounds of the general amnesty, proclaimed after the expulsion of the French. Corte upheld the duke's sentence on the basis of plenitude of power, which, he believed, outweighed the strong presumption in favour of wills. He pointed out that, over and above the 1396 diploma, 'there was the latest investiture granted by his imperial majesty which was much fuller and included all royal rights and every kind of authority';[73] but in order to prove Francesco II's right to set aside established laws, he again cited the complete range of authorities from Angelo degli Ubaldi onwards.[74]

CONCLUSION

Once Giangaleazzo had won express recognition for plenitude of power from the empire, subsequent dukes had not been content with anything less concrete, as the interminable supplications at the imperial court bear witness. Hostility on the part of the emperor had led to bold new ideas under the Sforza, the legal world providing a framework for the survival of regional autonomy in the

[X. 1, 2, 7], ubi quaedam in contrarium adducit, postea salvat praemissa, ut procedant virtute amplissimarum investiturarum quas habuerunt duces Mediolani a serenissimis imperatoribus, cum regalibus et plenitudine potestatis; et ita testatur Martinus Laudensis in capitulo primo, "De natura feudi", se vidisse investituram ducalem, cum omni imperio et regalibus. Et ego etiam vidi omnes investituras ducatus Mediolani, cum clausulis amplissimis, concessione regalium et plenitudine potestatis'.

[72] Franceschino Corte, Consilium Bk 3, 219 ('In controversia vertente'), nr 70: 'Quibus stantibus, prout supra dixi, cessant omnes regulae iuris positivi, et praecipue patriae potestatis, quam habebat illustrissimus Dux Ludovicus in persona illustrissimi ducis nostri moderni, quando quidem ille qui habet plenitudinem potestatis possit donare filio in potestate, et statim valet donatio.' Francesco II did not win back the duchy of Bari.

[73] Franceschino Corte, Consilium Bk 2, 100 ('Praesupponitur in facto'), nr 4: 'Sed ultra eum [feudum], investitura nova facta per Caesaream maiestatem est multo pinguior cum omnibus regalibus et cum omnimoda potestate.'

[74] Franceschino Corte, Consilium Bk 2, 100 ('Praesupponitur in facto'), nrs 3–4: 'Praemissa tanto clarius procedunt in proposito nostro, stantibus decretis illustrissimi ducis Mediolani qui in suo ducatu habet amplissimam potestatem derogandi etiam iuri communi, quando quidem sit vera conclusio quod duces, comites seu marchiones perpetuo investiti censentur principes in suo regno, ducatu, comitatu vel marchionatu et omnia possunt in subditos eorum quae posset imperator in toto orbe ut concludit Paulus de Castro, consilio 225 ("Super primo dubio")'; he cited the same authorities as in Consilium Bk 3, 219 ('In controversia vertente'), nrs 69–70: see n. 71 above.

teeth of imperial pretensions. It was true that as soon as Ludovico il Moro had procured his own diploma, the rationale for claiming full-blown sovereignty disappeared; nevertheless the argument for independence put forward by adroit lawyers such as Alessandro Tartagni and Francesco Corte continued to be mined. By the time of the last Sforza the various models had been amalgamated to produce an assertion that was more confident than anything yet suggested: rather than looking to an outside source, full authority and plenitude of power was seen as intrinsic to ducal rule.

Chapter 5

Plenitude of Power in Practice: Preserving Justice while Infringing Rights

THE RULERS OF MILAN AS CHAMPIONS OF JUSTICE

There were two conflicting sides to plenitude of power, one connected to justice and equity, the other to injustice and tyranny. In legal theory, plenitude of power was an essential aspect of equity, that almost sacred prerogative which gave a ruler the capacity to realize justice through tempering the law (and, indeed, through enacting law).[1] Without power over the law there could be no equity. The Visconti were determined to be seen as just rulers. The grounds for their initial election as signori had been to bring peace and the 'medicine of justice' to the communes.[2] Justice was no less important for the Visconti's legitimacy than the establishment of a valid basis of authority. Here indeed lay one of the problems of plenitude of power: if the Visconti made excessive use of the prerogative of overriding fundamental rights, they could jeopardize their claim to be regarded as legitimate princes. In the process of using plenitude of power as an everyday tool of government, the Visconti committed innumerable acts of partiality and arbitrary wilfulness. They nevertheless endeavoured to foster a positive image. As an example of the kind of reputation they successfully cultivated, the court poet, Braccio Bracci, was scathing about the governing style adopted by most Italian rulers but full of praise for the the Visconti: 'I shall pass over in silence the great signori of Italy today, except for the Visconti, feared everywhere this side of the Alps and overawing even the church and its pastors; for in their hearts law and justice reign, and to do good is ever in their thoughts.'[3] In an oration given in 1425, on the anniversary of the death of Giangaleazzo, the humanist and historian Andrea Biglia summed

[1] See Costa (1969), pp. 135–44.

[2] This was the expression used in the Proemium to the statutes of Como of 1335, *Statuti di Como*, p. 17: 'Cum exactis temporibus Cumana civitas, rectoris defectu, sit passa ruinam et, civili bello lacerata, in partes se scinderit plurimas et indivisibile quodammodo corpus disperserit, ne plaga antiqua ulterius pululet, sed ipsi adhibeatur medella iusticiae, sub excelso brachio gubernari satius eligit'.

[3] 'Poniam silenzio a tutti i gran signori | omai d'Italia, salvo ch'a' Visconti; | temuti son di là, di qua dai monti, | e fan tremar la Chiesa e i suoi pastori | Ragion, giustizia regna in e' lor cuori | A ben far lor pensier' sempre son pronti', quoted in Medin (1891), p. 743.

up the Visconti achievement: they had defended Italy from foreign invaders and brought learning and magnificence to Lombardy, but chief among their accomplishments was justice. In Biglia's judgement, 'it would be impossible for even the most powerful person to establish a monarchical dynasty, unless circumstances were so ordered that for everyone alike justice and equity prevailed.'[4]

Visconti justice was defined by publicists in ways that reflected the prevailing political agenda. Azzone's short-lived imperial vicariate (granted at the beginning of his rule in Milan) charged him 'to protect the inhabitants with comprehensive justice, treating them all with equity and equality.'[5] The vicariate anticipated what was to be Azzone's chief policy: to win support by appealing to all factions, repealing partisan legislation, reinstating exiles, restoring confiscated property, and issuing general amnesties for political opponents and even for common criminals. Justice meant distancing the regime from its association with the Ghibelline party and implementing a policy of reconciliation between competing factions.[6] This aspect of Azzone's rule was highlighted by the contemporary chronicler Pietro Azario (*c*.1312–64), who pointed out that 'he did not persecute the Guelfs [opponents of the Visconti], being exceptionally keen to uphold justice.'[7] Luchino's subsequent expansion of Visconti domination to include Bobbio, Parma, Alessandria, and Tortona extended the policy of gaining support through amnesties and the restoration of property, and Azario similarly linked his love of justice to impartiality.[8]

Luchino and Giovanni, on the other hand, were more actively involved in the details of local legislation than Azzone, so that they were associated not only with impartiality but also with a particular programme of lawmaking. Encouraging subject cities to reissue statutes was already a key aspect of Visconti rule: Azzone, too, had sponsored the drawing up of new statutes in Milan (1330), Cremona (1335–9)[9] Bergamo (1333),[10] Como (1335),[11] and Monza (*c*.1335);[12] Giovanni and Luchino did the same in Vercelli (1341),[13] Bobbio (1342),[14] Parma (1346),[15] Alessandria (1347),[16] Milan (1348 and 1351),[17] Bologna (1351),[18]

[4] 'Nec liceret cuiquam potentiori in domo sua regnum statuere [nisi] ita collocatis negotiis, ut simul inter omnes ius atque aequitas valerent,' quoted in Romano (1915), p. 141.

[5] 'gubernare ac in in plena iustitia conservare omnes habitantes ibidem in equitate et equalitate tractare', Santoro (1976), p. 1.

[6] See Somaini (2005), pp. 143–4; Cognasso (1923), pp. 68–91, gives a comprehensive account of how Azzone implemented a policy of reconciliation in order to consolidate his authority in Milan, Bergamo, Como, Lodi, Vercelli, Piacenza, and Brescia between 1329 and 1337.

[7] Azario, *Liber gestorum*, p. 37: 'Dum autem iste regnaret, Guelfos in Mediolano et districtu propterea non molestabat, iustitiam animose vero exercebat'.

[8] Azario, *Liber gestorum,* p. 31: 'iustitiam amavit equa libra'.

[9] Lattes (1896) and Ferorelli (1911), pp. 77–82 for Milan; Gualazzini (1953), p. 54, n. 1 for Cremona.

[10] Storti Storchi (1996b), pp. v–vi.

[11] These are not extant: see Lattes (1896).

[12] Padoa Schioppa (1993), pp. 9–10.

[13] Cognasso (1923), p. 79.

[14] Cognasso (1923), p. 91.

[15] Cognasso (1923), p. 95.

[16] Cognasso (1923), pp. 103–4.

[17] Ferorelli (1911), pp. 77ff

[18] Sorbelli (1902), pp. 211ff and pp. 444ff (Doc. 75).

and Bergamo (1353).[19] But Giovanni and Luchino went considerably further than Azzone in promoting individual statutes and encouraging harmonization.[20] In 1347, for example, Luchino ordered the podestà of Parma to apply the same laws governing the restitution of property that were in force elsewhere in his domains.[21] He ordered Cremona and Piacenza to incorporate the Milanese statute of 1331 concerning the decima,[22] and attempted to engineer the adoption in Bergamo too of Milanese law. The acceptance there of Milanese funerary regulations was particularly applauded by local chronicler Galvano Fiamma (1283–1344).[23] In 1353, at the end of his life, Giovanni supervised a thorough reform of the statutes of Bergamo, representing a significant departure from earlier collections.[24] Contemporary observers took up the theme, linking Giovanni's and Luchino's legislative activity with justice itself: in the statutes of Parma of 1347, Luchino was dubbed 'the athlete of justice' for his role in eliminating unfair laws.[25] It was Luchino's and Giovanni's legislation which impressed Fiamma. He described as proof of just rule 'the many excellent laws and statutes' for which they were responsible, devoting two chapters of his chronicle to a list of six outstanding legislative acts, as well as noting the unfair Milanese customs that they abolished.[26] Fiamma was particularly struck by Giovanni's and Luchino's insistence that good statutes were to be observed in practice: 'Note,' he said, 'that, although introduced by their forebears and predecessors, these six commendable and beneficial measures came to be fully implemented only under these two signori.'[27] The result, he said, was that 'never before had justice been so well served as it was then.'[28]

A different slant was given to the Visconti image by Bernabò and Galeazzo II: they wanted to emphasize their position at the apex of the judicial system, dispensing decisions day-to-day.[29] And yet again each had his own angle: for Galeazzo a ruler's prime duty was to abide strictly by the law. Galeazzo, according

[19] Storti Storchi (1996b), pp. v ff.

[20] Lattes (1886), ii, pp. 76–83, gives a summary of Milanese statutes which the early Visconti ordered to be replicated in other subject communes.

[21] Cognasso (1923), p. 96.

[22] The date is uncertain; *Statuta et ordinamenta comunis Cremonae* (1952), pp. 223–35, and p. 234 n. 3; Lattes (1886), ii, p. 76, refers to the adoption of the statute by Piacenza.

[23] Lattes (1896), p. 1080; Fiamma, *Opusculum de rebus gestis,* p. 45. For the statute itself, see *Liber statutorum communis Modoetiae*, p. 109 [*sic*].

[24] Storti Storchi (1984), p. 61,

[25] Cognasso (1923), p. 95, and, for Giovanni's policy in Novara, pp. 70ff.

[26] Fiamma, *Opusculum de rebus gestis*, pp. 43–5. For a recent assessment of the chronicles of Galvano Fiamma and Pietro Azario, with translated excerpts, see Dale (2007).

[27] Fiamma, *Opusculum de rebus gestis*, p. 44: 'Et nota quod licet parentes et predecessores istorum dominorum istas sex laudabiles et utiles leges introduxerint, per istos tamen duos dominos optime observantur.' Similarly, Azario, p. 43, pointed out that the laws ensuring that all citizens were safe in their own cities and that exiles were welcome back, were instituted by Azzone but only enforced under his two successors.

[28] Fiamma, *Opusculum de rebus gestis*, p. 45: 'Et ut communiter dicitur, in ista civitate nunquam fuit servata tanta justitia, sicut modo servatur.'

[29] On Galeazzo II's concept of justice, see Cengarle (2007), p. 72; on Galeazzo II's and Bernabò's contrasting interpretations of justice, see Gamberini (2003), pp. 249–54.

to Azario, preferred not to make exceptions: 'he never, or very rarely, granted petitions and he charged *podestà* and rectors to make judgments in accordance with the statutes of the places for which they had responsibility and, when such local laws were lacking, in accordance with *ius commune*';[30] judges were instructed to obey the law unless it seemed preferable to do otherwise, 'when occasionally he ordered something to be done in accordance with his own wishes.'[31] Galeazzo's practice contrasted with that of Bernabò, for whom true justice meant that legal niceties should be transcended and that he exercise his right to depart from the letter of the law. Bernabò took pride in the frequency with which he granted exceptions and dispensations, making himself readily available to subjects. In Reggio, for example, in order to provide easier access for petitioners, he arranged a local drop-off point for petitions.[32] He relished dispensing justice personally: in the words of the Florentine chronicler, Goro Dati, Bernabò was the advocate of the indigent: ' "Come to me and do not be afraid, all you who are poor; the rich and powerful have advocates whom they pay; I shall be yours, who cannot afford to spend," and he meted out summary justice.'[33] Bernabò's reputation was reinforced in innumerable *Novelle,* where his penchant for administering informal justice, both savage and benevolent, was a key theme.[34] Despite his infamous outbursts of temper and cruelty, therefore, Bernabò was seen as a lover of justice ('amans iustitiam')[35]. The imposing equestrian statue, which he commissioned for himself (now in Milan's Castello Sforzesco), is a monument of self-publicity: the two female figures on either side, Justice and Fortitude, emphasized Bernabò's desire to be associated with dispensing justice as much as with military strength.[36]

Another aspect of the Visconti's desire for justice was reflected in their many attempts to reform judicial procedure. From 1340 to 1386 a series of decrees provide evidence of their common desire to enforce a more just kind of justice. The general aims of the programme were outlined by Bernabò and Galeazzo in the decree of 1356 reforming Milanese procedures, a statement which was

[30] Azario, *Liber gestorum*, p. 15: ' Nulle petitiones vel rarissime expediuntur cum permitat potestates et rectores secundum statuta locorum eis submissorum iudicare et, statutis deficientibus, secundum ius comune.'

[31] Azario, *Liber gestorum*, p. 153: 'nisi aliud aliquando appareat quod vult exequi secundum dispoxitionem suam.'

[32] By contrast Galeazzo's remoteness was noted by contemporaries: see Comani (1902), p. 224. The process by which claims were settled by signori as a result of petitions or *suppliche* was well established by the fourteenth century: see Varanini (2002).

[33] 'Venite a me, e non temete, voi che siete impotente, che i ricchi e grandi hanno i loro avvocati, i quali sono pagati da loro, e io sarò l'avvocato vostro che non potete spendere; e facea loro sommaria ragione,' quoted in Vitali (1901), p. 272.

[34] Vitali (1901), pp. 272–5.

[35] Azario, *Liber gestorum*, p. 133. Corio also stressed this aspect of Bernabò's rule: 'Fu Bernabò gravemente subiecto al furore, severo nel iudicare, e dove iustitia intendeva, mirabilmente sequitava quella': *Storia di Milano*, i, p. 883.

[36] Holding a sword and a pair of scales, Justice is shown as a judge, the role in which Bernabò took such pride; on Justice's robe are carved the initials HB: 'Honor Bernabovis'.

reproduced widely in the statute books of subject cities. They claimed to want to 'bring litigation to a just and speedy conclusion, to take all measures within their power for the benefit of subjects, to eliminate opportunities for petty obstruction and subterfuge, to ensure creditors' ability to receive through the courts what was lawfully owed to them without frivolous objections and delays; to spare litigants effort and expense by obviating the mischievous intent of lawyers; and to provide for decent and peaceful paupers as well as for children, the orphaned, the disadvantaged and other such individuals, with vigilance, diligence and every consideration for the common good.'[37] Bernabò and Galeazzo were articulating the belief that justice in the courts could be achieved only by limiting the role of lawyers and curtailing established procedures; they attempted to introduce summary trials, to limit the scope for appeals, and to substitute arbitration for traditional litigation. Though the changes had limited success, the message was clear: the Visconti were defenders of true justice against the vested interests of the legal profession and of those rich enough to pay for lawyers' pernicious skills.[38] Here, in other words, was a concept of social justice in which the signore acted to counterbalance the weight of the community's more powerful elements.

Giangaleazzo and his successors proceeded to give further encouragement to a system in which justice was grounded on their ability to overturn laws and rights. During the fifteenth century, as the means by which the duke's absolute power could be exploited by subjects, private petitions became ever more important as a way of settling claims.[39] As a result of individual requests, the dukes were persuaded to grant and confirm exemptions and other concessions, intervene in court proceedings, impose settlements, and overturn sentences. Under the Sforza petitions were no longer an exceptional expedient.[40] The process indeed had given rise to a large bureaucracy, with increasing numbers of commissioners through whom ducal authority was exercised; these appointees were charged with making pragmatic decisions rather than following the letter of the

[37] 25 May 1356, *ADMD*, p. 16: 'Cupientes litibus finem debitum et velocem imponere et subditorum commoditatibus totis viribus providere, cavillationum subterfugiorumque materias amputare et ut ab aliquo seu aliquibus iuridice ex quacunque causa licita debentes recipere vel habere possint ad sibi debita (reiectis exceptionibus frivolis et temporum prolixitatibus), debite pervenire ut parcatur litigantium laboribus sumptibus et expensis, causidicorumque malitiis obvietur provideaturque bonis et pacificis pauperibus, pupillis et orphanis necnon miserabilibus personis ac caeteris aliis quibuscunque vigilanti animo et solerti cura communique utilitate circumspecta.' Another version can be found in Galeazzo's decree reforming procedure in the districts of Seprio and Burgaria (December 1355, *ADMD*, p. 8); the passage appears in the statutes of Brescia, Cremona, Como, Lodi, and Crema: see Storti Storchi (1996a), pp. 122–4, and nn. 158–67.

[38] Storti Storchi (1996a), p. 177. The idea that law and lawyers were actually an impediment to justice was a widely accepted topos: see Kuehn (2006), pp. 1058ff.

[39] Covini (2007), pp. 76–7, 86–7 and 92ff, demonstrates the link between the system of petitions and plenitude of power.

[40] 'In età Sforzesco l'intervento ducale delle commissione e dei rescritti assunse . . . proporzioni tali da trovare una collocazione definitiva nel sistema politico e giurisdizionle del dominio': Covini (2002), p. 140 and pp. 107ff; see also Varanini (1996), p. 119.

law.[41] The impulse behind the growing importance of commissioners came not just from the petitioners themselves, but from the dukes: a feature of Sforza government, particularly under Galeazzo Maria, was the administration of justice by commissioners as a means of raising revenue.[42] In addition, the Sforza shared the Visconti's distrust of the legal system. Francesco Sforza wrote in 1457 that 'it is our duty to see to it that justice is fairly administered to both rich and poor (and indeed to all our subjects) and to ensure that no one's rights are lost as a result of partiality or influence, or through the force and skill of the other side's litigation.'[43] Swift justice was the ostensible motive behind much ducal interference: as one official put it in 1495, lawyers must not be allowed to continue ad infinitum debating with Bartolo and Baldo.[44] By curtailing court proceedings and denying jurists the luxury of pursuing endless points of law, the Sforza, like the Visconti, believed they could promote a more just kind of justice.

THE DANGERS OF ABSOLUTE POWER

At the same time a system that came to rely on petitions and ducal commissioners, that entailed government intervention in court proceedings, and that implied disdain for the letter of the law, could endanger the duke's reputation, any risk to his claim to be a just ruler being recognized as a potent threat.[45] Plenitude of power had by this time come under sustained attack in legal circles. Baldo degli Ubaldi had expressed serious doubts just as Giangaleazzo finally achieved imperial recognition of his absolute power. His misgivings had found broad sympathy. The Visconti and Sforza themselves were aware that it was advisable to use plenitude of power cautiously. A remarkable series of measures show that they were well apprised of the dangers of granting individual concessions that were not just and lawful.[46] They realized that titles and privileges granted as a result of private

[41] Covini (2007), pp. 82ff. Filippo Maria Visconti set out the role of the commissari in a decree dated 2 October 1433: it was to extend 'ad ea que ad bonam custodiam et conservationem dictarum civitatum seu terrarum spectent et nostrum statum concernant, in quibus eisdem concedimus plenam potestatem.' The decree is published by Fossati (1925), p. 441.

[42] See Leverotti (1994), pp. 40ff, 54ff. [43] Quoted by Covini (2002), p. 127.

[44] Covini (2007), pp. 71–2 and (2002), p. 130. On Ludovico il Moro's attempts to ensure 'una giustizia "giusta" ', see di Renzo Villata (1983), pp. 151–61.

[45] Giasone del Maino, for example, in Consilium Bk 2, 177 ('In praesenti consultatione'), nr 7, did not spare Galeazzo Maria his reproaches for granting a petition which in his eyes was patently invalid and unjust: 'Advertendum est quod tales literae ducales manifeste sunt nullae et iniustae, quum fuerint ab ipsis comitibus ex iniustis causis impetratae, quae causae iniustae fuerunt in ipsis literis ducalibus expressae.' Della Misericordia (2004), pp. 196–7, demonstrated how successive petitions could progress: references to the practical advantages, which would result for both the duke and the community if a particular request were granted, gave way to a stronger warning, reminding the duke of the danger to his reputation for justice if it were subsequently cancelled.

[46] The decrees of 1377–83 mentioned below are discussed by Storti Storchi (1996a), pp. 172–4.

petitions frequently undermined another party's rights and, so it was suggested, tended to have been obtained as a result of *importunitas* or *surreptitio* (improper campaigning and false statements). These were fatal defects which could leave acts open to challenge, whether issued with or without plenitude of power. In 1377 Galeazzo II lamented that 'concessions are frequently granted as a result of untrue statements and the persistent demands of petitioners' so that they might well have been issued 'at the expense of accepted statutes, decrees, or judgments'. Galeazzo's intention was 'for everyone's rights to remain intact, for no one to be deprived of his lawful due,' and for justice—pure, simple and unadulterated—to hold sway in all his territories.[47] He banned further requests for such privileges, annulling those already granted. The following year Giangaleazzo published a similar decree, cancelling any privileges that undermined established rights; he had no desire, so he declared, to be a party to injustice.[48] The subsequent act of 1383 had a comparable purpose: again Giangaleazzo lamented the number of concessions he had been induced to make, not on his own initiative (*sponte*), but which, as a result of determined petitioning, infringed subjects' rights.[49]

In the decree of 1423, 'Providere volentes', Filippo Maria declared that 'it is not, and never has been, our intention to remove anyone's legally recognized rights,' and that no concession was to be interpreted in that way (adding the ominous let-out clause 'unless such was its express purpose').[50] In 1442 he passed a decree cancelling all orders on behalf of private creditors albeit made, so he claimed, in good faith (*omni charitate et humanitate*), which, having been conceded because of the persistence of petitioners, had trespassed on the rights of third parties. Such acts were against his own principles, defying *ius commune*, ducal decrees and communal statutes.[51] Similarly, despite his increasing reliance

[47] 13 October 1377, *ADMD*, p. 46: 'Attendentes quod saepe tum ex suggestionibus non veris, tum ex importunitate petentium, et pro eis intercedentium, per nos concessa seu facta sunt rescripta, decreta, statuta seu litteras quae reperiuntur esse et sunt derogatoria statutis decretis aut sententiis prius editis seu latis; et ex hoc volentes uniquique suum ius illibatum esse et neminem contra iuris debitum iure suo privari aut privatum esse, cum sit et semper fuerit nostrae intentionis iustitiam meram, puram et inviolatam in civitatibus et terris nostris ac inter subditos nostros quoscunque inconcusse servandam esse.'

[48] 19 April 1378, *ADMD*, p. 47: 'ad hoc quod nemo de nobis iuste conqueri possit huiusmodi litteras nostras et mandata quae quemvis damnificatum seu laesum contra iuris debitum reddidissent.'

[49] 20 December 1383, *ADMD*, p. 55: 'Accidit aliquando ut non sponte sed importunitate petentium, quorum multus est numerus, moneamur ad concedendum literas quae iuri derogant nonnullorum.'

[50] 6 October, 1423 *ADMD*, p. 258: 'Non fuit nec est intentio nostra ius alicui quaesitum tollere, declaramus quod per aliquas donationes, remissiones, absolutiones, aut alias quasvis concessiones, tam factas quam fiendas, non intelligatur ius alicui quaesitum sublatum esse (in quacumque conceptione verborum tales donationes, remissiones, absolutiones aut aliae concessiones factae sunt), nisi in eis specialis sit clausula "non obstante quod alteri sit ius quesitum".'

[51] 21 July 1442, *ADMD*, p. 300: 'Dictas omnes letteras . . . tamquam emanatas ad importunitatem petentium et contra rectam mentem dispostionemque nostram ac etiam contra dispositionem iuris communis, necnon decretorum, statutorum et ordinamentorum, tam nostrorum quam communitatum nostrarum, et in praeiudicium iurium tertii, cassamus, revocamus irritamus et pro

on the system of petitions, Galeazzo Maria, too, recognized the danger of being made to seem unjust: in 1475 he issued a decree, *On the proper administration of justice*, in which he reiterated that 'it is, and has always been, our aim to administer the law equally to all our subjects, without regard for anything but justice'; nevertheless, so he went on, there were those who doubted his commitment and who believed instead that, 'either as a result of our [actions] or through the failings of our officials, consideration was sometimes given to the interests of the Camera, with justice being contravened in order to benefit the treasury.'[52]

OVERCOMING FUNDAMENTAL RIGHTS

Despite the inherent dangers, the rulers of Milan were dependent on their ability to overrule laws and rights. Plenitude of power, not limited, as Baldo said, by any of the rules of public law, enabled them to annul or bypass contrary statutes and overrule existing rights; it helped them as legislators and judges, facilitating the parallel system of justice based on petitions. Above all, it enabled them to consolidate assets and to recompense supporters. Azzone was the first to take advantage of this last aspect of plenitude of power. In 1334 he used it to reward Franceschino da San Gallo by legalizing his title to estates acquired in Milan before he became a citizen, despite the law which explicitly forbade foreigners from owning property there.[53] Giovanni Visconti used plenitude of power to grant immunity from taxation to the village of Romano to repay 'loyalty and devotion'.[54] To placate the people of Piacenza, he and Luchino, with plenitude of power, waived taxes due and promised a rebate.[55] On becoming signore of Pavia in 1359, Galeazzo II relied on plenitude of power to win support by setting aside

penitus annullatis revocatis atque irritis haberi volumus.' Similarly in the decree against immunities of 31 December 1446 (*ADMD*, p. 329), he was able to claim that most grants of tax exemption had been extracted from him and his predecessors 'ex importunitate postulantum' and so needed to be re-examined.

[52] 8 March 1475, *ADMD*, p. 379: 'È sempre stata nostra intentione, et è, che alli sudditi nostri sia ministrata ragione equalmente, senza haver rispetto a cosa alcuna eccetto che alla giustitia, la qual cosa quantunque crediamo essere manifesta a cadauno del dominio nostro. Nondimeno per più loro certezza e per rimovere ogni dubio, se alcuno forsi dubitasse che per nostra casone o defetto delli nostri officiali aliquando si havesse rispetto alla utilità della nostra camera et se procedesse contro giustitia per fare utile alla camera, vi declaramo che intentione nostra è che'l se habbia rispetto solum alla giustitia.'

[53] Santoro (1976), p. 7: 'liceatque vobis omnes terras, domos et posessiones aquirere et . . . deinceps tenere libere et possidere sicut veri fuissetis cives Mediolani tempore earum aquisitiones . . . non obstante statuto quo cavetur quod nequis valeat aquirere immobilia in civitate vel comitatu Mediolani onera non substinens comunis eiusdem'.

[54] 15 October 1339, Santoro (1976), p. 18: 'Attendentes vestra fidelitatis et devotionis obsequia'.

[55] 1341 and 1343, Santoro (1976), p. 24.

judicial sentences in a general amnesty for political crimes.[56] As for consolidating assets, Giangaleazzo, in order to secure property rights for the treasury, turned to plenitude of power in 1386 to annul the claims of those who had failed to establish title within a specified time.[57]

The most common application of plenitude of power was to declare inapplicable any laws or rights that were contrary to a ruler's own acts. A derogation was generally included at the end of a given measure to get round any contradictory law or privilege. 'And this notwithstanding any statutes, provisions, ordinances or directives of ours made sent or ordering anything to the contrary' was a typical clause.[58] But plenitude of power was not needed every time a contradictory law had to be bypassed. As custodians of communal jurisdiction, the Visconti established the principle that decrees took precedence over other forms of law, including local statutes. This prerogative was either implied or made explicit in the handover of communal legislative authority, which itself took precedence over *ius commune.* In Azzone's election to power in Vercelli, to cite just one example, it was specified that his decrees were to be observed as law, 'notwithstanding any contradictory local laws or customs'.[59]

Since derogation was seen as part of ordinary, delegated powers, the Visconti did not have to resort to plenitude of power to invalidate other laws. An early example of a derogating clause can be found in Azzone's confirmation of a customs exemption for the monks of Chiaravalle in 1333, granted 'notwithstanding any statutes, provisions, enactments or contracts issued or yet to be issued, which are contrary to these [privileges]; with certain knowledge, and with all the authority we have, we explicitly desire, in as much as they are contradictory, for them to be derogated.'[60] Later derogations, in both concessions and decrees, were more cursory, frequently issued simply *ex certa scientia*: typical was Galeazzo II's

[56] Cognasso (1923), p.107, and Doc. 12, p. 153. Similarly Bernabò's amnesty of 1353 in Bologna was decreed 'per amicarsi il popolo, e sopratutto per rinforzare l'erario del comune che era ridotto dalle moltissime spese in condizione deplorevoli': see Sorbelli (1902), p. 215, and Doc. 68, pp. 425–30.

[57] 3 September 1386, *ADMD*, pp. 110–11.

[58] Decree of Galeazzo II, 1 July 1356, *ADMD*, p. 21: 'Et hoc non obstantibus aliquibus statutis, provisionibus et ordinamentis, aut literis nostris factis missis vel disponentibus in contrarium.'

[59] *Statuta communis Vercellarum*, col. 1504: 'non obstantibus iuribus, consuetudinibus, reformacionibus et omnibus aliis scripturis editis et edendis in contrarium loquentibus. Quibus omnibus et singulis intelligatur esse derogatum eciam si de predictis et quilbet predictis et quolibet predictorum specialem opporteret fieri mencionem'. In the handover of Milan in 1330, Azzone was given the authority to rule as he wished ('omnia facere, dicere et exercere') regardless of existing laws: 'statutis et ordinamentis, provisionibus, consuetudinibus et privilegeiis in contrarium facientibus non obstantibus', Cognasso (1923), p. 126. According to the statutes of Monza, Azzone had the right to 'disponere, corrigere, mutare et emendare totiens quotiens voluerit ad suam plenam, meram, et liberam voluntatem', *Liber statutorum communis Modoetiae*, f. 106^{v}. See above pp. 48–9.

[60] Osio, i, Doc. 53, p. 80: 'non obstantibus aliquibus statutis, provisionibus, reformationibus vel contractibus in contrarium premissorum editis vel fiendis. Quibus in quantum premissis obviarent omni auctoritate qua possumus expresse et ex certa scientia volumus esse derogatum.' Azzone's derogation was meant to cover the customs duties laid down in the statutes of Milan.

appointment in 1370 of a new vicar general for the Milan area, with discretion to ignore local statutes, 'notwithstanding all the contradictory municipal laws and statutes of the commune of Milan, every one of which from certain knowledge we derogate.'[61] *Ius commune*, that is, the whole corpus of civil, feudal and canon law, was sometimes overruled explicitly, as in 1350 when Giovanni agreed to put a stop to court proceedings in Bergamo, 'common and municipal laws to the contrary notwithstanding, every one of which from our certain knowledge we derogate'.[62] The list of laws derogated became more extensive over time. In 1386 Giangaleazzo issued the decree revoking his failed judicial reforms of the previous two years, 'notwithstanding any laws, decrees, ordinances, statutes or provisions passed by us or by the cities and lands subject to us, nor any constitutions, *iura communes* or municipal laws which in any respect contradict this decree'.[63]

Although they had sufficient authority over subject communes to override local and other laws, the Visconti nevertheless found they had to employ plenitude of power as an additional tool. As early as 1336, when confirming the excise duty granted by Lewis IV to Moltono dei Capitani di Mozzo, Azzone included the following derogating clauses: 'and this notwithstanding any general law or individual [right] by which our concession could be overruled; all these laws, even those which ought specifically to be mentioned, we expressly and from certain knowledge utterly overrule, and indeed from our plenitude of power desire to be in every respect derogated.'[64] Another typical instance was Galeazzo II's decree of 1370 against the alienation of land to non-subjects, issued 'notwithstanding any laws, statutes, provisions, and decrees which henceforth, inasmuch as they contradict or detract from the present decree, we, from certain knowledge, not in error and from our plenitude of power, entirely derogate'.[65] The explanation for the use of plenitude of power appears to lie not in the type of law to be set aside, but in its subject matter: plenitude of power was deployed if what was being derogated related to fundamental rights associated with

[61] 29 November 1370, *ADMD*, p. 40: 'Omnibus et singulis iuribus municipalibus et statutis communis Mediolani in contrarium loquentibus non obstantibus, quibus omnibus ex certa scientia derogamus.'

[62] *Lo Statuto di Bergamo del 1353*, p. 354: 'aliquibus iuribus comunibus vel municipalibus in contrarium loquentibus non obstantibus, quibus omnibus et singullis ex certa scientia derogamus'.

[63] 2 October 1386, *ADMD*, p. 123: 'non obstantibus aliquibus legibus, decretis, ordinibus, statutis, seu provisionibus nostris vel civitatum et terrarum nostro dominio subiectarum vel alicuius earum nec aliquibus aliis constitutionibus vel iuribus omnibus [sic for communibus] vel municipalibus huic nostro decreto obviantibus vel derogantibus quocunque modo'.

[64] *Lo Statuto di Bergamo del 1353*, p. 357: 'Et hoc non obstante aliqui iure generali et singullari, per quod possit huic nostre concesssioni aliqualiter derogari. Quibus omnibus et singullis eciam si de eis vel aliquo eorum deberet fieri mencio speciallis, expressim et ex certa sciencia penitus derogamus et esse volumus omni modo derogatum, eciam de nostre plenitudine potestatis.'

[65] 29 November 1370, *ADMD*, p. 40: 'non obstantibus aliquibus legibus, statutis, provisionibus et decretis, quibus ex nunc in quantum contraria essent huic praesenti decreto vel in aliquo derogarent, ex certa scientia et non per errorem, de nostrae plenitudine potestatis totaliter derogamus.'

ius gentium. In the examples quoted above, the laws that Azzone and Galeazzo wished to overrule protected property: these rights were being undermined by Moltono's excise and by Galeazzo's restrictions on the free realization of assets. Similarly with plenitude of power, Giangaleazzo was able to overcome all impediments posed by property laws in the decree of 1389, threatening permanently to confiscate all assets where claims were not proved within a specified time.[66] The decrees of 1392 and 1394 setting out conditions relating to the confiscation of property included derogations, ordered from plenitude of power, of any contradictory laws, rights and edicts.[67] Likewise all laws protecting rights of ownership were to be set aside when, in 1428, Filippo Maria authorized the reinstatement of Carmagnola's lands, including any that had in the meantime come under new ownership.[68]

It was his capacity to overrule rights enshrined in *ius gentium* by means of plenitude of power that encouraged Giangaleazzo to undertake a programme of judicial reform, which would have the effect of denying the fundamental right of access to justice. The changes of 1384, establishing a system of arbitration by 'three good men' in civil cases, was designed to short-circuit the usual procedures, including possible appeals; it concluded with the derogating clause 'notwithstanding any contradictory common or municipal law or statute, and all remedies which, from certain knowledge and our plenitude of power, we derogate'. The decree itself was issued on the strength of ordinary power, but with plenitude of power Giangaleazzo was able to set aside accepted legal redress.[69] In 1386 he revoked the new scheme in the face of mounting dissatisfaction in the legal profession. This time he included a derogating clause covering a wide spectrum of laws, but without reference to plenitude of power: ordinary power would suffice when normal judicial procedures were being reinstated.[70] Following the same principle, the whole decree of 1387 abolishing the right of appeal in criminal cases, 'contrary laws, statutes, provisions and decrees notwithstanding,' was issued 'de nostrae plenitudine potestatis'.[71] Again when Filippo Maria

[66] 2 July 1389, *ADMD*, p. 155.

[67] *ADMD*, pp. 168 and 202 (16 February 1394).

[68] Osio, ii, Doc. 257, p. 387–8: 'Non obstantibus aliquibus donationibus, concessionibus, alienationibus, translationibus, et remissionibus quovismodo factis, etiam non obstante quod alteri sit jus quesitum . . . quibus omnibus ex certa scientia etiam motu proprio derogamus et de nostre potestatis plenitudine etiam absolute derogamus'. Carmagnola had defected to the Venetians in 1425.

[69] 25 June 1384, *ADMD*, p. 71: 'etiam non obstante aliquo iure communi, municipali seu statuto in contrarium loquente, quibus omnibus remediis ex certa scientia et de nostrae plenitudine potestatis derogamus et derogatum esse volumus.' The follow-up act of 2 October 1385, *ADMD*, pp. 80–5, was drafted according to the same formula: the main body of the decree being issued from ordinary power, the derogation 'de nostrae potestatis plenitudine'. For the best discussion of these reforms, see Storti Storchi (1996a), pp. 152ff.

[70] 2 October 1386, *ADMD*, pp. 115–23; see Storti Storchi (1996a), pp. 164–71.

[71] 21 February 1387, *ADMD*, p. 128: 'de nostrae plenitudine potestatis statuimus et mandamus quod a nulla sententia in causa criminali criminaliter mota possit per aliquem appellari aut appellatio aliqua etiam ad nos quovismodo interponi quam appellationem si fuerit interpositam ex

launched a reform of criminal procedure in 1443 with the aim of improving the system in the lower courts, the changes themselves were decreed on the basis of ordinary power, but with plenitude of power all opposing statutes, decrees and rules were ordered to be superseded.[72]

REINFORCING GOVERNMENT MEASURES

When the Visconti and the Sforza set about reorganizing governing structures and the judicial system in their dominions, most acts could be decreed without plenitude of power. Contrary to what might be expected, plenitude of power was not inevitably associated with decrees involving jurisdiction or the judicial system itself. In the decrees reforming the judiciary mentioned above, the innovations themselves were ordered on the basis of ordinary power and only the derogating clauses with plenitude of power.[73] Jurisdiction could be granted, removed and reassigned with ordinary power, including the separating of subject communities from the jurisdiction of cities. Filippo Maria's handover of jurisdiction in Monza to his wife Beatrice in 1414,[74] for example, as well as Franceso Sforza's confirmation of Monza's liberties and privileges 'separatim dalla città di Milano' on 19 March 1450, were decreed from ordinary power.[75] Plenitude of power was needed only when basic rights were at stake. The series of decrees confirming the independence of Monza from the jurisdiction of Milan illustrates the principle. In 1335 Azzone confirmed that no one from Monza could be forced to have litigation heard in Milan; this privilege was reconfirmed by Galeazzo II in 1359.[76] Both these acts were issued from ordinary power. On the other hand, Galeazzo's decree contained an addendum cancelling all judgments made in Milan in contravention of the act; since court decisions accorded rights to individuals, that clause was issued from plenitude of power.

Plenitude of power could be used to forestall opposition and ensure that policies would be implemented. By cutting short suits presently going through the Milanese courts, Galeazzo wanted to ensure that the granting of independence to Monza would not be frustrated.[77] Abbiategrasso was similarly

nunc decernimus irritam et inanem, volentes dictam sententiam ita per omnia executioni mandari ac si dicta appellatio interposita non fuisset, aliquibus legibus, statutis, provisionibus vel decretis in contrarium latis non obstantibus, etiam si de eis fieri debuisset mentio specialis.'

[72] 11 November 1443, *ADMD*, pp. 303–6.

[73] December 1355, *ADMD*, pp. 8–15; 25 May 1356, *ADMD*, pp. 15–20; 25 June 1384, *ADMD*, pp. 69–71; 12 November 1443, *ADMD*, pp. 303–6.

[74] Osio, ii, Doc. 23, pp 27–30.

[75] 19 March 1450, *ADMD*, 332–3: see Storti Storchi (1993), pp. 26–8. On the policy of granting independence to subject communities, see Chittolini (2002), pp. 65ff, and idem (1983).

[76] 19 January 1335, confirmed 10 December 1359, *ADMD*, pp. 48–9.

[77] 10 December 1359, *ADMD*, p. 48; Giangaleazzo's reissue of the concession on 2 August 1379, *ADMD*, p. 49, was again decreed from plenitude of power, because it reconfirmed all aspects of the previous decree ('in omnibus et per omnia sicut iacent'), including the cancellation of judgments.

guaranteed independence from Milan by Galeazzo's wife Blanche of Savoy in 1373, by Giangaleazzo's wife Caterina in 1394, and by Filippo Maria in 1418. Again this measure was undertaken without plenitude of power, except for clauses in the last two grants where court powers were quashed with respect to ongoing actions in order to prevent the act's being obstructed.[78] Plenitude of power frequently accompanied the grant of fiefs, but was not a prerequisite: Filippo Maria's enfeoffment of Melegnano, Bescapè, and Belgioioso was undertaken from ordinary power, but plenitude of power was used to forestall opposition from existing claimants.[79] In 1446, having fallen out with Francesco Sforza, Filippo Maria reallocated the fief of Tortona to his nephew Iacopo, after it had earlier been assigned to Francesco: the re-enfeoffment was decreed from ordinary power, but predictably the cancellation of the agreement with Francesco Sforza was achieved with plenitude of power.[80] Again plenitude of power was a means of inhibiting redress through the courts.

The political advantages of absolute power became clear when the Visconti faced opposition: plenitude of power was enlisted in order to forestall the judicial safeguards that protected individual rights. In 1363 Galeazzo II issued a decree on the crime of 'laesae maiestatis seu nostrae dignitatis' for offences 'against our government, or rather, against his imperial majesty' (referring to the imperial vicariate in order to substantiate the claim to *maiestas*).[81] To deal with opponents who had escaped prosecution, Galeazzo used his 'imperialis potestas', seemingly a substitute for plenitude of power, to order the authorities to disregard accepted procedure and act summarily, ignoring all legal formalities; plenitude of power itself was used to overrule the relevant laws, statutes and customs.[82] In the aftermath of the coup of 1385, following this lead, Giangaleazzo invented a new offence, that of disparaging his good name, indictable under the same procedures as Galeazzo II had decreed; the crime itself was a novel concept in Milanese law

[78] 24 November 1418, *ADMD*, pp. 244–6: see Comani (1902), p. 217.

[79] Osio, ii, Doc. 24, p. 34; plenitude of power was used as well to make good any deficiency in law or fact and to derogate contrary laws and decrees, the last two clauses being issued 'de plenitudine potestatis sue etiam absolute'.

[80] *Stilus,* Doc. 195, pp. 234–6. The creation of counts and counties did require plenitude of power: see *Stilus*, Doc. 59, pp. 88–91, where plenitude of absolute power was used to separate Pioltano from Piacenza and make it a county, with Francesco da Lavezzola its count and feudatory; plenitude of power was used similarly to grant a new county, Castello di Montafia, as a fief to Antonio de Curte and for its separation from Pavia, *Stilus*, Doc. 60, pp. 91–2.

[81] *Maiestas* was associated with, if not formally attributed to, the Visconti from the time of Azzone. In the 1335 statutes of Como it was stated that those who acted against the signore or his officials were to be punished as if guilty of *laesa maiestas*: 'Item statuerunt et ordinaverunt et preceperunt inviolabiliter observari quod quicumque contra predictum dominum vel eius officiales aliquid tractaverit . . . ad arbitrium dicti domini et suorum officialium tamquam lese maiestatis rei, per ipsum dominum vel ipsius officiales realiter et personaliter puniantur', *Statuti di Como del 1335*, p. 18. General observations on the crime of *laesa maiestas* in this period can be found in Sbriccoli (1974), pp. 104ff.

[82] 2 January 1363, *ADMD*, p. 26: 'summarie et de plano, sine strepitu et figura iudicii et alio quocunque modo extra ordinem omnis iuris et statutorum solennitate.'

and was proclaimed with plenitude of power.[83] The following week Giangaleazzo published yet another punishable offence: it would be a serious crime to criticize any of his taxes or, presumably because such sentiments and language were seen as a prelude to rebellion, to refer specifically to 'the people' rather than to 'the commune'. Again the concept was novel, so that both the crime itself and the derogation of all contrary laws and local statutes were decreed from plenitude of power.[84]

When in 1393 Giangaleazzo issued comprehensive new criminal legislation covering offences such as the forging of government documents, highway robbery, and plotting treason against the regime, he used plenitude of power to ensure that exemplary sentences of unprecedented severity would be imposed without any of the usual safeguards as to evidence, the laying of charges, court procedure, or the possibility of appeal.[85] Such laws were decreed on the basis of plenitude of power, because they involved the suppression of due process. On the other hand, when in 1394 it came to rethinking the treason clause in the 1393 decree, the relevant provision was expunged and conventional punishments restored with ordinary power: plenitude of power was needed to impose extraordinary measures but not to order a return to established law.[86] In 1407 Giovanni Maria issued his own addition to the treason laws, a decree that aimed to ensure that prosecutions were not hampered by legal technicalities, such as the omission of a suspect's name or place of birth in documents. To get round the normal requirements, the decree declared that in cases of *laesa maiestas* or other attacks on the regime, a public proclamation outside the palace of justice in Milan would replace all legal formalities, enabling the presiding judge to proceed straight to verdict and sentence. It is no surprise to find that the act was passed from plenitude of power.[87]

REPEALING LAWS AND JUDGMENTS

The examples quoted so far demonstrate logical consistency: the Visconti had recourse to plenitude of power when policies involved the subversion of basic rights. To secure the regime the Visconti also needed to get rid of (as opposed to get round) inconvenient laws and decisions of the courts, a policy that came

[83] 8 October 1385, *ADMD*, pp. 85–6.

[84] 13 October 1385, *ADMD*, pp. 88–9.

[85] 24 Spetember 1493, *ADMD*, pp. 185–9.

[86] 8 May 1394, *ADMD*, p. 204: 'et super octavo continente de proditorie committentibus et tractantibus contra statum vel signoriam nostram astrascinandis etc. dictum capitulum et contenta in eo dumtaxat ex certa scientia corrigimus et cassamus, decernentes et tenore presentium salubriter providentes quod quaelibet singularis persona . . . tractans proditorie contra nos . . . poenis legalibus condemnentur et puniantur.' There is no reference to plenitude of power, either, in the decree of 2 October 1399, *ADMD*, p. 228, prescribing the same procedures and punishments for those supporting and encouraging treachery.

[87] 17 August 1407, *ADMD*, p. 238.

to depend more and more on plenitude of power. To abolish existing laws was difficult in practice, because it was never clear which laws were in force and which obsolete.[88] By Giangaleazzo's day the government had developed a mechanism for burying unwanted decrees, communal statutes, judgments or privileges.[89] In the earlier period existing acts had been annulled by using ordinary power, on the grounds that the Visconti had been given authority to rescind local statutes in the initial transfer of communal jurisdiction.[90] In 1330 for example, on becoming signore of Milan, Azzone decreed a series of judicial changes which, without reference to plenitude of power, included 'the cancellation of all statutes and ordinances contradicting or negating the above and silencing these contrary [acts]'.[91] Many times Azzone, Luchino, and Giovanni had occasion to reverse criminal sentences in the process of reconciling exiles and opponents in general amnesties, and these too were made on the basis of ordinary power. In 1335, with a bald declaration, Azzone 'pronounced all citizens of the city of Lodi to be freed and absolved from all convictions proceedings and sentences'.[92] Likewise archbishop Giovanni in 1349 issued a decree releasing inhabitants of Treviglio and Caravaggio from convictions resulting from trials which had taken place over the previous two years in the court of the local vicar general; once he had been paid 1,000 lire, he simply declared proceedings and sentences totally null and void.[93] In a decree of 1350, applicable to all his territories, he again declared, without reference to plenitude of power, that the proscriptions, convictions, and debts of those whom, as a gesture of piety, he had released from prison should be forthwith annulled.[94] In Bologna in 1353, again without plenitude of power, Giovanni issued a general decree detailing a scale of payments which would

[88] Covini (2007), pp. 122–6, shows how difficult it was to know which laws were valid at any time and how problematic it was in practice to get rid of laws.

[89] Total cancellation differed from derogation, which simply negated the effect of a contrary law on a particular act.

[90] See above pp. 48–9.

[91] ASMi, *Statuti di Milano*, 1, fasc. 3 'deducentes omnia statuta et ordinamenta predictis omnibus contraria vel necetiva seu super ipsis sillentium imponentes.'

[92] Santoro (1976), p. 8: 'pronunciavit, statuit et decrevit quod omnes de civitate et episcopatu Laude sint liberi et absoluti ab omnibus et singulis condempnationibus, processis et sententiis.' Similarly in 1336 Azzone issued a decree in which he clarified his intentions with regard to the pacification of newly acquired Piacenza: 'in ea parte ubi dicit in decreto predicto quod omnes et singuli civitatis Placentie et episcopatus sint liberi et absoluti ab omnibus et singulis condempnationibus processibus et sententiis a tempore ipsius dominii retro contra eos et quemlibet ipsorum factis etc., declaramus et interpretamus et verba predicta extendimus ad condempnationes processus et sentencias in criminalibus tantum factas et latas': Cognasso (1923), p. 86.

[93] Santoro (1976), p. 41. This favour to the Treviglians was repeated and accompanied by a grant of immunity from taxation: Santoro (1976), pp. 44–5.

[94] 5 July 1350, *ADMD*, p. 4: 'Edicimus per presentes ac universis potestatibus, rectoribus, vicariis et officialibus . . . quatenus omnes et singulos captivos et carceratos quos mandato nostro relaxati contigerit (utsupra praemittitur), de ipsorum bannis, condemnationibus et debitis pro quibus in carceribus tenebantur quantum est pro nostra parte et communium praedictorum, statim facta relaxatione prefata, aboleant, cassent protinus et cancellent.'

secure the cancellation of criminal convictions and exile imposed by the courts.[95] In 1358 Bernabò decreed that 'all immunities conceded by the archbishop [in Cremona] should be revoked and cancelled.'[96] In 1371 Galeazzo II, with ordinary power, abolished at a stroke 'the immunities and privileges which excuse many powerful and affluent people from the burden of taxation,' declaring all such concessions to be 'null and void and without force or significance'.[97]

Gradually it came to be accepted that the vital process of repealing existing acts and judicial proceedings, apart from measures that the ruler himself had enacted, was best done with plenitude of power.[98] Again plenitude of power was used here as a political instrument. In 1357, on the basis of their plenitude of power as signori of Milan, Bernabò and Galeazzo II annulled a grant of lands made by Matteo Visconti.[99] When Galeazzo II assumed control over Pavia in 1359, 'wishing to grant a special favour', he issued his general amnesty, ordering 'by his plenitude of power that it was to be inviolably observed that those exiled and absent from the city should be freely restored to their original condition and status . . . and that all relevant proscriptions and documents found are to be annulled, cancelled, and publicly burned'.[100] The decree of 1359 mentioned above, confirming the independence of the citizens of Monza, was expressed in a similar way: 'We decree by our plenitude of power and certain knowledge that the decisions and acts [of the podestà and other judges of Milan] are invalid and lacking in all force, as if executed by persons who are without jurisdiction and are not proper judges in those cases.'[101] The principle that plenitude of power was required to abolish laws outright was firmly established by Giangaleazzo's day, a good example being the scheme devised in 1383 to limit the involvement of lawyers in judicial proceedings: Giangaleazzo complained that their input was 'time-consuming, vexatious and had the effect of obstructing justice', and so he abolished by decree the many communal statutes that required the podestà to call for consilia in criminal trials: 'from our plenitude of power we cancel, invalidate and annul those [statutes] and all their effect and force.'[102] Here was

[95] Santoro (1976), p. 85.

[96] 'Volumus quod omnes immunitates concesse per dominum archiepiscopum super predictis sint irrite et nulle': Cognasso (1922), p. 160.

[97] 28 April 1371, *ADMD*, p. 43: 'Ea propter ex certa scientia edicimus, volumus et mandamus quod immunitates et gratiae quae multos potentes et habiles a talibus oneribus excusabant . . . cassae, irritae et nullius roboris vel momenti sint.'

[98] On the cancellation of a ruler's own acts, see below pp. 139–40.

[99] Santoro (1976), p. 109.

[100] 'Volens . . . facere gratiam specialem, de sue plenitudine potestatis statuit et decrevit inviolabliter observari quod ipsi banniti vel absentes de dicta civitate vel districtu libere restituantur in casum et statum in qui erant tempore dati banni . . . et quod omnia banna et scripture ex eis aboleantur et canzelantur et in contione publica comburentur': Cognasso (1923), p. 153.

[101] 10 December 1359, *ADMD*, p. 48: 'Decernimus de nostre plenitudine potestatis et ex certa scientia tamquam a non habentibus iurisdictionem aliquam et a non suis iudicibus gesta et facta non valere et omnino viribus carere.'

[102] Pavia Biblioteca Civica, ms. A III 30, f. 35v–36r: 'Nos dominus Mediolani etc. Comes Virtutum imperialis generalis ad noticiam nostram pervenit quod in nonnullis civitatibus terris et locis

a classic example of how the Visconti would make use of plenitude of power. The role of the offending statutes was declared invalid in criminal trials by the ubiquitous formula, *de certa scientia*, but plenitude of power was needed to authorize the abolition of the laws themselves 'so that they have no status and are not followed'. The procedure proved invaluable: in order to consolidate the *coup d'état* of 1385 after the capture of Bernabò, Giangaleazzo made use of plenitude of power to win the support of the people of Martesana. The leading families there had suffered confiscations, exile, and death in an orgy of revenge after rebelling against Bernabò.[103] Naturally Giangaleazzo responded enthusiastically to the petition requesting restoration of property, 'destroying, annulling and totally abolishing by our plenitude of power' all Bernabò's judicial proceedings; the judgments were 'invalid and were to be eradicated, cancelled and expunged by the responsible officials, together with the papers and books in which they were written; they were to be considered as never having been passed'.[104] The emphatic reiteration of the vocabulary of annihilation reflected Giangaleazzo's political purpose in the aftermath of Bernabò's overthrow.

Giangaleazzo had to denigrate his uncle's regime in order to legitimize his seizure of power. He turned again to his absolute power in order to repeal the entire body of Bernabò's legislation on the grounds of peace and justice. 'Mindful of the well-being of our territories,' he proclaimed, 'it is our duty to ensure that happiness and tranquillity prevails'; Bernabò's acts 'deviated from *ius commune*, and so were not consistent with the peace that represents the fruits of justice. Therefore, by this decree, using the best means open to us and by our absolute power, we annul, cancel, and revoke all decrees and ordinances whatsoever issued and passed by Bernabò' without the express consent

dominio nostro suppositis vigent statuta seu provisiones' decreta vel ordinamenta quorum vigore in causarum et questionum criminalium examinatione seu diffinitione potestates seu iudices vigentur seu astringi possunt ad assumendum conscilium sapientis alterius vel sapientium quod vehementer extitit et est nobis tediosum et molestum maxime quia nobis constat quod abinde resultat et resultare potest impedimentum iustitie contra intencionem nostram. Idcircho decernimus edicimus et ex certa scientia mandamus quod statuta, decreta, provisiones et huiusmodi ordinamenta sunt quoad causas et questiones criminaliter intemptatas ipso jure et facto cassa et irrita et nullius valoris et momenti eaque de plenitudine potestatis nostre cassamus irritamus et anullamus et eorum effectum et vigorem ita quod de cetero modoquo supra dicximus locum non habeant nec observentur.' A version of the decree from 30 November 1393 is published in *ADMD*, p. 194. On this decree, see Storti Storchi (1996a), pp. 150–1, and n. 242. There is similar usage in the decree of 1 January 1398 (*ADMD*, pp. 218–22) establishing a new system of accounting in the collection of taxes. The whole process was enforced 'ex certa scientia et de nostrae plenitudine potestatis etiam iubemus servari debere praecise prout iacet et inviolabiliter pro lege haberi, contradictione et exceptione cessantibus quibuscumque et ita observari ordinetis et faciatis de caetero diligenter cum effectu.'

[103] Cognasso (1955a), p. 485.

[104] 7 June 1385, *ADMD*, p. 78: 'Omnes processus, condemnationes et banna contra praedictas personas . . . de nostrae plenitudine potestatis tolentes, cassantes et paenitus abolentes, declarantesque ipsas et ipsa esse nullas et nulla et per omnes officiales ad quos spectat et spectabit tolli cancellari et aboleri debere de quibuscumque capitularibus et libris ubi descripta et inserta et scriptae et insertae reperiantur, eaque et eas irrita et nulla ac irritas et nullas, nulliusque valoris et momenti et pro non factis haberi debere.'

of Galeazzo II or Giangaleazzo himself.[105] Filippo Maria adopted the same tactic on becoming duke after the chaos which had followed Giangaleazzo's death. Again he wanted to dissociate himself from the previous period, so that there was a political and presentational purpose behind the decree of 1413 aiming to prevent among citizens of the duchy any 'disturbances, quarrels, confusion and conflict which could arise because of statutes issued during the time of wars and upheavals which are at odds with, contrary to and, in our opinion, completely at variance with the decrees and ordinances of our illustrious predecessors and of the Milanese commune'. Therefore he ruled 'ex certa scientia et de nostre plenitudine potestatis' that all laws passed by the occupiers of Giangaleazzo's lands since his death 'were and are not valid or binding, and are of no worth, efficacy, force or significance'.[106] As with previous attempts at wholesale repeal, the practical effects of the decree were limited, but the mechanism was clear: Filippo Maria, like Giangaleazzo, turned to plenitude of power as the way to annul laws and judgments in order to distance himself from the previous regime.

The convention established by the second half of the fourteenth century, whereby plenitude of power was used to eliminate unwanted laws and troublesome individual rights, was applied with notable consistency once Filippo Maria had re-established the Visconti regime. Such is the conclusion to be drawn from the chancery handbook, the *Stilus cancellariae*, the collection of Filippo Maria's letters of appointment, pardons, grants of citizenship, concessions of immunity and other privileges, compiled by Francesco Sforza's chancery.[107] The series of political pardons contained in the *Stilus* illustrate this trend. Following his term as commissario in Cremona, Giacomo da Lonato, for example, was absolved of

[105] ASMi, Registri ducali, 212, p. 116: 'Nobis incombunt de statu salubri ipsius nostre civitatis comitatus et districtus, cogitare nos convenit ut in eis vigeat tranquilis beatitudo. Cum igitur per olim dominum Bernabonem vicecomitem fuerint diversa decreta eddita a iure comuni exorbitantia et paci non congruentia et fructus iustitiae sit pax. Idcirco presenti nostro decreto omni modo quo melius possumus et de nostre absolute potestate cassamus, annullamus, irritamus et revocamus quecumque decreta et ordinamenta facta et eddita per prefatum dominum Bernabonem in quibus non fuerit nostri seu bone memorie magnifici domini genitoris nostri expressus consensus.'

[106] 'Ad solvendum jurgia et dissensiones, perplexitates, contentiones et debata que suscitari vel oriri possent inter cives istius nostre civitatis ac homines et personas ducatus ejusdem ratione et occasione certorum statutorum et ordinamentorum conditorum in burgis, terris et locis predicti nostri ducatus tempore guerrarum sive novitatum que viguerunt in ipso nostro ducatu, eisque durantibus discrepantium sive obviantium, sicut sentimus, et exorbitantium a decretis, statutis ac ordinamentis illustrium quondam dominorum predecessorum nostrorum, communisque nostri Mediolani, quibus dispositi sumus condecentibus oviare remediis, ex certa scientia et de nostre plenitudine potestatis hoc presenti nostro decreto . . . statuimus . . . quod aliqua decreta, statuta seu ordinamenta condita seu facta in terris predicti nostri ducatus sive facta fuerint per detentores ipsarum terrarum sive per aliquam communitatem, commune, collegium aut universitatem . . . a die obitus quondam felicis recordationis domini genitoris nostri citra, contra observantiam supradictam non valuerint neque valeant nec teneant, nulliusque sint et esse intelligantur valoris, efficaciae, roboris et momenti': Osio, ii, p. 15.

[107] See above p. 92.

his conviction for corruption;[108] Giovanni of Lodi of his condemnation for murder;[109] the Venetian condottiere, Antonio da Marsciano, for crimes 'however abominable' committed in 1432 against the regime.[110] Unlike comparable acts issued under the early Visconti,[111] these pardons were granted on the basis of plenitude of power. Similarly, plenitude of power could be used to forestall judicial proceedings: it exonerated Gian Galeazzo Ponzoni without trial for his part in activities hostile to 'nos et statum nostrum etiam si crimen lese maiestatis incidisset',[112] and freed the entire population of two communities, Val San Martino and Valle Imagna, from judicial liablity for plotting against the regime.[113] A pardon would normally promise to restore the recipient to his previous status and in such circumstances plenitude of power proved invaluable. Filippo Maria did not need plenitude of power to return property still held by the treasury, so that in the 1420s Ludovico and Emanuele Cavalcabò of Cremona were pardoned on the basis of ordinary power for acts of rebellion and confiscated goods were given back, 'except for rights which have since been acquired by someone else'.[114] On the other hand, plenitude of power was unquestionably required to restore property which had subsequently been sold or given away. In the case of Gian Galeazzo Ponzoni, cited above, the pardon specifically stated that restitution would be made even though his property had subsequently been acquired by new owners, the contracts involved being overturned by plenitude of power.[115]

EXPLOITING THE NEED FOR A JUST CAUSE

The principle of the just cause came to be fully acknowledged as the Visconti became aware that, however routine the use of plenitude of power, some justification would be needed for infringing property and other rights. It was true that many times a just cause was claimed in the form of a bald assertion: when Galeazzo II used plenitude of power in 1370 to prohibit sales of land to non-subjects, denying property owners the free disposal of assets, he declared simply

[108] *Stilus,* Doc. 127, pp. 163–4; on the difficulty of dating the individual diplomas contained in the *Stilus*, see 'Introduzione generale,' p. clxvi.

[109] *Stilus*, Doc. 161, pp. 196–7. [110] *Stilus*, Doc. 162, p. 197.

[111] See above pp. 128–9. [112] *Stilus*, Doc. 164, pp. 198–9.

[113] *Stilus*, Doc. 165, pp. 199–200.

[114] *Stilus*, Doc. 164, pp. 198–9. The same principle applied in the series of tax concessions and pardons decreed on 26 December 1476, 1 January 1477, and 15 January 1477 (*ADMD*, pp. 383–5) by Bona Sforza after Galeazzo Maria's assassination.

[115] *Stilus*, Doc. 164, p. 199: 'Aliquibus donationibus et alienationibus per nos sive per alios factis de bonis huiusmodi, in quovis facte reperiantur, non obstantibus; quibus ex certa scientia et de nostre plenitudine potestatis, derogamus.' As is clear from other sources, annulling a formal contract required plenitude of power; an example can be found in the decree 18 May1437 forbidding notarial acts from being drawn up on Sundays and holy days: from his plenitude of power Filippo Maria declared such instruments 'nulla sint, nulliusque valoris, efficaciae, roboris et momenti et prorsus inania': *ADMD*, p. 276.

that he was impelled 'ex iustis et rationabilibus causis'; later, too, when investing members of his family with Melagnano, Bescapè, and Belgioioso in 1414, Filippo Maria annulled all existing claims 'ex certa scientia et proprio motu et de ipsius plenitudine potestatis etiam absolute', stating merely that he was acting 'ex iusta causa'.[116] But the Visconti began to see that even for individual concessions, the requirement to articulate a just cause was an opportunity to dissociate the use of plenitude of power from the suggestion of abuse. The *Stilus cancellariae* included a property grant of the most thorough type, relying on plenitude of power to overrule all existing ownership rights of whatever kind and derogating in particular the decree of 1423 protecting the rights of third parties. The document referred to the loyalty, devotion and diligence of the recipient as well as to the 'legitimate cause' underlying the concession.[117] With regard to general decrees the government attempted to provide more elaborate explanations. By this means infringing the law would be put in the best possible light, an acceptable rationalization bolstering the Visconti image as just rulers. In 1386, for example, Giangaleazzo forbade the export of grain, using plenitude of power to order instant compliance 'without anticipating any legal impediments', because he was 'mindful of the many previous episodes which had led to serious misfortunes and horrendous disasters'; his excuse here for blocking potential profits was to avoid dearth and famine.[118] A frequent justification was found in the duty to support the work of the church: devotion to the Virgin was the stated reason for Giangaleazzo's decree authorizing cathedral officials to sell certain property with the stipulation, based on plenitude of power, that all claims by third parties not divulged within six months would lapse.[119] A wish to prevent the dissipation of church property, 'without which divine office cannot be celebrated', was the motive for Giangaleazzo's decree of 1401, again issued with plenitude of power, limiting to nine years any investiture involving ecclesiastical holdings and annulling existing agreements made otherwise.[120] The requirements of good government were deemed to justify the revocation of individual rights: in 1413 Filippo Maria ordered, from plenitude of power, that, despite any past agreements, lands held in fief were not exempt from excise duties; he gave, by way

[116] Osio, ii, Doc. 24, p. 34.

[117] *Stilus*, Doc. 181, pp. 212 and 214: 'Quibus omnibus donationibus, alienationibus, translationibus in feudum, concessionibus et contractibus quibuscunque etiam juris gentium, ex certa scientia et causa legitima, animo deliberato et de nostre plenitudine potestatis etiam absolute et ad cautellam tenore presentium, quatenus expediat, derogamus easque in totum revocamus . . . non obstante aliquibus statutis, decretis . . . et maxime decreto nostro, edito de anno curso mcccxxiii de mense octobris'. On other clauses in the 1423 decree 'Providere volentes', see below p. 142.

[118] 18 July 1386, *ADMD*, pp. 106 and 103: 'Volentes providere ne in nostro territorio valeat quod absit fames seu carestia pervenire. Memorantes quod alias multarum gravibus incommodis et horrendis cladibus contigerunt.'

[119] 23 December 1394, *ADMD*, pp. 209–10; this clause was specifically introduced on the basis of plenitude of power, 'Edicimus, decernimus et sancimus utsupra [i.e. ex certa scientia et de nostrae plenitudine potestatis]'.

[120] *ADMD*, p. 234.

of justification, concern for the maintenance of the regime and the well-being of subjects which would follow from the supply of adequate revenues.[121] In 1433 he declared that the transfer of tax exemption when land was sold by members of the family to outsiders, by means of various legal fictions, was 'seriously detrimental to the treasury and to tax revenue, and a great burden and loss to other subjects'; with plenitude of power he repealed the grants of immunity included in all such sales.[122] In the decree of 1446, mentioned above, instigating, under threat of revocation, an inquiry into the value of all tax exemptions, Filippo Maria again articulated a just cause for invoking plenitude of power: 'We require the means to see to our affairs and the ability to manage matters on an orderly basis.'[123]

The most common defence for infringing individual rights was to associate overriding the law with justice itself: by linking plenitude of power to fairness in general the Visconti not only fulfilled the necessary conditions, but pursued the aim of appearing as just and legitimate rulers, even while disregarding the law.[124] Accordingly, when in 1386 Giangaleazzo issued a general summons to all those who had claims on property held by the treasury, threatening to cancel with plenitude of power any titles not proved within a prescribed period, he cited as a just cause the desire to curtail the unending process of claim settlement, 'so that to each may be given his due'.[125] Again in 1386 he issued a decree prohibiting by means of plenitude of power all inhabitants of his territories, clergy as well as laity, from petitioning, without permission, either pope or emperor for privileges. The justification for depriving individuals of this avenue of advancement was, so he stated, not his own desire for control but because such concessions were inimical to other subjects' rights, unfairly causing

[121] 'Curis anxiis, ac diligenti meditatione pensantes intra claustra pectoris nostri quod sit efficatius et salubrius adminiculum pro manutentione status nostri, subditorumque nostrorum defensione et conservatione, nihil utilius cognoscimus, videmus potissime isto instanti tempore quo intrate nostre non respondent ad incumbentes nobis expensas quam quod conserventur illese intrate imbotaturarum bladi et vini, salis et mercadantie pertinentes ad cameram nostram.' Osio, ii, Doc. 20, pp. 23–4.

[122] 22 September 1433, *ADMD*, p. 272: 'Vigore talium fictorum et simulatorum contractuum massarii, seu fictabiles censeantur de agnatione nostra praedicta, vel aliorum exemptorum, in grande detrimentum camerae nostrae, intratarumque nostrarum et aliorum nostrorum subditorum non modicam laesionem et iacturam . . . Hoc praesenti nostro decreto ex certa scientia et de nostrae plenitudine potestatis etiam absolute removemus annullamus et totaliter irritamus quo ad observantiam exemptionum praedictas omnes et singulas venditiones, donationes, obligationes et investituras temporales et emphiteoticas.'

[123] 31 December 1446, *ADMD*, p. 329: 'Cupientes ut rebus nostris postmodum providere et eas certo ordine gubernare valeamus'; see above p. 121, n. 51.

[124] That concept had been at the root of Bernabò's system of personal justice. On the relationship between plenitude of power and justice, see Caravale (1994), p. 541; Krynen (1988), pp. 134–5; Storti Storchi (1996a), p. 61.

[125] 3 September 1386, *ADMD*, p. 111: 'Hoc enim decernimus et pro lege ac decreto nostro intendimus inviolabiliter observari, ne huiusmodi causae restitutionis in infinitum extendantur, et ut ius suum unicuique tribuatur.' *Suum cuique tribuere* is the definition of justice and one of the principles of law given in D. 1, 1, 10.

them serious loss and the prospect of time-consuming and expensive litigation.[126] The declared reasons for Giangaleazzo's recourse to plenitude of power in 1386 in order to ban parties and factions was that they posed a danger not to the regime but to society as a whole: these organizations were 'unlawful, dishonest and corrupt';[127] members were 'unwilling to trust the scales of justice' and had formed such associations simply to gain the power to crush opponents and rivals more effectively.[128] In another decree the link between plenitude of power and government conducted 'honourably, justly and without the stain of illegality' was made explicit: Giangaleazzo was anxious to dissociate himself from corruption, so that in 1399, 'from the plenitude of our power as conceded to us in accordance with God's will by his imperial highness', he decreed that 'it had to be inviolably observed as a universal law in all our lands' that anyone found guilty of any kind of violence or extortion would be barred from holding all future administrative positions.[129] Likewise, with regard to the abolition of tax exemptions, plenitude of power was presented not only as a tool of good government but as a force for justice; in an exceptional appointment, Filippo Maria designated Sperone di Pietrasanta head of finance[130] with wide powers to ignore legitimate concessions of immunity; plenitude of power was used to ensure that those who lost tax exemption could not sue on the grounds of any law or individual privilege, and that the decree of 1423, 'Providere volentes', guaranteeing the rights of third parties, would not be observed. The justification was that, with the appointment of one 'who stands above others in the sincerity of his loyalty, devotion to justice, integrity, diligence, and authority', the recovery of revenue would be carried out more efficiently and equality would prevail.'[131] It has recently been shown how,

[126] 26 September 1386, *ADMD*, p. 115: 'Cum saepe contingit, praesertim importunitate petentium, quod diversarum manerierum privilegia, tam papalia quam imperialia, concedantur in praeiudicium et grave damnum iurium subditorum nostrorum et per quae ipsi iniuste non sine magnis eorum incommodis et sumptuosis laboribus litigiosis inditiorum anfractibus implicantur.'

[127] 14 April 1386, *ADMD*, p. 98: 'illicitas et inhonestas et contra bonos mores'.

[128] 14 April 1386, *ADMD*, p. 98: 'Nonnulli cives et subditi nostri de libramine iustitiae non confisi, scilicet, potius eorum pravis cogitationibus, inhaerentes ligas, uniones, confoederationes, sectas et conventiculas, necnon coniurationes et conspirationes diversimodas ad invicem facere procurarunt et procurant ut exinde praecipue potentiores fiant et ob hoc eorum adversarios et aemulos ac etiam eisdem assistere non volentes opprimere possint et facilius superare.'

[129] 14 February 1399, *ADMD*, p. 225: 'Attendentes quod nihil sanctius est in superiore regente quam modum et ordinem apponere ut collaterales, syndicatores, potestates, vicarii, capitanei . . . recte, iuste et absque illiciti macula gerant; ea propter ad refrenandum multorum violentias, extorsiones, facinora et alia illicita qui abruptis debite fidelitatis iustitiae, obedientiae ac virtutum habenis gubernacula administrationis per nos et etiam auctoritate nostra eis attributae non recte seu non iuste gerunt, praesenti nostro decreto motu proprio, ex certa scientia et de nostra plenitudine potestatis nutu divino a Caesarea dignitate nobis concessae, edicimus, ordinamus, statuimus et decernimus et pro lege nostra generale in nostro universo Dominio praesenti et futuro inviolabiliter observari volumus.'

[130] Sperone was appointed Maestro generale di tutte le entrate e spese ducali.

[131] *Stilus,* Doc. 97, pp. 128 and 129–30: 'Vehementer appetamus ut ipsa pecuniarum recuperatio fiat cum qua minori fieri possit incomoditate et equalitas omnino procedat, et cognoscamus aperte eius rei administrationi et cure virum fore preponendum, qui sinceritate fidei, justitie cultu,

under the Sforza, too, as a conscious feature of administration, the use of absolute power in privileges and dispensations was a way of ensuring equity.[132]

PLENITUDE OF ABSOLUTE POWER

Plenitude of power could be regarded as devalued by the adoption of the tautology 'plenitude of absolute power'. In legal commentaries, absolute power was considered a synonym for plenitude of power, that is, authority to act outside the law.[133] It was not obvious how plenitude of absolute power could add anything extra: the significance of the phrase has to be gleaned from the contexts in which it was used. Plenitude of absolute power was sometimes deployed to reflect the importance of the subject-matter or the wide scope of particular acts. Reference to absolute power, as opposed to plenitude of power, first began to appear in decrees of the late fourteenth century: Giangaleazzo's act of 1385 abolishing the entire body of Bernabò's legislation was passed 'de nostre absolute potestate'.[134] The complete phrase, 'plenitudo absolutae potestatis', is found from the early fifteenth century. In 1408 Giovanni Maria issued a full and universal pardon to the people of Vimercato for rebelling against him, emphasizing the significance of the concession using plenitude of absolute power.[135] In 1415, in an attempt to win back Visconti control, Filippo Maria created the county of Cremona, enfeoffing it to Gabrino Fondulo, its current occupier. 'Impelled by concern for the preservation and expansion of the regime,' he issued the long and solemn document 'de eius ducalis potestatis plenitudine et absolute'.[136] The phrase appears in 1442 in Filippo Maria's decree against legitimizations which had been made by counts palatine without parental approval. Again it was the exalted context of the decree which dictated its use. The authority to legitimize had been granted by the emperor himself, a fact of which Filippo Maria was conscious; feeling sure, so he claimed, that the emperor would approve the attempt to put an end to such an abuse of imperial privilege, he summoned plenitude of

integritate, solertia et auctoritate pre ceteris emineat . . . Hec igitur omnia et eorum quodlibet plenum effectum validum que robur habere volumus ac ex certa scientia et de nostre plenitudine potestatis statuimus, decrevimus ac pro lege servari volumus, non obstantibus aliquibus juribus, tam communibus quam municipalibus, generalibus vel spetialibus, statutis, decretis, provisionibus, ordinibus ac privilegiis quibuscunque, que predictis vel alicui eorum aliqualiter obviarent vel aliter formam darent, et presertim quodam decreto per nos edito de anno mcccc°xxiii, incipiente "Provideri volentes" etc. nec eius dispositione quibus ex certa scientia et de nostra potestate antedicta, premissorum respectu, expresse derogamus, quamquam diceretur jus tertii licet in modico tolli vel ledi.'

[132] Covini (2007), pp. 143–6, 154–5.

[133] Alberico referred to 'absoluta potestas' as well as to 'plenitudo potestatis' in his comment on the Constitutio Omnem of the *Digest*: see above pp. 16–17.

[134] ASMi, Registri ducali, 212, p. 116; see above pp. 130–1.

[135] Osio, i, Doc. 267, pp. 404–5.

[136] Osio, ii, Doc. 27, p. 42.

absolute power to annul all such legitimizations.[137] Plenitude of absolute power appears again in what the *Stilus cancellariae* described as *amplissima* concessions and transfers of property: the fullest donation exemplified in the formulary includes five separate references to plenitude of absolute power.[138] Later in the period came the decree of 1490 in which Ludovico il Moro attempted to restrict feudal succession to legitimate male heirs 'ex certa scientia et de nostrae potestatis plenitudine, etiam absolutae'.[139]

Following papal practice, the Visconti began, from the second half of the fourteenth century, to adopt the convention that, with plenitude of power, they could rectify legal flaws.[140] Bernabò's grant of lands to his wife of 1366 contains the phrase 'supplying all defects which might be found in this [document] from plenitude of power'.[141] Giangaleazzo's criminal law decree of 1393 was more ambitious, 'supplying from certain knowledge and as above [i.e. from our plenitude of power] every error of fact and law'.[142] By the fifteenth century plenitude of absolute power, rather than basic plenitude of power, was called upon for major failings. Defects of mere formality (*defectum solemnitatis*) or phraseology (*defectum verborum*) could be made good by plenitude of power; but substantive deficiencies, that is of law and fact (*defectum iuris et facti*), required plenitude of absolute power. The *Stilus cancellariae* gave the example of a straightforward grant of citizenship rectifying errors of form from plenitude of power.[143] In contrast, the sale of a tax farm showed how defects of fact and law were made good by means of plenitude of absolute power.[144] Defects of

[137] 9 October 1442, *ADMD*, p. 301: 'Satis dubii et incerti fuimus quodammodo ea scandala et inconvenientia tolleremus, quae ex huiuscemodi abusione proveniunt, ne fienda a nobis provisio imperiali auctoritate aliqua ex parte detrahere videretur aut aliena esse a reverentia, obedientia et devotione qua Sacro tenemur Imperio; sed postea cogitantes quod per importunitatem petentium ampliora saepe conceduntur . . . nihil dubitantes quod imperialis maiestas pro sua immensa prudentia et maxima erga nos benevolentia et charitate provisionem a nobis fiendam non improbabit, sed factam iudicabit ad scandala prohibenda, et maxime commendabit.'

[138] See for example *Stilus*, Doc. 181, pp. 212–15 (below p. 202); see also the *amplissima* grant of citizenship to Luigi di San Severino (Doc. 146, pp. 184–5) and the wide exemptions he was granted (Doc. 168, pp. 202–3).

[139] 27 March 1490, *ADMD*, pp. 413–14.

[140] The basic principle had been acknowledged in the early fourteenth century in a well known passage by Guido da Baisio 'Arcidiacono': 'Quid si clausula illa "supplemus de plenitudine potestatis si quis fuisset defectus" ponatur forte in privilegio' (*Super Decreto*, Dist. 56, c. 13, Cenomanensem, nr 1); the phrase was commonly used in papal and imperial documents.

[141] 'Volumus, insuper, dicimus et mandamus de plenitudine nostre potestatis hanc nostram concessionem, donationem et dispositionem valere et tenere et in perpetuum servari debere, etiam si omnis solemnitas iuris et statutorum intervenisset ac si foret legiptime insinuat, supplentes etiam omnem defectum qui repperirentur in predictis', Santoro (1976), p. 160.

[142] 23 September 1393, *ADMD*, p. 188: 'Supplentes ex certa scientia et utsupra [de nostrae plenitudine potestatis] omnem defectum facti et iuris in praedictis.'

[143] *Stilus*, Doc. 144, p. 182: 'supplentes de eadem nostra potestate [i.e. de nostre plenitudine potestatis] omni defectui cuiuslibet solemnitatis'; see also Doc. 60, p. 92; Doc. 182, p. 216.

[144] *Stilus*, Doc. 189, p. 223: 'supplentes ex certa scientia et de plenitudine nostre potestatis, etiam absolute, quoscunque defectus et quascumque solemnitates tam iuris tam facti'; see also *Stilus*,

fact were not just omissions in the narrative, but shortcomings in the actual circumstances to which the act was being applied.[145]

'PLENITUDE OF POWER SHOULD BE USED RARELY'

In accordance with Innocent IV's dictum that plenitude of power should not be employed as a general expedient,[146] Baldo was firmly of the view that, 'even though a ruler has plenitude of power, he should use it rarely, because he has to be more scrupulous than other people.'[147] It was a difficult teaching for governments to follow because plenitude of power was a necessary device in so many instances. Nevertheless, conscious as ever of the need to avoid an abusive or tyrannical image, the aim of the Visconti appears eventually to have been to omit plenitude of power wherever possible. For example, they discontinued recourse to plenitude of power when disallowing future contracts. In 1370, under the old system, Galeazzo II had relied on plenitude of power for his version of the law forbidding the alienation of land to foreigners. The decree included a clause forbidding notaries from drawing up any related documents: 'from our plenitude of power such contracts and alienations are henceforth invalid and without force, effect or worth'.[148] Likewise Giangaleazzo's act of 1386 against factions employed plenitude of power to ensure that leagues 'however entered into or contracted shall be and are to be invalid, worthless and without force or significance'.[149] But in 1394 he felt able to decree without reference to plenitude of power that business contracts agreed between locals and government officials in subject cities would thereafter be considered invalid.[150] Filippo Maria also realised that plenitude of power was not required to preclude future acts which contravened a decree. The act of 1419, restricting the possibility for childless wives to bequeath dowries

Doc. 141, p. 179; Doc. 181, p. 214; and Osio, ii, Doc. 24, p. 34 (1414); Bib. Civica Pavia, ms. A III 30, f. 60 ^{r} (1468).

145 This was not considered an empty formula: defects of fact could be remedied according the decree 'Providere volentes' of 1423 which declared that ducal statements in criminal cases were to be accepted as incontrovertible evidence.

146 See above p. 11.

147 Baldo on C. 4, 52, 2 (De communium rerum alienationem, l. Multum): 'Nota tamen quod licet Princeps habeat plenitudinem potestatis, tamen raro debet ea uti, quia magis cavere se debet princeps quam alius, ut notatur in l. pen, *ff*. De Haer. insti. [D. 28, 5, 92] et *Extra*, De iud. c. venissent [X. 2, 1, 12].'

148 14 March 1370, *ADMD*, p. 39: 'Item, quod nullus notarius undecunque sit audeat vel presumat aliquem contractum vel aliquam alienationem contra formam praesentis decreti facere, rograre stipulari vel tradere, sub poena aeris et personae, et ex nunc tales contractus et alienationes sic celebratos et celebratas decernimus de nostrae plenitudine potestatis non valere et nullius esse efficaciae vel momenti.'

149 14 April 1386, *ADMD*, p. 98: 'Ex certa scientia et de nostrae potestatis plenitudine sancimus . . . quod huiusmodi ligas . . . hinc retro inchoatas vel contractas quovismodo fore et esse debere irritas et inanes, nullisque valoris et momenti.'

150 21 March 1394, *ADMD*, p. 203.

freely, declared simply, 'from now on any such wills and other arrangements drawn up against this decree are to be rendered null and absolutely without force or import.'[151] In 1445 a decree was issued (confirming an earlier act of 1387) prohibiting the alienation of fortified places; its central provision was backed by a fulsome statement of authority,[152] whereas the clause prohibiting future transfers of ownership was added without plenitude of power.[153] In 1455 a decree of Francesco Sforza's establishing new rules for the guardianship of orphans declared simply that all future formal arrangements made contrary to the decree were 'null and of no effect or significance in or out of court'.[154] In 1489 Giangaleazzo Sforza invalidated all future contracts involving transfers of property unless based on strict truth, the decree being intended to substitute for expensive litigation.[155]

Another way of curtailing the use of plenitude of power was for the Visconti to abandon their earlier custom of employing it to annul even their own decrees and concessions. In 1372 Bernabò had declared that, 'for an honourable purpose and with the best of intentions', he himself had issued a decree exonerating any outlaw who handed over another person guilty of a similar offence, confessing that the edict had given rise to fraud and corruption, and so 'from our plenitude of power we hereby revoke and annul that decree of ours'.[156] Similarly in 1386 when Giangaleazzo reversed his judicial reforms and restored local statutes and *ius commune* with respect to appeals, he had employed plenitude of power simply to derogate his own earlier decree.[157] But it was subsequently realized that plenitude

[151] 20 May 1419, *ADMD*, p. 248: 'Edicentes et mandantes ex nunc ipsa talia testamenta et quaslibet alias dispositiones contra hoc nostrum decretum fienda nullas et nulla esse et nullius valoris penitus et momenti.'

[152] 5 July 1445, *ADMD*, p. 313: 'motu proprio, de nostra potestatis plenitudine, animo plene et mature deliberato et multorum fidelium nostrorum accedente consilio, ex certa scientia'.

[153] 5 July 1445, *ADMD*, p. 314: 'Si quis autem huic nostro decreto contrafecerit, contractus et omnis alienationis aut cuiuslibet translationis contractus aut actus irritus sit et inanis et tamen alienans et transferens pretium, si quod habuit, et rem amittat et in floren. mille puniatur.'

[154] 3 November 1450, *ADMD*, pp. 343–4: 'Decernentes insuper omnes tutellas et curas omniaque repertoria quae de caetero fient praedictis non observatis, omniaque etiam quae per tutores vel curatores datos vel ordinatos non servatis praemissis seu aliter, quam supra dispositum est vel cum eorum auctoritate, gesta aut facta fuerint nullas et nulla fore et nullius effectus ac momenti tam in iudicio quam extra.'

[155] 20 May 1489, *ADMD*, p. 404: 'Aegre audivimus quendam fictarum donationum abusum subrepisse et per totum dominium nostrum quotidie magis usurpari in maximum multorum hominum praeiudicium, fraudem et dispendium. Quamobrem providere volentes ne subditi in perpetuum litibus atterrantur, laboribus et expensis fatigentur atque calliditate et versutia circumscribantur harum tenore edicimus'.

[156] 'Cognoscentes evidenter quod occaxione et sub velamine ordinis et decreti nostri quod vos ad bonum finem et pura mente concessimus . . . quod si quis bannitus presentaverit seu presentari fecerit aliquem alium bannitum de simili delicto exhimatur de suo banno prout latius et plenius in dicto nostro decreto dato Mediolani XII septembris MCCCLXVIIII continetur, multe fraudes, multeque barature comittuntur, volentes que inde providere harum tenore dictum nostrum decretum de nostre plenitudine potestatis irritamus et annullantes super ipso silentium imponentes': Cognasso (1922), pp. 172–3.

[157] 1 May 1386, *ADMD*, p. 100: 'Decreto nostro de quo supra fit mentio cui in hac parte ex certa scientia et de nostrae potestatis plenitudine derogamus aliqualiter non obstante.'

of power was not needed in such instances, presumably on the logical grounds that a legislator with the authority to promulgate a law in the first place needed no extraordinary powers to repeal it. Bernabò and Giangaleazzo themselves had begun to appreciate this argument. In 1383, faced with a chorus of complaints, Bernabò revoked a decree of his own which had compelled litigants (in Cremona) to swear before going to court that they had a just cause: 'Since with changing times, human laws will vary,' he protested lamely, 'we discard, remove, and annul' the earlier decree; there was no reference here to plenitude of power.[158] Giangaleazzo, too, followed this convention in annulling his own decrees: in response to a petition from Cremona in 1386 complaining about one of his judicial reforms, he wrote back simply, 'et nos nunc ipsum revocamus.'[159] In the fifteenth century ordinary power was invariably considered sufficient. In 1421 Filippo Maria decreed, without plenitude of power, that concessions which he himself had issued in the context of judicial proceedings would lose validity unless produced within a month of the start of the hearing;[160] in a private concession Arasmino dell'Acqua of Lodi was exempted from 'payments owed . . . under the terms of the decree issued by us', again without reference to plenitude of power.[161] In an extraordinary decree of 1490 Giangaleazzo Sforza, again without plenitude of power, cancelled all the promises of benefices he had ever made, on the grounds that they were based on 'ambition and greed'.[162]

FILIPPO MARIA VISCONTI AND PLENITUDE OF POWER

With Filippo Maria Visconti, new ways were found to avoid the overuse of plenitude of power. He concluded that by building a moral denunciation into the preamble, an activity could be banned without recourse to plenitude of power. In 1442 yet another decree against the export of grain and other foodstuffs was issued, but, unlike Giangaleazzo's ban of 1386, this act was not passed from plenitude of power. Rather than giving the prevention of famine as a just cause and using plenitude of power, as Giangaleazzo had done, Filippo Maria used ordinary power and instead lambasted 'the brazen insolence and temerity of those who do not heed the penalties laid down in our orders and decrees and dare to export our territory's grain; they have no shame in brushing aside the

[158] 'Si secundum varietatem temporum statuta varientur humana, dicta nostra decreta . . . remittimus, tollimus et cassamus': Cognasso (1922), p. 180.

[159] Cognasso (1922), p. 184.

[160] 24 July 1421, *ADMD*, pp. 252–3.

[161] *Stilus*, Doc.167, p. 201: 'Tenore presentium, ex certa scientia, liberamus eximimus et absolvimus ab omni solutione, que veniret a se fienda, vigore decreti super annatis bonorum feudalium donatorum et concessorum per nos editi'. In the following document the duke also allows Luigi da Sanseverino exemption from a number of his own decrees using plenitude of power, presumably because this was not just a one-off concession but a full and perpetual remission for his family: *Stilus,* Doc. 168, pp. 202–3.

[162] 6 October 1490, *ADMD*, pp. 412–13.

concern they should have for conserving the produce of their fatherland.'[163] By this device decrees which violated individual rights in the most egregious ways, including some of Filippo Maria's harshest laws, were issued without invoking plenitude of power. Once a person was proclaimed to be in the wrong, his rights could be removed with ordinary power, the duke wrapping himself in the cloak of law and morality.

An exceptional piece of legislation passed by Filippo Maria without plenitude of power was the decree of 1441, *De maiori magistratu*, limiting the jurisdiction of feudatories.[164] The act was a direct attack on the established rights of individuals: fief holders lost the prerogative of taxing, judging, and demanding oaths of loyalty from the inhabitants of any lands previously subject to the duke or his dependent cities. As before, Filippo Maria devised a preamble which would preclude the need to rely upon plenitude of power. The decree opens with a solemn statement upholding the paramount place of justice among princely virtues.[165] There follows a damning indictment of fief holders' behaviour: they have abused the privileges granted by the duke and his ancestors and 'they believe they can get away with whatever is within their power; they think they are not bound by the norms of morality and honour; in a word, they do not consider they are subject to the law. Indeed, more often than not they try to establish right and wrong according to their own interests.'[166] There were dangers for society as a whole: 'Unless the necessary action is taken, not only will murders, conflicts, divisions, and hostilities most certainly be provoked among individuals, but civil unrest and violent outrages could be strirred up, leading to the downfall and destruction of ourselves and our regime.'[167] By condemning the fief holders, Filippo Maria claimed to be enforcing, not repudiating, the law; he therefore ordered the feudatories, on pain of a heavy fine, to annul the taxes and sworn fealties that they had wrongly imposed.

[163] 3 February 1442, *ADMD*, p. 298: 'Aegre nimis, et moleste ferentes proterviam insolentiam ac temeritatem eorum qui non verentes poenas in ordinibus et decretis nostris appositas, praesumunt blada territorii nostri in alienum abducere et charitatem quam in conservanda ubertate patriae habere deberent postponere non erubescunt.'

[164] See Nasalli Rocca (1934 and 1935) and Petronio (1974) for detailed discussions of this decree.

[165] 7 November 1441, *ADMD*, p. 291: 'Quamquam deceat principis dignitatem omnibus ornatam esse virtutibus, sola tamen iustitia illa est quae adeo peculiaris et propria principi esse debet ut sine ea nec res publicas nec privatorum facultates, sed nec quidem ipsius principis nomen tueri aut servari possit.'

[166] 7 November 1441, *ADMD*, p. 291: 'Nonnullorum insolentiam eo pervenisse comperimus, ut quidam iurisdictionibus, potestatibus aut exemptionibus per nos, seu per illustrissimos olim progenitores nostros concessis abutentes, existiment tantum licere sibi quantum vindicare viribus possunt, nullis laboribus [sic for moribus], nulla honestate, nullis denique legibus teneri se putantes, quin illa facere persaepe conentur aequa seu iniqua sint, quae animis eorum collibuerint.'

[167] 7 November 1441, *ADMD*, p. 291: 'Ex quibus periculosi suscitantur errores et nisi provisio debita fiat, excitari facillime possent non solum homicidia, rixae, factiones, contentionesque privatae, sed publici tumultus, gravissima scandala commoventes et in nostram statusque nostri iacturam ac labem redundantes.'

Filippo Maria again avoided using plenitude of power in another attack on basic rights, the notorious decree 'Providere volentes' of 1423. According to that act, if the duke issued an injunction accusing someone of a crime,

> no form of counter-argument, objection or allegation can be made that would undermine the charge or the proceedings. The document must be accepted as it stands and accorded full credence, including with regard to the precise narration of events which led to charges being laid by us or our predecessors, exactly as if everything described had actually been witnessed; in addition, all procedures must be presumed to have been carried out formally and correctly, so that no contrary evidence is admissable.[168]

This was guilt by decree. The explanation for ordering an extraordinary perversion of due process without any reference to plenitude of power lay in the preamble: the duke, it was asserted, simply wished 'to obviate the misinterpretations, misunderstandings and oversights which very often occur contrary to, or in defiance of, what we order'.[169] Under the guise of the need to clarify ducal measures, the decree abolished, without the help of plenitude of power, some of the most fundamental principles of law.[170]

By 1423 Filippo Maria had managed to re-establish the Visconti regime in most of the areas which had rebelled or been occupied under Giovanni Maria. He now published yet another law on treason, but this time members of the culprit's family—the older generation as well as brothers and descendants—would suffer the same punishments as the accused.[171] The decree stated that family members would not be accorded separate trials, and yet this serious breach of due process was not passed from plenitude of power. The new law differed in this respect from Giovanni Maria's treason act of 1407, in which plenitude of power had been used to abolish the fundamental right to a summons and trial.[172] By contrast,

[168] 6 October 1423, *ADMD*, p. 258: 'Rescriptis aut litteris illustrissimorum dominorum praedecessorum nostrorum, aut nostris declarantibus commissionem, perpetrationem aut factum alicuius delicti vel aliquorum delictorum non possit aliqualiter opponi, objici aut allegari quod non appareat de delicto aut processu; sed ipsis litteris aut rescriptis prout iacent ad contestum credatur et plena fides adhibeatur etiam in narrativis super quibus intentio praedecessorum nostrorum aut nostra perinde fundetur, ac si omnia in eis narrata et scripta apparerent actualiter et praesumantur omnia solenniter, recte et rite facta, adeo quod non admittatur aliqua probatio in contrarium.'

[169] 6 October 1423, *ADMD*, p. 257: 'Providere volentes inconvenientiis, erroribus et negligentiis quae saepissime occurrunt praeter aut contra dispositionem nostram.'

[170] Francesco Corte expressed the dismay of the legal profession at the idea that the duke's account of events was to be taken as evidence of guilt; not wanting to appear too critical, Corte concluded that it was the clause in the decree confirming the sanctity of individual rights, mentioned above p. 120, which represented Filippo Maria's true intentions: see consilium 49 ('Memoriae recolendae'), dated 1491, nr 94: 'Et sic stat sublatum ipsum decretum ex multis responsionibus superius accommodatis, maxime ex tenore eiusdem decreti in alia particula, dum vult per literas aliquas non derogari iuri tertii.' The sixteenth-century jurist and senator, Egidio Bossi, described how the decree was eventually abolished as tyrannical (see below pp. 187–8).

[171] 1 September 1423, *ADMD*, pp. 254–7. So exceptional was this decree that Filippo Decio, Consilium Bk 1, 64 ('Praesupponitur tempore'), nrs 3–5, accepted its validity only on the inaccurate grounds that it merely applied to family members who were actually complicit in the crime.

[172] 17 August 1407, *ADMD*, pp. 238–9; see above p. 127.

Filippo Maria prefaced his law with an elaborate moral justification: 'Human endeavour from the earliest times to our own day has shown that none of all the political systems of the world has been found more desirable or satisfactory than the rule of a single prince'; hence the need for

> the utmost vigilance to ensure the protection of that prince, whose health, life and safety is the foundation and cornerstone of the political system and the strongest guarantee of peace and tranquillity. The prince's disappearance or injury but especially his violent death, if plotted or actually carried out in accordance with the designs of infamous villains, would mean the collapse and annihilation of the whole structure of the state; along with the overthrow of government and the republic would come the ruination of cities, lands and villages together with their individual inhabitants and all their property.[173]

The punishment of family members was explained as a deterrent; their inclusion in the act would in addition ensure that 'the poison of villainous and rebellious men would be eradicated and wiped out.'[174] So exceptional was this decree that it was seen to require the support of overwhelming moral justification, that is, the very survival of civil society. It was that statement which replaced plenitude of power as the authority for Filippo Maria's subversion of judicial rights.

CONCLUSION

Guidelines for the use of plenitude of power had been laid down largely under Giangaleazzo and Filippo Maria. The Sforza followed their example, using the models collected in the *Stilus cancellariae* as a guide to the principles which had to be followed in order to satisfy legal opinion. Medieval chanceries have been accused of using plenitude of power at random: according to Ugo Nicolini, *motu proprio, ex certa scientia* and *de plenitudine potestatis* had become mere 'stylistic formulae, used indiscriminately and without reference to the original meaning or to the significance attached to them in juridical thought'.[175] But an examination of how plenitude of power was employed in Milan reveals that there at least the phrase was used with increasing care.[176] Since lawyers dominated the Visconti

[173] 1 September 1423, *ADMD*, p. 255: 'A priscis aetatibus inter caeteras mundi politias humana docuit industria et ad nostra deduxit tempora, nil melius, nil dignius repertum regimine unius principis . . . Et ut quilibet summe et accurate vigilet pro salute principis, cuius salubritas, vita et incolumitas fundamentum est, et columna totius reipublicae status et quietis et pacis firmissimum stabilimentum et cuius personae defectu seu laesione maxime ex morte violenta, machinatione sceleratissimorum cogitata, tentata, tractata aut ad effectum deducta, tota machina status sui ruit, decedit et annihilatur in dilapsum et perniciem civitatum, terrarum, castrorum, locorum et singularium personarum eorundem totiusque suorum, principatus et reipublicae subversione.'

[174] 1 September 1423, *ADMD*, p. 255: 'Ideo ut improborum et sceleratorum hominum virus cohibeatur et extinguatur'.

[175] Nicolini (1952), p. 177 and n. 2.

[176] Historians have observed in other contexts that legal forms were ever more closely adhered to in the duchy during the fifteenth century. An increasingly law-abiding approach has been noted, for

and Sforza regimes at every level,[177] it is not surprising that the attitude of government reflected the shift of opinion in legal circles against too free a use of absolute power. By spelling out the justification for acts which undermined basic rights the dukes turned to their own advantage conditions insisted upon by jurists. They minimized the association of plenitude of power with abusive rule and affirmed their central ideology—that the rulers of Milan were champions of justice.

example, by Della Misericordia in connection with petitions (2004), p. 179, and by Covini (2007), pp. 291–2, in the context of administration generally.

[177] See di Renzo Villata (1983), pp. 150–1; Martines (1968), pp. 457–61; Covini (2007), pp. 106–10.

Chapter 6

Lawyers and the Repudiation of Ducal Absolutism

THE VERDICT ON THE VISCONTI

Baldo degli Ubaldi

The fourteenth century had seen plenitude of power employed indiscriminately by Italian signori, their disregard for basic rights finding support in law. Cino and his circle had led the way, showing how the restraining mechanism of the just cause could be circumvented. Baldo had concurred: despite his suggestion that the rational intelligence of rulers was a safeguard, he accepted that, in reality, motives might well be dubious. While cautioning that plenitude of power should be exercised rarely,[1] he had accepted that signori of every rank were using it as a workaday expedient. As he said of Bernabò, 'he was above the law and could disregard enactments, as the glorious princes of the house of Visconti do on a daily basis.'[2] Yet Baldo did not disguise his unease over the manner in which the Visconti used their authority: 'This kind of donation [namely, Bernabò's to his mistresses] is repugnant because it contravenes *ius commune* and, it could be said, moral standards.'[3] But he felt he was not in a position to challenge an entrenched tool of government. He revealed his reason for failing to speak up more forcefully on behalf of the rule of law in this instance: 'If I were to counsel otherwise, I would incur the wrath of Bernabò's mistresses and their sons, and my work would be pointless; to wear

[1] See above p. 138.

[2] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 1: 'Sed dominus Bernabos non erat de istis nec erat sub lege militari, sed supra legem quia poterat derogare legibus sicut et quotidie faciunt gloriosi principes de domo Vicecomitum; ergo potuit derogare illi legi quae dicit quod miles non possit donare concubinae', BAV Barb. Lat. 1408, f. 137^{v}.

[3] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 4: 'Praeterea ista donatio est odiosa, quia iuri communi contraria et quodammodo contra bonos mores, ut C. De naturalibus liberis, l. 1 [C. 5, 27, 1] et l. fin. *ff*. De acti. et oblig. [D. 44, 7, 61]', BAV Barb. Lat. 1408 f. 138^{r}. Baldo admits the possible argument that in providing dowries for his illegitmate daughters Bernabò was undertaking an act of piety, namely to save his daughters from prostitution.

myself out just for the sake of provoking indignation would be completely insane.'[4]

Baldo openly disapproved of some of Giangaleazzo's concessions. His disquiet surfaced where an opponent had been convicted of treason, his property being confiscated and given to Giangaleazzo's close adviser Paganino da Biassono. Years later an action was brought by a third party with a claim to the land predating the act of treason. In Baldo's opinion the law was all on the side of that original claimant: 'A concession given by the prince should not mean injury to another,' and the use of plenitude of power to support Giangaleazzo's transfer of the property was therefore unfair. But the legitimate rights of the original owner were overruled because Giangaleazzo had acted 'ex certa scientia et de plenitudine potestatis'.[5] Similarly Baldo bemoaned Giangaleazzo's use of plenitude of power when the treasury confiscated the house of a certain Thomas to settle a debt; Giangaleazzo had given the property *ex certa scientia et de plenitudine potestatis* to the defendant, Benentono.[6] A third person subsequently claimed that the house had been pledged as security for money owed, so that he had effectively been robbed by the government. Baldo was again confident that this earlier claim was the stronger in law: 'Benentono ought to return the house, even though he had rights as the recipient, because it is generally agreed that he who comes first has a stronger claim, as the maxim goes.'[7] On Benentono's side all that could be said was that 'he possessed the house in good faith and with a decree from the prince; or indeed, it should rather be said that where a decree is involved there is no need for good faith;' it was axiomatic that a ruler could, with cause, take someone's property.[8] 'Moreover the deed of conveyance contained the words *ex certa scientia et de plenitudine potestatis* and, where those words are incorporated,

[4] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 1: 'Et si contrarium dicerem, incurrerem hodium tam dictarum concubinarum quam ipsarum filiorum et frustra niti, nec aliud se fatigando, nisi hodium querere, extrema dementia est', BAV Barb. Lat. 1408 f. 137^{v}.

[5] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'), nr 4: 'Preterea privilegium emansum a principe non debet interpretari cum alterius iniuria.' He pointed out (nr 9) that *Bene a Zenone* (C. 7, 37, 2) did not apply here; nevertheless because of plenitude of power the recipient was safe: 'Et est sciendum quod, quando fischus convenitur ut heres, non habet locum l. Bene a Zenone, quia non agitur conditione ex illa lege sed utili hereditaria et perpetua actione. Solutio: si dominus fecit ex certa scientia et de plenitudine potestatis, tutus est recipiens', BAV Barb. Lat. 1409, f. 92^{r}. The consilium appears to have been composed at Paganino's request in 1399: Vallone (1989), p. 124 and Conetti (2005), pp. 488 and 496.

[6] Presumably this was the Benentono da Casate who had worked on the *castello* in Pavia.

[7] Baldo, Consilium Bk 1, 253 ('Illustris dominus noster'), nr 1: 'Et sic Benentonus tenetur ad restitutionem dictae domus, preterea etsi haberet ius donatoris, cum creditor agens sit prior tempore, constat, quod potior in iure, ut in regula 'Quod prior' [C. 8, 17, 3]', BAV Barb. Lat. 1408, f. 131^{v}. This consilium was another dating from Baldo's last three years. Vallone (1989), p. 121; see also Conetti (2005), who discusses the work and gives some of the text, pp. 487ff, 493–4 and n. 63;

[8] Baldo, Consilium Bk 1, 253 ('Illustris dominus noster'), nr 3: 'Sed ipse Benentonus possedit bona fide et cum decreto principis, ymo plus videtur dicendum quod ubi intervenit decretum non requiratur bona fides . . . Sed princeps, ex causa, potest tollere dominium, ergo fortius hypothecam, ut *ff*. De leg. 2, l. Peto, § praedium [D. 31, 69, pr. 1].' BAV Barb. Lat. 1408, f. 131^{v}.

it would be sacrilege to disobey (always assuming the giver has such power).'[9] Again there was right in law and there was plenitude of power. Baldo himself put it starkly at the end of the consilium: 'This is a problematic case because on the one side you have fairness (*aequitas*) and on the other you have supreme power.'[10]

Baldo appreciated that the Visconti's use of plenitude of power in concessions meant ignoring a multitude of laws related to ownership. But, as has already been suggested, he did not believe absolute power could be defied. The reason was a practical one: the Visconti system of grants and privileges functioned in conjunction with plenitude of power and Baldo was afraid of articulating a general principle, which might have the effect of undermining existing concessions. As he had exclaimed in the context of Bernabò's largesse, he would not challenge the prerogatives of the Visconti for fear of provoking disputes.[11] 'If anyone were to call into question the powers of the signori,' he wrote, 'he would sap all their strength; for my own part, I would never put forward an opinion suggesting that the whole world should be turned upside down.'[12]

Paolo da Castro

It has been seen that Baldo's successors were equally troubled by the effects of plenitude of power,[13] but that they, in contrast, were more confident that the prerogative could be challenged. Paolo da Castro was willing to question the powers of the Visconti at the most fundamental level. It was a surprising position for the author of the consilium 'Super primo dubio', a prime text on Visconti plenitude of power. Nevertheless, in the kind of contradiction not unknown among jurists, Paolo disputed the duke of Milan's claim to plenitude of power. He pointed out in his lecture on *l. Quotiens* (C. 1, 19, 2) that

> Alberico says that the ability to annul someone's rights belongs to no one apart from a sovereign ruler who, like the pope or the emperor, has no superior; a lesser ruler who acknowledges a superior, as do counts, and marquises who accept the authority of the church (such as the marquis of Ferrara and others), may not disregard a person's rights, even if a derogating clause is included in the act and even if, in similar circumstances, the emperor would be able to do so.

[9] Baldo, Consilium Bk 1, 253 ('Illustris dominus noster'), nr 4: 'Praeterea in donatione sunt hec verba "ex certa scientia et de plenitudine potestatis" et quando apponuntur ista verba, instar sacrilegii est infringere, supposita potestate concedentis', BAV Barb. Lat. 1408, f. 131^{v}.

[10] Baldo, Consilium Bk 1, 253 ('Illustris dominus noster'), nr 4: 'Quaestio ista dubitabilis est, pro prima parte facit aequitas; pro seconda suprema potestas.' BAV Barb. Lat. 1408, f. 132^{r}.

[11] Baldo, Consilium Bk 1, 248 ('Quaeritur utrum donatio'), nr 4; see above p. 35.

[12] Baldo, Consilium Bk 1, 262 ('Recolo me consuluisse'), nr 2: 'Item si quis vellet revocare in dubium potestatem dominorum, evacuaret omnem virtutem eorum; et ego non essem istius consilii qui vellem revangare mundum.' BAV Barb. Lat. 1408, f. 138^{r}.

[13] See above pp. 30–5.

Paolo gave an instance from his own legal practice:

> I had to give an opinion this year in the city of Bergamo in a case which arose during the period when Pandolfo [Malatesta] was signore, concerning an order he issued freeing one of his supporters from a debt owed to another citizen. I judged that the directive was not valid (even had he been a legitimate ruler with a lawful title from the emperor); the reason was that Pandolfo acknowledged the emperor as his superior and discharged all his functions as vicar. The same principle applies to the duke of Milan who, because of his position as duke, acts in the name of the emperor; this [ability to annul rights] belongs to no one but a sovereign ruler. It is different in the case of counts who in practice acknowledge no higher authority but rule independently without an imperial vicariate; they enjoy the position of sovereign ruler in their territory and are considered to be acting in place of the emperor. Remember this because it comes up every day.[14]

The distinction made here between the duke of Milan and a fully independent ruler was unambiguous: in formal terms the duke was an imperial official and so did not enjoy full powers.

Paolo did not resolve his own inconsistent statements. Subsequent commentators were able to use his teachings either in support of or against ducal plenitude of power. His teaching on *l. Quotiens* did find favour when plenitude of power began to come under general attack in the second half of the century.[15] But lawyers working in the duchy generally preferred 'Super primo dubio' backing ducal power. From his vantage point in the sixteenth century, the Venetian lawyer and civil servant, Antonio Pellegrini, summed up the general opinion on Paolo's comment:

[14] Paolo da Castro on C. 1, 19, 2 (De precibus imperatori offerendis, l. Quotiens), nr 2: 'Adde unum quod est notandum; nam dicit hic Albericus quod tollere totum ius alterius non pertinet nisi ad supremum principem, qui non habet superiorem, ut est papa vel imperator. Inferior vero qui superiorem recognoscit, ut sunt comites, et marchiones qui recognoscunt ecclesiam, ut marchio Ferrariae et similes, non possent etiam si in eorum rescripto contineretur clausula *non obstante* et etiam si esset casus in quo imperator posset tollere et allegat Archi. [Guido da Baisio] hoc tenentem xxv, Questio 2 in *Summa Glo.* Et ego habui consulere isto anno in civitate Pergami quia dominus Pandulphus, tempore quo ibi dominabatur, per suum rescriptum liberavit quendam partialem suum ab eo in quo tenebatur alteri Pergamensi. Dixi quod non valebat rescriptum, etiam si ipse fuisset iustus dominus cum iusto titulo habito ab imperatore, cum ipse recognoscat imperatorem in superiorem et quia omnia faciat tanquam eius vicarius. Et idem esset dicendum de duce Mediolani qui facit ut dux et sic nomine imperii; quia hoc non pertinet nisi ad supremum principem. Secus in illis comitatibus qui de facto non recognoscunt superiorem, sed regunt semetipsos, absque vicariatu imperatoris sed proprio, quia ille obtineret principatum supremum in eorum territorio et loco principis habentur, ut notat Cynus in l. ea lege ante finem infra De cond ob cau.[C. 4, 6, 3] et Bartolus in l. Hostes, *ff*. De captivis [D. 49, 15, 24]. Tene mentem quia est quotidianum, ut dixi.' Pandolfo Malatesta was signore of Bergamo from 1408 to 1419: see above pp. 73–4.

[15] Giasone del Maino, for example, in connection with the dukes of Milan, quoted in full Paolo's comment on *l. Quotiens*, see below p. 163; Filippo Decio cited the opinion ('quod est notabile') in his general discussion of plenitude of power in his comment on X. 1, 2, 7 (De constitutionibus, c. quae in ecclesiarum), nrs 102 and 105. Paolo was not the only jurist to deny that the duke had absolute power: Raffaele Fulgosio also denied on occasion that the duke of Milan was *legibus solutus*, see below p. 156.

Princes acknowledging a superior do not have plenitude of power and so they may not cancel the rights of a third person, as Alberico convincingly argues in his comment on *l. Quotiens*; Paolo agrees, recalling his own consilium given when Pandolfo Malatesta was ruler of Bergamo; and he says that the same is true of the duke of Milan, who acknowledges the emperor as a superior. But be aware that, regardless of what the law says, dukes with permanent titles have a customary right to use plenitude of power in their states, even if they do acknowledge a superior; and this applies to the duke of Milan, as Baldo, Angelo, and Giasone all testify.[16]

Cristoforo Castiglioni

In practice, as Baldo had realized, it was impossible to pretend that the Visconti had no plenitude of power, and other jurists realized that there were more practical ways of confronting absolute power than outright denial. In particular, the effects of plenitude of power could be mitigated by exploiting the traditional weakness at the concept's heart, namely that no act was valid unless issued with reasonable justification. It was in this context that lawyers set about restoring rigour to the principle of the just cause which fourteenth-century commentators, including Baldo, had undermined. It has been seen that one lawyer concerned with these issues in the early years of the duchy was Cristoforo Castiglioni (1345–1425), Baldo's colleague at Pavia.[17] He too was closely connected to the Visconti regime: in the role of adviser to Giangaleazzo he was entrusted with various diplomatic missions, becoming a member of the ducal council during the minority of Giovanni Maria. As a result of involvement in the political turmoil following Giangaleazzo's death, he was twice forced to leave Pavia, thereafter finding teaching positions in Turin, Parma, and Siena.[18] In 1414 Filippo Maria

[16] Antonio Pellegrino, *De privilegiis et iuribus fisci*, Bk 1, tit. 2, nrs 78–9: 'Principes recognoscentes superiorem plenitudinem potestatis non habent, ac ideo uti nequeunt et proinde ius tertii auferre non possent; sic pulchre scripsit Albericus in l. quoties, C. De precibus imperatori offerendis, quem ibi sequitur Paulus Castrensis, ubi refert se ita consuluisse tempore illustrissimi Domini Pandulfi de Malatestis qui fuit dominus Bergomi; et idem dicit in Duce Mediolani, qui recognoscit imperatorem in superiorem . . . Sed adverte: quia quicquid de iure sit, isti serenissimi duces perpetui, quamvis superiorem recognoscant, de consuetudine utuntur in statibus suis plenitudine potestatis; sic in duce Mediolani et in aliis perpetuis dominis, tradiderunt Baldus, Consilia, 457, nr 5 in V ['Ad evidentiam praemitto'], Angelus in dicto consilio [217 'In causa accusationis], Jason, Consilia, 'Immunitas,' in III.' Paolo's comment that the dukes of Milan had no right to use plenitude of power provoked the unfair criticism by Catelliano Cotta, a pupil of del Maino, that he had not studied the ducal investitures: 'Posset tamen dici Paulum non bene vidisse investituras ducales, quia, ut refert Martinus Laudensis in cap. 1 'De natura feudi', dux Mediolani habet duo feuda ducatus et ultimum est concessum cum omni imperio et regalibus', which was cited by Orazio Carpani in his commentary on the 1498 statutes of Milan (*Statuta ducatus mediolanensis,* p. 2). On Martino Garati's opinion, see above p. 71, n. 16.

[17] See above p. 33. Details of Castiglioni's career can be found in the entry in *DBI* by P. Mari (s.v. Castiglioni, Christoforo di); Barni (1941b); Besta (1925), pp. 18–21; Massetto (1990b), pp. 507–8.

[18] Having taken sides against Facino Cane, he was forced to leave, returning when peace was restored in 1409; he had to leave again in 1412 after Giovanni Maria's death, presumably on account of his marriage to Antonia di Biaggio, sister of two of the duke's assassins. That association did not dissuade Emperor Sigismund from making Castiglioni a count palatine in 1414.

ordered him back to Pavia and he eventually returned in 1419. Known for his independence, Castiglioni's association with the government did not prevent his championship of the rule of law in the teeth of plenitude of power.

In Consilium 8 ('In facto supposito'), composed late in his career, Castiglioni gave his opinion on whether a concession which the duke had granted from plenitude of power did indeed override the rights of another subject. Following involvement in anti-Visconti activity in 1410, Andrea Lignazzi had had goods confiscated by Giovanni Maria Visconti and given to Iacopo Scotti. Filippo Maria later pardoned and reinstated Lignazzi, restoring his lands in full 'notwithstanding any [intervening] grants, which *ex certa scientia* we revoke'.[19] As a consequence, Scotti lost the property. Castiglioni claimed that Filippo Maria could not ignore the laws which protected the new owner's rights. 'Restoring the property of a convicted person does not affect rights acquired in the interim by someone else,' he declared, citing, among others, Baldo: 'If, in the period following a banishment or exile, such property has passed to someone else in a new transaction, as happened in the case of the grant to Iacopo Scotti, then any subsequent restitution does not jeopardize that transfer; quite the reverse indeed: the grant stays in force.' When in doubt it should be assumed that if a ruler restores property in these circumstances, he means 'without violating anyone else's rights'.[20] Filippo Maria was subject to basic principles of law: 'A ruler is bound by his contract in accordance with *ius gentium* and therefore he is bound by civil law because that too is an aspect of *ius gentium*; hence he may not infringe rights acquired under that law.' Here was a thinker who was not afraid to contradict strong legal tradition—the classification of *ius civile* as separate from *ius gentium*, and so less binding on a ruler, had long been one of the chief buttresses of plenitude of power. Castiglioni added that not even plenitude of power was enough to overturn rights of ownership 'in the absence of some kind of public expediency or misdismeanour on the part of the recipient'.[21] The

[19] Castiglioni, Consilium 8 ('In facto supposito'), Introduction and nr 2: 'Dominus ipsum Andream restituit in integrum et certis bonis respectibus et legitimis (ut refertur in literis) videlicet ut subiicit cum haberet et reputaret ipsum pro suo fideli servitore, etiam ad bona confiscata et proinde per quamcumque personam occupata, aliquibus donationibus nequaquam obstantibus . . . quas ex certa scientia revocamus et revocatas esse volumus.'

[20] Castiglioni, Consilium 8 ('In facto supposito'), nrs 8–10: 'In integrum restitutio bonorum damnati non tollit ius illo medio tempore quaesitum alteri: argumentum pro hoc optimum *ff.* De minoribus l. si sine § sed quod Papianus [D. 4, 4, 7, 10] et C. De repu. haered, l. ult. [C. 6, 31, 6] et *ff*. De decur. l. ii [D. 50, 2, 2] . . . Subtilius limitat Baldus ibidem distinguens, quando interim bona sunt apud alium, utrum novo facto post deportationem vel relegationem interveniente sit ius alteri quaesitum, ut puta per donationem sicut hic Iacopo dicto Scoxato factam. Nam tunc sequens restitutio minime tollit donationem illam; imo efficax remanet donatio . . . Non crederetur per principem facta in praeiuditium alterius cui medio tempore novo ex facto, id est, nova donatione ius foret quaesitum. Imo rescripta principum semper creduntur in ambiguo concessa salvo iure alieno ut vulgo legitur *ff.* Ne quid in loco publico, l. ii, § si quis a principe et § merito [D. 43, 8, 2, 16 and 10].'

[21] Castiglioni, Consilium 8 ('In facto supposito'), nr 14: 'Merito princeps ex contractu suo obligatur iure gentium, quemadmodum et civili et velut existens infra ius illud gentium non potest

rights enshrined in *ius gentium* could not be abused even by the emperor himself without good reason 'in spite of an express declaration that he was acting from his plenitude of absolute power'.[22]

For Castiglioni the key issue was the duke's lack of credible justification. He admitted that Filippo Maria had attempted to explain his reasons for removing the property from the new owner: 'A specific motive is proclaimed in the directive, namely that, despite his having been exiled for serious acts of opposition, the duke considered Andrea [Lignazzi] to be his faithful servant and that he was therefore justified in upholding his private and personal interests. That was the reason why he deserved to have his criminal conviction pardoned and his property restored.' Nevertheless, 'for the purpose of taking a person's property and giving it to someone else, that kind of justification is not adequate; rather it requires either an offence on the part of the person who is being deprived or at least some public benefit. Everyone is agreed, without question indeed, on the requirement to assign lawful and rational justifications when taking someone else's property.'[23]

There was, of course, Cino's celebrated assertion that 'with a ruler there is always the strong presumption (*violenta praesumptio*) of a just cause,'[24] a doctrine boosted by Baldo's belief that any motive on the part of the prince was enough to justify an infringement of fundamental laws. Castiglioni confronted both teachings, expressing particular horror at Baldo's opinion:

> The position is this: if a cause is articulated in an act, well and good. Otherwise, when in doubt the best thing is to accept that there must have been some motive for the measure on the part of the ruler: that should be adhered to until some evidence to the contrary is

tollere quae sunt ex illo iure etiam si in rescripto dicat facere ex certa scientia et de suae potestatis plenitudine, qualibet publica utilitate et donatarii culpa vacante.'

[22] Castiglioni, Consilium 8 ('In facto supposito'), nr 15: 'Defensio est de iure gentium cuius spes est citationis necessitas; ipsius citationis amissio, seu sui defectus supletio, non consistit in imperatoris potestate et arbitrio, quamquam dixerit palam se illud fecisse de suae absolutae potestatis plenitudine, nulla super hoc causa rationabili, ut est textus omnibus vulgatis et not. in Clem. Pastoralis, De re iudi. [*Clem*. 2, 11, 2] ubi text ita interpretatur in imperatorem [*sic*] plenitudinem potestatis absolutae, scilicet, cum modificatione quod oporteat causam iustam subesse.'

[23] Castiglioni, Consilium 8 ('In facto supposito'), nrs 16–18: 'Cum ergo nostro rescripto (ut praefert) certa causa exprimitur, puta quod habebat et reputat Andream pro suo fideli servitore, quamvis propter graves contradictiones occursas fuerit bannitus, quo concludit optime ipsius Andreae privatam et particularem utilitatem, id est, quod illa de causa indulgentiam criminium moeruit et restitutionem bonorum suorum . . . Sed quoniam ad tollendum alienum dominium et alii dandum, non sufficit talis causa: imo requiritur aut culpa eius cui aufertur aut saltem utilitas publica: *ff.* De usuca.l. 1 [D. 41, 3, 1] et De evic. l. Lucius [D. 21, 2, 11] et De rei vendi. l. Item si verberatum [D. 6, 1, 15] et dicunt omnes sine controversia causas assignantes iustas et rationabiles ad tollendum dominia aliena.'

[24] Castiglioni, Consilium 8 ('In facto supposito'), nr 5: 'cum tenuerint Iacobus de Ravani et Petrus [Bellapertica], quos Cynus refert: De preci. Imperatori offer. l. Rescripta [C. 1, 19, 7] et Si contra ius vel utilitatem publicam l. ult. [C. 1, 22, 6], quod licet non possit Princeps (ut exorditur), dicunt ipsi et alii omnes, alienum dominium auferre sine iusta causa; valet tamen, dicunt ipsi, rescriptum auferens alienum dominium, illud transferendo in alium quantum ad observantiam, id est, quod protinus venit observandum eo in principe violenta est praesumptio semper quod sit iusta causa'; see above p. 15 for Cino's opinion.

brought forward or discovered. And to this end, to make sure that an act contravening natural law or *ius gentium* is valid, it is essential to follow up those doubts. [This must be done], whatever Baldo says in his comment on the *l. Rescripta*, where he states that any motive given in an act by a ruler should be accepted as reasonable justification. That seems to me to be nonsense; and what I find embarrassing is that he does not even cite any texts.[25]

It was not enough to presume the existence of a just cause: it had to be investigated. Castiglioni, in fact, had no patience with any attempt to water down a ruler's obligations:

It seems proper to stand by the accepted opinion, as explained above [namely that there has to be just cause]; otherwise, as shown, all the analysis which has been painstakingly undertaken on the subject of property ownership, and whether or not it can be removed on the orders of a prince, would have been pointless; if, that is to say, there were always to be a strong presumption of a just cause, or if any sort of consideration (*quodlibet motivum*) on the part of a ruler was deemed such. If that were so, once one had identified the intention of an act, it would always be possible to confiscate property and to say that would be ridiculous.'[26]

The conclusion was obvious: 'Transferring property from a recipient in the case of a restitution cannot be done without cause, even if such restitution has been implemented by our own illustrious ruler.'[27]

Castiglioni ended his opinion on a less ascerbic note, attempting to salvage Filippo Maria's honour: 'It should not be forgotten that to dispute the power of a prince is a kind of sacrilege; it is a safer and better course not to argue against acts of this kind, because it suggests a fault on the part of the prince (as if it had ever been claimed he could do everything!).' As he tactfully pointed out, Filippo Maria himself 'has honourably and graciously conceded that he is very often ensnared by the shameless rapacity of petitioners' into granting unlawful concessions. As Castiglioni himself described, presumably from his own observation: 'To escape the importunity of petitioners, the prince confidently grants such concessions,

[25] Castiglioni, Consilium 8 ('In facto supposito'), nr 20: 'Imo verior in eo videtur illa conclusio, quod aut causa exprimitur in eo et benequidem, ut But. ibi supra [on C. 1, 22, 6, Si Contra ius, l. Omnes]. Alioquin in dubio optimum credatur fuisse motivum principis in rescripto et illi est standum, donec praebetur vel appareat contrarium. Et secundum hoc, utilissimum est investigare illud dubium, videlicet an valeat rescriptum contra ius naturale seu gentium, quicquid Baldus super hoc in lege Rescripta [C. 1, 19, 7] in eo quod dixit quod in rescripto quodlibet motivum principis expressum pro iusta ratione venit habendum. Nam videtur somnium; nec aliquid eligat, unde erubescimus.'

[26] Castiglioni, Consilium 8 ('In facto supposito'), nr 20: 'Et videtur standum in communi sententia, de qua supra; alioquin (ut praefertur) frustratoria fuisset inquisitio per omnes accuratissime facta de dominio, utrum possit tolli principis rescripto, et non rebus, si semper foret violenta praesumptio, seu quodlibet motivum in principe haberetur pro iusta ratione. Imo semper effectu inspecto, illud posset tollere, quod ridiculum foret dicere.'

[27] Castiglioni, Consilium 8 ('In facto supposito'), nr 20: 'Ideo nec possibilis est dominii translatio a donatario in restitutum sine causa, etsi restitutio in integrum facta fuerit per nostrum illustrissimum Dominum.'

anticipating in his own preamble and directive that he knows and accepts that these acts will not be acceptable in any hearing.'[28]

Raffaele Fulgosio

Raffaele Fulgosio (1367–1427), as has been seen, was another front-rank lawyer who mistrusted absolute power; he too spoke out against the way it was exploited by the Visconti. A pupil of Castiglioni's at Pavia, he taught there from 1390 until 1399, thereafter transferring to Piacenza, then to Siena for a year, and finally in 1408 to Padua, where he spent the remainder of his career teaching both civil and canon law.[29] He was seen as a figure who would attract students. The Venetian Senate was so keen not to lose him that they offered him 850 ducats a year to stay in Padua, rather than see him transfer to the University of Parma (with the offer of 1,000 ducats).[30] Outside the academic life Fulgosio was an active judge and consultant in Padua and, in addition, was *advocatus concilii* at the Council of Constance. Fulgosio followed Castiglioni's lead in championing the rights of the subject. On the issue of the just cause, he argued that Cino's claim that a ruler's acts are necessarily deemed to be justified meant only that the grounds could be taken for granted, not that they did not have to exist:

I know Cino claimed that with a prince there is always presumed to be a just cause and that this is such an overpowering assumption that no contrary evidence is admissible. That means, Cino observes, that an act infringing *ius gentium* is enforceable, even though by law and in terms of the powers he has been given, he may not issue such an act without just cause. But surely, if we admitted this, the effect would be that, if the prince passed an edict against *ius gentium* without cause, the act once issued would have to be obeyed in every particular.[31]

[28] Castiglioni, Consilium 8 ('In facto supposito'), nrs 28–31: 'Sed nec illud est omittendum, cum disputare de potentia principis quodammodo instar habet quasi sacrilegii; tutior videtur et via melior ne arguamus contra talia rescripta defectum aliquem ex parte principis importantia. Imo etsi quis dixerit quod potest omnia! . . . Nam pulchre et eleganter inquit ipsemet princeps quia plerunque constringitur in verecunda petentium inhiactione, idest fraudulenta petitione . . . Unde intrepide princeps propter importunitatem petentium, ut quod eos effugiat, talia faciliter concedit rescripta, praesciens suo ex praeambulo, mandato et eius conscientia et voluntate quod talibus rescriptis nulla probabitur audientia.'

[29] For details of his life and career, see the entry by C. Bukowska Gorgoni in *DBI*; Belloni (1986), pp. 306–11; di Renzo Villata (1982), pp. 69–70, and n. 7; on Fulgosio's political ideas, see Gilli (2001), pp. 5ff.

[30] Grendler (2002), p. 23.

[31] Fulgosio on D. Constitutio Omnem, nr 7: 'Scio tamen quod Cynus alibi [on C. 1, 18, 7, De precibus imperatori offerendis l. Rescripta] dicit quod in principe creditur semper iusta causa; et est violenta presumptio ut nec admittatur probatio in contrarium; et ideo rescriptum contra ius gentium tenet quantum ad observantiam licet de iure et ex potestate sibi a iure concessa non possit sine iusta causa contra ius gentium rescribere, sicut ipse notat: C. De precibus impera. offer. l. Rescripta [C. 1, 19, 7] et Si contra ius vel utilitatem publicum, l fin. [C. 1, 22, 6]. Sed certe si hoc admiserimus effectu contra ius gentium rescribit sine causa, postquam id rescriptum omnimodo servandum est.'

What Cino had meant, according to Fulgosio, was that, 'if there really is no proof to the contrary, perhaps the prince should be trusted and his assertion accepted as evidence [of a just cause]; in these circumstances Cino's dictum is acceptable and has no implication that the prince is acting other than justly.'[32] But, as he had already made clear: 'Where it is obvious that the certain and undoubted wish of the prince is to order something against *ius gentium* with the intention of transferring someone's property to another, it seems safer [to conclude] that the edict is not valid and should not be obeyed.'[33]

Fulgosio was one of the many who disagreed with Angelo degli Ubaldi's statement that plenitude of power could be used *sine causa*. Commenting on the same law, *Item si verberatum* (D. 6, 1, 15), where the emperor transferred people's property to servicemen without full compensation, he wrote that 'in this law the prince is seizing property from a private person; Angelo says he is doing so from plenitude of power with no conceivable justification, referring to an instance of this when the property of ordinary citizens in Perugia was given by the pope to other persons, and quite legitimately according to this law. But the glossators universally say the opposite, believing that there is a just cause, namely the good of the republic.'[34] For Fulgosio it was entirely wrong to think that the law *Item si verberatum* validated the untrammelled use of plenitude of power.

In Consilium 61 ('Domina Catherina') Fulgosio was as good as his word, condemning recourse to imperial absolutism without just cause. The Catherina in question had beqeathed her property to a niece, but only so long as she married a native of her own town of Riva di Trento; otherwise the estate would go to the commune. The niece decided to ignore this stipulation, marrying instead someone from Verona. In order to secure the inheritance, she acquired an imperial diploma making her husband and his father natives of Riva and freeing her from the restrictions laid down in her aunt's will. The diploma was granted from the emperor's plenitude of power and with the fullest possible derogating clauses. But for Fulgosio, even when issued in these terms, 'if a directive is granted in contravention of natural law and *ius gentium* without just cause, the law says that

[32] Fulgosio on D. Constitutio Omnem, nr 7: 'Si autem non probaretur oppositum, fortassis ei creditur et pro tanti principis asseveratione presumitur et hoc casu procedit dictum Cyni; neque enim de principe aliud quam factum et iustum presumendum est, ut l. 1 in fin. infra, De officio praef. praetor [D. 1, 11, 1].'

[33] Fulgosio on D. Constitutio Omnem, nr 7: 'Ubi autem appareat certa et indubitata principis voluntas aliquid rescribentis contra ius gentium sine causa et in ius alienum auferre volentis, placet magis nec valere rescriptum nec servandum.'

[34] Fulgosio on D. 6, 1, 15 (De rei vendicatione, l. Item si verberatum, § Item si forte ager fuit), nr 1: 'Nota principem rem privati auferre privato; et dicit Angelus ex plenitudine potestatis, etiam sine ulla causa. Iste est enim casus huius § et ideo subinfert quod possessiones quorundam plebeiorum in civitate Perusii, que per papam fuerunt quibusdam assignate, quod recte fuerunt asssignate per istam legem et l. ii et l. Bene a Zenone, infra De quadrennii praescriptione [C. 7, 37, 2 and 3]. Sed glossatores communiter tenent contrarium et intelligunt hoc esse iustam causam, scilicet propter utilitatem rei publice, ut traditur in l. i supra De constit. principum et l. finalis C. Si contra ius vel utilitatem publicam [C. 1, 22, 6] et in Prima Constitutione Digestorum.'

it must be repudiated by all magistrates.'[35] Once again it was the lawyer's task to judge whether there had been sufficient justification for a ruler's interference, Fulgosio pointing out, like Castiglioni, that 'nowadays privileges of this kind are generally obtained very much through the persistent requests of petitioners, as a result of which unlawful decisions are obtained.'[36] He dismissed both Cino's doctrine that there is always an overwhelming presumption of a just cause, as well as Baldo's claim that, when a prince wants to set aside rights, 'any motive or excuse is a sufficient justification'.[37] Most devastatingly, Fulgosio asserted that, to qualify under the terms of the will, 'it was not enough to have fulfilled its dispositions and conditions legalistically and artificially; for in truth Antonio [the bride's father-in-law] was not really from Riva by birth or by residence.'[38] Not even with plenitude of power could the emperor change reality. 'It is more consistent both with the wishes of the testator and with integrity, fairness and natural justice,' therefore, that the property should go to the commune.[39]

Fulgosio applied the same criteria to the duke of Milan: if he used plenitude of power to take property from one person and give it to another without cause, the act was unenforceable. His view was put to the test in the context of the grant of a fief in 1402 by Giangaleazzo to the condottiere Ottobuono Terzi, an early example of the refeudalization programme which had followed the creation of the ducal title. Giangaleazzo had seized the lands and other properties of Giberto di Azzo da Correggio (member of one of the most powerful old families in Parma) when he had died childless.[40] Normally the property would have gone to Giberto's cousins. In 1425 the cousins, Galeazzo, Gerardo, and Giberto da Correggio, went to court, armed with a consilium from Fulgosio, who believed that the laws of inheritance had been unjustly violated.[41] He pointed out that the transfer rested entirely on the law quoted above, *Item si verberatum*, which did not, in his view, give a ruler licence to take property without solid justification: 'That

[35] Fulgosio Consilium 61 ('Domina Catherina'), nr 4: 'Rescriptum principis ius alienum prorsus asorbens respuitur, etiam si ibi sit clausula non obstantium si contra ius naturale vel gentium et sine iusta causa concessa sit; et ab omnibus magistratibus refutari praecipitur, ut C. De precibus imperatori offerendis, l. quotiens [C. 1, 19, 2].'

[36] Fulgosio Consilium 61 ('Domina Catherina'), nr 6: 'Plerunque hodie maxime propter importunitatem petentium huiuscemodi rescripta potius obtinentur, ut C. De pet. bo. subla. l. 1, lib 10 [C. 10, 12, 1], ex qua importunitate rescripta contra ius obtinentur.'

[37] Fulgosio, Consilium 61 ('Domina Catherina'), nr 4; see above p. 33, n. 106.

[38] Fulgosio, Consilium 61 ('Domina Catherina'), nr 3: 'Tertio quia non sufficit praeceptum seu conditionem impleri civiliter et fictae sed naturaliter et vere desideratur impleri ut C. De his qui veniam aetat. impet. l. fin. [C. 2, 44, 4] quod ibi not., *ff*. De leg. 2, l. Si ita quis § is cui, [D. 31, 51, pr] et De cond. et demon. l. Fideicommissum [D. 35, 1, 76]. Hic autem dictus Antonius vere et naturaliter non est oriundus et habitator terrae Ripae praedictae, igitur etc.'

[39] Fulgosio, Consilium 61 ('Domina Catherina'), nr 7: 'Praevaleat pars communis dictae terrae quoniam profecto tam voluntati testantis quam veritati et aequitati ac naturali iustitiae magis consentanea est.'

[40] On the circumstances surrounding Giangaleazzo's act, see Gentile (2001), pp. 94–5, 99–103, and (2007a), p. 40

[41] He refers to the defendants as the other side.

law, correctly interpreted, operates when the emperor orders private property to be assigned to soldiers for pay or for rewards owed'; in those circumstances 'he is allowed, on the grounds of public necessity, to seize the property and assets of private individuals.' Otherwise, he declared, 'where there is insufficient justification, it is against the fixed principles of *ius gentium* and natural justice.' He described the issue as one which had been 'thoroughly examined by the majority of commentators and repeatedly discussed in universities and law courts, so that the opinion argued above is an accepted one and, to my mind, well proven.' Here was another instance in which the role of the just cause was reinvigorated as a hedge against arbitrary power. For Fulgosio it was so clearly against the law to take someone's property in that way that he would not 'waste paper and ink, and wear out the eyes of his readers and the ears of his listeners with any more verbiage on the issue.'[42] But this was not the only line of attack. Like Paolo da Castro, he accused Giangaleazzo of exceeding his authority: he was only a duke and therefore not *legibus solutus*. 'It seems clear,' he wrote, 'that the law [*Item si verberatum*], particularly with regard to the right and privilege relating to majesty and royal rank, does not apply here. Indeed I do not recall that it ever applied to a duke, count, or marquis.' For, he continued, 'as we read, only a prince of the rank of emperor is above the law.'[43]

Having accused Giangaleazzo of acting unlawfully and of overstepping his powers, Fulgosio attempted to rescue his reputation as a ruler: he made excuses for him and, parroting the arguments put forward by Castiglioni, blamed his captain instead.[44] 'The duke himself need not feel aggrieved that the gift was deemed unenforceable, because very often benefits of that kind are not given spontaneously from a ruler's pure generosity but as a result of the unceasing avarice and persistence of petitioners; the duke even admits that concessions he

[42] Fulgosio, Consilium 20 ('Pro pleniora veritate'), nr 7: 'Lex illa, Item si verberatum § 1 cum concor. [D. 6, 1, 15, 1], secundum rectum sensum, procedit cum Caesar militibus pro suis stipendiis seu debitis praemiis res privatorum assignari iubet . . . Ob publicas etenim necessitates (cum forte principi parata non est pecunia pro stipendiis militum), licet principi manus extendere ad res et pecunias privatorum . . . Caeterum, ubi nulla superest causa vel publica stipendiorum similis necessitas, quod princeps possit res privatorum dominis auferre et in alios transferre, contra ius gentium, quod est immutabile, ut *Inst.* De iur. nat. gent. et civ, § pen. [*Inst*. 1, 2, 11], et ipsam naturalem iustitiam . . . Sed quoniam hec quaestio pene per omnes commentarios abunde rotata est communis atque frequentata tam in scholis quam in forensibus negociis, conclusio superius recitata probata est; bellissimum censui, nec supervacuo denigrare papyrum, nec lectorum oculos nec auditorum aures prolixitatis taedio fastidire.'

[43] Fulgosio, Consilium 20 ('Pro pleniora veritate'), nr 5: 'Videretur id proprium et praecipuum ius seu privilegium cessare maiestatis et regiae dignitatis. Nulli vero inferiorum [sic for inferiori] duci, comiti vel marchioni vel alii cuiuscunque magistratus id ius competere nullibi cautum memini et liquet hoc ex l. Lucius, *ff*. De evic. ibi principali praecepto etc. [D. 21, 2, 11 pr]; et regules generales ceteris obviant, *ff*. De regu. iuris, l. Id quod nostrum [D. 50, 17, 11] et De acq. re. do. l. Traditio [D. 41, 1, 20 pr.] . . . Solum namque principem Caesareae dignitatis solutum legibus, legimus.'

[44] He does not acknowledge Castiglioni as his source (Giasone del Maino did indeed accuse him of plagiarizing his teacher's work: see Bukowska Gorgoni, *DBI*, l, p. 700).

decreed may not be sound. We know how unrelenting such men are in pressing claims and how much Otto[buono Terzi] and other people like him have in the past hankered after other people's property.'[45] In this case, however,

> it seems that the illustrious prince of divine memory, the duke of Milan, was not aware of the status of the properties he was granting and of the laws which apply to the last wishes of the dead, lawfully made, namely that property may not be passed to outsiders who are not members of the testator's house or family. It is unlikely that this most just prince would have wanted to cancel the dying man's wishes (which all previous rulers have passionately believed should be protected); for as it says in the *Codex*: 'There is nothing to which people are more entitled etc.' If he had known this, it is unlikely he would have made the grant. I am not denying that he could have done it, but I do maintain that he probably would not have done so.[46]

Like Castiglioni, Fulgosio was attempting to absolve Giangaleazzo from an act of injustice by shifting the blame on to the relentless pressure of petitioners, both lawyers having found a role for the doctrine that no concession was valid if made on the basis of *importunitas*.

GROWING ANTIPATHY UNDER THE SFORZA

'Plenitudo Tempestatis'

Leading lawyers expressed further grave doubts in the Sforza period. They included Bartolomeo Sozzini, son of the Sienese jurist, Mariano.[47] Bartolomeo had studied in Bologna under Alessandro Tartagni and Andrea Barbazza, and in Pisa under Francesco Accolti. After teaching in Siena, he transferred to Ferrara in 1472, by which time his fame had soared, resulting in heavy demand for his

[45] Fulgosio, Consilium 20 ('Pro pleniora veritate'), nrs 5–6: 'Nec hoc aegreferre debet illustrissimus dominus Dux ut hac ratione donatio viribus vacua dignoscatur; quoniam saepenumero eiusmodi donationes non proprio motu et ex mera principis liberalitate procedunt, sed ex frequenti inhiatione atque importunitate petentium, ut et ipse legislator attestatur C. De bon. petit. sublata, l. 1 et 2, lib. 10 [C. 10, 12, 1 and 2]. Ideoque nec concessa rescripta robur habere concedit. Novimus porro quanta importunitate laborent eius conditionis homines quantaque in praeteritis temporibus in alienas res inhiarunt ipse dominus Otto et alii similes.'

[46] Fulgosio, Consilium 20 ('Pro pleniora veritate'), nr 6: 'In re autem proposita non apparet divinae recordationis illustrissimum principem, dominum Ducem Mediolani, scisse rerum donatarum conditiones atque leges impositas ex iustis defunctorum supremis dispositionibus, ut, scilicet, res ipsae non possint alienari in personas extraneas et quae non sint de domo seu familia testatoris; verisimile namque est ipsum iustissimum principem nolle irritas facere deficientium voluntates quas omnes divi retro principes summo studio tuendas censuerunt, ut C. De postu. haer. inst. l. fin. [C. 6, 29, 4] et De testa. l. pen. [C. 6, 23, 30]. Nihil est cui quod magis debeantur hominibus etc., ut C. De sac. sanct. ecc. l. 1 [C. 1, 2, 1]; et *ff*. Quemad. test. aper. l. Vel negare [D. 29, 3, 5]. Si itaque id scisset verisimiliter non donasset; non nego potuisse, sed assero verisimiliter non fecisse.' Though there were other factors besides the court case, the da Correggio did in fact retrieve many of their holdings: see Rombaldi (1979).

[47] See the biography by Bargagli (2000).

consilia. He was persuaded by the Florentines in 1473 to take up a post in Pisa, where the presence of Filippo Decio and the subsequent arrival in 1489 of Giasone del Maino famously led to academic warfare between the legal stars, which not even Lorenzo de' Medici could contain.[48] Significantly, Sozzini was a member of Ludovico il Moro's Consiglio di Giustizia.[49] His approach to plenitude of power was uncompromising: it led of itself to serious injustice. His attitude emerged when asked to assess the force of an act dating back to the pontificate of Boniface IX (1389–1404) in which the pope had granted to the town of Cingoli jurisdiction over the neighbouring community of San Severino. Sozzini took the opportunity to consider the question of plenitude of power.[50] Because of the importance of the subject, as well as because of his own celebrity, Consilium 164 ('Visa bulla Bonifacii') became a famous text. The pope had acted *ex certa scientia et de plenitudine potestatis*, not allowing the injured party, San Severino, to put its case for continuing independence. 'It must therefore be concluded that this was a directive which contravened all legal procedure' and broke the rules of *ius commune*.[51] It was not beyond the scope of plenitude of power to effect such an infringement, but the pope would not have made the concession had he been fully apprised of the circumstances.[52] He further protested that 'the pope could not have deprived San Severino of its assets without legitimate grounds because that would have meant he was acting in violation of *ius gentium* (though he could have done so had there been legitimate cause).'[53] Here Sozzini made a point of disagreeing with Angelo degli Ubaldi that the emperor could take property even without just cause.[54] The fact that San Severino had not been given a chance

[48] Bargagli (2000), pp. 150ff; Verde (1985), pp. 803–6, publishes despairing letters written in June 1489 from the rector and procurator of the university to the Ufficiali dello Studio describing del Maino and Sozzini as being of 'tanta diversità d'animi e sì cupidi e sì passionati, mi pare essser fra' soldati e, per Dio, che se io dicessi peggio non direi bugie.' Sozzini taught at Padua and Bologna before returning to Siena at the end of his life; he taught, at various times, both civil and canon law.

[49] He was appointed on 19 March 1495: see Petronio (1972), p. 36, n. 91.

[50] Bartolomeo Sozzini Consilium 164 ('Visa bulla Bonifacii'), Introduction, protested: 'Non enim potest materia esse non ampla, cum de plenitudine potestatis summi Pontificis eiusque voluntate discutiendum sit.'

[51] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), Introduction and nr 1: 'In casu nostro Papa processit ex certa scientia et de plenitudine potestatis, omisso omni ordine iuris, non habita aliqua causae cognitione, veritate et inquisitione, non citatis his de quorum praeiudicio agebatur, neque eorum defensionibus auditis. Ex quibus patet quod tale rescriptum fuit concessum contra dispostionem iuris communis.'

[52] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 3: 'Sed in casu nostro unum fuit obmissum, quod si fuisset narratum, et duo fuerunt falso expressa, quae si vera narrata fuissent, Papa non concessisset vel non ita de facili concessisset.'

[53] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 7: 'Secundum fundamentum est quod dicta bulla non habet obstare ratione deficientis potestatis. Istud fundamentum probatur quoniam, nulla causa legitima subsistente, non potuit Summus Pontifex privare communitatem Sancti Severini dominio rerum suarum, quia hoc fuisset rescribere contra ius gentium, licet causa legitima subsistente potuisset.'

[54] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 7: 'Non est currandum de eo quod dixit Angelus in l. Item si verberatum, *ff*. De re vendi. [D. 6, 1, 15] ubi dicit quod imperator

to put its case was a serious defect:[55] 'Everyone agrees that even from plenitude of power a ruler cannot act without summoning the defendant in criminal cases because of the grave consequences [of the proceedings]; the same must hold true in civil cases, such as this present instance, because, so far as the law is concerned, the potential loss is equally damaging.'[56] In a final flourish he hit out at what he saw as a misuse of plenitude of power: 'Plenitude of power is there to effect what is right, not to distort [legal principles]'; otherwise it would be better known as *plenitudo tempestatis*.'[57] Thanks to Sozzini, the phrase *plenitudo tempestatis* (plenitude of turmoil), which had originated with the thirteenth-century French canonist Jean Lemoine (Johannes Monachus), was now given new currency.[58]

Francesco Corte

Francesco Corte, professor at Pavia and the most original thinker to consider Sforza legitimacy,[59] revisited the link made by Baldo between plenitude of power and tyranny. In what became a well-known denunciation in Consilium 73 ('Super memorata'), he attacked the legitimization granted by a count palatine to a *spurius* (a child whose parents would never be able to marry):[60]

Disinheriting other legitimate descendants for no right and proper reason is an unfair and cruel dispensation [from the law], given that [this son] was already equal and more than equal [materially] to legitimate and natural-born children; it [had the effect of] putting an illegitimate son in a stronger position than legitimately born daughters: it was an act which must be considered utterly outrageous. That is why Baldo said that when he cancels a person's established rights without grounds even the emperor is called a tyrant; for, as he put it, plenitude of power should not extend to anything wrong. It should not

de plenitudine potestatis potest dominium rei alicui auferre, nulla cause subsistente et quod qui dicit contra mentitur.'

[55] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 12: 'Tertium principale fundamentum est quod dicta bulla non habet obstare, ratione deficientis solennitatis, quoniam non potuit Papa auferre ius commmunitatis Sancti Severini sine causae cognitione et eis non citatis: casus est in Clem. Pastoralis, De re iudi. [*Clem.* 2, 11, 2].'

[56] Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 16: 'Nam si omnes fatentur quod in causis criminalibus propter praeiudicium non potest princeps etiam de plenitudine potestatis procedere parte non citata, ergo idem dicendum est in civilibus gravis praeiudicii, quoniam causae civiles graves aequiparantur quo ad iuris dispositionem causis criminalibus: § propter litem, *Inst*. De excusat. tuto. [*Inst*. 1, 25, 4].'

[57] 'Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), nr 17: 'Adest enim plenitudo potestatis in dispositione bonitatis, non autem pravitatis, nam potius tunc dici deberet plenitudo tempestatis.' Sozzini was quoting the fifteenth-century Milanese canonist Giovanni da San Giorgio of Alexandria (known as Cardinal Mediolanensis).

[58] Johannes Monachus on *Extrav. Bonifacii VIII,* 'Rem non novam' [*Extrav. comm. 2*, 3]. Jurists frequently cited Sozzini's consilium as the source for the phrase.

[59] See above pp. 102–5.

[60] For an account of the various kinds of illegitimacy, see Kuehn (2002), pp. 33–65. Filippo Maria had forbidden legitimizations which did not have the consent of the father and other relatives, his decree being reissued by Francesco Sforza: *ADMD*, pp. 301, and 338; see above pp. 136–7; on these attempts to control legitimizations, see Visconti (1912), pp. 354–9.

be assumed that the count palatine was persuaded [to issue the legitimization] for any just or worthy cause, for he made no reference [to such a circumstance in the document].

Corte was adamant that

overriding the law can be done solely on the grounds of a just cause, because people's rights are being infringed; in other words a legitimization should be granted only in the absence of legitimately born children, and then it is done from ordinary power and not from plenitude of power.[61]

For Corte, plenitude of power was bound to be associated with injustice; otherwise it would not be needed.

In a dispute over another legitimization, this time an act which had been confirmed by Giangaleazzo Sforza 'relying on plenitude of absolute power', Corte again cited Baldo's reference to tyranny: 'Baldo says that, when the supreme emperor takes away a person's rights without an offence having been committed, he is called a tyrant, even if he is using absolute power; that is because plenitude of power does not grant anything unfair, especially when it comes to a spurious child's legitimization which, as I have often said, is not granted by ordinary power.'[62] In this case he admitted that a proper motive could possibly be put forward, namely the preservation of the family line; 'but that is not a sufficient and creditable justification; because the legitmizing of a spurious child could always be granted on the grounds of saving a family [line].'[63] In a similar case, he revealed his feelings even more frankly: a concession legitimizing sons did not have to be understood to include daughters 'because it is granted from absolute power, which is [in itself] objectionable'.[64]

[61] Francesco Corte, Consilium 73 ('Super memorata'), nr 27: 'Sed ita est quod Johannes Thomas, comes palatinus, in ista tertia legitimatione (seu potius iniqua et crudeli dispensatione) inherendo aliis legitimationibus, nullam interseruit causam iustam et laudabilem (cum iam esset adaequatus et perequatus filiis legitimis et naturalibus), volens ipse Joannnes Thomas quod Albertus, spurius, esset melioris conditionis quam filiae legitimae et naturales, quod omnino reputari debet absurdissimum. Et ideo dixit Baldus in cap. i, in titulo 'De feudo marchiae', [*Liber feudorum*, 1, 13] quod etiam princeps, auferendo ius quaesitum sine causa, appellatur tyrannus; quia plenitudo potestatis non debet se extendere ad aliquod iniquum, ut ibi per eum. Non debet ergo censeri quod fuerit motus ex aliqua iusta et laudabili causa, quam non inseruit in legitimatione . . . Ad dispensandum requirebatur iusta et laudabilis causa, cum iura offenderentur, vel melius illud procederet quoties legitimarentur naturales, non existentibus filiis legitimis et naturalibus, quia tunc fieret de ordinaria potestate et non de plenitudine potestatis: per textum, cum glossa, in § fin. in *Auth*. Quibus. modis. nat. effic. sui [*Nov*. 74, Coll. VI, 1].'

[62] Francesco Corte, Consilium 16 ('Clarus vir Jacobus'), nr 18: 'Et saepe soleo referre Baldo in dicto [cap] i, 'De feudo marchie', *In usibus feudorum,* dicentem quod supremus imperator auferendo ius quaesitum sine culpa, etiam ex absoluta potestate, non debet appellari princeps sed tyrannus, quia plenitudo potestatis non tribuit aliquod iniquum, et potissime in legitimandis spuriis, quia illa legitimatio non fit de ordinaria potestate ut saepe dixi.'

[63] Francesco Corte, Consilium 16 ('Clarus vir Jacobus'), nr 18 and 18: 'Sed scrupulum restat quia diceret aliquis fecit ex causa iusta eo quod dixit ratione conservandae agnationis et familiae . . . Respondeo quod ista non est sufficiens et laudabilis causa, quia sequeretur quod spurius legitimandus semper legitimaretur quia conserveretur agnatio.'

[64] Francesco Corte, Consilium 9 ('Ticinensi statuto'), nr 34: 'Privilegium legitimandi masculinum non debet includere feminam, quia conceditur ex absoluta potestate, quae est odiosa: l. Nec

Giasone del Maino

The question of whether the Sforza dukes could stand up to imperial ambitions had raised difficult issues after 1450. The problems were compounded with the fall of Ludovico Sforza and the arrival of the French in 1499. The lawyer best placed to demonstrate the impact of these upheavals on the duke's prerogatives was Giasone del Maino (1435–1519).[65] Del Maino is one of the few lawyers of the period who, thanks to the lively biography by Gabotto, emerges with an identifiable personality. Ambitious, clever, irascible and energetic, he was a dominant figure in university circles from the 1470s until his death almost fifty years later. He taught at Padua from 1485 to 1488, spent a year at Pisa, and then transferred to Pavia where he spent the rest of his career. He was just as much at home at the Sforza court, being the nephew of Agnese del Maino, Filippo Maria's mistress and mother of Francesco Sforza's wife, Bianca Maria.[66] Francesco gave the fief of Borgofranco in the contado of Pavia to Giasone del Maino's father in 1456; his uncle Lancellotto was made a ducal councillor in 1477 and del Maino himself became a member of the Consiglio Segreto in 1492. He dedicated several of his commentaries to Ludovico il Moro[67] and gave the formal oration both at the marriage of Maximilian and Ludovico's daughter Bianca in 1493 and at Ludovico's investiture in 1495.[68] After the French occupation he was persuaded to stay on at Pavia, becoming a supporter of Louis XII, who was a known admirer of his work.[69] Remarkably, when the Sforza returned in 1513, del Maino somehow managed to avoid the fate of his colleagues, Filippo Decio and Francesco Corte, who were condemned as rebels: he was rewarded instead by Duke Massimiliano Sforza with yet more property.[70] Characteristically, he spent his last years, when he was over eighty, as councillor to Francis I, still actively composing consilia.[71]

Working so closely with successive governments, del Maino had to modify his concept of plenitude of power to suit the times. But even he took a stand against the misuse of power in general. He considered, for example, that the right of

damnosa et l. Rescripta, C. De prec. imper. offerendis [C. 1, 19, 3 and 7]; l. 1, Honorariis, § sed cum rescissa; *ff*. De actionibus et obligat. [D. 44, 7, 35].' The implication was that the concession should not therefore be extended beyond what was strictly stated.

[65] For details of Giasone del Maino's career, see Gabotto (1888); Belloni (1986), pp. 221–7; Santi (2003).

[66] Giasone del Maino was illegitimate, but the family connection was acknowledged by the dukes: Gabotto (1888), pp. 154 and 283.

[67] In 1491 he dedicated the first edition of his commentaries on the first part of the *Digesti veteris* and of the *Codex* to Ludovico; there were more such dedications in 1493: Gabotto (1888), pp. 157 and 179.

[68] Gabotto (1888), pp. 183ff and 195–6.

[69] On a visit to Pavia in 1507, the king accompanied del Maino on foot to hear him lecture: Gabotto (1888), p. 237.

[70] Del Maino was given some of Gian Giacomo Trivulzio's property: Gabotto (1888), p. 256.

[71] Gabotto (1888), p. 260.

communes to draw up statutes was regularly infringed by the need to seek the signore's approval.[72] When it came to explaining the statement 'whatever the emperor has decreed has the force of law', he commented, quoting Baldo, that 'the prince does have plenitude of power.' But,

While it is sacrilege to challenge a ruler's power, it is still permissible to question his knowledge and wishes; for, as Baldo says, a ruler does sometimes make mistakes. He also says that it must be presumed that a ruler will not decree anything that is not lawful and right, and that he wants all acts, whether administrative or judicial, to be based on justice. Thus a general confirmation will only reinforce what is legal, and if a ruler makes or confirms a grant, it is understood that [he means to act] in accordance with the law, and with the proviso that another person's rights are not being violated.[73]

With regard to the absolute authority of the Sforza, del Maino was hostile to begin with, and was even prepared to suggest that rulers in their position had no right to plenitude of power. For this purpose he cited Paolo da Castro's statement:

Only a supreme prince can completely overrule someone's rights by using the phrase *notwithstanding*; a lesser ruler may not do so, even where the emperor could, as Paolo forcefully insists, describing an episode which took place when Pandolfo [Malatesta] was signore of Bergamo and issued a directive with the phrase 'notwithstanding ', where he pardoned the debt owed by one of his supporters to some Bergamask citizens. Paolo said that his advice had been that he [Pandolfo] could not do that, even had he been a legitimate ruler, and that the same applied to the duke of Milan.[74]

[72] This was in his comment on D. 1, 1, 9 (De iustitia et iure, l. Omnes populi) from his lectures given in Pavia before he began to work for Ludovico: Storti Storchi (1990), p. 86, n. 34.

[73] Giasone del Maino on D. 1, 4, 1 (De constitutionibus principum, l. Quod principi), nrs 2–3: 'Et dicit Baldus in Praeludium feudorum in 13 col. [*In usus feudorum,* Proemium, nr 13 s.v. Aliqua], quod in principe est plenitudo potestatis . . . Tamen adverte quod licet de potestate principis sacrilegium sit, ut dixi, disputare, de scientia et voluntate principis licitum est disputare, quod [sic for quia] princeps quandoque errat: l. 2, *ff*. De supellect. legata [D. 33, 10, 2], secundum Baldum hic, qui etiam subdit quod in principe nunquam aliquid praesumit placere, nisi quod iustum et verum sit. Et princeps vult omnes actus suos regulari a iustitia poli et fori, et in generali confirmatione solum iusta confirmata intelliguntur. Et si princeps aliquod dat vel firmat specifice intelligitur, salvo iure alterius et legis auctoritate, ut l. Meminerit, cum glossa, C. Unde vi [C. 8, 4, 6] et refert et sequitur Alex [Tartagni] in Consilio 125 in ii vol. incip. Viso titulo in ii col.[nr 4].'

[74] Giasone del Maino on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta), nr 3: 'Solus supremus princeps potest in totum tollere ius alicuius cum clausula 'non obstante'; inferior autem non posset, etiam si supremus princeps posset: ita tenet Archi [Guido da Baisio] 25 quaestio in Summa, refert et sequitur Alb. de Ros. in l. Quotiens, *ff.* [sic] eo [C. 1, 19, 2]. Et ibi Paulus multum exclamat et dicit quod habuit de facto tempore quo dominus Pandulphus [Malatesta] tenebat imperium Bergomi; nam uni ex partialibus suis remisit per rescriptum quicquid debebat civibus Bergomi, cum clausula 'non obstante'; dicit se consuluisse quod non potuit, dato quod fuisset iustus princeps, et idem dicit in duce Mediolani et in Marchione Ferrariae quod tu diligenter notas ad ea quae traduntur per glossa et Doctores in c. quae in ecclesiarum, De constit. [X. 1, 2, 7] et in l. fin. infra Si contra ius vel util. pub. [C. 1, 22, 6].' Del Maino understood this to be a reference to the use of plenitude of power; on C. 1, 22, 6 (Si contra ius utilitatemve publicam, l. Omnes), nrs 1and 3: 'Dominium rei meae non potest princeps auferre per rescriptum, cui nihil occurrit, per

Given his support for the rule of law in these circumstances, it is hardly surprising to find Giasone del Maino reacting against the Sforza's misuse of plenitude of power. His disapproval emerged in connection with the same dispute over ducal powers that had inspired Francesco Corte to develop his theory of ducal sovereignty. Corte had upheld Duke Galeazzo Maria's use of absolute power to support the claims of Bartolommeo and Gianfrancesco Anguissola to the fief of Montechiaro (Piacenza).[75] Del Maino, on the other hand, stood up against ducal powers on behalf of Antonio Maria and Filippo Maria Anguissola, legitimized by Frederick III in 1466 and designated heirs in their grandfather's will. By the time he composed the consilium del Maino had made a name for himself as a university teacher and professional lawyer, having been a member of the College of Jurists since 1472.[76] He was not yet working for the governnment, a fact which makes the strength of the invective against what he perceived to be the misuse of authority by the duke more comprehensible. He began the opinion by suggesting that Galeazzo Maria did not have plenitude of power:

> Since we are dealing with the illustrious duke of Milan, it is proper to add what Paolo says on this issue in his comment on *l. Quotiens*, that the ability to annul someone's rights belongs to no one apart from a sovereign ruler who, like the pope or the emperor, has no superior; lesser rulers who do acknowledge a superior, such as counts and marquises who recognize the Church of Rome (for example the marquis of Ferrara), may not do so.

Such lesser rulers included the duke of Milan and, as del Maino pointed out, 'Paolo believed that this fact does need to be borne in mind, as it is an issue which comes up on a daily basis.'[77]

On the question of absolute power, Francesco Corte (Giasone del Maino's adversary in the present case) had taken the line that as duke of Milan Galeazzo Maria was an independent ruler on a par with the emperor: 'With absolute power the emperor can take one person's property and grant it to another, and

quae dixi in l. Rescripta, supra, De preci. impera. offer. et ita in specie tenet Angelus in d. l. Item si verberatum, in principio, ubi animose dicit quod mentiuntur per gulam qui dicunt quod imperator de plenitudine potestatis non possit mihi auferre dominium rei meae . . . Praedicta omnia intellige ut procedant in supremo principe et sic in papa vel imperatore; secus in inferiore, puta in duce, marchionibus et similibus, ut dixi in l. Rescripta, supra De precibus imperatori offerendis.'

[75] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'); the two documents are described as dated 8 February 1472 and 8 August 1475.

[76] Gabotto (1888), p. 66; del Maino's consilia were published in chronological order: this one must therefore have been composed sometime in the 1480s.

[77] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'), nr 2: 'Ad terminos nostros de illustrissimo duce Mediolani oportune accedat illud quod tenet Paulus de Castro in l. Quotiens, C. De prec. imper. offer. [C. 1, 19, 2] ubi formaliter dicit unum esse bene notandum quod ibi dicit Albericus de Rosate, quod tollere totum ius alterius non pertinet nisi ad supremum principem, qui non habet superiorem, ut est papa vel imperator; sed inferiores, qui superiorem recognoscunt ut sunt comites et marchiones qui recognoscunt Romanum ecclesiam, ut Marchio Ferrariae et similes, non possunt istud facere . . . Et idem subdit esse dicendum de duce Mediolani, qui facit ut dux, quia non pertinet nisi ad supremum principem, et reputat Paulus de Castro hoc esse tenendum menti, quia quotidianum.'

so can any ruler who does not acknowledge the emperor.'[78] For support Corte had cited Angelo degli Ubaldi's controversial statement that 'from plenitude of power a prince can seize property even without an obvious justification,' a view which, as he was forced to concede, was weak corroboration.[79] 'Many jurists take a different view from Angelo,' Corte admitted, 'and hold that, without reasonable grounds, a ruler may not take another person's property.' But he had attempted to put a positive gloss on Angelo's opinion, arguing that those who took issue with Angelo did not really understand him: 'When he says that a ruler can, from certain knowledge and plenitude of power, take someone's property without any justification, he means without any explicit justification; for with a prince it is always assumed that there is a good reason, albeit tacit.'[80]

Del Maino, on the other hand, considered the duke's directives in favour of his client's adversaries 'unjust and invalid since they had been granted on grounds that were notoriously unfair'.[81] He did not spare Galeazzo Maria in his denunciation of the manner in which he had supported the defendants: it was thanks to ducal authorization that they had 'misappropriated and taken *de facto* possession of Giovanni Galeazzo Anguissola's estate and the fief of Montechiaro'.[82] The seizure had been facilitated by 'the duke's threat of force, which subjects are unable resist, such intimidation being clearly revealed in the two injunctions'.[83] Del Maino condemned the use of plenitude of power in this

[78] Francesco Corte, Consilium 65 ('Super praemissa narratione), nr 12: 'Et ideo ex absoluta potestate imperator potest tollere dominium rei alterius et alteri concedere et sic quilibet princeps imperatorem non recognoscens: ita voluit Angelus et moderni in l. 3, § si is pro quo, *ff*. Quod quisque iuris [D. 2, 2, 3, 3]; per textum in l. Bene a Zenone, C. De quadriennii praescript. [C. 7, 37, 3]'. On this consilium see above pp. 102–5.

[79] Francesco Corte, Consilium 65 ('Super praemissa narratione), nr 12: 'Et idem firmavit Angelus in l. Item si verberatum, § 1, ubi apertius loquitur, *ff*. De rei vendicatione [D. 6, 1, 15], ubi inquit quod princeps de plenitudine potestatis potest nobis dominium, etiam nulla causa suadente, auferre ex certa scientia et de plenitudine potestatis praedictae per text. in dictam legem Bene a Zenone [C. 7, 37, 3]; idem, Angelus in l. Venditor, § si constat, per illum text. *ff*. Commun. praedio. [D. 8, 4, 13, 1] et in l. Lucius per text. ibi *ff*. De evicti. [D. 21, 2, 11]; idem Angelus in l. Omnes, C. De Quadriennii praescr. [C. 7, 37, 2].'

[80] Francesco Corte, Consilium 65 ('Super praemissa narratione), nr 12: 'Et licet multi doctores teneant contra Angelum, quod sine causa non possit princeps dominium alterius auferre . . . Tamen reprehendentes Angelum non bene eum intellexerunt; quia dum dicit Angelus quod princeps ex certa scientia et plenitudine potestatis suae etiam sine causa possit auferre dominium alteri, intellexit de expressione causae, idest sine causa expressa; cum in eo tacite semper praesumatur causa.'

[81] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'), Introduction: 'Tamen dictae literae ducales reddantur iniustae et nullae, cum sint ex causis notorie iniustis concessae.'

[82] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'), nr 7: 'Circa vero binas literas ducales quas praefati comites obtinuerunt ab illustrissimo quondam duce Galeacio, vigore quarum apprehenderunt et de facto obtinuerunt bona et haereditatem domini Ioannis Galeacii et castrum Montisclari.'

[83] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'), nr 20: 'Primo vis ducalis seu graves violentiae ab illustrissimo quondam Duce Galeacio illatae, quibus per subditos resisti non poterat. Et de tali violentia ducali constat ex binis literis, ex causis iniustissimis et nullis, obtentis ab illustrissimo quondam duce Galeacio, ut in superioribus fuit demonstratum.'

instance precisely for its lack of a just cause, dismissing Corte's contention that valid grounds could be assumed even if not spelt out. In this instance, indeed, 'the ducal acts were clearly invalid and unjust since they had been sought by the counts themselves on wrongful grounds, as was made explicit in the documents.'[84] In Giasone del Maino's eyes ducal plenitude of power had been misused and discredited.

On the other hand, once he had become a key figure at court, del Maino's advocacy of Sforza powers was unstinting. By the later fifteenth century, as has been seen, plenitude of power had become associated with the independent status of the duchy. In a consilium composed in this period del Maino once again addressed the issue of the duke's plenitude of power: in 1437 the governing magistrates and podestà of Alessandria had granted tax exemption to a key ducal official, Cristoforo Ghilini, the concession being confirmed by Filippo Maria 'de plenitudine potestatis etiam absolutae'.[85] When the commune attempted to cancel the privilege, del Maino argued that ducal power prevailed: 'Duke Filippo confirmed the privilege of exemption *motu proprio, ex certa scientia et de plenitudine potestatis ducalis etiam absolutae*.' Del Maino was sure that there was consequently no more room for doubt about the validity of the concession.[86] He turned to Baldo's fundamental passages on the force of plenitude of power:

> No one should presume to challenge what a ruler orders or confirms from certain knowledge; indeed [that person] should be disregarded and perpetually silenced, as Baldo notably observes in his commentary on the Peace of Constance. The duke included the words 'from our plenitude of absolute power' and it is ill-advised and almost sacrilegious to challenge the force of such an exemption. Nothing, according to Baldo, can defy a ruler's plenitude of power: he may do whatever he wants. Again, according to Baldo, a ruler's plenitude of power is not subject to necessity and is limited by none of the rules of public law.[87]

[84] Giasone del Maino, Consilium Bk 2, 177 ('In praesenti consultatione'), nr 7: 'Tales literae ducales manifeste sunt nullae et iniustae, quum fuerint ab ipsis comitibus ex iniustis causis impetratae, quae causae iniustae fuerunt in ipsis literis ducalibus expressae.'

[85] Giasone del Maino, Consilium Bk 4, 101 ('Immunitas'), Introduction; the exemption was confirmed by Francesco Sforza 'cum interventu senatus, causa iustitiae per eos diligenter examinata'.

[86] Giasone del Maino, Consilium Bk 4, 101 ('Immunitas'), nr 6: 'Dux Philippus, motu proprio, ex certa scientia et de plenitudine potestatis ducalis, etiam absolutae, confirmavit dictam concessionem immunitatis ut quatenus opus foret de novo concessit, et voluit pro lege haberi, supplendo ex eadem potestate omnes defectus et maxime respectu potestatis concedentia, aliquibus in contrarium vel factis vel fiendis nequaquam obstantibus, ut ex ipsis literis ducalibus inspici potest. Quibus sic stantibus, non est amplius de validitate dictae immunitatis dubitandum.'

[87] Giasone del Maino, Consilium Bk 4, 101 (Immunitas'), nrs 7–8: 'Item non debet quis audiri contra illud quod facit vel confirmat princeps ex certa scientia, immo debet repelli et imponi ei perpetuum silentium. Ita pulchre notat Baldus in titu. *De Pace Constantiae,* in decimo col., § si quis autem per illum textum, in verb. non admittemus. Item princeps apposuit clausulam "de plenitudine potestatis etiam absolute" unde temerarium est et quasi sacrilegum de validitate talis immunitatis amplius disputare l. 2 C, De crimine sacrilegii [C. 9, 29, 2]. Nam plenitudini potestatis principis nihil resistit. Nam si libet, licet: l. Princeps. *ff*. de legi [D. 1, 3, 3], secundum Baldum in

Del Maino completed the diatribe referring to the classic texts of Baldo, Angelo degli Ubaldi, and Paolo da Castro in support of the assertion that 'the duke of Milan is allowed to use plenitude of power in his lands and do anything, just as the emperor can in the empire.'[88] In a few succinct lines he had managed to gather the key elements regarding the scope and legitimacy of ducal plenitude of power to support the opinion that a ducal exemption, once given, was unassailable.

There were further twists: when he wanted to endorse the Sforza regime's independence, del Maino argued against the emperor's use of plenitude of power. The lands of the Scarampi family fell within the boundaries of three different rulers, the duke of Milan, the duke of Orleans, and the marquis of Monferrato. In one of the causes célèbres of the turn of the century, del Maino's brief was to protect the position of Francesco Scarampi in a dispute over succession rights, against cousins who had an imperial privilege to back their claim.[89] Del Maino's principal argument centred on the independence of the three local rulers: 'The Scarampi family are not strictly considered direct vassals of the emperor but of the above-mentioned [three] rulers who, in their lands, have immediate superiority over them.'[90] He now applied well-honed arguments to challenge the emperor's interference: with regard to his plenitude of power, its force depended on the justice of the case and on his familiarity with the details. As del Maino explained, it made no difference that the privilege was issued 'on the basis of certain knowledge and plenitude of power and that nothing is proof against imperial plenitude of power: the response to that is the fact that the emperor is not meant to use plenitude of power without overwhelming justification. Since such was hardly the case here, the clause ought to have no force, and even less considering the emperor had not been made aware of the settlements and sworn agreements existing among members of the Scarampi family.'[91]

c. i, in 11 col., De constitutionibus [X. 1, 2, 1] et in Consilio 333 primae partis, incipiendo "Ad intelligentiam sequendorum praemittendum," circa principium. Item plenitudo potestatis principis nulli necessitati est subiecta, nullisque iuris publici regulis limitata, secundum Baldum in l. 2, in 7 col., C. De servitutibus et de aqua [C. 3, 34, 2].'

[88] Giasone del Maino Consilium Bk 4, 101 ('Immunitas'), nr 10: 'Item Dux Mediolani potest in terris suis uti plenitudine potestatis et omnia facere sicut imperator in universo, secundum Baldum in consilio 359, tertii voluminis quod incipit "Quemadmodum imperator;" Angelum notabiliter in consilio 217, incipiente "In causa accusationis," in secunda col; et late Paulus de Castro in Consilio 227, incipiente "Super primo dubio".'

[89] Gabotto (1888), pp. 225–6, describes the circumstances of case; the consilium must have been composed sometime before 1503, the year of Francesco Scarampi's death.

[90] Giasone del Maino, Consilium Bk 2, 233 ('Circa primum consultationis'), nrs 42–3: 'Ista feuda nobilium de Scarampis de quibus in presens contenditur, partim sunt sub illustrissimo duce Mediolani, partim sub illustrissimo ducatu Aurelianense et partim sub illustrissimo marchione Montisferrato . . . In proposito ergo isti nobiles de Scarampis proprie et immediate non censentur vasalli Caesaris, sed principum supranominatorum, qui respectu istorum in suis territoriis habent directum dominium.'

[91] Giasone del Maino, Consilium Bk 2, 233 ('Circa primum consultationis'), nrs 44–5: 'Non obstat ergo in primis dum dicebatur de privilegio Caesareo indulto domino Ambrosio, cum clausula "ex certa scientia et de plenitudine potestatis" et quod plenitudini potestatis Caesareae nihil resistit;

During the period of French occupation, in what must have been one of his last consilia, Giasone del Maino looked again at the conflict between imperial and ducal plenitude of power. In that complex world of competing authorities he was now prepared to support the enduring authority of the emperor as a defence against the new French ruler. Giovanni Enrico del Carretto of Savona claimed sole possession of his father's lands on the basis of a diploma formerly granted by Frederick III to his grandmother, instituting a system of primogeniture. But his younger brothers claimed equal shares of the lands, relying on a later investiture obtained from the duke and from Francis I when he was ruler of Milan. According to del Maino, 'the emperor from his plenitude of power could grant rights of primogeniture in respect of these holdings, especially given that he made explicit a reasonable justification for doing so, and that is the basis of Giovanni Enrico's claim.'[92] The younger brothers, on the other hand, argued that 'Giovanni Enrico had no right to benefit from the imperial concession, given that, from the time of their father's death, there had been no formal acknowledgement [by the family] of the Holy Roman Empire, nor had a [further] imperial investiture been sought; in contrast, his illustrious highness the duke [of Milan] and his most Christian majesty [the king of France], holder of the duchy of Milan, who had been responsible for the other investitures, were recognized.'[93] But del Maino did not accept that his client should lose out just because he had failed to seek imperial confirmation of the original diploma. The fact was that circumstances had been too unsettled: 'During that period there were so many different dukes and rulers holding power in Insubria [Lombardy] and Liguria, none of whom, at least in practice, recognized the emperor, that this situation in itself was enough to excuse Giovanni Enrico and his parents from acknowledging the authority of the empire and seeking the necessary investiture.'[94] Frederick's diploma, in his eyes therefore, retained its force.

quia respondetur quod cum imperator non debeat uti plenitudine potestatis nisi ex magna causa (ut dixi supra in 12 fundamento) et hic nulla penitus subsit causa, ergo dicta clausula non debet habere effectum; et tanto minus, cum imperator non fuerit certificatus de conventionibus et transactionibus iuratis nobilium de Scarampis.' Ambrogio represented the other branch of the Scarampi.

92 Giasone del Maino, Consilium Bk 4, 107 ('In divisione bonorum'), nr 1: 'Stat ergo ex praedictis vera conclusio quod imperator de plenitudine potestatis potuit in dictis castris et locis concedere ius primogeniturae, et tanto magis cum in dicta concessione rationabilem causam expresserit et sic dominus Ioannes Henricus habet in dictis locis et castris fundatam intentionem suam.'

93 Giasone del Maino, Consilium Bk 4, 107 ('In divisione bonorum'), nr 1: 'Nec obstat si diceretur quod dominus Ioannes Henricus non possit se iuvare dicto privilegio imperiale, ex eo quod, post mortem patris usque ad haec tempora, non fuit facta aliqua recognitio Sacro Romano Imperio nec requisita investitura; immo recognitio fuit facta ab illustrissima ducale celsitudine et a Christianissimo maiestate, ducatum Mediolanensem obtinente, et ab eis investiture obtente.'

94 Giasone del Maino, Consilium Bk 4, 107 ('In divisione bonorum'), nr 1: 'Item conditio temporum et varietas ducum et principum qui in Insubribus et Liguribus dominati sunt et imperatorem non recognoverunt, saltem de facto, satis excusant dominum Ioannem Henricum et eius progenitores si postea non recognoverunt Sacrum Imperium, nec investituram requisiverunt, cum requiratur.'

A long career spent at the top of the profession and at the centre of government made Giasone del Maino a prime authority on plenitude of power. Aware of growing hostility among other jurists, his earliest inclination had been to follow that trend. But once in government his attitude changed. As a result, del Maino can be seen arguing both for and against plenitude of power. In the earlier period he had taken a stance against the duke of Milan, citing Paolo da Castro to deny that the duke even possessed such a prerogative. Afterwards, as a ducal councillor, he became an ardent supporter of Sforza plenitude of power, making use of Baldo's key statements to defend the duke against challenges from both communes and emperor. Authority in the duchy being in a state of flux following the foreign invasions, del Maino was aware that, when it came to plenitude of power, there could be no hard and fast rules. In his last years he continued to demonstrate a flexible approach: when he wished to oppose a Sforza concession reissued by the king of France in his role as duke, he could be found supporting imperial powers once more.

Giovanni Nevizzano

Giasone del Maino's multi-faceted approach did not signal an overall revival of confidence in the merits of plenitude of power: criticism became ever more strident in the first decades of the sixteenth century. Among influential figures working in and near Milan during this period were Giovanni Nevizzano, Aimone Cravetta, and Andrea Alciato, all of whom were keen to discredit the very concept of absolute power. By this time consilia concerning issues of public law had become essays in political thought, eloquent vehicles for the expression of growing disillusion with the practical effects of absolutism. In the hands of these three lawyers, the ideological basis of attack was broadened: perceiving that plenitude of power could lead whole communities to forfeit rights, they saw it as their responsibility to protect claims to liberty and independence.

In additon, two periods of French rule (1499–1512 and 1515–22) had had their own effect on Milanese lawyers, who now became accustomed to citing French as well as Italian precedents. Giovanni Nevizzano of Asti (*c*.1490–1540),[95] sickened by what he described as Italy's descent into lawlessness and tyranny,[96] composed the most comprehensive critique yet against plenitude of power. He, like Machiavelli, saw in the French system strong protection for individual rights and new ways of combating ducal plenitude of power. In 1516 he composed a consilium contesting Francis I's entitlement, as duke of

[95] Nevizzano, having studied under del Maino, Decio, and Franceschino Corte at Pavia and Padua, received his doctorate *in utroque iure* in 1511 in Turin, where he then taught civil law. For details of his career, see Lessona (1886), pp. 15–44, and di Renzo Villata (1982), p. 102; on his political thought, see Rossi (2005).

[96] This was how Nevizzano described the contemporary scene in his best-known work, the *Sylva nuptialis*, published in 1518: see Rossi (2005), pp. 93–4.

Milan, to sell feudal rights over *unum fortalicium et una bona villa* in the territory of Asti (communities B and C as he called them). The result was that they had been removed from that city's control, to the dismay of those communities and of Asti itself.[97] Nevizzano interpreted Francis's act of enfeoffment as divesting B's and C's inhabitants of property and liberty. 'The king was not allowed to infringe rights, that is, tax revenues, jurisdiction and other assets, by means of this enfeoffment,' he protested. 'The concessions and privileges of princes are assumed to be made without prejudice to the rights of others.'[98] Naturally, Nevizzano did not approve of what he described as 'the arrogant statement of Angelo [degli Ubaldi] that it is a lie to say that from his plenitude of power the emperor cannot deprive a person of property or rights without cause,' observing that Angelo was usually taken to task for this assertion.[99] But, in fact, Nevizzano went further than the perennial debate about just cause. He cited as well classic sources opposing the effects of plenitude of power: he referred to Francesco Corte's assertion that 'a ruler who takes someone's established rights without cause is given the name of tyrant, because plenitude of power does not extend to wrong doing'; he quoted Fulgosio's declaration that 'it is frequently said that God can do anything but he cannot commit an injustice'; and Decio's to the effect that the words of a privilege should actually be misinterpreted before someone's rights were abused. As Nevizzano concluded: 'From this we can say that a ruler's edicts and concessions are always issued on the understanding that the phrase "without prejudice to anyone else" is implicit.'[100] But the present duke was king of France; hence the new element to his invective:

[97] Giovanni Nevizzano's, Consilium ('Partes comederunt') is published as number 12 in Alberto Bruno, *Consiliorum feudalium*. Nevizzano disagreed completely with Giovanni da Anagni's support for the similar concession of Asti lands by Duke Filippo Maria: Giovanni da Anagni, Consilium 81 ('Viso instrumento'); see above pp. 94–5. According to Nevizzano, nr 120: '[Giovanni da] Anagni's consilium was based wholly on the argument put forward by scholars concerning the validity of Constantine's donation to Pope Sylvester, which has no bearing here where subjects were opposed [to the handover]. (Si bene inspiciatur illud consilium Ioannis de Anania, innittitur solum fundamentis quae adducuntur per documento in quo an valuerit donatio per Constantinum Papae Sylvestro, quae non congruunt huic fundamento de subditis invitis.)'

[98] Nevizzano, Consilium 12 ('Partes comederunt'), nrs 128 and 131: 'Quarto quia non potuit Rex per talem infeudationem auferre iura ipsius communitatis, scilicet gabellas, iurisdictionem et alia . . . Nam beneficia et privilegia principum debent intelligi sine damno tertii: l. Nec damnosa, C. De praecib. imperatori offerend. [C. 1, 19, 3]; l. Nec avus, C. De adop. [C. 8, 48, 4] cum similibus.'

[99] Nevizzano, Consilium 12 ('Partes comederunt'), nr 140: 'Non obstat arrogans dictum Angeli in l. Item si verberatum, § 1 ff. De rei vendicatione [D. 6, 1, 15], ubi dicit quod mentiuntur qui dicunt quod imperator non potest sine causa auferre res vel iura alterius de plenitude potestatis . . . quia Angelus communiter reprobatur.'

[100] Nevizzano, Consilium 12 ('Partes comederunt'), nrs 132–3 and 136: 'Et dicit Curtius, consilio 73, col. 29, in fine, quod princeps auferendo ius quaesitum sine causa appellatur tirannus, quia plenitudo potestatis non extenditur ad aliquod iniquum et Fulgosius, consilio 61, "Domina Chaterina", col. pen. dicit quod vulgo de Deo coelesti dici solet quod omnia potest; non tamen potest iniustum facere (Io. cap 1) facit Barbatia lib. 2, Consil. 24 "Clementissimi", col. 4 [etc]; Decius Cconsilio 11, "Divino igitur" [sic for "Quoniam iudicantium"], col. 5, ubi subdit quod potius impropriantur verba privilegii quam quod tertio praeiudicium inferatur . . . Hinc dicimus quod in rescriptis et concessionibus principum semper subintelligitur clausula "salvo iure alterius": l. Auctoritatem cum glossa, C. Unde vi [C. 8, 4, 3]cum similibus.'

In the French king's court it is always the practice to include in fiefs the words 'without prejudicing the rights of third parties' and we see that royal directives by convention always end with the words 'without in other ways prejudicing our position or in any respect the rights of any other person'. According to the king's ordinances, it is stipulated that, if a royal privilege injuring someone else is ever granted, it is not to be observed. Royal ordinances can even be found to contain this: where a royal concession prejudices someone else it is not to be obeyed.[101]

Nevizzano emphasized the point: 'Indeed the Most Christian King has issued an even stricter order, stating that, if any concessions prejudicing a third party are sought maliciously, then the petitioners are to be be punished.'[102] He continued: 'The king is said to be perfectly happy to accept that an edict which appears to contain an injustice should not be implemented by officials, and that an alternative order should be anticipated: we do a ruler no harm by assuming he is [in the words of the *Digest*] "good and equitable".'[103] In the French system, 'the fact that the fief had been granted from plenitude of power made no difference, because this power was superseded by the order to commit the case to the Parlement and this was done by law, regardless of the use of that clause [from plenitude of power].'[104]

According to Nevizzano, as soon as they heard about the sale, the people of community B had gone to the vicario of Asti to register opposition, 'citing their freedoms, privileges and the law itself against such a transfer without consent. Moreover, they had made an appeal to the king to ensure that he was better informed [about their rights].'[105] He went on to describe how, 'at that point, while still in Milan, the king (most Christian, most just and most merciful) committed the case to be decided in the Parlement of Grenoble. That was in

[101] Nevizzano, Consilium 12 ('Partes comederunt'), nrs 136–9: 'In curia regis Franciae de consuetudine semper recipiuntur fidelitates "salvo iure alterius". Et videmus litteras regias de stillo semper in fine earum continere, "salvo in caeteris iure nostro et in omnibus quolibet alieno". Et hoc etiam cavetur ex ordinationibus regalibus, ubi si concedantur litterae regiae tertio nocentes, iubetur eis non esse obtemperandum . . . Et hoc etiam cavetur ex ordinationibus realibus ubi si concedantur litterae regiae tertio nocentes, iubetur eis non esse obtemperandum.'

[102] Nevizzano, Consilium 12 ('Partes comederunt'), nr 138: 'Immo fortius mandat ibi Rex Christianissimus quod si tales concessiones tertio praeiudicantes malitiose impetrentur quod impetrantes puniantur.'

[103] Nevizzano, Consilium 12 ('Partes comederunt'), 139: 'Et ideo dicitur quod princeps aequo animo patitur si rescriptum quod videtur iniustum continere, non mandatur executioni per inferiorem sed expectatur altera iussio; et principi nullam iuiuriam facimus si eum bonum et aequum reputamus.'

[104] Nevizzano, Consilium 12 ('Partes comederunt'), nr 140: 'Non obstat quod fuerit facta talis infeudatio de plenitudine potestatis, quia responderi potest quod sublata fuit talis clausula per aliud rescriptum, per quod causa ipsa fuit commissa parlamento in quo casu fuit commissa de iure, non obstante tali clausula.'

[105] Nevizzano, Consilium 12 ('Partes comederunt'), nr 175–6: 'Postea autem de tali alienatione habita noticia, ab ea statim coram domino vicario gubernii Astensis, allegando franchisias et privilegia et ius commune propter quod inviti alienari non poterant. Interea fecerunt appellationem ad regem melius informandum.'

accordance with the law and despite the concessions which had been or were about to be granted.'[106] He explained how 'from his certain knowledge and plenitude of absolute power, the king brought the affair back into the framework of *ius commune*.'[107] The appeal to the Parlement undercut absolute power: 'A sale or enfeoffment such as this, seriously injurious to the subject, cannot, as shown above, be effected except from plenitude of power, that is, from power above and beyond the law; therefore once the affair is brought back under the normal rules of *ius commune* (as commanded by the king) it follows that the enfeoffment itself is effectively revoked.'[108] The Parlement defended subjects against plenitude of power, though, paradoxically, the initiative had to come from the king himself again using plenitude of power.

There was no let-up, as Nevizzano continued the attack on more conventional lines: 'Even with plenitude of power a ruler may not break his contract.'[109] Moreover, 'plenitude of power should never be employed to disadvantage subjects and should be used only rarely. If it is used without cause it is said to be plenitude of turmoil (*plenitudo tempestatis*).'[110] Even the pope's plenitude of power was conditional and not an inherent ingredient of papal authority: 'Plenitude of power was conceded to the pope so long as it actually did no harm. A grant of exemption from the law without cause is known as dissipation (not dispensation). To use plenitude of power beyond its scope is to commit

[106] Nevizzano, Consilium 12 ('Partes comederunt'), nr 178: 'Qui Rex Christianissimus et iustissimus et clementissimus informatus Mediolani, postea huiusmodi causam appellationis et totius capitaneatus commisit insigni parlamento Grationopolitano decidendam, prout iuris fuerit, cum clausula non obstantibus quibuscunque litteris nostris impetratis et impetrandis et aliis contrariantibus.' Francis I was in Milan from 11 October to 3 December 1515 after the battle of Marignano: Franceschini (1957), pp. 190–2; the inhabitants of "communitas B" had first registered their protest in a notarized document on November 1515, as Nevizzano mentioned in the consilium (nr 175).

[107] Nevizzano, Consilium 12 ('Partes comederunt'), nr 178: 'Ad terminos iuris communis reducimus ex nostra certa scientia et de plenitudine potestatis etiam absolute, quia sic nobis placet.'

[108] Nevizzano, Consilium 12 ('Partes comederunt'), nr 180: 'Sequitur ergo quod, cum talis alienatio seu infeudatio, maxime in damnum subditi, fieri non potest nisi de plenitudine potestatis, et sic ultra et praeter ius commune, ut late supra deductum est in primo fundamento secundae rationis principalis, quod si haec reducuntur ad ius commune (prout fit in litteris concessis dictis comunitatibus), remanet effectualiter revocata dicta infeudatio.'

[109] Nevizzano, Consilium 12 ('Partes comederunt'), nr 26: 'Princeps contractui suo non potest contravenire etiam de plenitudine potestatis.' He was referring to the original terms of Asti's submission to Giangaleazzo Visconti (nr 20): 'Quando submisit se comiti Virtutum, domino Mediolani . . . hoc fecit cum pactis et conventionibus quod nullam terram de dominio et comitatu Astensi pateretur separari a dicta civitate.'

[110] Nevizzano, Consilium 12 ('Partes comederunt'), nr 141: 'Et dicit Petrus de Ravanis in suo Alphabeto in vers. Privilegium, col. 2 quod plenitudo potestatis non debet exerceri in praeiudicium subditorum et quod princeps ea raro uti debet: Baldus in l. 1,§ cum autem, C. De cadu. tollend. [C. 6, 51, 1, 13]; in l. 2 C. De com. re. al [C. 12, 12, 2]. Et ea utendo sine causa diceretur uti plenitudine tempestatis [sic for potestatis] ut Johannes de Silva ubi supra [*Tractatus beneficialis*, pars ii, quaestio 1].' (Jean de Selve wrote, 'Item plenitudo potestatis in executione bonitatis non auctoritate pravitatis consistit, alias, mutato vocabulo, non plenitudo potestatis sed tempestatis diceretur.')

a mortal offence.'[111] In addition, 'this particular sale and enfeoffment was not binding because proper procedure had not been followed, in that our most Christian king had acted in the absence of the representatives of Asti and the small communities whose rights were being seriously impaired.' Given such an omission, the clause signifying the king's intention to make good every legal defect *ex certa scientia et de plenitudine potestatis* was of no account. For even God, with his infinite power, summoned Adam before he banished him from paradise, calling out, "Adam where are you?"'[112]

Nevizzano ended the diatribe against arbitrary power with a literary flourish, expressing outrage at the fact that the rights of a small community had been put up for sale. Such misuse of power was, he believed, insidiously encouraged at court; in his view, it should be 'incumbent upon the king's councillors and nobles to alert him to the kind of harm such transfers cause; otherwise a king will instinctively do what comes naturally, which is to express his generosity.'[113] But, 'whether out of fear or venality, courtiers do not recommend what they know to be right; as Decio said, what great rulers lack is someone to tell them the truth; or, as Xenophon put it in his work *On Tyranny*, "among the evils suffered by those who rule is that they are forever listening to their own praises and come across no one who does not eulogize their every word and deed".'[114]

Aimone Cravetta

'Cravetta dixit, sat est' summed up the reputation of Aimone Cravetta (1504–69), the Piedmont jurist who, in the 1530s, joined the campaign against absolute

[111] Nevizzano, Consilium 12 ('Partes comederunt'), nrs 142–4: 'Et dicunt moderni in l. Rescripta, C. De precibus imperatori offerendis [C. 1, 19, 7] quod plenitudo potestatis intelligitur concessa papae, scilicet dummodo non facit expresse iniquum: Baldus in c. quanto, De iureiurando [X. 2, 24, 18] dicens esse figendum cordi in c. cum omnes in principio, De constitutionibus [X. 1, 2, 6]. Et dispensatio principis facta sine causa dicitur dissipatio: Archi.[Guido da Baisio] in c. consequens, 11 dist. [*Super Decreto*, Dist. 11, Quod vero, pars 2, c. 1] Et utendo plenitudine potestatis ultra debitum peccat mortaliter, secundum Paulum de Castro, consilio 26 ["Super primo videtur dicendum est"], in 2 vol.'

[112] Nevizzano, Consilium 12 ('Partes comederunt), nrs 150–1: 'Tertia ratio propter quam non teneat dicta infeudatio et alienatio est ratio obmissae solemnitatis. Probatur quia Christianissimus Rex noster ad causam processit non citatis sindicis civitatis Astensis nec ipsarum villarum qui graviter laedebantur. Ergo est nulla etiam si sit clausula "supplens omnem defectum ex certa scientia et de plenitudine potestatis": Clem. Pastoralis, § caeterum, De re iudic. [*Clem*. 2, 11, 2]. Et Deus in quo est infinita potestas, antequam privaret Adam paradiso citavit eum. "Adam ubi es?"'

[113] Nevizzano, Consilium 12 ('Partes comederunt'), nrs 158–9: 'Incumbit ergo ipsius consiliariis et proceribus notificare regi quale damnum sint allaturae tales alienationes; alias enim a se ipso princeps facit quod sibi proprie spectat, scilicet uti liberalitate.'

[114] Nevizzano, Consilium 12 ('Partes comederunt'), nr 163: 'Propterea dicebat Baldus ex quo proceres timore vel commodo corrupti, non proferunt quod eis iustum videtur, quod hoc solo privantur magni principes, quod non est qui eis veritatem dicat (refert Decius consilio 197, "In casu inquisitionis." ad finem). Et Xenophon, *De tirannide*, charta 1, dicit "inter caetera mala dominantium esse quod laudes suas audiunt continuo, nec quisquam est qui non in conspectu suo omnia dominorum facta et dicta conetur extollere".'

power. A pupil of the younger Corte, he taught in Turin, Grenoble, Pavia, and Ferrara, besides participating in public affairs as councillor to and ambassador for Ercole II d'Este.[115] In 1535, as a young judge in the Piedmontese city of Cuneo, he composed a famous consilium, number 241 ('Princeps illustrissimus'), supporting the inhabitants of the small town of Briga in the territory of Nice against Duke Carlo II of Savoy.[116] The duke had sold feudal rights over the town to the judicial magistrate, Giorgio Malopera of Cuneo, who held a tax farm in Nice.[117] The dispute was reminiscient of the case examined in Nevizzano's consilium, with which Cravetta was familiar; like Nevizzano, Cravetta had to consider the merits of an act issued from plenitude of power against the wishes of those affected, resulting in their loss of independence.

Cravetta was critical of the whole affair: 'A ruler should regard his people as sons and grandsons; but to transfer subjects from a prince to a private person is treating them like slaves, bought for a price, so that a transaction of this nature is completely intolerable.' He agreed with Franceschino Corte that such a ruler deserved to lose his authority over those individuals.[118] Cravetta cited the agreement of 1388, whereby the city of Nice and its territories, including Briga, had submitted to the then ruler of Savoy, Amadeo VII; one of the provisos of that agreement had been that these territories 'could never be sold or otherwise transferred to other signori subordinate to the dukes themselves.'[119] That settlement in itself brought the issue into the orbit of *ius gentium,* while the fact that it had been agreed on oath meant that it came under divine law, too. 'All this means that the sale was forbidden by every law *divino, naturali, gentium*

[115] For details of Cravetta's career, see the entry in *DBI* by A. Olmo; see also Novellis (1840); particularly valuable on Cravetta's approach is Lupano (1995), pp. 505–24.

[116] Cravetta's Consilium 241 became a standard text on the force of plenitude of power.

[117] Benedetto et al. (1997), p. 511. See also details of his activities as a tax farmer in Vester (2004), pp. 759–63.

[118] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 8: 'Princeps debet tractare subditos suos tanquam filios et nepotes, ut l. Si quis filium, ubi Jason, circa principium, C. De inofficioso. testament. [C. 3, 28, 34]; Baldus in consilio 460 "Ioann. de Abbingana", col. 2, lib.i . . . Sed alienare subditos a principe in hominem privatum non est eos tractare instar filiorum et nepotum, sed exemplo servorum precio redemptorum; et abest alienatio eiusmodi longe a favoribus. Ex quibus infertur prohibitam esse alienationem eiusmodi de iure communi, imo fortius voluit Curtius iunior in dicto consilio 174 (col. 4 et in col. pen, in finem), quod princeps alienando subditos debet privari eorum proprietate.'

[119] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 9: 'Prohibetur ista alienatio de iure gentium, nam, quo tempore homines comitatus Nicie et vicariatus Sospelli sponte se subiecerunt illustrissimis Sabaudie principibus, convenerunt cum ipsis principibus pacto expresso et solenni stipulatione vallato ne possent alienari neque aliquo modo transferri in alios dominos inferiores ipsis principibus et ita promissum fuit solleniter sub hypotheca bonorum et aliis clausulis opportunis, quibus pactis et conventionibus gaudet ipsa commmunitas Brigae, quae fuit unita vicariatui Sospelli et comitatui Nicie.' The agreement included the clause: 'Dominus Comes . . . promisit . . . quod ipse et eius haeredes . . . civitatem Niciae, terras et loca vicariae suae . . . non alienabit seu alienabunt . . . ratione dominii possessionis et tenutae, vel etiam quocunque alio titulo, modo seu via . . . alicui principi, comiti, Baroni et marchioni seu alteri domino pari, maiori vel minori praedictis', Luenig, i, col. 668.

et civili, and without cause no ruler, not even the emperor himself, can cancel rights guaranteed under natural law or *ius gentium* from plenitude of power.'[120] Certainly, he argued, 'one can discount Angelo [degli Ubaldi's] statement that people who deny that a ruler can deprive someone of his rights without cause are lying: Angelo was speaking not as an angel but as a mere mortal (and a liar); universal opinion, which I have supported at length above, is opposed to him.'[121] Cravetta dismissed any semblance of a just cause which might support the efficacy of plenitude of power:

> In this case there can be no suggestion of public benefit: rather this sale is wholly against the public good, for it means that subjects are being consigned to new rulers and will find themselves reduced to subjection, not to say ignominy; for when people are handed over from a prince to a private person, their status is diminished to their grave disadvantage. To live under a just ruler is the greatest form of liberty (as Seneca says); but to be subjected to a new ruler, much lower in rank, is the harshest slavery and misery.[122]

That statement led Cravetta on to an attack on the feudal relationship itself: 'This is why the feudal contract was unknown to the Romans; and, if they had foreseen it, they would have considered it repugnant because it involves the subjection of persons and property to servitude, granting private individuals the kind of jurisdiction that should be held only by a ruler or public official.'[123] Cravetta insisted that the people of Briga were not bound by this enfeoffment: 'Indeed, from the terms of the agreement made with the counts of Savoy, if the people of

[120] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 12: 'Ex quibus infertur interdictam esse alienationem praedictam iure omni—divino, naturali, gentium, et civili; sed princeps, etiam supremus, non potest tollere ius competens de iure naturali, vel gentium sine causa, etiam de plenitudine potestatis; quia licet Deus subiecerit leges principibus, non tamen subiecit contractus et conventiones, quae sunt de iuregentium quibus principes obligantur non minus ac privati: Baldus in c. 1, "De natura feud."[*Liber feudorum,* 1, 7] et in l. 2, C. De servitu. et aqua [C. 3, 34, 2]; Cynus et doctores in l. fin. Si contra ius utilit. pub. [C. 1, 22, 6]; Inno. et canon. in c. quae in ecclesiarum, De constit. [X. 1, 2, 7].'

[121] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20 at the beginning: 'Non obstat dictum Angeli quod mentiuntur qui dicunt non posse principem ius alterius tollere sine causa quia non ut Angelus locutus est sed ut homo mendax, nam contra eum est communis opinio ut supra late defendimus.'

[122] Cravetta, Consilium 241 ('Princeps illustrissimus'), nrs 13–14: 'Sed hic cessat causa publice utilitatis; imo ista alienatio dicitur contra publicam utilitatem quia daretur materia subditis discedendi ad extraneos, ubi viderent se redigi et reduci ad eiusmodi subiectionem, ne dicam ignominiam. Pertinet enim ad deducus subditorum, et maximum eorum incommodum, ubi a principe transferuntur in privatum; nam vivere sub principe iusto summa libertas est, secundum Senecam relatum per Angelum in l. 1, ad fin., *ff.* De servitu. urban. praedior. [D. 8, 2, 1]. Per contrarium summa servitus et onus durissimum subiici novo domino multo infimo et scribit Baldus in consilio 327 "Pridie enim consului," col. 3, circa fin. lib. 1.'

[123] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 15: 'Ideo scribit Jason, in *Tractatus feudorum*, col. 11, nr 33, quod contractus feudi fuit incognitus populo Romano, et si Romani ipsum prescivissent, exosum habuissent, quia continet servitutem personarum et rerum, et iurisdictionem tribuit singularibus personis quae non debet esse nisi penes principem vel magistratum: l. Non est singulis, *ff*. De iur reg. [D. 50, 17, 176].'

Briga are brought into subjection of another person, it would be open to them to resist with force of arms.'[124]

The diatribe continued: 'A ruler should not feel aggrieved that he is not allowed to use plenitude of power in this instance since he should not be aspiring to more power than God himself (nor indeed equal power) and God cannot do anything unjust,' adding that 'moral philosophers and thinkers will not allow that vice is an attribute of power and they extol justice above all other virtues.' Therefore, he explained, 'the ability to act unjustly is not power but the failure of power,' concluding: 'If a ruler uses plenitude of power in an unjust measure it is not called *plenitudo potestatis* but *plenitudo tempestatis* (plenitude of turmoil).' Like Nevizzano, Cravetta was able to exploit what was by then a considerable body of opinion against plenitude of power: he cited Bartolomeo Sozzini, Consilium 164 ('Visa bulla Bonifacii'), Fulgosio, Consilium 61 ('Domina Catherina'), Francesco Corte, Consilia 73 ('Super memorata') and 16 ('Clarus vir Jacobus'); to these he added Nevizzano's recent consilium 'Partes comederunt'.[125] Like these jurists he quoted Baldo's *Lectura feudorum*, equating the misuse of plenitude of power with tyranny. But Cravetta went further, condemning not only the abuse of absolute powers but plenitude of power itself. For, unlike his predecessors, he quoted Baldo's withering protest: 'That ill-considered and abusive device, which rulers employ nowadays in their edicts, should be totally eradicated from the courts and ought never to be used.'[126]

Cravetta hated the idea that the words 'from plenitude of power', mechanically inserted into an act, could have devastating consequences. Since the duke had not been adequately informed about the terms of the 1388 agreement, the

[124] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 15: 'Infertur ex praemissis quod homines Brige cogi non possunt ut alii domino fidelitatem iurent: Cynus in l. 1, C. De dona. [C. 8, 54, 1] . . . Quinimo ex forma et tenore conventionum cum ipsis principibus initarum, permittitur hominibus Brige de facto et manu armata resistere si per alium in subiectionem vocentur.'

[125] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20, f. 47^{r}: 'Nec princeps egreferre debet quod ei non liceat hoc casu uti plenitudine potestatis, quia non debet appetere et velle maiorem potestatem ipso Deo (imo nec quidem parem); sed Deus nihil potest quod sit iniustum . . . Iam ipsi morum philosophi et censores non ascribunt vitia potentie, sed ipsam iustitiam prae omnibus virtutibus extollunt . . . Itaque posse iniuste agere, non est potentia, sed defectus potentiae: facit textus [Gratiani] in c. faciat homo 22, q. 2 [C. 22, c. 15] et in l. Nepos proculo, *ff*. De verbo sig. [D. 50, 16, 125] . . . Ideo si princeps utatur clausula de plenitudine potestatis in re iniusta, non dicitur plenitudo potestatis sed plenitudo tempestatis ut ait Card. Mediolan. [Iohannes de Sancto Giorgio] in Cle. pastoralis, De re iudi. [*Clem* 2, 11, 2] quem refert et sequitur Socinus in Consilio 164, col. pen. lib. 2 et in Consilio cxx, col. pen. ad fin., lib. 3; et ultra Socinum nota Fulgosium in Consilio. 61, "Domina Catherina" col. pen.; Franciscus de Curte in Consilio. 73 ['Super memorata'], col. 29 in fin. quos refert Nevizanus inter Consilia. Bruni in Consilio. xi, col. 26.'

[126] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20, f. 47r: 'Allego Baldum in consilio 345, ("Ad evidentiam praemittendum est quod imperator"), col. 2, lib. I, ubi [dicit] quod clausula de plenitudine potestatis intelligitur de potestate bona et laudabili non vituperabili vel tirannica; nam non dicitur imperator posse nisi quod de iure potest et quod ista temeraria et abusiva cautela, qua hodie principes utuntur in suis rescriptis, deberet in totum radicari ab aula nec ita in usu frequentari, secundum eum. Alibi scribit idem Baldus in c. i, "De feudo. march."[*Liber feudorum,* 1, 13] quod princeps auferens ius alterius de potestate absoluta sine culpa dicitur tirannus.'

phrases *non obstantibus*, *ex certa scientia*, and *de plenitudine potestatis* could not possibly have any meaning. 'In the absence of all serious consideration of the facts, it would be outrageous that phrases such as those, so lightly used, should actually lead to grave injustice.' Cravetta believed that 'the words had by all accounts been included at the behest of the buyer, who, as a jurist himself of some renown, had consulted his own interests with particular care and thought; but such words are not evidence that the duke had a full understanding of all the issues.'[127] In conclusion he returned to Baldo: 'Finally, with regard to the multiplication of these kinds of phrases, it can be argued that, the more they are included in what to one of the parties is an act of injustice, the greater is the wrong they are asserting, as Baldo says.'[128] Having undermined the merits of plenitude of power on so many grounds, Cravetta argued that there was little left: 'And if, after all that, you say that the words "ex certa scientia, de plenitudine potestatis" and the rest must therefore be completely ineffective then I have to concur that it would be better to accept that these formulae are indeed meaningless, than to declare that a ruler would want to deprive someone of his rights.' In this instance the duke, Francesco Sforza II, by now becoming disillusioned with plenitude of power himself, agreed to restore the inhabitants of Briga to their previous status.[129]

Andrea Alciato

Andrea Alciato (1492–1550), best known for applying a humanist's approach to the language and history of law, was the most outspoken of the reforming

[127] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20, f. 47v: 'Quarto respondeo quod ex quo princeps non fuit informatus de praemissis conventionibus et toties confirmatis, non operatur talis clausula "non obstantibus" . . . Quae responsio referri etiam potest ad clausulam "ex certa scientia" quae non operatur in his quae sunt facti de quibus non apparet principem informatum fuisse . . . Hoc casu non operatur clausula "de plenitudine potestatis". Socinus in dicto consilio cxx, col. 6, vers. Respondetur etiam, lib. 3; Decius in consilio 198 ['Pro tenui facultate'], col. pen. ad fin.; Brun. Astens. in cons. 87, col. v . . . Et profecto esset absurdum quod istae clausulae ita leviter operarentur in gravissimum alterius praeiudicium, matura deliberatione non habita, et ut dicitur fuerunt appositae ex consilio domini emptoris, qui ut doctor est non obscurus, ita rei suae studiose et accurate consuluit; tamen ex hoc non arguitur principem intellexisse ad integrum totius rei veritatem.'

[128] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20, f. 47v: 'Postremo, ad multiplicationem istarum clausularum, responderi potest quod quo plures clausulae in rescripto ponuntur contra iustitiam partis, eo sunt expressiones maioris delicti, ita Baldus in dicto consilio 346 [sic for 345], col. 2, lib. i.'

[129] Cravetta, Consilium 241 ('Princeps illustrissimus'), nr 20, f. 49r: 'Et si dicas hoc modo illae clausulae "ex certa scientia, de plenitudine potestatis" et aliae nihil operabuntur, respondeo quod potius tolleratur ut illae clausulae nihil operentur quam ut dicimus voluisse principem iuri tertii derogare: glossa, Bartolus et doctores in l. fin. § in computatione in *Glossa Magna*, C. De iure delib. [C. 6, 30, 22, 9] . . . Sed quid absurdius quam illud praesumere voluisse principem ius tertii tollere, et iuiuriam seu iniustitiam facere, unde iura nasci debent: l. Meminerint, C. Unde vi [C. 8, 4, 6] . . . Tandem princeps illustrissimus iustitie amans et studiosus homines Brigae eorum libertati restituit.' For Francesco II's attitude to plenitude of power, see p. 189 below.

lawyers of the early sixteenth century and also the most radical in his approach to absolute power. After graduating in Ferrara, Alciato had, in 1518, moved to a teaching post in Avignon before returning to his native Milan to pursue a career as a professional lawyer, while continuing with his literary and legal compositions.[130] Like Cravetta, it was the very concept of plenitude of power that he condemned. In 1530, in his attempt to restore ancient terminology, he published the *De verborum significatione libri IIII* (his commentary on D. 50, 16). Here, in explaining the verb *censere* (to decree or resolve), he began to reveal his attitude to the notion of absolute power. He linked the word to *censores*, the officials who in ancient Rome penalized moral offenders, bemoaning in his best rhetorical style the fact that such an office no longer existed. He described the venality and corruption of his own day:

> Functionaries whose province is greed and the accumulation of wealth have connived in an extraordinary way with scheming beaurocrats, rambling theologians and grovelling lawyers to sustain the deception that rulers can do anything and that their power is supreme and unlimited. That is emphatically not true in Italy: the Romans and other Italians formed a confederation; and when they passed the *lex regia*, the only authority which could be transferred to Augustus was that which was held by the confederation. The idea that popes and dukes and those who in German are called margraves have absolute power over subjects is preposterous: the emperor himself has no such power in Italy and yet he is their source of authority.[131]

In antiquity, the peoples of Italy were not to be compared to provincial inhabitants, who were forced to pay tributes to the Roman state: 'Italians were free and enjoyed equal rights with the Romans. The only people who have remained true to the ancient system are the free cities of Germany, who are willing to acknowledge the ascendency of the emperor and pay heavy taxes, but who will not put up with subjection under the weight of any brutal tyranny.'[132] Alciato

[130] For Alciato's career, see the *DBI* entry by R. Abbondanza; Viard (1926) provides a full biography; see also Maffei (1956); di Renzo Villata (1982), pp. 103–11; Massetto (1990b), pp. 522ff. Barni (1960) explains the political and legal context of Alciato's ideas. Belloni (1995b) argues convincingly that it was because of the French domination as well as for purely practical reasons that Alciato went to teach in Avignon rather than because of his preference for the *mos Gallicus* over the *mos Italicus*.

[131] Alciato, *De verborum significatione libri IIII*, 'Censere', pp. 284–5: 'Magistratus qui tamen hodie nusquam est, cum ea quae ad avaritiam pecuniarumque aeruscationem pertinent officia, mirum in modum coaluerint ubique laqueos tendentibus Satrapis, hallucinantibus theologis, adulantibus iurisconsultis persuadentibusque omnia principibus licere, summamque eorum et liberam esse potestatem. Quod certe in Italia verum non est: Romani enim caeteris Italis foedere in societatem attractis, in Augustum lege regia non nisi ius transferre potuerunt quod ipsi ex foedere habebant; ut ridiculum sit adfirmare pontificibus, ducibus et quibus, Germanica voce, marchiones vocantur, absolutam in subditos potestatem competere, quae nec ipsi imperatori in Italos competit, unde illi causam habent.'

[132] Alciato, *De verborum significatione libri IIII*, 'Censere', p. 285: 'Italici liberi erant, aequoque cum Romanis iure agebant. Solae antiquam indolem retinuerunt in Germania civitates, quas illi francas vocant; ut enim imperatoris fastigium libenter agnoscunt, ita tributis se atteri, violentia urgeri tyrannide opprimi non patiuntur.'

had exploited his knowledge of history to repudiate the notion, entrenched in legal tradition, that plenitude of power had been handed to the emperor in the *lex regia*; for him the whole notion of absolute power was a snare and a delusion.

Alciato addressed one of his most systematic attacks on plenitude of power to the pope. In that consilium, he was defending a subject of the duke of Ferrara, whose inheritance was threatened by a legitimization granted by a papal count palatine.[133] In the duchy of Ferrara the pope was the superior authority, endowed with imperial powers, so that Alciato was able to exploit the loopholes in secular plenitude of power, besides taking into account the fact that the pope was head of the Church. Using the plenitude of power given to him by Pope Leo X, the count palatine issued his legitimization with clauses (namely, *de plenitudine potestatis* etc.), which were described by Alciato as 'inordinately forced and exaggerated', with the object of usurping the rights of lawful heirs. Had the defendant been merely an expectant heir, or even an actual beneficiary who had not yet taken possession of his legacy, plenitude of power might have been enough to deprive him: civil law would still be involved. But at the final stage, 'when the heir has already taken possession of his property, with ownership enshrined in *ius gentium*, as is the case here, it seems all the more plain and undeniable that a ruler may not infringe those rights even from plenitude of power.'[134] Alciato was unequivocal, not even admitting the excuse of just grounds as a let-out.

Now that he had touched on the subject of plenitude of power, Alciato launched a full-scale assault: 'In order to clarify the present consilium, I should like to add some thoughts about the meaning of this clause, "from plenitude of power".' He insisted that 'a ruler who prejudices someone else's rights by using plenitude of power has an obligation to offer compensation from his own resources (since there is no transfer of ownership without payment and no one must be deprived of his property as a result of such a provsion). The second point is that, if a ruler makes a concession which he would not be able to make without this clause, it is an abuse and he is committing an offence.'[135] Moreover,

[133] Alciato's Responsum Bk 4, 5 ('Quia privilegium'), was composed during the pontificate of Paul III (1534–49).

[134] Alciato, Responsum Bk 4, 5 ('Quia privilegium'), nr 9: 'Circa tertium tempus, quando actualiter apprehensa est possessio, et dominium est acquisitum de iure gentium, qui est casus noster, videtur magis certum et indubitatum esse quod princeps non possit, etiam de plenitudine potestatis, tale dominium auferre ut dicunt doctores in dicto capitulo quae in ecclesiarum [X. 1, 2, 7].'

[135] Alciato, Responsum Bk 4, 5 ('Quia privilegium'), nrs 11–15: 'Addam tamen aliquas conclusiones pertinentes ad intelligentiam huius clausulae, "de plenitudine potestatis", unde praesens consultatio reddatur magis clara. Prima conclusio est quod princeps praeiudicans tertio per clausulam plenitudinis potestatis tenetur ipse de suo satisfacere, alias non potest quis, virtute talis clausulae, dominio privari: l. Servi, C. Pro quibus causis ser. [C. 7, 13, 2] et ibi Baldus; l. Venditor § si constat *ff*. Com. praed. [D. 8, 4, 13, 1]; Archi. [Guido da Baisio] c. per principalem, 9, q. 3 [C. 9, quest. 3, c. 21]; tradunt omnes Moderni in dicto capitulo quae in ecclesiarum [X. 1, 2, 7] quod videtur adeo procedere ut non prius transeat dominium quam solutum sit pretium . . . Secunda est conclusio quod princeps concedendo aliquid et absque illa clausula alias non posset, male facit et

acts carried out under the terms of absolute power are automatically annulled on the death of that ruler; for they were not measures implemented by ordinary power, through the functioning of justice, but [simply] because the ruler gave the order and no one could say to him, 'Why are you doing that?' In truth, jurists have given the more respectable name of 'supreme power' to what is really an abuse: after all, the Roman people never transferred this kind of prerogative to the emperor but only ordinary power, so that the republic could be governed more efficiently. For that reason, as Baldo says, the Romans never made use of any such clause [i.e. 'de plenitudine potestatis'].[136]

There was also the issue of natural justice: 'There is a local statute which states that legitimized children may not inherit unless they have the agreement of the legitimate heirs, which is valid in law, consistent with natural equity and cannot be overruled even in individual cases by the emperor or the pope.'[137] Here was an opportunity to rail against imperial interference:

I have seen this principle upheld many times in Milan, where there is a similar statute and where derogating clauses, inserted into the privileges issued by counts palatine in the name of the emperor, are not heeded. Imperial chanceries are extremely free with these clauses and it is clearly in the interests of the duke not to admit this kind of aberration into the duchy. Nor does the axiom 'what the ruler has ordered is deemed to be law' have any bearing: that only applies when what is ordered conforms to the underlying principles of law and, most importantly, that it is fair and reasonable, lest another person's rights be infringed.[138]

committit peccatum secundum Hostiens. in *Summa*, Qui filii sint legit. [X. 4, 17], "Quamvis autem hoc facere princeps" etc.'

[136] Alciato, Responsum Bk 4, 5 ('Quia privilegium'), nrs 18–19: 'Tertia conclusio, gesta per clausulam,"suprema potestas", mortuo ipso principe, cassa irritaque sunt, quia non per potestatem ordinariam, et viam iustitiae facta sunt, sed quia sic placuit principi et nemo poterit illi dicere 'cur ita facis?' Et nihil aliud hoc est quam violentia quae honestiore vocabulo a doctoribus appellatur "suprema potestas"; quia quantum sit secundum veritatem, populus Romanus in eum non transtulit talem facultatem l. 1, *ff*. De constit. principum [D. 1, 4, 1] sed duntaxat ordinariam, ut commodius respublica administraretur l. 2, § novissime, *ff*, De orig. iur. [D. 1, 2, 1]; l. 2, versi. regimentis reipubl., *ff*. De offic. praef. pret. [D. 1, 11, 2, Pr]. Et ideo nunquam populus Romanus usus est tali clausula, ut dicit Baldus in titulo *De pace Constantiae*, s.v. Libellariae [nr 3].'

[137] Alciato, Responsum Bk 4, 5 ('Quia privilegium'), nr 28: 'Octava conclusio est statutum quod legitimati non succedant, nisi illis qui suae legitimationi consenserunt, est validum de iure et consentit cum aequitate naturali et etiam cum regulis nostri iuris § sed si quis nepotis, *Inst*. De adop. [*Inst*. 1, 11, 7]; per Alex[ander Tartagni], Consilium 37 in principio, 1 vol.; Andr. Sic. [de Isernia] Consilium 57, 2 vol. Nec tali statuto potuit etiam in specie derogari per imperatorem vel papam.'

[138] Alciato, Responsum Bk 4, 5 ('Quia privilegium'), nrs 28–9: 'Et ita vidi saepissime servari Mediolani, ubi viget simile statutum. Nec attenduntur clausulae derogatoriae, positae in privilegiis comitum palatinorum, indultis a Caesare, quia cancellariae principum solent esse admodum liberales istarum clausularum. Et certe plurimum interest excellentissimi Ducis non admittere hanc corruptelam in ducatu suo. Nec obstat l. 1, *ff*. De constitutionibus principum [D. 1, 4, 1], ubi quod principi placuit habetur pro lege, quia intelligitur dummodo concurrant caetera requisita ad leges ut ibi per Jasonem, ex quibus maximum requisitum est aequitas et ratio naturalis, ne ius alterius tollatur.'

Alciato's depiction of the misuse of authority had emerged in a consilium composed in support of Pontestura in Monferrato.[139] He described how the townspeople had had title to a market abolished by the marchioness, Margherita di Monferrato, using plenitude of power.[140] 'It is inconceivable,' he said, 'that the marchioness would want to use this kind of power, for she would never feel secure in her conscience.' Alciato believed that besides restoring the market 'she ought, out of her own resources, to compensate the poor who had incurred losses as a result of her action.'[141] He focused on the terms of the town's original submission; for him that agreement implied a form of social contract between the town and the rulers of Monferrato, which had nothing to do with the handing over of absolute power. The truth was that the inhabitants had pledged obedience and loyalty, and in return the marquis had promised to protect the people and their laws. 'These days, submissions of cities are made on the understanding that the ruler will not abolish any rights without a proper hearing.' In other words, as Alciato explained, 'they do not submit with the idea of being subjected to [a ruler's] unfettered will, but in order to be governed more effectively.'[142]

Alciato did not accept the claim that 'a ruler could cancel this type of privilege with plenitude of power in accordance with what jurists have said about the force of that clause.' He dismissed a host of classic authorities on plenitude of power, including some of the most influential statements of Alexander Tartagni and Filippo Decio; in particular he rejected Baldo's famous definition that plenitude of power is subject to no compulsion and to none of the rules of public law.[143] On the contrary, asserted Alciato, 'so-called plenitude of power is actually an

[139] Alciato, Responsum Bk 5, 23 ('Concurro in sententiam'), nr 4, mentions a privilege granted sixty years before by Marchesa Maria of Monferrato, who was married to Guglielmo VIII for two years before her death in 1467, which means he must have been writing in about 1527.

[140] Margherita Paleologus, wife of Federico Gonzaga, first duke of Mantua, became Marchesa in her own right on the death of her uncle Giangiorgio in 1533.

[141] Alciato, Responsum Bk 5, 23 ('Concurro in sententiam'), nr 11: 'Ideo non est credendum quod illustrissima Marchionissa velit tali potestate uti, alias non esset tuta in foro conscientiae secundum Hostiensem in *Summa*, Qui filii sunt legit. [X. 4, 17], "Quamvis autem hoc facere princeps"; Paulus de Castro, Consilium 34, "Super primo dubio" vol. 2. Imo teneretur ipsa de suo resarcire damnum hoc quod viduis et pupillis et caeteris innocentibus praestaret, ut l. Servi, ubi Baldus, C. Quibus ex causis servi [C. 7, 13, 2]; l. Venditor, § si constat, per illum text. *ff*. Commu. praedio. [D. 8, 4, 13, 1]; Archi. [Guido da Baisio] c. per principalem, 9, quest. 3 [C. 9, q. 3, c. 21]; tradunt omnes Moderni in dicto capitulo, quae in ecclesiarum [X. 1, 2, 7]. Et ita procedit in supremo principe; multomagis in inferioribus, puta vicariis imperialibus, et marchionibus et comitibus.'

[142] Alciato, Responsum Bk 5, 23 ('Concurro in sententiam'), nrs 3–4: 'Secunda ratio est quia locus Pontis Sturae, sicut et alia oppida, transivit in potestatem marchionalem per viam foederis; quia illius loci homines promiserunt subiectionem et fidelitatem; contra marchio promisit eos defendere et tueri et eorum statuta et consuetudines illis manu tenere. Hodie enim fiunt deditiones [ed: deditimet] civitatum hoc modo unde non potest princeps, causa non cognita, iura eorum auferre; quia non subsunt liberae voluntati, sed ut commodius regantur: l. Non dubito, ff. De capti. et postlimin. [D. 49, 15, 7].'

[143] Alciato, Responsum Bk 5, 23 ('Concurro in sententiam'), nrs 10–11: 'Non obstat secundum quod princeps possit, saltem per clausulam "de plenitudine potestatis" auferre tale privilegium, per ea quae de virtute istius clausulae dicunt doctores in c. quae in ecclesiarum, De const. [X. 1, 2, 7];

abuse (*violentia*), though jurists use more diplomatic language. That is the reason why, according to Baldo, the Roman people never used it; what was handed over to the emperor was legitimate, ordinary power in order to ensure that the republic was governed more competently.'[144] Alciato went further than his contemporaries in repudiating the whole notion; he not only refused to accept that imperial plenitude of power was a consequence of the *lex regia,* but he put forward his own interpretation of Baldo's historical account: for him, the reason the term was not found in antiquity was that the Romans would never have countenanced such an abuse. For Alciato, in other words, Baldo's statement that the Romans did not refer to plenitude of power was strong evidence that it should never be used.

CONCLUSION

There had been a change of direction among lawyers since the fourteenth century. In the earlier period the trend had been to support the use of plenitude of power by the Visconti and other signori; but by the first decades of the sixteenth century the idea that a ruler was free to override laws and individual rights had been rejected. One explanation for the change is that jurists themselves had had to deal with the devastating consequences of the denial of people's rights, so that they seized on and added to the growing body of hostile opinion. Consilia by such luminaries as Bartolomeo Sozzini, Raffaele Fulgosio, and Francesco Corte were cited time and again in this context. After 1499 the example of France had its own impact on Milanese lawyers. The Visconti and Sforza themselves meanwhile became ever more wary of compromising their reputation simply for the benefit of an individual subject. Their attitude appears to have emboldened the legal world to stand up for the rule of law. In the fifteenth century jurists such as Castiglioni and Fulgosio came to see that ducal honour could be saved by blaming the importunity of petitioners for the misuse of absolute powers. In the sixteenth century that approach was swept aside by those who favoured a more direct attack on arbitrary government itself.

Baldus in l. 2, De serv. et aqua [C. 3, 34, 2]; Alex[ander Tartagni], C. De testament. milit. [C. 6, 21, 3]; Decius, Cons. 191, 373, 390, 403, 498 cum similibus.'

[144] Alciato, Responsum Bk 5, 23 ('Concurro in sententiam'), nr 11: 'Respondeo quod ista plenitudo potestatis nihil aliud est quam violentia, licet doctores modestiore vocabolo, eam sic appellent. Et ideo populus Romanus nunquam tali clausula est usus, secundum Baldum *De pace Constantiae*, v. libellariae, [nr 3]. Et imperatorem [*sic*] translata est potestas legitima tantum: l. 1. De constitutionibus principum [D. 1, 4, 1] et ordinaria, ut commodius Respublica administraretur: l. 2, § novissime, *ff*. De orig. iur. [D. 1, 2, 2, 11]; l. 1, verb. regimentis, *ff*. De officio praef. praet. [D. 1, 11, 1].' See Vaccari (1951), p. 164, who quotes the first part of this passage.

Chapter 7

The Surrender of Absolute Power

THE FRENCH OCCUPATION AND THE LAST SFORZA DUKES

In 1494 Ludovico il Moro had finally acquired the longed-for imperial investiture from Emperor Maximilian. But he was not to enjoy his new status for long: Louis XII (1498–1515) was determined to pursue the claim to the duchy which he had inherited from his grandmother, Valentina Visconti, in accordance with the diploma of 1396. With Gian Giacomo Trivulzio in command of French forces success was assured, Louis making a triumphal entry into the city on 18 October 1499. The end came for Ludovico, after a brief return, when betrayal by the Swiss in April 1500 led to his capture and imprisonment in France.[1] In November 1499 Louis XII had meantime issued the Edict of Vigevano, establishing the Milanese Senate. The duchy was ruled by a series of mainly military governors: first Trivulzio himself, then Georges d'Amboise, cardinal of Rouen, then his nephew Charles de Chaumont and finally, in 1511, Gaston de Foix. In April 1505 Maximilian was persuaded to annul Ludovico's investiture and recognize Louis XII as duke. Foreign rule came to a temporary end after the French collapse in 1512 following the battle of Ravenna, when the Swiss and the Venetians swarmed into the duchy, establishing Ludovico's incompetent elder son Massimiliano as the new duke.

The death of Louis XII without sons did not extinguish the French claim: Francis I was a descendant of Valentina Visconti's younger son, Jean d'Angoulême. To reinforce his position Francis married Louis XII's daughter, Claude. Rival leagues soon formed—Leo X, Ferdinand of Aragon, and the Swiss in support of Massimiliano, Francis I and the Venetians against. Milanese loyalty to Massimiliano Sforza was lukewarm: citizens had long resented the system whereby communal magistracies were held by outsiders chosen by the duke. It was only in exchange for the right to elect the Vicario di Provvisione and other key officials from among the local population that they agreed to hand over the

[1] Ludovico was taken to the fortess of Lys-St Georges near Bourges and afterwards transferred to Loches in Turenne, where he died on 27 May 1508.

50,000 ducats Massimiliano needed for defence in the summer of 1515.[2] The devastating defeat of Milanese and Swiss forces at Marignano enabled Francis to enter Milan (11 October 1515); Massimiliano retired to France with a pension of 30,000 scudi, surviving until 1530. Parma and Piacenza, occupied by the papacy since 1512, were restored to Milanese control. Once again soldiers were appointed governors: Charles duke of Bourbon was followed by Odet de Foix and then, once again, by Gian Giacomo Trivulzio. The General Council was reduced from 900 to 150 members chosen by local electoral colleges; that body, along with the Vicario e XII di Provvisione, was thereafter to comprise nobles, the oligarchic principle not having been demanded by Francis himself but requested by the local patriciate (who retained a monopoly of power until the eighteenth century).[3]

The new emperor, Charles V, had the resources and the incentive to attempt to wrest the duchy from the French: not only was Milan part of the empire, but it was key for communications between Spain and Charles's territories in northern Europe. In 1521, Charles declared war on Francis, forming a league with Leo X and the Swiss; Parma and Piacenza were quickly restored to the pope. Once Milan itself had fallen into imperial hands on 20 November 1521, Francesco Sforza, Ludovico's younger son, was proclaimed duke. During the first years of his rule Francesco II was hardly in control of the duchy. The French still dominated Pavia, Novara, Cremona, and other cities during 1522 and 1523; Milan itself was now wasted by disease and emptied of inhabitants. But the French occupation was doomed: having taken Pavia, Cremona, and Lodi, imperial troops were able to regroup, winning the spectacular victory of Pavia (24 February 1525). Francis I was taken captive and for the moment, as part of the Treaty of Madrid on 14 January 1526, agreed to relinquish all claims to the duchy.

On 27 July 1525, Francesco II finally received an imperial investiture from Charles (at a cost of 600,000 ducats and the formal surrender of the duchy of Bari). But what little trust there was between the Sforza and the Habsburgs evaporated when it was revealed that before receiving the investiture, Francesco had shown some sympathy to a plan to join the pope, Venice, and Florence in freeing Italy from foreign domination. Outraged, Charles withdrew his recognition of Francesco's right to the duchy, his troops besieging and then sacking Milan itself. Francesco now joined the anti-imperial League of Cognac (22 May 1526); there was even talk of marriage to a French princess. In reality Francesco had yet to gain control of any territories beyond Cremona, where he had his headquarters. Hostilities continued until peace was agreed at Cambrai in August 1529; Charles was persuaded by Clement VII to pardon Francesco, who, on 22 November 1529, was officially reinstated as duke. Francesco was able to

[2] Other concessions included the control over the main canals and the abolition of the tax on milling: Franceschini (1957), p. 172.

[3] Vismara (1958), pp. 239–40.

return to Milan, reappoint officials and assume something approaching normal government during the final years of his life.[4] Charles V spent three days in Milan in 1533 arranging for Francesco's marriage to his niece, Christina of Denmark. The bride was welcomed into the city during May 1534, but Francesco II died on 2 November 1535, before Christina had had a chance to bear him any children.

The spectre that Francesco II had most dreaded now came to pass: as a consequence of the diploma of 1395 the duchy devolved back to the empire. On the previous occasion when such a takeover threatened, namely on the death of Filippo Maria Visconti, the local claimant had been Francesco Sforza, more than a match for Frederick III. But under Charles V the Habsburgs at last prevailed. The title which had made Giangaleazzo a prince of the empire had proved to be a Trojan horse. In July 1546, following the investiture of Charles's son Philip, the duchy became part of the Habsburg family patrimony.

THE DECLINE OF PLENITUDE OF POWER

Francesco II

The vitriolic attacks by Alciato and other lawyers had been prompted by the actual use or misuse of absolute power by local rulers. Plenitude of power was still being employed in decrees, investitures and other privileges by Francesco II. In 1522, for example, he confirmed his ally and future governor of Milan, Alessandro Bentivoglio, in the family fiefs of Covo and Antegnate, overruling all conflicting acts 'de nostre potestatis plenitudine';[5] the solemn grant to the imperial chancellor, Mercurino Gattinara, of the fiefs of Valenza and Sartirana was made 'sponte, ex certa nostra scientia ac motu proprio et de nostrae potestatis plenitudine, etiam supreme et absolute'.[6] Specific laws and decrees were countermanded by the same means. Giangaleazzo's decree of 1423, 'Providere volentes', together with a number of laws protecting the rights of the treasury, were overruled by Francesco II 'de nostre plenitudine potestatis etiam absolute' when he confirmed Damiano da Valle in the hereditary post of chancellor to the Capitano di giustizia.[7] Moreover, as in the days of Azzone Visconti two hundred years earlier, plenitude of power was still being used to make grants of Milanese citizenship.[8]

In Francesco's hands, plenitude of power was applied with less attention to established conventions, the phraseology being now more exaggerated and

[4] On Francesco II's restoration of government, see Arese (1970), pp. 60–4.
[5] ASMi, Registri ducali, 69, pp. 9–11 (2 October 1522).
[6] ASMi, Registri ducali, 69, pp. 1–8 (27 July 1522).
[7] ASMi, Registri ducali, 68, pp. 306–8.
[8] See, for example, the citizenship granted to Giovanni Maria de' Compagnoni on 4 October 1522: ASMi, Registri ducali, 68, pp. 211–13; and to Galassio Landriano, 11 December 1522: ASMi, Registri ducali, 68, pp. 389–91.

the treatment less fastidious. When Iacopo Sarra was granted immunity from taxation as a reward for services against the French, it was done 'motu proprio, ex certa scientia et de nostre potestatis plenitudine etiam absolute';[9] the same words were used when the lawyer Antonio Garreto was exempted from the duties on bread, wine and meat in respect of his inn in Asti.[10] Compared to earlier practice, the formula in these instances was more imposing than circumstances warranted.[11] Whereas in the previous century plenitude of absolute power had been reserved for the more serious defects (*iuris et facti*), it was now used for deficiencies of all kinds, including mere technicalities.[12] In other instances a kind of shorthand was employed: in the transfer of a pharmacy (which had come into the possession of the treasury) to one Ambrogio da Prata, contradictory laws were overruled, 'as if they had been spelt out word for word, and *motu, plenitudine et scientia* had been included'.[13] Plenitude of power seems less than impressive, moreover, in the formula used in some of Francesco II's acts: '*motu proprio, ex certa scientia ac de nostre potestatis plenitudine etiam absolute* as well as by all other more effective methods, ways and forms open to us'.[14] In such contexts plenitude of power no longer appears as the supreme embodiment of ducal authority.

The *Novae Constitutiones*

The demotion of plenitude of power reflected Francesco II's overall policy of reform, one aspect of which was the codification of laws known as the *Novae Constitutiones*. One aim of the new code was to remove all vestiges of the abuse of power for which his forebears had been notorious: 'Many [decrees] are pointless, inconsistent or vexatious; others discredit the honour of the prince; some are extraordinarily cruel,' Francesco wrote in 1533.[15] Deficiencies were highlighted by one of the scheme's key architects, the lawyer Francesco Grassi, who especially condemned acts of Filippo Maria as tyrannical.[16] Francesco II, on the other hand,

[9] ASMi, Registri ducali, 68, pp. 403–4 (15 December 1522).

[10] ASMi, Registri ducali, 68, pp 430–1 (23 December 1522).

[11] On the use of 'plenitudo absolutae potestatis', see above pp. 136–8.

[12] The usage occurs, for example, in Francesco II's grant of tax revenues to Francesco Taverna: ASMi, Registri ducali, 68, p. 282 (12 October 1522).

[13] 'que omnia hic pro repetitis et specificatis et de verbo ad verbum expressis et insertis eisdem, motu, plenitudine et scientia haberi volumus', ASMi, Registri ducali, 68, p. 264 (17 October 1522).

[14] Grant of immunity from taxation to Giovanni and Gasparo Schmer: ASMi, Registri ducali, 68, p. 436 (26 December, 1533). A similar usage occurs in the concession of commercial privileges to German merchants made 'et a nobis ex certa scientia, et motu proprio et de nostre potestatis plenitudine etiam absolute, ac omnibus modo, iure, via et forma quibus melius et efficatius possumus, ratificamus et approbamus', ASMi, Registri ducali, 68, p. 299 (4 November 1522).

[15] 'Cum usu didicerimus multa inutilia, insipida, inconcinaque esse; alia inveniri maiestatis principis indecora; quaedam nimium saeva', ASMi, Uffici Giudiziari, 168, *Francisci Secundi Ducis Mediolani non nulla pro bona justitie regimine decreta pro Senatu observanda*.

[16] Grassi, *De origine iuris mediolanensis libellus*: 'Philippus frater, ubi primum recuperavit imperium, patrem in condendis decretis superavit, ut difficile sit credere, occupatum continuis

who 'gave no topic more thought than that of ensuring that magistrates paid due attention to justice and performed their duties satisfactorily, condemned the accumulation of decrees from earlier times'.[17] The codification came to fruition after Francesco's death in the form of the *Constitutiones domini mediolanensis* of 1541 (usually known as the *Novae Constitutiones*), the immense task having being carried out largely by the eminent lawyers, Francesco Lampugnani, Egidio Bossi, and the duke's closest adviser, Giacomo Filippo Sacchi, president of the Senate.[18]

As a codification, the collection was different in concept from the individual decrees of former periods; but it is still worth noting that it makes no mention of plenitude of power. Even the law *De constitutionibus*, authorizing and imposing the new compilation, used a simple formula: 'We decree that all the laws contained in this book must be obeyed.'[19] Contradictory legislation was overruled at the outset with no reference to *plenitudo potestatis* or *certa scientia*: 'Communal and other statutes at variance with these laws are not in any way to be observed.'[20] The simple phrase 'all other decrees to be revoked' replaced the elaborate clauses whereby earlier rulers had invoked plenitude of power in order to annul existing law. A clear example of the process was the section of the new code concerning legitimizations granted by counts palatine without the father's consent. In the original decree of 1442, Filippo Maria had used *plenitudo potestatis etiam absolutae* to forbid such legitimizations without ducal licence and also to annul any which had previously been made.[21] In the new compilation, by contrast, the law said simply: 'No count palatine, by virtue of any privilege, in whatever way and with whatever authority it has been given, may use that authority in Milanese territory without the permission of the Governor or Senate.'[22] Another example was the law stating that, where a debtor had been imprisoned, goods had to be accepted by creditors as payment.

bellis principem tantam molem legum condidisse. Haec sunt quae ad confiscationis bonorum onera, redditus ordinarios et extraordinarios ac causas fiscales pertinent. Pleraque tyrannica et quae tempore bonorum principum recepta non fuerunt.' The work forms an introduction to the *Novae Constitutiones*, appearing for the first time in the second edition of 1544: see Visconti (1913), p. 20.

[17] Grassi, *De origine iuris mediolanensis libellus*: 'Nihil attentius fecit quam ut magistratus bene se gererent et iustitiae suas integras partes darent, congeriemque decretorum illorum temporum damnans, statuit superflua resecare et caetera repurgata in unum volumen redigere.'

[18] Francesco II had initiated the process in 1529: Visconti (1913), p. 5; the original idea had been Ludovico il Moro's: Visconti (1942), p. 61.

[19] *Novae Contitutiones*, Bk 1, *De constitutionibus*: 'decernimus, omnes constitutiones in hoc codice comprehensas, inconcusse servari debere, reliquis omnibus antiquatis;' the decree was issued in the name of Emperor Charles V, under whom the project was completed after Francesco's death.

[20] *Novae Contitutiones*, Bk 1, *De constitutionibus*: 'statutis civitatum et locorum ac aliis his constitutionibus contrariantibus nequaque attentis.'

[21] 8 October 1442, *ADMD*, pp. 300–2; Francesco I, on 6 March 1452 (*ADMD*, pp. 338–40), had issued a modified form of the decree in 1452, also 'de nostrae plenitudine potestatis absolute'.

[22] *Novae Contitutiones*, Bk 3, *De legitimationibus*: 'Nullus comes palatinus virtute alicuius privilegii quomodocumque et cum quacunque potestate a nobis concessi, possit uti ea potestate in

The original decree of 1375 had been issued by Galeazzo II 'de nostrae plenitudine potestatis'; the new version simply stated, 'it is decreed that, in all cases in which, by agreement or otherwise, a debtor is liable for payment in cash, the debtor may give goods to the creditor as payment.'[23] But it was not just that the regime was no longer comfortable with the notion of plenitude of power; its disappearance from the reformed code implied new confidence. The use of plenitude of power by earlier rulers could not but give the impression that edicts were not valid without recourse to arcane formulae; the laws of the *Novae Constitutiones*, by contrast, were couched in plain, uncomplicated language; the preambles in which the motives behind a decree were spelt out have disappeared and with them the idea that the government had to justify its actions. Contrary to what might be assumed, the omission of plenitude of power from ducal legislation showed that the government of Milan was more, not less, sure of its ground.

Egidio Bossi

One of the new code's compilers, Egidio Bossi (1488–1546),[24] senator and leading government officer under Francesco II, devoted the treatise *De principe et privilegiis eius* to an exploration of ducal powers.[25] As a member of the administration Bossi was, like Giasone del Maino, an enthusiastic supporter of ducal authority; and yet he was keen to make it clear that absolute power had limits.[26] *De principe et privilegiis eius* corroborated the trend away from the use of plenitude of power. Bossi demonstrated, for example, that the mechanisms available to earlier dukes for the exploitation of absolute power had been curtailed. A prime instance was the abolition of the notorious clause in Filippo Maria's decree of 1423, 'Providere volentes', ordering from plenitude of power that the duke's own narrative of events had to be accepted in court as proof of guilt, allowing, for example, the summary reassignation of rebels' property. As Bossi pointed out, the law had been subject in legal circles to scathing criticism, to which he added his voice: 'We used to have a decree, ''Providere volentes'', stating that [the duke's version

dominio Mediolani sine licentia locumtenentis, aut Senatus nostri in eo dominio residentis.' See Visconti (1912/1913), pp. 354–5.

[23] *Novae constitutiones*, Bk 2, *De bonis in solutum dandis*: 'sancitum est quod in omnibus casibus . . . in quibus, vel pacto, vel aliter debitor teneatur ad solvendum in pecunia numerata, possit debitor dare de bonis in solutum creditori.' See Visconti (1912/1913), pp. 154–5.

[24] Bossi had studied at Pavia under Franceschino Corte and had been podestà in Alessandria and Novara as well as Avvocato fiscale (government lawyer) before 1522; Francesco II appointed him senator in 1528 and in 1536 a member of the 60 Decurioni di Milano (successor to the old General Council); in 1537 he was made commissario ducale in Pavia. Further details of his career are provided by di Renzo Villata (1982), pp. 113–15, and (1996), pp. 368–84; see also the anonymous entry in *DBI*.

[25] The work, written in the 1540s, after Emperor Charles V had assumed direct rule over the duchy, formed part of his collection of treatises, the *Tractatus varii*, which mainly concerned criminal law but which also included 'plurima ad fiscum et ad principis auctoritatem ac potestatem.'

[26] The point is well made by di Renzo Villata (1980), pp. 346–7.

of events] had to be believed; but it was repealed as tyrannical in the collection of new decrees compiled by Senator Francesco Lampugnano and me.'[27] The decree had had the effect of endorsing the use of the powers above the law; had it not been repealed, 'it would have left it open to the duke indirectly to carry out an action which [in law] he could not do.'[28] Another example was the abolition of the laws *Omnes* and *Bene a Zenone*,[29] guaranteeing the ownership rights of whoever had received property from the government. Baldo had been at pains to prove that those laws applied not just to the emperor but to the Visconti, declaring that, having been given his authority by the emperor, Giangaleazzo's concessions benefited from the same legal protection.[30] Later jurists had concurred.[31] But there was a now a conviction that these laws were unjust.[32] As Bossi explained, they were no longer followed in the city of Milan and its territory, 'on account of the decree declaring that the rights of third parties are understood never to be infringed in ducal grants and acts,' a fundamental principle applying to concessions of every kind and in all courts.[33] Baldo's opinion that 'the law *Bene a Zenone* was not applicable unless it was clear that the prince intended to make use of plenitude of power' was generally accepted, so that relinquishing that law and its companion, the law *Omnes*, meant that plenitude of power was further restricted.[34] In more general terms, Bossi would not even accept the

[27] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 80: 'Sed an credatur literis principis attestantibus aliquem esse bannitum vel rebellem, super quibus postea se fundet donando bona sua. Decretum habebamus disponens ut crederetur (quod incipiebat "Providere volentes"); sed fuit abolitum uti tyrannicum in compilatione novorum decretorum facta a clarissimo viro D. Francisco Lampugnano, Senatore, et me, ex autoritate Senatus.'

[28] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 80: 'Alias esset via aperta principi faciendi per indirectum quod non posset.'

[29] C. 7, 37 (De quadrennii praescriptione), l. 2 and 3.

[30] Baldo, Consilium Bk 3, 359 ('Quemadmodum imperator'), nr 2 (see above p. 64).

[31] The statement by Ludovico Pontano was often quoted, to the effect that the law *Bene a Zenone* applied to Pandolfini Malatesta, as he argued in Consilium 59 ('Ad discutiendum'), nr 8: 'Cum igitur vicariatum habens ex speciali pontificis commissione in praefata civitate locum principis obtineat, ac etiam fiscum habeat, merito, dicta lex Omnes et dicta lex Bene a Zenone [C. 7, 37, 3 and 3] etiam sibi locum vendicant in donatione per eum facta praefato Antonello.' See also above p. 95, n. 3.

[32] See, for example, the statement made in 1526 by Mariano Sozzini, Consilium Bk 1, 69 ('Pro dilucidatione'), nr 60: 'Nam quicquid disponit dicta lex Bene a Zenone, cum eis dispositio sapiat iniquitatem, eo quod quis de facto dominio rei suae privatur.'

[33] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 86: 'In hac tamen civitatem Mediolani et eius dominio, non observantur dictae leges. Et hoc procedit propter decretum disponens ut nunquam intelligatur sublatum ius tertii in concessionibus et gestis per principem . . . Et non solum servatur in concessionibus gratuitis sed etiam onerosis, et non solum in Senatu sed coram omni magistratu.' The act to which Bossi was referring was the other clause of the decree of 6 October 1423, 'Providere volentes', setting out the axiom that it was never the duke's intention to undermine anyone's rights in his concessions: *ADMD*, p. 258; see above p. 120. Bossi cited an instance when that principle had been upheld by Francesco Taverno, as president of the Magistrato Straordinario under Francesco II.

[34] Baldo, on *Decretales,* Proemium, s.v. Gregorius, nr 13: 'Unde lex Bene a Zenone, C. De quadrennii praescriptione non habet locum nisi constet quod princeps vult uti plenitudine potestatis.' On the point that *Bene a Zenone* did not come into force in the absence of plenitude of

long-established principle that a ruler was not bound by local statutes: provided they were based on *honestas*, he should submit to them.[35]

The Transfer of Plenitude of Power to the Senate

Francesco II's attitude to absolute power was different from that of his predecessors: until his accession every ruler of Milan had been anxious to acquire plenitude of power as a tool of government and symbol of authority; Francesco, on the other hand, wanted to divest himself of it. That at least is what the Venetian ambassador believed. Reporting back to his government in 1533, Giovanni Basadonna drew a portrait of Francesco as a ruler: 'He is highly intelligent and articulate in matters of state; in fact he has no interest in anything else.'[36] The duke was a thoroughly honourable ruler: 'He is altogether a man of integrity and is particularly obsessed with justice, so much so that, whatever business is under discussion, he constantly repeats that what he wants is justice, which indeed he never fails to support.' It was in this context that Basadonna described Francesco's policy with regard to plenitude of power: 'His Excellency does not keep absolute power to himself, or rather he does not want it, but has handed it over entirely to the Senate.'[37] Basadonna's analysis was in keeping with the tradition which saw plenitude of power as incompatible with principled government, a view which had reached its climax in the works of Alciato and other contemporary jurists.

The Senate was now the key organ of government. It had been formally established by Louis XII in the Edict of Vigevano of 1499, in which he ordered that, instead of the two existing councils, the Consiglio Segreto and the Consiglio di Giustizia, 'there will be one supreme council to be called our Senate, in the manner of the ancients.'[38] It was to consist of a president (Pierre de Saverges, bishop of Luçon) and seventeen members, appointed for life by the king: two clergy, four military men and eleven graduates (presumably lawyers). The Senate would enable Louis XII to govern the newly

power, both Decio in Consilium Bk 2, 357 ('In causa magnifici'), nr 7, and Franceschino Corte in Consilium Bk 1, 174 ('In causa vertente'), nr 33, quoted Baldo verbatim; see also Martino Garati, *Tractatus de principibus*, nr 10, p. 89, where he quotes Baldo.

[35] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 83: 'An subiaceat statutis civitatis, dic non subiacere etiam de honestate Card. [Franciscus Zabarella], consil. 2; Felinus in dicto cap. 1 [De const. (X. 1, 2, 1)], col. 9. Quae conclusio forte non procederet, quando per eam [i.e. honestatem] confirmata.'

[36] 'Di ingegno è acutissimo; in cose di stato discorre benissimo e non lassa loco da considerare più oltra', *Relatio*, p. 46.

[37] 'È di animo pieno di virtù e principalmente di iustizia, tanto che, parlando di ogni cosa, sempre l'ha in bocca voler iustizia, la quale non si manca di custodir. Invero che Sua Eccellenzia non si riserva la potenzia assoluta over non la vole, ma il tutto rimette al senato', *Relatio*, p. 45.

[38] 'Ordinamus quod de caetero erit in dicto dominio nostro Mediolani unicum supremum consilium qui *Senatus* noster iuxta veterum morem appellabitur', 11 November 1499, Pélissier (1891) p. 19. The term Senatus, occasionally found even in the fourteenth century, was frequently used to refer to the Consiglio Segreto and Consiglio di Giustizia: Del Giudice (1899), pp. 384–7.

conquered duchy as an absentee ruler.[39] In contrast to the two earlier councils, its functions were precisely delineated. Its chief role was to administer justice:[40] it would hear important cases (involving feudatories, the government itself, or sums over 1,000 ducats) and judge appeals from lower courts, its own decisions being final.[41] The Senate also had responsibility for issuing dispensations, reinstatements of status, confirmations of rights and similar privileges.[42] Most striking was the Senate's authority to confirm or reject ducal decrees,[43] and to verify and register (*interinare*) the duke's grants, concessions and privileges, a process familiar to Louis XII from the practice of French Parlements.[44]

The Senate was ordered to judge cases, not according to the letter of the law, but according to God and conscience. Bartolo had explained that an ordinary judge had to base his decisions on law and on the evidence produced in court (*allegata et probata*); 'but if the judge is someone who is above the law, as are the pope, the emperor, and any other ruler whose pronouncements have the status of law in his territory, then he should judge according to his own conscience.'[45] From the outset, therefore, senators were charged with duties traditionally associated with princely authority; but according to Basadonna, it was Francesco II who gave them plenitude of power itself. In the edict of 18 May 1522, the

[39] 'Verum animadvertentes nos continue in dicta mediolanensi provincia non posse residere', 11 November 1499, Pélissier (1891), p. 17; Pélissier publishes the whole decree as Doc. 11, pp. 17–28; see also Petronio (1972), pp. 51–2.

[40] 'Volumus praeterea et ordinamus praefatos Senatores nostros, sic in Senatu nostro ordinatos, in dicta civitate Mediolani residentiam facere ut sua valeant officia exercere et subditis nostris prout de eis confidimus, justitiam ministrare', Pélissier (1891), p. 22.

[41] The judicial functions of the Senate have been summarized most recently and precisely by Monti (2001), pp. 45–134.

[42] 'dandi omnes et quascumque dispensationes statutorum et ordinationum, confirmationes, rehabilitationes, temporum prorogationes, in integrum restitutiones et omnes alia provisiones justitiae in dicto ducatu nostro mediolanensi et aliis terris ab eo dependentibus ac in toto dominio nostro Astensi': Pélissier (1891), p. 22.

[43] 'Eidem Senatui nostro damus et concedimus, per praesentes, potestatem seu auctoritatem decreta nostra ducalia confirmandi et infirmandi': Pélissier (1891), pp. 22–3.

[44] 'Et cognoscet ulterius dictus senatus de verificatione et interinatione litterarum nostrarum donorum, remissionum, indulgentiarum, privilegiorum, ordinationum, et edictorum tam justitiam quam policiam concernentium. Quae quidem litterae omnes supradictae, nisi per prius fuerint in dicto Senatu nostro praesentatae, interinatae et verificatae, nullius firmitatis, effectus vel momenti esse poterunt easque tam concessas quam concedendas decernimus per praesentes irritas et inanes': Pélissier (1891), pp. 23–4. See Petronio (1968), pp. 344–5, who points out too that the Consiglio Segreto had been known to register ducal decrees in the 1470s; on *interinazione* and the Milanese Senate, see Visconti (1909) and on the comparable procedure in Piedmont, see Lattes (1908).

[45] Bartolo on C. 2, 10 (Ut quae desunt advocationi partium, iudex suppleat, l. unica): 'Sed si esset iudex supra legem, ut papa vel imperator, vel alius dominus cuius dictum habetur pro lege in territorio suo, tunc debet iudicare secundum conscientiam suam;' see Padoa Schioppa (2001), pp. 142ff and idem (2003), pp. 273ff, where the author traces the history of judging according to conscience through to the sixteenth century, pointing out that the distinction between judging according to law and the evidence produced, and according to conscience was made by almost all commentators; see also Cavanna (1999), p. 594, nr 39. Baldo had seen the appeal to conscience as a misuse of plenitude of power (see above p. 28).

new duke had already added significantly to the senators' remit: whereas under Louis XII their role had been simply to 'administer justice', Francesco had decreed that the senators were to 'preside over and supervise all aspects of justice and *aequitas*'.[46] This provision was incorporated into the *Novae Constitutiones* in the clause beginning *Habeatque* under the title, *De senatoribus*.[47]

Whether its authority to administer equity meant that the Senate enjoyed plenitude of power became a matter for debate. *Aequitas,* the concept so central to ancient and medieval law, had no single definition.[48] In Roman law itself there were inconsistencies over whether the administration of *aequitas* applied to judges generally or whether it was an aspect of the emperor's supreme authority. On the one hand, there was the golden rule which applied to all judgments, as laid down in the *Codex*: 'In all matters the principles of justice and equity, rather than the strict rules of law, should be observed.'[49] At the same time, there was Justinian's precept that 'the interpretation of issues arising between equity and the law is for us alone to decide.'[50] Reflecting these parallel doctrines, two different kinds of equity had been identified in the middle ages—unwritten and written. The first, *aequitas rudis* or *non scripta*, signified fundamental moral standards, which would be translated into *aequitas constituta* or *scripta* only by the legislator himself.[51] *Aequitas scripta* would then be applied as a matter of course by all judges. Bossi explained what this meant in the context of the Senate:

[46] 'Decernimus quod unus tantum sit supremus senatus sive supremum consilium in toto nostro ducatu et dominio Mediolani, et Mediolani continuam faciat residentiam, possitque omnia quae sunt iustitiae et aequitatis moderari ac gubernare, et alia etiam tractare ac terminare quae iam per Senatum solita fuere tractare et terminari': decree of 18 May 1522, ASMi, Uffici giudiziari, 168, printed as *Constitutio ac ordinatio Senatus ac Magistratuum Illustrissimi ac Excellentissimi Principis Domini Francisci Secundi Sfortiae*; the decree is published in Landi (1637); on the decree, see Molteni (1897), p. 13.

[47] *Novae Constitutiones*, Bk 1, 'De senatoribus': 'Habeatque idem senatus auctoritatem constitutiones Principis confirmandi, infirmandi, et tollendi, ac concedendi quascunque dispensationes, etiam contra statuta et constitutiones . . . et ultra praemissa, in his quae ad iusticiam aut aequitatem spectant.'

[48] There is an extensive literature on the concept of *aequitas* in medieval law; for brief discussions, see Calasso (1954), pp. 476ff, Grossi (1995), pp. 175ff, and Piano Mortari (1997), pp. 145–58.

[49] C. 3, 1, 8 (De iudiciis): 'Placuit in omnibus rebus praecipuam esse iustitiae aequitatisque quam stricti iuris rationem.'

[50] C. 1, 14, 1 (De legibus et constitutionibus principum): 'Inter aequitatem iusque interpositam interpretationem nobis solis et oportet et licet inspicere.' These two strands of interpretation were exemplified by Martino and Bulgaro respectively: see Grossi (1995), pp. 180–1, and Cortese (1989), pp. 111ff.

[51] The clearest explanation of this distinction was set out by the thirteenth-century Provençal glossator, Rogerio (. . .1162. . .): 'Dicitur enim "equitas" nunc in significatione stricta et ad iuris scripti differentiam vocaturque in tali significatione ea sola "equitas" que nondum in preceptionem redacta sit et iuris laqueis innodata. Dicitur etiam "equitas" nunc in larga significatione et ad iuris stricti differentiam vocaturque in tali significatione "equitas" etiam quoddam ius scriptum, quale est omne illud. quod equitatis ratione contra rigorem verborum iuris stricti regularisque sit introductum . . . Hanc equitatem que ipsa non rudis est set ius scriptum cum iuri scripto strictoque similiter contradicat. Omnes iudices investigare diligenter a iurisque rigore propria secernere interpretatione ac secundum eam iudicare precipiuntur': Kantorowicz (1938), p. 282.

aequitas scripta was the law even inferior judges could apply, whereas *aequitas non scripta* was 'the basis upon which the Senate makes its day-to-day judgments in both civil and criminal cases; this must be so because otherwise there would be no difference between inferior judges and the Senate itself.'[52] That would mean that its authority over *aequitas* gave the Senate supreme power (as the senators themselves believed).

On the other hand, not everyone agreed that the duke had indeed surrendered his plenitude of power and *iura reservata* to the Senate.[53] Bossi, the most authoritative contemporary observer, pointed out that there were still aspects of princely authority which the Senate was not allowed to exercise. The decree of 1522, for example, reiterated in the *Novae Constitutiones*, prohibited senators from pardoning serious crimes: that was a prerogative reserved to the duke. Basadonna had asserted that the duke had given his plenitude of power away altogether; but Bossi knew of no specific handover. Citing Felino Sandeo's discussion of plenitude of power, he said: 'It should be noted that Sandeo indicates that the emperor might well create a duke or marquis, and proclaim that he was empowered to do whatever he [the emperor] could; but [in that case the emperor] would have to add that he could do "whatever he himself could do even from plenitude of power".'[54] For Bossi the debate came round once more to the terms of Giangaleazzo's 1396 diploma: plenitude of power had not been expressly conceded by the duke to the Milanese Senate in the same way as it had been granted by Wenceslas to Giangaleazzo. Moreover, it was a fact that Francesco II never ceased to issue privileges on the basis of plenitude of power. Indeed, Bossi himself had benefited from one such grant.[55]

[52] Bossi, *Tractatus varii, De remediis ex sola clementia principis contra sententiam,* nr 44: 'Et haec clara sunt quando militat aequitas scripta, secundum quam etiam iudices inferiores possunt apponere manum iuxta textum in l. quid ergo, § poena gravior, *ff*. De infa. [D. 3, 2, 13, 7] et notatur per Felinum in c. qualiter, § ad corrigendos, De accusa. [X. 5, 1, 17] et late dicta supra in titulo De Sent. et dicta per Decium in Regula, fere ff. De reg. iuris [D. 50, 17, 1]. Sed loquor etiam militante aequitate non scripta, secundum quam Senatus quotidie iudicat tam in civilibus quam in criminalibus; et bene quia aliter non esset differentia inter iudices inferiores et Senatum.' On the Senate's right to apply equity in criminal law cases in the sixteenth century, see Cavanna (1975), pp. 197–223.

[53] See, for example, Cavanna (1999), pp. 597–8; Monti (2003), p. 103; Petronio (1972), pp. 143–4.

[54] Bossi, *Tractatus varii, De principe et privilegiis eius*, nrs 87 and 88: 'Nec etiam in generali concessione veniunt reservata principi, et quando veniant et per quae verba, vide Felinum in cap. quae in ecclesiarum, De constitutionibus, charta 3, col 3 versi. Quarta declaratio est [X. 1, 2, 7, nr 32]; et ibi dicit quod nec vicarius imperialis habet talem potestatem nec rex, marchio, dux et comes, nisi aliter vis verborum velit ut ibi notatur per eum et ideo quod dicit Bartolus in dicta lege 1, De legatis 3 et ubi supra et Jason in l. Conventionum, col. 2, ff, De pact. [D. 2, 14, 5] . . . Est etiam advertendum quod Felinus, ubi supra, vult ut quamvis Caesar constituat ducem vel marchionem, et dicat quod possit quae ipse Caesar potest, tamen debeat addere "quae potest Caesar etiam ex plenitudine potestatis".' Sandeo had expressly quoted the 1396 diploma in this passage.

[55] In 1533 the duke had bestowed on him an annual income of 300 lire from tax revenues 'motu proprio, ex certa scientia et de nostrae potestatis plenitudine etiam absolute', ASMi, Registri ducali, 82, p. 71.

The rest of the Senate, on the other hand, evidently disagreed. Bossi described a debate on this very question:

> When this issue, which had never previously been addressed, was raised in the Senate in connection with a particular case, everyone, apart from me, strongly supported the opposite view [that the Senate did enjoy plenitude of power]. After that I gave some thought to the points I have been discussing here, which confirmed me more and more in my conviction that there can be no room for doubt about this, because [in his mandate to the Senate] the emperor[56] restricted himself to matters of justice and equity.[57]

For Bossi, the administration of equity did not imply plenitude of power: 'Had the emperor really been of such a mind,' he argued, 'he could have allowed the Senate to exercise his own personal powers and then it could have acted in every way as a sovereign. But he did not do so.'[58]

Judging on the Basis of Facts Alone

While not agreeing that the authority of the Senate included a blanket right to plenitude of power, even Bossi had to concede that there were times when the senators could make use of aspects of that prerogative. Louis XII had instructed them to conduct judicial hearings 'informally, intelligibly and in a straightforward manner, without verbosity or judicial rhetoric on the basis of the facts (*facti veritate inspecta*)'. This approach meant 'curtailing delays as much as possible, and cutting short the petty objections and quibbles of the parties involved'.[59] The right to decide cases on the basis of the facts alone had previously

[56] Bossi was referring to the *Novae Constitutiones* published under Charles V.

[57] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 88: 'Dum tamen haec dubitatio fuisset proposita in Senatu, nullo praecedente studio, universus Senatus, me excepto, contrarium asserebat, quod fuit in causa, ut deinde praedicta consideraverim, quae magis atque magis confirmarunt me in meam sententiam, ut in praecedenti quaestione tollitur omnis dubitatio, quia Caesar se restrinxit ad iustitiam et aequitatem iuxta l. Placuit, C. De iud. [C. 3, 1, 8] et dicta l. penult. cum ibi notatur, *ff*. De iustitia et iure [D. 1, 1, 11].'

[58] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 87: 'Caesar rescribat Senatui ut in his quae accident in eo dominio faciat quae conveniunt iustitiae et aequitati, an Senatus poterit non solum exercere iustitiam, verum etiam facere gratias delinquentibus et remittere condemnationes? Videtur id posse si absolute voluisset, ut ipsius vices gereret, quia tunc posset omnia quae princeps secundum Bartolum in l. 1, § si quibus, ff. De legat. 3 [D. 32, 1, 5] et in l. 2, *ff*. De his qui sui vel alien. gest. post glossam ibi. [D, 1, 6, 2]. Sed non ita fecit Caesar, imo se restrinxit ad ea quae concernunt iustitiam et aequitatem.'

[59] 'Propositione autem facta, et responsione [del reo] secuta verbo, vel in scriptis, Senatus media cause committat uni vel duobus Senatoribus per D. Cancellarium deputandis, ut facilius et celerius expeditionem partes ipse consequantur, qui procedant summarie, simpliciter et de plano, sine strepitu et figura iudicii, ac facti veritate inspecta, abreviando quantum fieri poterit dilationes, resecando frivolas exceptiones et cavillationes partium . . . Deinde alii Senatores, secundum quod exquirentur, eorum vota, dicent eorum sententiam simpliciter et libere, secundum Deum et conscientiam.' This section of Louis XII's regulations is published in Merlo (1910), doc. 6, p. 197; the complete text can be found in Ruginelli, *Tractatus de senatoribus*, § I, Glossa sexta, *c.* 4, nr 56. On the history and significance of the phrase, see Monti (2003) pp. 128–46.

been accorded to lower courts.[60] But in the context of the Senate it came to be associated with absolute authority. This was a development explained by Alciato: in the Senate *veritas* signified not simply, as in other courts, the factual circumstances behind a case, but was 'the same thing as conscience, reflecting the normal procedure whereby the Senate makes its judgments on consideration of the unvarnished facts and its own conscience and, what is more, without reference to contradictory proceedings'.[61] The Senate, in other words, had the right, not just to short-circuit judicial forms, but to ignore the findings of other courts, as well as oaths and agreements among the parties, a process normally requiring plenitude of power. Bossi accepted the principle: a ruler himself could pass sentence without a formal hearing, 'provided it was clear that he wanted to proceed on the basis of facts alone (*solam veritatem sequi*), disregarding procedure and judicial formalities; otherwise it is assumed that he would want to comply with the law'. It was important, therefore 'to establish that it was in fact his intention to use plenitude of power'.[62] He described the profound implications of the right to judge on the basis of the facts: 'Once a ruler has been made aware of any justification for so doing, he can use plenitude of power to improve a plaintiff's suit; for in his court lack of skill in drafting a case is of no consequence.' Judging outside the usual parameters was an intrinsic aspect of his authority: 'The reason is that rulers are not constrained by the technicalities of law. Indeed with them technicalities cease to exist, for whatever a prince does, he does as God himself; and because God is truth, a ruler ought to base his judgment solely on a consideration of the facts. When a ruler is aware of the facts, he should not get involved in any legal quibbling; and therefore he rightly sets aside all

[60] The expression had been used first in the mid-fourteenth century, when Pope Urban V, with the same object of accelerating hearings, enjoined the judges in the Rota to proceed on that basis: see Monti (2003), p. 135. The Sacra Rota or Rota Romana was the court set up by Pope John XXII in 1331, largely devoted to disputes over benefices. The phrase was included in a similar context in Giangaleazzo's reforms of 2 October 1386 and 23 September 1393: *ADMD*, pp. 122 and 188, and see Monti (2003), pp. 132–3; see Lattes (1886), pp. 58–5, and n.18, for a list of its many appearances in local statutes.

[61] 'Talis veritas est unum et idem cum conscientia . . . eo modo quo solet Senatus ipse iudicare, clarum autem est, quod Senatus ipse iudicat, inspecta nuda veritate et conscientia, etiam nullo habito respecta ad acta, quae veritati contrariantur': Alciato, *Responsa*, 301, nrs 7–10, as quoted by Monti (2003), p. 141, who explains this important point, pp. 142ff..

[62] Bossi, *Tractatus varii, De principe et privilegiis eius*, nr 72: 'An valeat sententia principis sine citatione, videtur tamen ex mente doctorum quod hoc procedat ubi appareat principem velle solam veritatem sequi, omisso ordine et solemnitatibus iudiciariis, quia alias in dubio princeps praesumitur velle uti iure communi . . . Ideo debet constare voluisse uti plenitudine potestatis.' This interpretation became generally accepted; Iacopo Menochio (1532–1607), *De arbitrariis iudicum,* Bk 2, 'Centuria prima', casus 68, nr 32 wrote: 'Nostri temporis Senatus, ex lege praescripto non iudicat, sed ex aequitate et sola facti veritate inspecta, ut ipse princeps facere consuevit'; see Monti (2003) p. 145. The eighteenth-century commentator P. A. Mogni Fossati, *Constitutiones mediolanensis dominii iam primum illustratae decisionibus et annotationibus*, tit. 'De senatoribus', para. Unus tantum, s.v. Senatus, nr 2, reiterated that the Senate's ability to judge on the basis of the facts alone was linked to its supreme power: 'Senatus Mediolani, attenta suprema eius auctoritate, iudicat sola facti veritate inspecta', quoted in Petronio (1972), p. 142, n. 157.

procedural formalities.'[63] Examining the significance of the words with which Charles V delegated cases to the Senate, 'conferring on you our own powers in these matters', Bossi conceded that 'there can be no doubt that this means that [the Senate] is authorized to proceed on examination of the facts alone, in the same way as the emperor himself.' But this should not be understood as a grant of plenitude of power: 'To avoid misunderstanding, let no one go any further than this and suppose that the authority to exercise the emperor's particular prerogatives (*iura reservata*) has been given [to the Senate].' The analogy, he explained, 'is the pope's delegation of his own powers over particular churches or localities to someone else: that does not mean he is handing over his own exclusive prerogatives'.[64] In other words, the Senate had the use of these powers but had not been given them outright. This was as far as Bossi was prepared to go: the Senate's authority was delegated rather than intrinsic, its scope being strictly circumscribed.

The conflicting views about whether or not the Senate had plenitude of power were never reconciled. The debate continued to centre on the significance of Francesco II's mandate. Giuseppe Oldradi, the seventeenth-century Milanese commentator on ducal legislation, asserted that 'our Senate enjoys plenitude of power,' citing as evidence the key passage *Habeatque* in the title *De senatoribus* of the *Novae Constitutiones*.[65] Angelo Stefano Garoni was another seventeenth-century authority who believed that the Senate owed its plenitude of power to

[63] Bossi, *Tractatus varii, De principe et privilegiis eius*, nrs 69–70: 'Princeps de plenitudine potestatis potest supplere circa libellum, ex causis sibi notis; quia coram principe non attenditur ineptitudo libelli . . . Ratio huius specialis est quia principes non arctantur ad observantiam solennitatis; imo in ipsis omnis solemnitas cessat. Nam quicquid facit princeps, facit ut Deus: in Auth in Haer. et Fal. in princ. [Nov. 1, Coll. I, 1]. Ergo sola facti veritate attenta debet iudicare, cum Deus sit ipsa veritas, ut notatur in c. cum omnes, De const. [X. 1, 2, 6] quae non fallit nec fallitur. Et ideo ubi princeps scit veritatem, non debet ire per ambages; et per consequens omnis solemnitas iudicaria videtur ab eo excludi.' On Bossi's comparing the judgments of the Senate to those of God, see Monti (2003), pp. 100–1; Cavanna (1999), p. 593, n. 38, suggests that Bossi was the first to make such a comparison.

[64] Bossi, *Tractatus varii, De principe et privilegiis eius*, nrs 91–2: 'Et non videtur dubitandum, prosequendo significatum illorum verborum "dantes vobis in praedictis vices nostras", quin possit procedere sola facti veritate inspecta, et in eo modo quo posset ipse Caesar. Sed quod videatur data facultas exercendi ea quae sibi sunt reservata nullus amplius hoc dicat ne sibi obiiciatur. Et in terminis quando papa committit vices suas quo ad tales ecclesias vel in talibus locis, quod tamen non intelligatur transtulisse ea quae sibi soli erant reservata.'

[65] Oldradi, *De litteris et mandatis principum,* 'Praeludium primum', nrs 35–6: 'Ideo Senatui nostro cum sint remissa omnia ad iustitia pertinentia in hoc dominio, ut supra dixi n. 5 et 30. Is eadem ratione utitur plenitudine potestate, in his quae ad iustitiam pertinet in hoc dominio: Bossi in dicto titulo *De principe et privilegiis eius,* n. 87 & 88 cum seq.; Clare [Giulio Claro, 1525–1575] sua *Praxi* § fin. Qu. 38 vers. est etiam et Qu. 94 et per *Novae Constitutiones* dicto titulo "De senatoribus", § Habeatque, ibi "In his quae ad iustitiam pertinent provideri etc." Regulariter enim plenitudine potestatis uti potest princeps per suos consiliarios, ac vicarios, sicut per se ipsum ut tradit Cravetta, cons. 135, n. 4; Baldus, Consilium. 267, lib. I ["Ad evidentiam praemitto"] et Consilium. 457, lib. V ["Ad evidentiam praemitto"] et cons. 359. lib III ["Quemadmodum Imperator"].' Cavanna (1999), pp. 591–3, comments on the reputation enjoyed by the Milanese Senate for absolute power.

Francesco II. In his commentary on the title *De senatoribus*, he wrote: 'Charles V and the kings of Spain considered it vital to set up a tribunal authorized to exercise supreme power, and Francesco Sforza [II], duke of Milan had had the same view.'[66] Later Gabriele Verri (1696–1782), himself a Senator and an expert on the constitution, stated in his history of Milanese law, 'unquestionably this absolute power was bestowed on [the Senate of Milan] by the *Constitutiones*, in the part where it says "Habeatque idem Senatus".'[67] On the other hand, Bossi's opinion was endorsed by the early seventeenth-century commentator Giulio Cesare Ruginelli, who, in the *Tractatus de senatoribus*, stated categorically that 'the Senate does not enjoy plenitude of power, because it knows that at no time has that power ever been shared with it.'[68] The dilemma was reflected over the years in the Senate's own procedures, some senators believing they had a right to plenitude of power, others not. There is a striking illustration of the lack of consensus in an exemplar for the granting of citizenship by the Senate (dated 1583), as set out in the official formulary. It had originally included the words: 'from certain knowledge and by every more effective means, law, way and form by which we could better and more legitimately act including from our plenitude of power'. But the president of the Senate, Giovanni Battista Rainoldi, ordered that this last clause should be omitted and there was a line through the words 'etiam de nostra potestatis plenitudine'.[69] He evidently agreed with Bossi that the Senate did not have plenitude of power.

Corruption in the Senate and Plenitude of Power

The Venetian ambassador, Giovanni Basadonna, had explained that the motive for Francesco II's surrender of plenitude of power was devotion to justice. But in his view plenitude of power in the hands of the Senate would mean less assurance of justice, not more, the potential for abuse being far greater. The duke's decision, he wrote, 'has met with scant approval from subjects and there is little guarantee that justice will thereby be safeguarded. That is because [if he had not done this] the respect which judges would have [for the duke],

[66] Garoni, *De senatoribus,* Praeludia, cap. 4 nr 18: 'Prudentissimus ille imperator et Reges Catholici talem ac tantam potestatem tribuerunt Senatui; considerarunt siquidem magni referre, in dominio tot principibus finitimo collocare tribunal quod suprema polleret authoritate, id pariter cordi fuit Francisco Sfortiae duci Mediolani, ut multo magis debuerit esse cordi ipsi imperatori et regibus ob ipsorum absentiam.' On Garoni, see di Renzo Villata (1980), pp. 359–60, and n. 90. On Verri, see Del Giudice (1907), and di Renzo Villata (1980) pp. 387–8.

[67] Verri, *De ortu et progressu juris mediolanensis prodromus,* p. cxxxii: 'Ei quippe absoluta haec potestas ab ipsis Constitutionibus est attributa ibi "Habeatque idem Senatus" '; his account forms the preface to his edition of the *Novae Constitutiones*.

[68] Ruginelli, *Tractatus de senatoribus,* § I, Glossa sexta, c. 5, nr 101: 'Sed hac [absoluta] non utitur Senatus potestate, qui novit illam sibi usquequaque communicatam non fuisse.' On Ruginelli's career, see di Renzo Villata (1980), pp. 361–2.

[69] Monti (2001), p. 223. Rainoldi again ordered 'ut deleatur clausula de nostrae potestatis plenitudine' from the abbreviated form of citizenship drawn up in 1586: ibid. p. 224.

together with the expectations of his people, would actually have ensured higher standards in judicial proceedings.'[70] These fears were evidently well grounded: corruption in the Senate was thereafter associated with plenitude of power. Years later, in the *Ordini di Tomar* of 17 April 1581, Philip II warned the senators: 'You make such extravagant use of your arbitrary powers in civil and criminal cases that you pardon and condemn without regard to laws, statutes or the *Constitutiones*.'[71] It was accepted by Lombard jurists that, in the tradition of plenitude of power, the Senate's as well as the Governor's supra-legal powers were supposed to be circumscribed: concessions were invalid, for example, if there were any suggestion of *surreptitio*, or disregard for divine law; pardons could not be promised in advance of a crime or without the consent of the injured party.[72] And yet studies of the Senate's judicial records reveal the notorious scale of venality stemming from the senators' right to judge according to conscience, equity, and the facts alone.[73]

CONCLUSION

Absolute power had been portrayed as the opposite of *honestas* by Milanese lawyers since the middle of the fourteenth century; by the first half of the sixteenth century plenitude of power itself had been unequivocally denounced. Against such a background it is not surprising that Francesco II and his government did not consider absolute power compatible with justice, most observers believing that he had transferred plenitude of power to the Senate. Even senators preferred not to employ the phrase. Their reluctance did not mean that they lacked power: the Senate's infamous reputation for favouritism showed that it was well able to

[70] 'Sua Eccellenzia non si riserva la potenzia assoluta over non la vole, ma il tutto rimette al senato, con poca satisfazione delli sui sudditi e di poca securità della conservazione di essa iustizia; perchè la tèma che teneriano li giudici e speranza che averiano li populi seria causa di miglior proceder nelle cause', *Relatio*, p. 45.

[71] 'Si usa da voi tanto assolutamente l'arbitrio nelle sentenze e civili e criminali che assolvete e condannate senza guardare leggi, statuti, né costituzioni dello Stato talchè si dice non esservi causa alcuna, nella quale altri per molto che abbia ragione, si possa assicurare che gli abbia a valere, se s'introduce ne tribunal vostro', quoted in Petronio (1972), p. 142. Monti (2003), p. 102, describes how corruption in the Senate had become notorious by the 1560s.

[72] Massetto (1990a), pp. 76ff.

[73] 'Nella decisione della cause portate alla sua cognizione, a quanto emerge dallo studio della sua giurisprudenza, sia civile che penale, il collegio portava alle estreme consequenze il ricorso a quel "privato sapere" dei suoi sommi magistrati, tant'è che, molte volte, sconfinava proprio in un abuso dell'*arbitrium* giudiziale e dei poteri equitativi, che così inutilmente sempre gli sarà rimproverato': Monti (2003), p. 114; see also p. 31. Petronio's work on the activities of the Senate under Philip II underlines the corrupting effect of its arbitrary power: Petronio (1972), pp. 124ff, esp. p. 126. Royal commissions of enquiry into corruption in Milan came to the conclusion that the Senate was filled with *ladrones*: Chabod (1958), p. 127. But, of course, it was not only the Senate that was corrupt: Chabod describes notorious abuses that permeated all aspects of government in Milan in the mid-sixteenth century.

overrule individual rights. But in its role as supreme tribunal the Senate preferred to rely on less controversial prerogatives: conscience, equity, and the right to judge on the basis of the facts represented the respectable face of arbitrary power. And yet while others railed against plenitude of power, Bossi saw it as an important ducal prerogative that could never be alienated, even to the Senate. For him the function of absolute authority was its ability to override law in the interests of justice. Both approaches to plenitude of power, one associated with tyranny and the abuse of rights, the other with equity and a less legalistic form of justice, had had a long history in Milan.

Conclusion

The Visconti and the Sforza had, paradoxically, been preoccupied with plenitude of power in order to enjoy rights which republican regimes largely took for granted.[1] Since it was the prerogative of a personal ruler, not of a collective body, republican city-states did not have plenitude of power as such: in Baldo's words, 'plenitude of power is not an attribute of the people.'[2] After years of working for the Venetian government, the sixteenth-century lawyer Marco Antonio Pellegrini said he could not remember ever having come across a reference to plenitude of power in that city.[3] And yet, as Bartolo had been at pains to demonstrate by means of the theory of *civitas sibi princeps*, republican governments had as much authority in their territories as any personal ruler. The exact origins of communal rights—whether by permission of the emperor,

[1] Nicolini (1946), pp. 28ff, discusses the intrinsic rights of communes in this area; see also Gorla (1982), pp. 634 and 654.

[2] Baldo, on De constitutionibus, c. canonum (X. 1, 2, 1), nr 24: 'Imperator non solet legitimare nisi reservata forma, id est clausula non obstantium adiecta. Sed populus, qui est minoris auctoritatis, non potest istam clausulam derogatoriam apponere, quia ista clausula est de suprema iurisdictione, que vocatur plenitudo potestatis, que non est apud populos.' This passage is quoted by Canning (2000), p. 294, who explains nevertheless that 'there is no clear suggestion in Baldo's works that he sought to place any signori above sovereign city-republics.' Canning (1987a), pp. 116ff, has a thorough discussion of Baldo's notion of the liberty and independence of the city-state: they enjoyed full powers, even without de iure authority.

[3] Pellegrini, *De fideicommissis tractatus*, Art. 52, nr 123: 'Ego non memini vidisse clausulam hanc in litteris et rescriptis Serenissimae Reipublicae Venetiae, quae est altera novior Roma . . . quamquam in statibus suis plena libertate fruatur, nullum recognoscens superiorem et regalia omnia habens.' The main exception appears to have been Lucca, as Filippo Decio testified in Consilium Bk 2, 403 and 528. Decio did not question the city's right to this prerogative, though in the first of these texts he contested the act itself on the customary grounds (lack of just cause, the failure to abide by local statutes, *surreptitio* and denial of a hearing). In the second he defended the inhabitants of the small commune of Nozzano against an act of the Lucchese general council, issued "de plenitudine potestatis", to take over their property; here again Decio argued against the way plenitude of power had been used but not Lucca's right to use it. Bartolomeo Sozzini, Consilium Bk 2, 275 ('In causa fratrum'), nrs 6 and 10, referred to the fact that 'civitas Lucana usa fuerit suprema potestate in puniendo committentes crimen laesae maiestatis contra dictam civitatem,' but argued against their right to use it: 'dicta lex Quisquis, Ad legem Julaim maiestatis [C. 9, 8, 5] loquitur quando ostenditur persona imperatoris et loquitur in personam; igitur non non habet locum in civitate, quae etiam superiorem non recognosceret, quia est universitas quae verae non est persona, licet loco personae fingatur.' With regard to Lucca's right to plenitude of power, which, as he said, the duke of Milan enjoyed, Decio stated simply in Consilium Bk 2, 403 ('In casu proposito'), nr 7: 'Et ideo, cum civitas Lucensis habeat perpetuam iurisdictionem et dominium civitatis dicendum est quod illi omnia principi reservata videantur competere.'

the Peace of Constance, long usage, or simply the *lex Omnes populi*—was an issue widely ventilated among fourteenth-century jurists.[4] But on whatever basis, no one doubted that independent communes had complete control. Discussing their prerogatives, Filippo Decio pointed out that city-states had the right to legitimize, to make notaries, to restore the status of those condemned in court and in general to enjoy all privileges normally reserved to rulers.[5] The chronicler Goro Dati wrote of the Florentine Signoria early in the fifteenth century: 'Their functions, powers, authority and might are vast beyond measure; whatever they want to do they can do for as long as their responsibilities continue. Nevertheless, they do not use this power except in extreme and compelling circumstances, and only rarely; otherwise they act in accordance with laws passed by the commune.'[6] Dati appeared to be claiming that what amounted to plenitude of power was an intrinsic attribute of the government of Florence.

By this argument the force of plenitude of power would necessarily underlie any act of a popular regime which contravened individual rights. Accordingly, when overruling fundamental laws, republics were careful to abide by the laws and conventions associated with plenitude of power itself. Property, for example, was not to be seized without cause.[7] Concerns over whether such cause had to be explicit dogged the acts of republican governments as much as those of personal

[4] Storti Storchi (1990), pp. 80ff; see also Sbriccoli (1968), pp. 32ff, and Quaglioni (1989), pp. 45ff, who summarizes the key ideas of Alberico, Ranieri Arsendi (Raynerius de Forlivio) and Bartolo on the origins of popular legislative authority.

[5] Decio, Consilium Bk 2, 403 ('In casu proposito'), nr 8: 'Domini inferiores et civitates praescribere possunt potestatem legitimandi spurios, creandi tabelliones et restituendae famae et alia quae principi reservata sunt ut notat Angelus [degli Ubaldi]in consilio 290, "Thema".' See also Paolo da Castro on C. 2, 44, 1 (De iis qui veniam aetatis impetraverunt, l. Eos), nrs 2 and 3, where he explained that the status of majority could only be granted by a prince: 'Concedere veniam aetatis ad solum principem pertinet, sicut concedere restitutionem adversus infamiam;' therefore the Florentine law to this effect would be invalid, except that Florentines do not acknowledge a superior and so hold the same status as a prince: 'Non ergo videntur valere statuta dicentia quod maior xviii vel xx annis, ut est Florentiae. Sed imo valet si talis populus non recognoscit superiorem, saltem de facto, quoniam in suo territorio locum principis tenet.'

[6] Dati, *Istoria di Firenze*, 'L'uficio e balìa e autorità e potenzia de' detti Signori è grande senza misura: ciò che vogliono possono, mentre che dura il loro uficio; ma non adoperano questa potenzia se non in certi chasi necessari e stremi e di rado; anzi, seguitano sechonda gli ordini fatti per lo Chomune.' On Florence's claim to sovereignty, see Fubini (1990), p. 38, who quotes this passage.

[7] Pontano, Consilium 310 ('In casu propositae'), nr 2: 'Secunda conclusio quod ipsa civitas [Florence] per legem, ut ita dixerim, specialem seu privatam ius privatae personae non potest auferre sine iusta causa. Hic est casus in l. Si privatus, *ff*. Qui et a quib. [D. 40, 9, 17] et l. toties, De pollicita. [D. 50, 12, 6, pr]; *ff*. De iure aure. an. l. Divus [D. 40, 10, 3]; *ff*. De nata. restiti. l. Nec filio [D. 40, 11, 4]; et etiam conclusio glossatoris in l. Quotiens, C. De prec. imperat. offer. [C. 1, 19, 2]; l. prima in l. finali C. Si contra ius vel util. public. [C. 1, 22, 1 and 6] et in l. prima in gloss. *ff*. De constitut. principum [D. 1, 4, 1]; Baldus in l. Rescripta. C. De prec. imperat. offeren. [C. 1, 19, 2]. Hoc autem procedit nisi subsit justa causa, quia tunc civitas si locum principis obtinet, rem privati auferre potest.' See also Decio on De constitutionibus, c. quae in ecclesiarum (X. 1, 2, 7), nr 103, addressing the issue whether an independent city could take a person's property: 'Ipsa possit ex causa, cum habeat iure proprio potestatem faciendi statutum, l. Omnes populi, *ff*. De iustitia et iure [D. 1, 1, 9]. Secus videtur in marchionibus et comitibus, qui potestatem et auctoritatem ab homine consequentur, quia in generale commissione non venit ista potestas auferendi alicui privato

rulers. Mariano Sozzini il giovane (1482–1556) advised that Cino's controversial suggestion that a ruler's acts must be presumed to be valid applied equally to the authorities in Siena.[8] As a further illustration, the law *Bene a Zenone* (protecting the owner of property acquired from the government), relevant only to grants made from plenitude of power, was generally applied in city-states, as the Roman jurist, Ludovico Pontano (1409–39)[9] and Filippo Decio both maintained.[10] This is a subject which would merit further study.

Another paradox is that the rejection of plenitude of power took place just as the concept of absolute monarchy was coming into vogue particularly in France. Logically, the work of Alciato and the others who had campaigned against absolute power should have been dismissed by the new generation of political thinkers. That did not happen. On the contrary, French thinkers agreed with the assumption that a ruler was bound by reason as well as by *ius gentium* and the other fundamental laws.[11] Like Baldo, Guillaume Budé (1467–1540) rejected the idea that absolute power had to mean capricious rule: being endowed, at least in theory, with the wisdom of Solomon, the king could be considered *ratio animata*.[12] Nor, for all his belief in a *puissance souveraine*, did Bodin (1530–96) accept that the king could disregard fundamental principles, including rights of

ut notat Bartolus in dicta lege toties, *ff*. De polli. [D. 50, 12, 6, pr]; et Baldus in dicta lege 2, C. De servit. et aqua [C. 3, 34, 2].'

[8] Mariano Sozzini, Consilium Bk 2, 92 ('Viso puncto praedicto'), nr 8, following his citation of Cino's famous comment on l. Rescripta, C. De precibus imperatori offerendis (C. 1,19,7): 'Ego memini patria mea Senensi saepe per superiores magistratus illius civitatis capitaneo sive barigello commissum fuisset, ut delinquentem aliquem perquirat et, inventum, immediate suspendat, dicemus, ne hoc iniuste factum absit in tam celebri republica, fuit ergo iuste factum et causa iustissima praesumitur si aliter non constat.' Mariano was Bartolomeo's nephew. Grendler (2002), p. 463, summarizes his career.

[9] Pontano, Consilium 310 ('In casu propositae'), nr 5 wrote, with reference to l. Omnes and l. Bene a Zenone (C. 7, 37, 2 and 3), 'Is qui a principe seu a fisco et consequenter a civitate, vicem principis obtinente, res quae aliena dicitur donata est vel vendita, quam tamen fiscus putat suam esse, quod in dubio praesumitur cum bona fides praesumatur l. non ex eo, C. De evi. [C. 8, 44, 30] cum similibus.' Pontano taught in Pisa from 1428 to 1431 before going to Rome where, besides teaching, he was a judge in the Roman Rota; he later taught in Siena; he was ambassador to the Council of Basel on behalf of various rulers; see *Dictionnaire du Droit Canonique*, vol. 7, pp. 22–3.

[10] As Decio, Consilium Bk 2, 357 ('In casu magnifici Petri Ardinghelis'), nr 7, demonstrated (in advice he gave where the Florentine government had overruled the terms of a will in making a grant of property), that the recipient could have been protected under the law *Bene a Zenone*, had the government chosen to use plenitude of power: 'Quarto responderi etiam potest quod dispositio l. Bene a Zenone non habet locum nisi constat quod princeps voluerit uti plenitudine potestatis ut Baldus expresse dicit in proemio Decretalium, col. 3, in versiculo Unde bene a Zenone et sequitur Felinus in cap. quae in ecclesiarum, col 12, De constitut. in versiculo Quinta limita [X. 1, 2, 7]. Et in casu isto non apparet quod usus sit plenitudine potestatis, et in dubio non praesumitur quod princeps voluerit uti plenitudine potestatis, ut notat Innocentius in c. innotuit, in principio De electione [X. 1, 6, 20]; Abbas [Panormitanus] in c. ad haec, De recriptis [X. 1, 3, 10].' Without explaining precisely how the Florentine government would make it clear that plenitude of power was being used, given that they never used the phrase itself, Decio appears to accept that they had the possibility of doing so.

[11] Piano Mortari (1973), pp. 46–51; Quaglioni (1992), p. 54; Parker (1983), p. 1.

[12] *L'institution du Prince*, p. 131, quoted in Sciacca (1975), p. 79.

property and the other elements of *ius gentium.*[13] When it came to plenitude of power, Bodin quoted Baldo's statement that 'a ruler is not in fact exempt from positive law; for no authority, not even the emperor's or the senate's, can pretend that he is not a rational, mortal animal, nor free him from the laws of nature, the dictates of right reason or eternal law.'[14] François Connan (1508–61), Hugues Doneau (1527–90), and François Duaren (1509–52), all pupils of Alciato at Bourges, transmitted his teachings into French monarchical theory.[15] In truth, the preoccupations of these thinkers were very different from those of lawyers living in the pioneering days of the signori; the former were attempting to justify royal control over local and national institutions, the latter to validate the seizure of power by a new regime. By the sixteenth century Italian lawyers, in parallel with the gradual maturing of signorial authority, had moderated the doctrines surrounding plenitude of power; it was their concept of absolutism which appears to have been incorporated into French monarchical theory.

The principal benefits of plenitude of power for any government were always practical. The *Stilus cancelleriae*, handbook of the Sforza chancery, showed what could be done. The collection contained a sample instrument by means of which the duke could overcome all legal safeguards in order to transfer property. Using plenitude of absolute power, he was able to rectify every technical defect, every error of law, and every inapplicable circumstance; he could ignore all the necessary preconditions prescribed in local statutes or in his own decrees; notwithstanding any 'contrary statutes, decrees, privileges, provisions, laws, ordinances, or other acts', he was able to revoke 'all other grants, sales, enfeoffments, concessions, and contracts whatsoever, even if made under *ius gentium*'.[16] Given this kind

[13] Scattola (1999), pp. 182ff; see also Bonney (1987), p. 96.

[14] Baldo on C. 3, 34, 2 (De servitutibus et de aqua, l. Si aquam), nr 45; see above p. 24.

[15] Piano Mortari (1973), pp. 51–3. Connan did not even accept that the king was *legibus solutus*.

[16] *Stilus,* Doc. 181 ('Forma donationis amplissima'), pp. 212–14: 'Harum serie, ex certa scientia et de nostre plenitudine potestatis etiam absolute . . . largimur et pleno iure donamus pure, mere et irrevocabiliter inter vivos, remittentes omnes et singulas ingratitudinis causas, eidem M. pro se et suis heredibus, quomodolibet et quibus dederit, infrascripta bona et iura . . . supplentes ex certa scientia et de potestate nostra predicta plenaria et absoluta omnem solemnitatis, insinuationis et juris ac facti defectum et sacramenta quelibet necessaria et omnia alia expedientia, necnon a jure seu ex forma statutorum seu decretorum et ordinamentorum nostrorum seu Communis nostri Mediolani requisita et opportuma ad confirmationem et convalidationem omnium predictorum tam de jure quam de consuetudine . . . et non obstantibus aliquibus donationibus, alienationibus, translationibus in feudum, concessionibus et contractibus quibuscunque de dictis bonis et juribus per nos sive per alium vel alios hinc retro quomodolibet factis et concessis quibusve personis sive persone, cuiuscunque status, gradus, conditionis aut preeminentie existant . . . quibus omnibus donationibus, alienationibus, translationibus in feudum, concessionibus et contractibus quibuscunque, etiam juris gentium, ex certa scientia et causa legitima, animo deliberato et de nostre plenitudine potestatis etiam absolute et ad cautellam tenore presentium, quatenus expediat, derogamus, easque in totum revocamus et revocatas esse volumus et mandamus; et hoc etiam non obstantibus aliquibus statutis decretis, privilegiis, legibus, juribus vel ordinamentis vel aliis aliquibus in contrarium editis.' It was stipulated in the *Stilus* that an act of such force could only issued on the explicit instructions of the duke.

of capability, it is small wonder the Visconti and the Sforza were so anxious to possess plenitude of power.

At first lawyers had been content to cooperate with the unlimited use of plenitude of power; but they eventually realized that the legal system, not to say society at large, could not function unless property and other rights were firmly entrenched. In 1606 the Mantuan jurist, Ludovico Rodolfini, published his *Treatise on the supreme or absolute power of the prince, or on plenitude of power* in which he set out the stockpile of opinions from previous generations.[17] Of the six chapters, the first five, each containing between six and twenty-three points, covered the meaning of plenitude of power—who was entitled to it, when a ruler was presumed to be using it, when he could not use it, and its effects. The sixth chapter itemized the limitations of plenitude of power. That last title contained 225 conditions (equivalent to three-quarters of the treatise). There Rodolfini went through the restrictions which had become attached to the use of absolute powers: he reiterated the convention that a ruler could not, for example, deny the right to a judicial hearing and a defence, or access to remedies available in court; he could not punish one person for the crimes of another; he could not interfere with the terms of a will nor ignore established rights, or even the expectation of rights; he could not rescind his own contracts, promises or agreements; he could not alter the terms of an investiture or revoke agreements made by his predecessor. Such rights could be breached only in the presence of a just cause.

The just cause lay, as always, at the heart of the deployment of absolute power. The erosion of that criterion in the fourteenth century had reflected the indiscriminate use of plenitude of power by contemporary signori. Baldo's frustration over the abuse of plenitude of power had stemmed from the ease with which a ruler could violate rights by pretending a justification. Rodolfini, at the beginning of the seventeenth century, demonstrated how the potency of the just cause had been restored. He spelt out the principle put forward by Cino and Baldo that a ruler's 'will alone is considered a cause and a justification',[18] but proceeded to list eighteen instances in which leading jurists had refuted their views.[19] He proved, too, that it had been accepted that any such

[17] *Tractatus de suprema seu absoluta principis potestate, sive de plenitudine potestatis;* Rodolfini was usually known as da Sabbioneta; not much is known about him except that he worked for Francesco IV Gonzaga as governor of the small town of Castiglione delle Stiviere.

[18] Rodolfini, *Tractatus de suprema seu absoluta potestate*, Cap. VI, 'Plenitudo potestatis quando non operatur,' nr 203: 'Attamen non desinam hanc materiam attingendo dicere quod regulariter causa praesumitur in principe ut ait glossa in l. relegati, in verbo ex aliqua causa. C. [sic for D.] *De poenis* [D. 48, 19, 4] ubi ait voluntas sola habetur pro causa et ratione et Cynus in l. Rescripta, nr 7, C. De precibus imperatori offerendis [C. 1, 19, 7] et ibi Baldus nr 10.'

[19] These included where great loss would be incurred; where a measure had originated from a private petition; when the ruler was motivated by his own partiality, or by errors or falsehoods; when no possible justification could be surmised; when councillors had not been consulted; in the case of

justification had to concern the public good, that it had to be supported by a full hearing and, in addition, that any seizure of property had to be recompensed.[20] Rodolfini's work demonstrated the lengths to which the legal profession had gone to limit the exercise of arbitrary power. By then plenitude of power had had its day.

The Visconti and the Sforza had wanted to avoid the label of tyranny and yet any privilege given to one subject at the expense of another using absolute power was bound to be unfair. Decio put it succinctly: the phrases *ex certa scientia* and *de plenitudine potestatis* were employed only where there was no intrinsic justice in the matter.[21] As so many consilia reveal, individual concessions could launch a train of acrimony, focusing blame not only on the opposing party but on the government itself. The series of decrees issued from the 1370s cancelling any concessions which had undermined individual rights showed the Visconti and the Sforza to be well aware of the pitfalls: they wanted 'justice pure, simple and unadulterated to hold sway' in their lands.[22] Fifteenth-century lawyers had tried to respond to the dukes' sensitivities. In challenging government privileges, they had made capital out of the suggestion of either deceit or harassment on the part of petitioners.

Plenitude of power had doubtless been employed for unedifying ends. Nevertheless, it still retained some of its original prestige as a papal and imperial prerogative. One reason why the Sforza resented the lack of imperial plenitude of power was that they felt such an omission reflected on their status: Galeazzo

acts of a lesser ruler; when derogating clauses only had been employed; when a ruler countermanded his own measures; when he was ignoring the higher laws; where the interested parties had not been granted a hearing; where proceedings had been rushed through; when an act would lead to civil disorder; where the terms of a will had been overturned; where a vassal lost his fief in defiance of the terms of the original investiture; where rights agreed by contract were seized; and where property acquired under *ius gentium* was taken: Rodolfini, *Tractatus de suprema seu absoluta potestate*, Cap. 6, 'Plenitudo potestatis quando non operatur,' nrs 205–24.

[20] Rodolfini, *Tractatus de suprema seu absoluta potestate*, Cap. 6, 'Plenitudo potestatis quando non operatur,' nrs 160–2: 'Quae limitatio vera est tribus copulative concurrentibus. Primo quod causa respiciat publicam utilitatem principaliter, ut ait Surd. [Giovanni Pietro Sordi] in consilio 203, 'Bona' num. 26, versi. 'Et non sufficit' vol. 2, et M. Ant. Peregrin. in *Tract. De iur. fisci*, lib. 5, tit. 2, sub num. 49, versi. 'causa autem legitima', et hoc verum est, si auferatur dominium de iure gentium quaesitum; secus si auferatur dominium quaesitum per modum iuris civilis, quia hoc casu sufficit causam respicere privatam utilitatem ut ait Cravett. in *Tract. De antiquit. temp*. par. 1, sect. 1, num. 51 et 52 . . . Et non solum sufficit causa publicam utilitatem concernens, sed omnis ratio naturalis movens principem ad sic agendum . . . Secundo quod ultra causam adhibeat quoque princeps causae cognitionem in privando aliquem iure suo ut ait Surd in d. consilio 203, num. 27, vol. 2 et Menochio in consil. 1, num. 396, versi. tertio accedit, vol. 1. Tertio quod princeps solvat pretium seu aestimationem dominii, seu iuris aut rei quam aufert, vel tantundem reddat ut ait Jason in l. Barbarius, num. 36, vers. 'Secunda conclusio'et num. 39, *ff*. De offic. praetor. [D. 1, 14, 3] et Felynus in c. quae in ecclesiarum, num. 28 De const. et ibi Decius, num. 91 [X. 1, 2, 7].'

[21] Decio Consilium 198 ('Pro tenui facultate'), nr. 4: 'ut sonant illa verba quibus imperator dicit sententiam prius latam revocare et annullare "ex certa scientia de plenitudine potestatis", quia talibus verbis non utitur quando pro iustitia rescribit.'

[22] 13 October 1377, *ADMD*, p. 46 (above p. 120): see the conclusions of Gilli (1997).

Maria was said to want those powers 'for reasons of law and for the respect of the world'.[23] And yet plenitude of power could not shed its association with injustice, so that, ultimately, reliance on plenitude of power threatened the government's reputation. That, in the end, was the prime reason for its downfall.

[23] 'Per la ragione ed honore del mondo', Francesco Petrasanta a G. Sforza, 30 June 1473, quoted in Cusin (1936b), p. 319.

APPENDIX 1

Certa Scientia, Non Obstante, Motu Proprio

De plenitudine potestatis was only one of the standard phrases used in concessions and decrees. Others were *ex certa scientia* (from certain knowledge), *non obstante* (notwithstanding), and *motu proprio* (voluntarily). In the hands of a ruler, these expressions were analogous to plenitude of power. *Ex certa scientia* meant that he was fully aware of existing law and of the legal consequences of his action.[1] *Non obstante* indicated that contrary acts or privileges were to be disregarded; *motu proprio* signified that an act was the result of the ruler's settled purpose.[2]

The expressions *motu proprio* and *ex certa scientia* were intended to obviate any suggestion of importuning, fraud, or deception (*importunitas*, *obreptitio*, or *subreptitio*) on the part of a petitioner. It was for that reason that these phrases so often appeared in tandem with *de plenitudine potestatis*. Each had the effect of overriding existing laws and individual rights. Bartolo's consilium 196 ('Civitati Camerini') became a classic source for the notion that *ex certa scientia* had the same effect as *de plenitudine potestatis*: 'The confirmation [of rights] was made simply and *ex certa scientia;* in this way [the pope] endorsed what was unlawful.'[3] The connection between *certa scientia* and plenitude of power was underlined by Baldo in his most cited passage on plenitude of power, namely that 'if [a ruler] is acting from certain knowledge, no one can ask, ''why are you doing this?'''[4] Other statements confirmed that *ex certa scientia* and *non obstante* were equivalent to using plenitude of power. 'What the prince does *ex certa scientia* he is assumed to be doing *de plenitudine potestatis*,' Baldo said.[5] The phrase *non obstante* could in itself carry

[1] For a detailed examination of the significance of these terms as expressions of a ruler's will, see Cortese (1962–4), ii, pp. 81–99. As Raffaele Fulgosio, Consilium 155 ('Proponitur quod'), nr 3 explained, in the case of a papal decision overruling the law issued on the basis of certain knowledge: 'Ex tenore rescripti quod expressim iuri contrarium foret, nec facti errore vel ignorantia princeps falleretur, constaret papam ex certa scientia rescribere contra ius, cuius praesumitur habere scientiam et memoriam ut C. De testa. l. Omnium [C. 6, 23, 19] et *Extra*. De constit. c. 1 [X. 1, 2, 1].' On the concept of certain knowledge, see Krynen (1988), pp. 134ff; Nicolini (1952), pp. 173–5. There is a clear definition in Kirshner (2005), p. 339: *ex certa scientia* meant 'the pope's and emperor's absolute knowledge of the law and the ensuing fiction and presumption that the pope and the emperor, in new and subsequent laws, certainly intended to abrogate existing and prior express laws.'

[2] According to Francesco Accolti, Consilium 15 ('Visis ac diligenter examinatis'), nr 9, *motu propio* and *ex certa scientia* had the same implication of considered intention: 'Illa clausula ''ex certa scientia'', ut aliquod operetur, significet maturam et deliberatam concessionem principis et non extortam per importunitatem.' This was a frequently cited consilium. See Nicolini (1952), pp. 175–6 on *motu proprio*.

[3] Bartolo, Consilium 196 ('Civitati Camerini'), nr 3: 'Sed confirmatio fuit facta simpliciter et ex certa scientia, et sic quod est invalidum confirmat.'

[4] *In usus feudorum,* Proemium, s.v. Aliqua ('Sed pauca de principe dicamus'), nr 34 (see above p. 25).

[5] Baldo on C. 7, 62, 6 (De appellationibus et consultationibus, l. Eos), nr 1: 'Quod princeps facit ex certa scientia, videtur facere et de plenitudine potestatis'; this comment was cited, along with

the same weight as *de plenitudine potestatis*: the pope was able to change the terms of a will by means of plenitude of power, 'which he is never seen to use as a way of breaking the law without the addition of *non obstante* and similar clauses, so that it is clear that it is his intention to use the ultimate prerogative of his supreme power'.[6] According to the much-quoted opinion of Giovanni da Anagni: 'A ruler can give away another person's property if the clause *non obstante* is added, though in our case it was specified that he acted from plenitude of power and *ex certa scientia* (which has the same effect as the expression *non obstante*).'[7]

Motu proprio, too, had special force. The phrase began to appear in concessions in the papal curia of the 1330s and was soon being used by signorial chanceries.[8] The device acquired its own particular significance. Filippo Decio summed up earlier teachings at the turn of the sixteenth century:

> When a concession has been obtained following a petition, it is assumed to have been obained as a result of improper pressure but when issued *motu proprio* it is understood as being based on just deserts. *Motu proprio* demonstrates largesse and so privileges granted on this basis should be interpreted liberally; when the pope gives something *motu proprio* it is the same as if he were using his special prerogatives (*iura reservata*); a concession made *motu proprio* surmounts every legal flaw and error; the use of *motu proprio* by a ruler is equivalent to the presumption of a just cause.[9]

As with plenitude of power itself, these prerogatives had limitations. An example was the restriction relating to the phrase *ex certa scientia*: as Baldo noted, it had no effect 'except in matters about which a ruler can be assumed to have certain knowledge, such as matters pertaining to legal issues, that is, to the laws themselves; it has no force in situations about which he is demonstrably uninformed, such as particular events, commercial transactions or local customs.'[10] It was for this reason, according to Felino Sandeo, that the phrase *ex*

others, by Francesco Corte, for example, in Consilium 65 ('Super praemissa narratione'), nr 10, to show that 'ipsa clausula "ex certa scientia" importat principem voluisse uti plenitudine potestatis.'

[6] Baldo on C. 6, 23, 10 (De testamentis quemadmodum testamenta ordinantur, l. Si testamentum), nr 1; see above p. 102, n. 35. The passage was cited by Alessandro Tartagni in his comment on C. 6, 21, 3 (De testamento militis, l. Quanquam), nr 4, to show that, when a prince says *non obstante,* it means he is using his plenitude of power: 'Ubi tamen princeps in dispositione sua apponeret clausulam "non obstante lege faciente in contrarium", tunc videtur uti plenitudine potestatis secundum Baldum in l. Si testamentum, infra De test. [C. 6, 23, 10]'.

[7] Giovanni da Anagni, Consilium 81 ('Viso instrumento'), nr 4: 'Princeps potest rem alterius concedere, si apponatur clausula "non obstante"; sed in casu nostro est expressum quod fecit ex plenitudine potestatis et ex certa scientia, quae certa scientia operatur illud idem quod clausula "non obstante", per id quod habetur in l. Quidam consulebat, *ff*. De re iud. [D. 42, 1, 57]et in l. Idem Ulpianus, *ff*. De excu. [D. 27, 1, 12]. et per Baldum in Proemio feud. circa finem.'

[8] Olivier-Martin (1949), pp. 365–6.

[9] Decio on D. 2, 2. 3 (Quod quisque iuris in alterum statuerit, l. Si quis iniquum), nrs 1–5: 'Quod conceditur ad postulationem presumitur obtentum propter importunitatem . . . l. pen. ubi Bartolus in fin. C. De pet. bon. sublat. lib. x [C. 10, 12, 2] secus videtur quando *motu proprio* conceditur quia ob bene merita concessum videtur, ut text. in l. Nec adiecit, infra Pro socio [D. 17, 2, 9] . . . Nam "motus proprius" ostendit liberalitatem, ideo debet late interpretari . . . Et paria sunt quod papa exprimat in concessione ea quae sibi reservata sunt vel utatur clausula "motu proprio" . . . Et in concessione facta *motu proprio* dispensatum videtur super omni macula et defectu . . . Similiter clausula "motu proprio" operatur quod in principe iusta causa presumatur.' On the force of *motu proprio*, see Nicolini (1952), pp. 175–6.

[10] Baldo on C. 7, 50, 3 (Sententiam rescindi non posse, l. impetrata), nr 9: '"Ex certa scientia" nihil operatur nisi in his de quibus princeps praesumitur habere certam scientiam, sicut sunt ea

certa scientia could not always be taken at face value: 'If a privilege comprises something against the law, it must be assumed that it was granted in response to importunity rather than *ex certa scientia*. A ruler will often grant a privilege which is not lawful, believing it to be legitimate, the confusion arising partly as a result of the myriad of things he has to do, and partly [because he is following] the customary character and style of such privileges, which do not ordinarily contravene the law.' Sandeo added, 'Make sure you take this on board, because, despite lengthy research, I have not found it touched upon by anyone else.'[11]

Nevertheless, these other expressions lacked the impressive pedigree of plenitude of power itself. Therefore, in spite of the strong parallels, the trend was to see the phrase *de plenitudine potestatis* as more potent than all others. Sandeo undertook the most detailed examination of anyone on the relative merits of the various provisions. His conclusion, based, as he said, on an extensive study of the literature, was that, 'where in a directive there is the provision *de plenitudine potestatis*, it is clear that the prince means to issue an order overruling the law, and thus it is the equivalent of *ex certa scientia* and *non obstante*. This is what Abbas [Niccolò Tedeschi] believes; but, at the same time, Abbas does manifestly accept that *de plenitudine potestatis* is stronger than *ex certa scientia*.'[12]

Baldo had said that what the prince does *ex certa scientia* is assumed to be done *de plenitudine potestatis*; but that argument was later turned on its head by Francesco Corte, who cited Baldo himself to argue that plenitude of power actually had more force than the other clauses: 'This provision goes beyond *motu proprio, ex certa scientia*, and *non obstantium*, effectively containing in itself all the other clauses.'[13] Later commentators

quae consistunt in iure, idest in ipsis legibus; non autem operatur in his quae princeps praesumitur ignorare, ut sunt facta et commercia et bonae consuetudines locorum.' Francesco Accolti in Consilium 15 ('Visis ac diligenter examinatis') nr 5, explained that 'the *certa scientia* of a ruler who is well known to be informed has more weight than the words *certa scientia* included in a concession and is a clearer indication of the wishes of the person who is conceding it: 'Praeterea certa scientia notoria principis est fortior quam expressio certae scientiae in privilegio et magis ostendit voluntatem concedentis.' On this issue see Quaglioni (1996), pp. 14–15, who interprets the requirement that a ruler had to have geniune knowledge of contrary laws and customs as a limitation on the force of plenitude of power.

[11] Sandeo on X. 1, 3, 28 (De rescriptis, c. nonnulli), s.v. Confirmatur, nr 12: 'Attento quod rescripta de sui natura non sunt regulariter contra ius, sed secundum ius; et ideo si aliquando continet aliquid contra ius, potius praesumitur inductum ex importunitate quam ex certa scientia. Posset princeps plerunque concedere rescriptum contra ius, credens quod esset secundum ius, quae aequivocatio inducitur partim ex agendorum multitudine, partim ex communi natura et stilo rescriptorum, quae non solent deviare a iure . . . Et super praedictis bene cogita, quia non reperi per alios tacta, licet praemiserim longam indaginem.'

[12] Sandeo on X. 1, 3, 28 (De rescriptis, c. nonnulli), nr 13: 'Fallit quinto praedicta regula ubi in rescripto est clausula "de plenitudine potestatis", quia per illam apparet quod princeps vult disponere supra ius et ideo aequipollet clausulae *ex certa scientia* et clausulae *non obstante*, ut sentit dominus Abbas [Panormitanus] in c. ad haec, ver. ex his infertur [X. 1, 3, 10], dum expresse innuit potentiorem esse clausulam "de plenitudine potestatis" clausula "ex certa scientia".' Sandeo's comment was thereafter cited as often as than that of Panormita (Niccolò Tedeschi) himself.

[13] Francesco Corte, Consilium 65 ('Super praemissa narratione'), nrs 13–14: 'In ipsis literis etiam adest clausula "et de plenitudine potestatis nostrae etiam absolutae" ex qua clausula apparet principem voluisse uti suprema potestate, quia superat clausulam "motu proprio, ex certa scientia, non obstantium". Nam ipsa clausula, "de plenitudine potestatis" virtualiter in se continet omnes alias clausulas. Ita colligitur ex verbis Baldi in l. eos, in principio, C. De appellat. [C. 7, 62, 6]; Panorm. in c. ad haec, *Extra*, De rescript. [X. 1, 3, 10].'

concurred: the Neapolitan, Tommaso Grammatico (1473–1556), whose words were widely quoted, again citing Baldo's dictum, agreed that plenitude of power took precedence over the other provisions: 'The clause *de plenitudine potestatis* outdoes *motu proprio*, *ex certa scientia*, and *non obstante*; for in it are incorporated all those other clauses.'[14] It was assumed by Franceschino Corte that 'the simple clause *non obstantibus* in no way functions as plenitude of power.'[15]

Ex certa scientia, non obstante and *motu proprio* all signalled a ruler's intention to bypass contradictory laws and rights, but plenitude of power was the prerogative which underpinned the force of the other phrases. Even where there was no explicit reference to plenitude of power, if an act was not legally possible without it, then it was assumed that it was based on plenitude of power.[16] Niccolò Tedeschi, writing in the 1420s, explained that, 'when a ruler passes an act *ex certa scientia,* it is exactly the same as if he said he intended to act from plenitude of power, if such is required for the measure which is being carried out.'[17] *Ex certa scientia*, in other words, had the force of plenitude of power when a decree or concession would not otherwise be valid. 'Wherever the prince's plenitude of power is called for, it is enough for him to say that he is acting from certain knowledge.'[18]

[14] Grammatico, Consilium 100 ('In causa excellentis domini'), nrs 23–4: 'Clausula "de plenitudine potestatis" superat clausulam "motu proprio" et clausulam "ex certa scientia" et clausulam "non obstante" cum sub ipsa caeterae complectantur clausulae praemissae ut voluit Bald in l. eos in principio De appellationibus [C. 7, 62, 6].' Later, Aimone Cravetta in Consilium 241 ('Princeps illustrissimus'), nr 20, cited the passages of both Baldo and Francesco Corte to suggest that plenitude of power outweighed other provisions: 'Itaque si clausula "de plenitudine potestatis", quae est fortior, non obstat quantominus nocebunt alie clausulae non eque efficaces.'

[15] Franceschino Corte, Consilium Bk 1, 170 ('Habita diligenti consideratione'), nr 30: 'Est ergo simplex clausula "non obstantibus", quae nullo modo operatur plenitudinem potestatis, ut late per Felinum post caeteros, in c. nonulli, in principio, *Extra*, De rescriptis [X. 1, 3, 28]'. Ludovico Rodolfini gave a substantial list of similar opinions in his *Tractatus de suprema seu absoluta principis potestate*, *c*. 5, nr 14.

[16] Paolo da Castro, Consilium Bk 1, 414 ('In facto praesenti'), nr 5: 'Non obstante quod non censetur papa velle uti absoluta potestate nisi dicat expresse . . . secus si non posset valere nisi de absoluta, quia tunc videtur velle uti absoluta.' He reiterated the point in his comment on C. 6, 23, 3 (De testamentis quemadmodum, l. Ex imperfecto), nr 2.

[17] Tedeschi on X. 2, 25, 5 (De exceptionibus, c. cum inter), nr 8: 'Scias quod quando princeps actum gerit ex certa scientia, perinde est ac si diceret se velle facere ex plenitudine potestatis, si illa opus est in actu quod geritur.' For Tedeschi's career and writings, see the collection edited by Condorelli (2000); for an account of Tedeschi's ideas on papal plenitude of power in particular, see Pennington (1993), pp. 220–37.

[18] Tedeschi on X. 1, 3, 10 (De rescriptis, c. ad haec), nr 7: 'Ex quo generaliter infero unum singulum dictum, quod ubicunque in materia requiritur plenitudo potestatis principis, satis est principem dicere quod illud facit ex certa scientia.'

APPENDIX 2

Plenitude of Power and *Iura Reservata*

Plenitude of power was closely linked to *iura reservata*.[1] Baldo described these special prerogatives as the ways in which a ruler could overstep the law in accordance with the principle that 'whatever the emperor has decreed has the force of law'.[2] He provided his most comprehensive list of *iura reservata* in his analysis of *merum imperium* (the highest power). Here he wrote that 'the first distinction to be made is between the absolute power of the prince and the limited power of a lesser authority. The *merum imperium* of the prince is defined as the absolute power which was granted to the emperor in the *lex regia*.'[3] That power, he said, allowed him a number of prerogatives, or *iura reservata*: to legitimize illegitimate children; to reinstate a person from infamy; to disregard a criminal sentence and restore someone to their original status by an act of grace; to give a minor the benefits of majority; to intervene by decree in cases of adoption; to intervene by decree in cases concerning the emancipation of infants or absent children; to remove someone's rights lawfully; to overrule the law in cases concerning legitimacy. In addition, only the emperor could commission notaries; issue laws which affected ongoing litigation; delegate *merum* and *mixtum imperium*; confer major titles; designate an island as a place of deportation; proceed without observing the judicial formalities; make good any error of legal procedure; impose a supplementary tax.[4]

A more exhaustive list of *iura reservata* was provided by Ludovico Pontano in his own analysis of *merum imperium*.[5] 'We need to know what it is that the emperor reserves for himself,' he said, adding somewhat unfairly, 'lawyers have not explained this, except for Baldo, who gives three or four examples.' Like Baldo, Pontano defined *merum imperium* as 'the absolute power which the Roman people transferred to the emperor in the *lex regia*'. Again he cited the maxim, 'what the prince has decreed has the force of law,' adding, 'this power is unrestricted (*soluta*) as is shown where it says "the prince is exempt from law", even though he says that he is in honour bound by the laws.'[6] Pontano

[1] For a list of *iura reservata*, see Ercole (1929), pp. 315–22.

[2] Baldo on C. 1, 19, 7 (De precibus imperatori offerendis, l. Rescripta), nr 7 gives two of these prerogatives: 'Nota ergo hic aliqua de principis potestate; nam legem transgreditur dispensando: *ff.* de ritu nuptiarum, l. Qua in provincia, s.v. divus [D. 23, 2, 57]; remeatum exuli dando: *ff*. De poenis, l. Relegati [D. 48, 19, 4]. He finished by remarking: 'Et conclusive, quidquid principi placuit legis habet vigorem, ut l. 1, De constitutionibus principum [D. 1, 4, 1].'

[3] Baldo on D. 2, 1, 3 (De iurisdictione omnium iudicum, l. Imperium), nr 6: 'Dico quod prima distinctio est illa quae est duplex, scilicet absolutum in principe et limitatum in inferiore, prout in principe diffinitur sic: merum imperium est absoluta potestas imperatori concessa per legem regiam.'

[4] Baldo on D. 2, 1, 3 (De iurisdictione omnium iudicum, l. Imperium), nrs 6–7.

[5] For details of Pontano's career, see above p. 201, n. 9.

[6] Pontano on D. 2, 1, 3 (De iurisdictione omnium iudicum, l. Imperium), nr 1: 'Dic quod duplex [i.e. merum imperium]. Primum quod personae principis solummodo reservatur. Secundum quod ex persona principis in alios magistratus distribuitur. Item primum sic definitur quod est absoluta potestas quam populus Romanus ex lege regia in principem transtulit. Probatur in l. i supra,

proceeded to describe more than forty separate prerogatives, including those listed by Baldo. Among these were the right to legislate and the right to pass sentence without going through the courts.

The relationship between plenitude of power and the *iura reservata* was not straightforward. On the one hand, the two concepts appeared to be synonymous. As seen above, Baldo described *iura reservata* as rights which lay outside the law; both he and Pontano defined *iura reservata* as an aspect of *potestas absoluta* (i.e. plenitude of power). In contemporary chanceries many processes, such as legitimizations, the making good of legal defects in court proceedings, the overruling of a person's rights, and the passing of sentence without trial, were ordered *de plenitudine potestatis*. On the other hand, not all the *iura reservata* described in these lists required plenitude of power. Where fundamental rights were not at stake, a ruler could initiate actions which were not open to anyone else, such as creating noble titles, levying extra taxes, building city walls and fortified outposts, coining money, issuing pardons, and passing laws, without reference to plenitude of power. With his *iura reservata* a ruler could overrule property and other fundamental rights based on *ius gentium*, provided he acted from plenitude of power. It was in this way that *iura reservata* were associated with absolute power outside legal norms, and were described by Baldo as ways in which a ruler could overstep the law.

Plenitude of power, as Francesco Sforza exercised it in the absence of an investiture, was not at first thought to include imperial *iura reservata*: in his petition to Frederick III for a diploma, the duke sought imperial plenitude of power in order to ensure that he had the *iura reservata* still in the emperor's hands.[7] Francesco Sforza's concept was in keeping with the traditions of the fourteenth century, when the Visconti received *iura reservata* in the imperial vicariate and in the 1396 diploma.[8] Both he and the early Visconti were already exercising plenitude of power thanks to election by their subjects. But once the Visconti had received the vicariate, they tended to accept that their plenitude of power originated with the emperor. It fell to jurists working in the duchy after Francesco Sforza's accession to devise a new model of ducal authority that would encompass imperial prerogatives, or *iura reservata*, even in the absence of any imperial diploma.[9]

De officio praefecti praetorio, l. Breviter [D. 1, 11, 1]; *Institutiones*, De iure naturali et gentium et civili, l. Sed quod principi [*Inst*. 1, 2, 6]; quod sit soluta probatur in l. princeps, supra De legibus senatusque consultis [D. 1, 3, 31], licet ex honestate dicat se legibus alligatum, ut l. Digna vox, C. De legibus et constitutionibus principum et edictis [C. 1, 14, 4].'

[7] The proposed diploma was to include complete plenitude of power 'sine ulla exceptione vel diminutione' extending to 'reservata suppremo principi, ita ut omnes casus etiam duriores hic pro expressis habeantur,' ASMi, Sforzesco Alemagna 569, pp. 39 and 47; see above pp. 88–9.

[8] See above pp. 54–5 and 95–6.

[9] See above pp. 98, 100, 101–2.

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