

A *CONSILIUM* OF ONOFRIO BARTOLINI DA PERUGIA
ON THE *MULIER ALIBI NUPTA*

UN *CONSILIUM* DI ONOFRIO DA PERUGIA
SULLA *MULIER ALIBI NUPTA*

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Abstract English: The study focuses on a legal opinion (*consilium*) authored by the Perugian jurist Onofrio Bartolini, addressing a dispute over taxation between Castiglione and Arezzo during the 1370s. The crux of the matter revolved around a woman from Castiglione who married a citizen of Arezzo but retained ownership of immovable property in her hometown. Castiglione contended that the property fell under its direct tax (*libra*), while Arezzo argued that upon marriage, the wife ceased to be a citizen of Castiglione and became a citizen of Arezzo, thereby subjecting her property to Arezzo's *libra*. Bartolini, drawing upon Bartolo's principles regarding the citizenship of the *mulier alibi nupta*, concluded that the jurisdiction to tax lay with Castiglione, where the wife retained her citizenship.

Keywords: citizenship; *mulier alibi nupta*; *origo*; *libra*; *patrimonialia*.

Abstract Italiano: Lo studio si concentra su un *consilium* del giurista perugino Onofrio Bartolini, intervenuto in una disputa tra la località di Castiglione e la città di Arezzo negli anni Settanta del Trecento. Al centro della questione vi è il caso di una donna di Castiglione, andata in sposa ad un cittadino di Arezzo, mantenendo però la proprietà di un immobile nella sua città d'origine. Castiglione sostiene che tale immobile sia soggetto alla sua tassazione e debba versare a Castiglione l'imposta diretta (*libra*), mentre Arezzo replica che, a seguito delle nozze, la donna ha perduto la cittadinanza castiglionesa, divenendo aretina, con la conseguenza che le sue proprietà sono ora soggette alla *libra* del Comune di Arezzo. Bartolini, seguendo i principi formulati da Bartolo sulla cittadinanza della *mulier alibi nupta*, conclude che la giurisdizione in materia di imposizione fiscale rimanga a Castiglione, ove la donna conserva la propria cittadinanza.

Parole chiave: cittadinanza; *mulier abili nupta*; origine; *libra*; *patrimonialia*.

- ❖ Italian Review of Legal History, 10/1 (2024), n. 12, pagg. 395-408.
- ❖ <https://riviste.unimi.it/index.php/irlh/index>
- ❖ ISSN 2464-8914 – DOI 10.54103/2464-8914/26100. Articolo pubblicato sotto Licenza CC-BY-SA.

The issue of tax jurisdiction over a woman's goods and immovable property situated in her place of origin (*origo*)¹ when she married elsewhere is central to a disagreement between Castiglione Aretino and Arezzo. The woman in question was originally a citizen of Castiglione but married a citizen of Arezzo, where she resided at the time of the dispute. Although the precise date of the dispute is unclear, evidence indicates it occurred after 1371, following the conclusion of several agreements between the two towns, and before October 1384, when Castiglione Aretino became part of the Florentine territorial state and was thereafter known as Castiglione Fiorentino². The only account we have of the dispute and its origins is found in a legal opinion (*consilium*) penned by the Perugian jurist Onofrio Bartolini (ca. 1350 - d. 1415), who was tasked with resolving the dispute. An edition of the *consilium* is provided in the appendix below.

Bartolini's educational background remains obscure, but it is likely that he pursued his studies at the University of Perugia. He later went on to become a professor at Perugia, where he taught from 1382 to 1407, lecturing on Justinian's *Digest* and *Code*³. Apart from his *recollectae* on the second and third books of the *Code* and select titles in book four, preserved in MS. 235 of the Collegio di Spagna of Bologna⁴, copies of his lectures have not survived. He was also actively engaged in the political affairs of Perugia and undertook various diplomatic missions. In the realm of legal history, he is admired for his *consilia*, some of which are included in sixteenth-century printed editions and in manuscripts of *consilia variorum*, such as MS. 6 of the Regenstein Library at the University of Chicago⁵. The *consilium* addressing the dispute between Castiglione and Arezzo is found in the Biblioteca Apostolica Vaticana, MS. Vat. lat. 8069, fols. 356v-357v⁶.

Preceding Bartolini's *consilium* is an abbreviated copy of legislation (*reformatio*) purportedly enacted by Arezzo's general council concerning the dispute⁷. At that time, Castiglione was under the jurisdiction of Arezzo⁸. In essence, the general council acknowledged that Castiglione and its district relied on direct taxes

¹ For recent studies on the treatment *origo* by *ius commune* jurists, see Lepsius, 2016 and Chiodi, 2020.

² Taddei, 2006, pp. 133 ff.

³ Abbondanza, 1964 and Zucchini, 2008.

⁴ Maffei et al., 1992, p. 235.

⁵ Izbicki, Kirshner, 1985, p. 98, n. 19. Eight of Bartolini's *consilia* are in the Collegio di Spagna. See Maffei et al., 1992, p. 923. For another *consilium*, Florence, Biblioteca Nazionale Centrale, MS Magl., 174, fol. 283rv. Regarding Bartolini's *consilium* of 1397 on the citizenship of Jews in Perugia, see Toaff, 2012, p. 32.

⁶ Campitelli, Liotta, 1961-1962, p. 398.

⁷ The legislation no longer exists. The series of *reformationes* preserved in the Archivio di Stato of Arezzo begins in 1384, when Arezzo came under the rule of Florence. On Arezzo in this period, see Berti, 2005 and Luongo, 2019.

⁸ Taddei, 2006, pp. 128-132 and Ghizzi, 1972, pp. 63ff.

(*libra*) levied on the properties of their citizens and inhabitants to cover ongoing expenses. Moreover, it recognized that a significant number of Castiglione's taxpayers listed (*allibrati*) in the town's tax records also appeared in Arezzo's tax records, both for their own possessions within Arezzo and its district and for the dowries of their wives — a circumstance deemed contrary to both law and equity ('*et hoc iuri et equitati dissonum videatur*'). Consequently, the priors of Arezzo and the *sindicus* of Castiglione, acknowledging the manifest injustice of requiring these taxpayers to pay the *libra* in two localities for the same assets, jointly resolved to submit the issue of double taxation to a jurist for adjudication.

We glean from Bartolini's *consilium* that taxation of the Castiglionesi residing in Arezzo was grounded in agreements (*pacta*) sealed on 18 October 1371, which no longer exist⁹. The *consilium* elucidates that the dilemma of double taxation arose due to the ambiguous legal status of a certain Simona, a resident of Castiglione who married an Aretine and settled in Arezzo. The crux of the matter revolved around whether, under the agreements, she was obligated to pay Castiglione's *libra* on her immovable properties (*patrimonialia*), apparently constituting a substantial portion of her dowry, situated in her hometown.

Arguing *pro et contra*, Bartolini presents three main arguments in support of Arezzo's claim to impose taxes on Simona's dowry. First, 'it seems that the said lady should bear the burdens in the place of her husband's domicile, both by the *ius commune* and the force of the aforementioned agreements. For by the *ius commune*, a wife follows the forum of her husband [the place which has jurisdiction over the husband], not only as regards lawsuits, as in the *lex Cum quedam puella*, ff. de iurisdictione omnium iudicum (D. 2. 1. 19), but also as regards public burdens and services [*munera*], as in ff. ad municipalem, l. finali, § *Idem rescripserunt mulierum* (D. 50. 1. 38. 3), where the text says that a wife is not compelled to bear burdens in the place of [her] origin but in her husband's domicile'.

Second, Bartolini concedes that taxes and burdens imposed on immovable properties (*munera patrimonialia*) can only be imposed on the owners of the property who are legal residents (*municipes, incolae*), as in l. *Rescripto*, § *Sed enim haec* (D. 50. 4. 6. 5). However, he argues that a wife, upon marriage, undergoes a change in citizenship status, transitioning from being a citizen of her place of origin (*origo*) to becoming a citizen in her husband's *origo*, as decisively proclaimed in the *Glossa*¹⁰. Additionally, he cites the opinions of Cino da Pistoia

⁹ The *pacta* were approved ten days later. Taddei, 2006, p. 128. See Archivio di Stato, Firenze, Diplomatico, Castiglione Fiorentino, 28 October 1371. This document omits mention of taxation but indicates that «in the same year, between the municipality of Castiglione and that of Arezzo, agreements of friendship and mutual defense were renewed, with the former committing to an annual fee of 50 lire in money and 50 pounds of wax».

¹⁰ On the transformation of the contested legal status of the married women's citizenship

(d. 1336) and Baldo degli Ubaldi (d. 1400), who maintain that through marriage, the 'women married elsewhere' (*mulier alibi nupta*) relinquishes her residency in her father's domicile and is henceforth considered a resident of her husband's domicile¹¹.

Third, the change in the wife's citizenship status, leading to her falling under the jurisdiction of Arezzo, is reasonably inferred from the terms of the agreements. The agreements explicitly stipulate that concerning the dowry, such a wife cannot be obligated to pay the *libra* in Castiglione, whether for her personal belongings or any immovable properties she possesses there.

Reversing direction, Bartolini now holds that the «the truth seems to be otherwise. And first, according to the *ius commune*, it is explicitly proven that the wife shoulders patrimonial burdens and those imposed on a person for things in the place where she possesses them and receives their fruits. But she shoulders personal burdens and services in the husband's place, for which *C. de mulieribus et in quo loco*, l. 1 (C. 10 64 (62).1), *libro X*¹². Since this matter deals with immovable property and goods located in Castiglione, the *libra* should be paid there».

The rationale behind this determination is readily apparent. As clarified by the *Glossa*, laws such as *l. Imperatores*, § *Item rescripserunt* (D. 50. 1. 38. 3) and *l. Malchaeam* (C. 10. 64 [62], 1) specifically address personal burdens, excluding those of a patrimonial nature. As emphasized in *l. Malchaeam*, concerning patrimonial burdens, it is imperative for a woman to bear them in the location where she possesses immovable property. This interpretation had long been the *communis opinio*.

Regarding the notion of a wife relinquishing her citizenship of origin upon marriage to a foreigner and residing in his hometown, Bartolini, following Bartolo, asserts that «many doctors do not subscribe to this view». Writing hastily and concisely, Bartolini inadvertently mischaracterizes Bartolo's position, which had

from the *Glossa* onward, see Kirshner, 1995, 2015b, pp. 161-188; Cavallar, Kirshner 2020, pp. 551-568; Cavallar, Kirshner, 2021. More broadly, regarding women as citizens and their activities in the public sphere in medieval Italy, see Menzinger, 2012 and Kirshner, 2017.

¹¹ Cynus ad C. 3. 13. 2, *de iurisdictione omnium iudicium*, l. *Iuris ordinem*, *Commentaria*, I (Frankfurt am. M. 1578), n. 3, fol. 146va: «Et facit ad questiones de facto quotidie contingentes. In muliere autem nupta, que mutat domicilium mariti, aliud est, que in nihilo tenetur in domicilio commutato, ut ff. ad municip., l. ultima, § *Item rescripserunt* (D. 50. 1. 38. 3), et C. de digni., l. *Mulieres*, lib. 12 (C. 12. 1. 13). Sic enim trahit eam in domicilium suum matrimonium viri, qui caput est eius, et cum quo ipsa efficitur una caro». Baldus ad C. 3. 13. 2, *de iurisdictione omnium iudicium*, l. *Iuris ordinem*, *Commentaria*, V (Venice 1599), n. 4, fol. 189ra: «Facit in muliere nupta que nullo modo retinet domicilium paternae originis, vel avie ... et hoc operatur virtus matrimonii quod mutat ius originis, quod in alio casu non reperitur, ut d. l. *Assumptio* (D. 50. 1. 6), et ita tenet hic Cynus».

¹² Translated Cavallar, Kirshner, 2020, p. 556.

qualified the *Glossa*'s abandonment of the principle that one's original citizenship cannot be altered. Following the lead of the *Glossa*, Bartolo acknowledges that the *mulier alibi nupta* becomes a citizen of her husband's *origo*, yet he continues, she retains citizenship of her native city concerning matters and possessions not under her husband's authority. This encompasses immovable properties situated in her *origo*, which she may have inherited, received as gifts, or purchased after marriage. For all intents and purposes, the secondary citizenship does not abolish her legal capacity to acquire and own immovable property in her *origo*, which is subject to taxation there. As Bartolo explained to his students:

The statute of the city decrees that a foreigner cannot buy [immovable property] in the city's territory. Suppose that a woman originating from that city who marries elsewhere wants to buy immovable property there, what should we say? Briefly, we can say that she changes her place of origin in regard to everything by which the person of the wife can be drawn away and separated from the services of her husband, and therefore she cannot be called and forced in that city to shoulder personal burdens, perform public services, or be summoned to court, and this is what the laws cited above say. In regard to other things, she does not change her place of origin, . . . and consequently, she can buy immovable property, which, in my opinion, is equitable¹³.

In effect, the *mulier alibi nupta* joins the ranks of numerous original citizens who obtained dual citizenship (a concept inexistent at the time). Unlike the *mulier alibi nupta*, whose second citizenship is mandatory, other original citizens acquired a second citizenship primarily through approval of their petitions to become citizens in another locality by its legislative councils¹⁴.

Furthermore, Bartolo not only refrained from asserting that «very many doctors» disapproved of the *Glossa*'s doctrine, but he also made efforts to express his respect for the *Glossa* in his qualifications. Conversely, jurists from the mid-fourteenth century onward were inherently skeptical of the *Glossa*'s far-reaching departure from Roman law, particularly its assertion that upon marriage, the umbilical attachment of the *mulier alibi nupta* to her *origo* was severed. For instance, Alberico da Rosciate (d. 1360) discussed the scenario of a Veronese citizen marrying a man from Vicenza. Through marriage, she becomes 'Vicentina', not because she gains Vicentine citizenship, but because she assumes her husband's domicile¹⁵. In accordance with *lex Adsumptio* (D. 50. 1. 6) and on the authority of Azo, she retains her original citizenship, albeit with the obligation to bear personal burdens and render services in Vicenza¹⁶. Alberico consistently

¹³ Quoted from the translation of Bartolo's commentary in Cavallar, Kirshner, 2020, p. 557.

¹⁴ On dual citizenship, see Cavallar, Kirshner, 2020, pp. 530-540.

¹⁵ *Quaestiones statutorum* (Milan 1493), sp. «Sed quid si Veronensis factus est civis Vicentinus? Veronensis maritata est Vicentie sic facta est Vicentina quia sequitur domicilium viri».

¹⁶ Ibid.: «Non obstat quod si mutetur origo, ut ad munici., l. Assumptio (D. 50. 1. 6), quia

and unequivocally observed that *immobilia* are subject to taxation in the locality where they are situated¹⁷.

It is also highly plausible that Bartolini was thinking of the views of Baldo and his brothers Angelo (d. 1400) and Pietro (d. 1412), all professors at Perugia with whom he had interacted, possibly as a student and certainly as a fellow professor, and with whom he collaborated on drafting *consilia*¹⁸. Baldo, having authored well over a dozen opinions directly and indirectly addressing the *mulier alibi nupta*, presents views that are conceptually and contextually complex, defying easy summarization¹⁹. Nevertheless, I underscore four points on which Baldo was unwavering. Unsurprisingly, he asserts that by virtue of marriage, a woman is considered a legal resident in her husband's place of domicile. He moves beyond the *Glossa*, employing legal fiction and word-and-meaning parsing to argue that not only does the wife assume her husband's citizenship, but she also becomes an original citizen in her husband's *origo*²⁰. Pertinent to our discussion, he emphasizes that she does not forfeit her citizenship of her own *origo* upon marriage. Finally, Baldo insists that patrimonial burdens must be borne in the locality where the immovable property is situated²¹.

Angelo degli Ubaldi, for his part, closely adhered to Bartolo's interpretation, arguing that 'the *mulier alibi nupta* ceases to be a citizen of her own original city as far as the performance of those public services through which, as a wife, she can be separated from her husband's services; as far as other matters, however, she retains her citizenship'²². This quotation directly reflects Bartolo's commentary

illud quo ad honores et munera non quo ad alia, ut ibi no. per Azo. in summa, de iur. o. iud., ad fi. (C. 3. 13)». See Azo, *Summa aurea* (Lyons 1557), fol. 44ra, n. 32.

¹⁷ Albericus de Rosate ad D. 50. 1. 6, *ad municipalem et de incolis*, l. *Adsumptio*, *Commentarii* (Venezia 1585), fol. 227rb, n. 5; ad D. 50. 1. 29, l. *Incola et his*, fol. 229vb, n. 4. See the valuable discussion by Menzinger, 2013.

¹⁸ Abbondanza, 1964, p. 618; Maffei et al., 1992, p. 388, n. 163; Izbicki, Kirshner, 1985, p. 98, n. 19.

¹⁹ Canning, 1987, p. 183; Kirshner, 2015b, pp. 168-184.

²⁰ See, for example, Baldo's *consilium* dedicated to 'Seya orrigine paterna Mantuana nupsit Titio orrginario Civitatis Parme'; Città del Vaticano, Biblioteca Apostolica Vaticana, MS. Vat. lat. 1406, fols. 65r-66r. Baldo explains: «Preterea quod ista Seya fuit nupta Parmensi, unde debet reputari originaria Parmensis, etiam dum est vidua, quia origo viri dat ius nove originis uxori, ut singulariter notatur C. de municipibus et originariis, l. Origine, libro X^o, que gl. non est alibi». On Baldo, see Murano, 2012 and Kirshner, 2020.

²¹ Baldus, *Consilia*, III (Venezia 1575), fol. 40rb, cons. 139: «Et hoc verum est quando munera patrimonialia subiit in loco originis pro possessionibus quas ibi habet, sed pro possessionibus quas habet in loco domicilii subiit in loco domicilii».

²² Angelus de Ubaldis ad C. 10. 39(38). 2, *de municipibus et originariis*, l. *Si, ut proponis, ea, Super tribus libris Codicis* (Venezia 1487), s.p: «Quod mulier nupta alibi desinit esse civis civitatis proprie originis, quod intellige quantum ad munera que habent eam avocare a servitiis viri, quantum ad alia autem remaneret civis, ut ff. eodem l. fi., § Idem respondit. . .». On Angelo, see Murano, 2016. On Angelo and Bartolini, Maffei, 2020, p. 225.

on *I. Origine* (C. 10. 39[38]. 4), though without overtly acknowledging Bartolo as the source²³. It is evident that Angelo was familiar with Bartolo's text, and I believe the omission can be attributed to an oversight by a careless scribe.

The case presented to Pietro degli Ubaldi for his *consilium* involved Lady Caterina, a native citizen of Cortona, who had married a citizen of Gubbio and was now a widow residing there. She had transferred property, via a *donatio inter vivos*, to an individual in Matelica, seemingly in violation of the statute prohibiting anyone from the city or *contado* of Gubbio («nullus de civitate vel comitatu Eugubii») from alienating property subject to Gubbio's direct tax to foreigners. Pietro raises the question: given her marriage to an original citizen of Gubbio, should Caterina be regarded as a citizen, a legal resident, or an original citizen (*oriunda*) of the city of Gubbio? He argues that the phrase «nullus de civitate vel comitatu Eugubii», refers specifically to original citizens. Therefore, while Caterina should be considered a resident, she cannot be deemed an original citizen of Gubbio. Her marriage did not abolish her status as an original citizen of Cortona, and it is contrary to the laws of nature to simultaneously hold original citizenship in two places. Since Caterina is not recognized as an original citizen of Gubbio, the *donatio inter vivos* remains valid²⁴.

Despite their varying approaches to the swirl of issues surrounding women who marry foreigners, Baldo, Angelo, and Pietro stood among the jurists who rejected the *Glossa's* position, instead fully embracing Bartolo's doctrine affirming the enduring rootedness of the *mulier nupta alibi's* original citizenship.

Bartolini bolstered Castiglione's claim with two additional arguments. He points out that only after the conclusion of the pacts did she marry and become a citizen of Arezzo, inheriting property in Castiglione thereafter. Given that the temporal scope of the pacts does not encompass future events, they are entirely irrelevant to the current case. Second, the inherited property was, strictly speaking, not part of Simona's dowry, but was instead extradotal property or *paraphernalia*. Since the wife's *paraphernalia* are not expressly mentioned in the pacts, they are thereby exempt from taxation in Arezzo. Unlike dotal property, ownership

²³ For the translation, Cavallar, Kirshner, 2020, p. 559.

²⁴ Leipzig, C. Haenel, 15, fols. 173r-174r: «Ista questio in hoc residet, an domina Catarina ratione dicti matrimonii censeatur civis civitatis Eugubii, an incola, an vero censeatur tamquam oriunda dicte civitatis Eugubii. Quedam iura dicunt eam censi incolam dicte civitatis Eugubii, ff. Ad munipa., l. Imperatores, § Item rescripserunt (D. 50. 38. 5. 1). Glossa in l. Cives, C. de incolis. li. x.º (C. 10. 40(39). 7) dicit eam censi civem. Sed hic dubitatur quomodo sumantur ista verba "nullus de civitate vel comitatu Eugubii" etc., an intelligantur pro eo qui est civis, an vero pro eo qui est oriundus de civitate. Nam si intelligantur de cive, mulier illa civis est civitatis Eugubii, ut d. l. Cives, et sic non teneret illa donatio. Si autem illa verba intelligantur de civitate pro loco originis, tunc illa donatio teneret, non enim mulier illa est oriunda de civitate Eugubii, sed de civitate Cortone: non enim est possibile secundum naturam quem esse oriundum de duabus civitatis». On Pietro, see Woelki, 2016.

and administration of which is immediately transferred to the husband and is maintained *constante matrimonio*, ownership of *paraphernalia* is vested in the wife²⁵. Just as wife's the *paraphernalia* are not under the husband's authority, they are similarly not subject to Arezzo's jurisdiction. In conclusion the wife should not be taxed in both Arezzo and Castiglione for the same properties. Her patrimonial properties are subject to burdens and levies in Castiglione only.

Summing up, Bartolini's *consilium* offers invaluable insights into the dispute between Castiglione and Arezzo over double taxation and jurisdiction. It highlights the capacity and responsibility to fulfill tax obligations as defining elements of citizenship. Leaving aside the perennial issue of enforceability, it reveals the susceptibility of pacts and statutes to contradictory interpretations. Additionally, it exemplifies medieval Italian cities' reliance on *ius commune* jurists for conflict resolution and the commitment of political leaders to rectify injustices resulting from public policies and local laws. Well-argued and persuasive, the *consilium* heavily draws on Bartolo's ideas and arguments. Its jurisprudential significance lies in its adoption of Bartolo's refiguration of the *mulier alibi nupta*, now deemed a citizen in both her husband's *origo* and her own. By 1400, thanks to the authoritative opinions of Onfrio Bartolini and Baldo, Angelo and Pietro degli Ubaldi, the figure of the *mulier alibi nupta* as a dual citizen was widely embraced as the *communis opinio*.

Appendix

Consilium Honofrii Bartolini de Perusio

Città del Vaticano, Biblioteca Apostolica Vaticana, Vat. lat. 8069, fols. 356v-357v

Copia reformationis facte Aretii super facto Castelglionensis.

In quo Castelionis et eius districtu habent et pro dictis libris eorum cotidie graventur ad solvendum expensas in dicto communi castri occurrentes. Cumque etiam plurimi Castilionenses in dicta terra Castilionis alibrati et pro eorum libris occurrentes in dicto communi Castilionis solventes reperiantur et sint alibrati in libris civitatis Aretii, tam pro eorum propriis bonis, que habent in civitate Aretii et eius dictrectu, quam etiam pro bonis dotalibus eorum uxorum, et pro dictis eorum libris pro expensis occurrentibus in communi Aretii cotidie graventur, et hoc iuri et equitati dissonum videatur. Idcirco domini priores civitatis Aretii et etiam ex una parte, et B. C. castri sindicus etc ex altera parte volentes predictis salubriter provideri, decernentes maxime iniustum fore quem solvere in duobus locis pro libra venerunt ad iudicem ad huiusmodi conventionem et pactum, videlicet quod scilicet omnes etc.

²⁵ Bellomo, 1961; Kirshner, Pluss, 1979; Kirshner, 2015a; and Di Renzo Villata, 1996. For two recent and highly informative studies on Genova, Bezzina, 2018 and Guglielmotti, 2020.

In quo loco mulier subeat honera bonorum positorum in loco originis, si ipsa est alibi nupta?

In Christi nomine, amen. In premissis breviter pertransibo in allegationibus. Et videtur quod dicta domina debeat honera subire in loco domicilii viri, tam de iure communi, quam vigore pactorum predictorum. Nam de iure communi uxor sequitur forum viri, non solum quoad conveniendum eam, ut lex Cum quedam puella, ff. de iurisdictione omnium iudicum (D. 2. 1. 19), sed etiam quoad munera, ff. ad municipalem, l. finali, § Idem rescripserunt mulierum (D. 50. 1. 38. 3), ubi dicit textus quod uxor non cogitur subire in loco originis, sed in loco domicilii viri. Preterea munera patrimonialia non possunt imponi aliis quam municipalibus vel incolis, ut ff. de muneribus et honoribus, l. Rescripto, § finali (D. 50. 4. 6. 5). Sed uxor per matrimonium desinit etiam esse civis originis, ut notat glossa C. de municipiis et originariis, l. penultima (C. 10. 39 (38). 4). ar. dicto § Idem rescripserunt, et notat Cynus et Baldus, C. de iurisdictione omnium iudicum, l. Iuris ordinem (C. 3. 13. 2)²⁶. Ergo talia iura in loco originis subire non debet. Item, predictis videntur pacto confirmari et validari, ubi disponitur quod propter bonis propriis et dotalibus civis Aretinus non possit gravari pro libra quam habet²⁷ in Castilione, nec pro muneribus personalibus, nec realibus, et <e>converso.

Modo, sive consideramus ipsam dominam Simonam, que est uxor Aretini, censetur et ipsa civis Aretina, et sic ut principalis comprehenditur in pacto predicto, quod pro libra gravari non debet in Castilione. Quod ipsa censeatur civis probatur in l. Cives, de incolis (C. 10. 40 [39]. 7), et firmat Bartolus in privil<eg>iatus in ad legem Falcidiam bonis suis et dotalibus, quando fructus industriales bonorum parafrenalium uxoris vir faciat suos, ut notat glossa C. de pac²⁸. conven., l. finali (C. 5. 14. 11), de quo per Bartolum in l. penultima, ff. (D. 35. 2. 95)²⁹.

In contrarium videtur veritas. Et primo, de iure communi probatur expresse, quod munera patrimonialia et que inponuntur per<so>ne pro rebus, uxor substinet in loco ubi possidet et fructus percepit. Sed personalia in loco viri, casus est C. de mulieribus et in quo loco, l. 1. (C. 10 64 [62].1), libro X. Cum ergo hic tractetur de honeribus patrimonialibus pro libra et bonis situatis in Castilione, ergo et ibi solvi debet.

Non obstat dictus § Idem rescripserunt, quia debet intelligi cum distinctione predicta, quia ibi loquitur in muneribus personalibus, ut ibi notat<ur>, et dicta l. 1., de mulieribus et in quo loco, per glossam. Non obstat quod uxor desinat

²⁶ Cynus ad C. 3. 13. 2, *de iurisdictione omnium iudicum*, l. *Iuris ordinem*, In *Codicem* . . . *commentaria* (Frankfurt am. M. 1578), fol 146va, n. 3; Baldus de Ubaldis ad C. 3. 13. 2, *de iurisdictione omnium iudicum*, l. *Iuris ordinem*, In *primum, secundum, & tertium Codicis libros commentaria* (Venice 1599), fol. 189ra, n. 4.

²⁷ habent MS.

²⁸ compac. MS.

²⁹ Bartolus ad D. 35. 2. 95, *ad legem Falcidiam*, l. *Maritus uxoris res*, *Commentaria*, 4 (Venice 1526-1529), fol. 158va, n. 3.

esse civis loci originis per matrimonium, quia multi doctores non tenet, ut notat Bartolus in dicto § *Idem rescripserunt*³⁰. Tamen posito quod esset verum nichilominus civilitas non inducit hanc potestatem, sed quod bona sint in loco ubi libram habet, ut patet in dicta l. 1. C. de mulieribus et in quo loco, que proprie loquitur in casu nostro. Preterea iam propter libram obligata est in dicto castro respondere, ut l. *Incola iam*, ad municipalem (D. 50. 1. 34), et ibi per glossam et Bartolum³¹. Item non obstat pacta et conventiones, quia loquuntur respectu bonorum civis Aretini vel dotium. De parafrenalibus non loquitur pactum; ista enim inter se differunt, ut patet in l. *Si ergo*, § *Dotis*, ff. de iure dotium (D. 23. 3. 9. 3). Ideo pactum super una re non trahitur ad aliam rem, ff. de pactis, l. *Si unus*, § *Ante omnia* (D. 2. 14. 27. 4 in c). Nec obstat l. *finali*, C. de pactis conveniendis, quia illa glossa non est simpliciter vera, nisi quando fructus sunt consumpti voluntate mulieris per virum, ut notat Bartolus in l. *penultima*, ff. ad legem Falcidiam³², secundum Martinum Sillimani³³.

Preterea dominium rerum parafrenalium est ipsius mulieris, ut d. § *Dotis*. Item dicta pacta limitantur respectu bonorum et lib^{re} de presenti tempore conventionis, vel in preteritum, non in futurum. Ergo ad futura non trahitur, ut l. *Cum stipulamur*, et l. *Si a colono*, de verborum obligationis (D. 45. 1. 125 et 89). Sed hic verba relata sunt ad tempus presens, quia maxime patet in prohemio pactorum, ex quo licitum est arguere, ut l. *Pactuleius*³⁴, de heredibus insituendis (D. 28. 5. 93 [92]), et l. 1., ff. de origine iuris (D. 1. 2. 1), ergo etc. Et maxime quando esset magni preiudicii, ut notat Bartolus in l. *Si ita*, ff. de auro et argento legatis (D. 34. 2. 7)³⁵. Item et maxime quando exorbitant a iure communi, ubi verba sunt restringenda, ut ff. de legibus, l. *Quod vero contra* (D. 1. 3. 14). Nam quod sit contra ius commune patet per allegata superius quod ubi bona sita sunt et libram habet quis debet subire munera patrimonialia, et hic disponunt contrarium.

Non obstat quod dispositio super*ius* loquitur, ut l. *Ariani*, C. de hereticis (C. 1. 5. 5), quia illud verum in dispositioni legali³⁶, vel statutaria, non in contractibus et conventionibus, ut notat Bartolus in dicta l. *Si ita*, <ff.> de auro et argento legatis, et ff. de conditione ex lege, l. 1. (D. 13. 12. 1)³⁷.

³⁰ Bartolus ad D. 50. 1. 38. 3, *ad municipalem*, l. *Imperatores*, § *Idem rescripserunt mulierum*, VI, fol. 253rb, n. 4.

³¹ Bartolus ad D. 50. 1. 34, *ad municipalem*, l. *Incola iam*, VI, fol. 252r.

³² Vide supra, n. 4.

³³ Martinus Sillimani, Città del Vaticano, Biblioteca Apostolica Vaticana, MS. Chigi, E.VIII. 245, fols. 88ra-88va.

³⁴ Paccomeius MS.

³⁵ Bartolus ad D. 34. 2. 7, *de auro et argento legatis*, l. *Si ita esset legatum*, VI, fol. 103ra, nn. 2-3.

³⁶ legati MS.

³⁷ Bartolus ad D. 13. 12. 1, *de conditione ex lege*, l. *Si obligatio lege*, II, fols. 66vb-67ra, nn. 7-9.

Et per istas rationes patet similiter responsum ad id, quod dicebam, quod ista mulier est effecta civis, quia hoc contingit post dicta pacta, et acquisivit bona postea, unde non trahitur virtus pactorum ad futura. Preterea est alia ratio, quia pacta requirunt quod civis Aretinus habeat libram et subeat honera in civitate Aretina, etsi mulier in Castilione, et sic in duobus locis quod hic non est. Sed tantum pro patrimonialibus bonis habet libram in Castilione dicta mulier, unde in ea non vendicat sibi locum tenor pactorum nec ratio ipsorum. Nam ratio pactorum fuit, ne quis in duobus locis pro eisdem rebus substineat honera, quod in hic non est iuri consonum, ut notat glossa C. de mulieribus et in quo loco, l. 1.

Ex quibus concludo quod dicta mulier pro honeribus, que imponuntur pro bonis et libra existentibus in Castilione, ibi subire debet; secus in personalibus.

Et ita dico et consulo ego Honofrius Bartolini de Perusio.

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