

## CHAPTER IV.

### BOLOGNA.

#### § 1. IRNERIUS AND THE CIVIL LAW REVIVAL.

The work of DIPLOVATACCIUS (fl. c. 1510), *De claris Jurisconsultis*, &c., has remained in MS., only extracts having been published by Sarti (see below) and others. He was followed by ALIDOSTI, *Li Dottori Bolognesi di legge canon. e civile*, Bologna, 1620, and *Li dott. Bol. d. teol. filos. med. e d' arti liberali*, Bologna, 1623, and PANCIROLUS, *De Claris Legum Interpretibus*, Venetiis, 1627 (republished with Jo. Fichardus, *Vita Recentiorum Jurisconsultorum*, and Marcus Mantua, *Epitome Virorum illustrium qui vel docuerunt in scholis Juris prudentiam* &c., Lipsiæ, 1721), but both were superseded by the learned and critical work of SARTI (continued by FATTORINI), *De claris Archigymnasi Bononiensis Professoribus*, Bononiæ, T. I. P. i. 1769, P. ii. 1772. Of the new edition published at Bologna by Cæsar Albicinius Forliviensis there have appeared only T. I. P. i. in 1888, T. I. P. ii. in 1889. (T. I. P. i. and ii, correspond to T. I. P. i. of the original edition; wherever I have cited T. I. P. ii. of that edition I have added the date 1772. All other references are to the new edition.) Sarti may occasionally be supplemented by ORLANDI, *Notizie degli Scrittori Bolognesi*, Bologna, 1714, and FANTUZZI, *Notizie degli Scrittori Bolognesi*, Bologna, 1781. In spite of this wealth of Bolognese literary history, no systematic history of the University has appeared except the slight work of SCARABELLI, *Delle Costituzione Discipline e Riforme dell' antico Studio Bolognese*, Piacenza, 1876. An earlier but valueless work by FORMAGLIARI († 1769) remains in MS. at Bologna (Bibl. Mun. No. 5935), and other MS. collections are mentioned in FRATI's very careful bibliographical work, *Opera della Bibliografia Bolognese*, Bologna, 1888. The want of such a history is, however, nearly supplied by the notices and documents in Sarti, by the notices in TIRABOSCHI, *Storia della Letteratura Italiana*, Milano, 1822, T. III, IV, V, VI, and by the full treatment which the University receives in SAVIGNY, *Geschichte des röm. Rechts im Mittelalter*, cap. xxi, supplemented

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CHAP. IV, and corrected (as to the earliest period) by the researches of DENIFLE, *Die Entstehung der Universitäten des Mittelalters bis 1400* (Berlin, 1885, p. 132).

§ I.



The following books on the history of the City contain frequent notices of the University—SIGONIUS, *Historia de rebus Bononiensibus*. Francofurti, 1604; GHIRARDACCI, *Della historia di Bologna*. Bologna, pt. i. 1596; pt. ii. 1669; SAVIOLI, *Annali Bolognesi*. Bassano, 1784-1795. The Statutes of the City have been edited by FRATI, ap. *Monumenti istorici pertinenti alle provincie della Romagna*. Ser. I. *Statuti*, Vol. I-III, Bologna, 1869-80. The little tract of GAGGI, *Collagii Bononiensis Doctorum Origo et dotes* (Bononiæ, 1710; unpagged) is chiefly valuable for its information as to the customs of the author's own time.

The Jurist Statutes of 1432 were printed in 1561 (*Statuta et privilegia almae universitatis Juristarum Gymnasii Bononiensis*, Bononiæ); those of the Artists (*Philosophia ac medicina scholarium Bononiensis gymnasii statuta*, Bononiæ) in 1609. The Statutes of 1432 were the earliest then known to exist; but in 1887 DENIFLE published in the *Archiv für Literatur- und Kirchengeschichte* III. p. 195 sq. a large portion of the Statutes of 1317, with additions up to 1347, from a MS. discovered by him in the Chapter Library of Pressburg in Hungary. These, together with the earliest extant Statutes of the other Universities and of the Doctoral Colleges (hitherto unpublished), are printed in the magnificent volume edited by MALAGOLA, *Statuti delle università e dei collegi dello studio bolognese* (Bologna, 1888). The Statutes and Registers of the German Nation are published in *Acta Nationis Germanicae Univ. Bonon.* Berolini, 1887; other documents in DALLARI, *I rotuli dei Lettori Legisti e Artisti dello Studio bolognese dal 1384 al 1799*, Bologna, 1888-91.

A number of monographs were published in connection with the Octo-centenary of 1888. Of these, FORNASINI, *Lo Studio Bolognese* (Firenze, 1887), is little better than a guide-book, and LEONHARD, *Die Universität Bologna im Mittelalter* (Leipzig, 1888), only professes to be a magazine article: CASSANI, *Dell' Antico Studio di Bologna e sua origine* (Bologna, 1888) is especially valuable in relation to the early history of Canon Law studies at Bologna: CHIAPELLI, *Lo Studio Bolognese* (Pistoia, 1888), contains some original and valuable researches as to the Pre-Irnerian Jurisprudence: but the work to which I am most indebted is FITTING, *Die Anfänge der Rechtsschule zu Bologna*, Berlin u. Leipzig, 1888: RICCI, *I primordi dello Studio di Bologna* (2<sup>a</sup> Ed. Bologna, 1888), prints the documents relating to Irnerius with some useful researches as to the origins of Bologna and Ravenna: MALAGOLA, *Monografie Storiche sullo Studio Bolognese* (Bologna, 1888), contains interesting essays on detached points.

The study of the Italian Universities in general was begun by MURATORI, *Antiquitates Italicae medii ævi* T. III. (Milano, 1740), Diss. xlv, and carried on by Tiraboschi and Savigny in the works already named. Since then no work specially devoted to this subject has appeared which calls for notice except COPPI, *Le Università Italiane nel Medio Evo* (Ed. 3, Firenze, 1886), which is, however, an unsatisfactory piece of work.

For the history of the Roman Law in the Middle Ages SAVIGNY (*op. cit.*) is the primary authority. Among his predecessors, I may mention ARTHUR DUCK, *De Usu et Authoritate Juris Civilis Romanorum*, Londini, 1653, and BERRIAT-SAINT-PRIX, *Histoire du Droit Romain*, Paris, 1821, and among his

successors FICKER, *Forschungen zur Reichs- und Rechtsgeschichte Italiens*, CHAP. IV, 1868-73; FITTING in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, § 1.  
 vol. VI. Röm. Abth. (1885), p. 94 sq., and vol. VII. Röm. Abth., Heft 2. p. 1,  
 and *Juristische Schriften des früheren Mittelalters*, Halle, 1876; FLACH, *Études critiques sur l'histoire du droit Romain au moyen âge*, Paris, 1890; MÜLLER,  
*Zur Geschichte der Rechtswissenschaft und der Universitäten*, Jena, 1876; CON-  
 RAT, *Die Quellen und Literatur des Römischen Rechts im früheren Mittelalter*,  
 Leipzig, 1889.

For the history of Literature and Culture in medieval Italy and Europe generally (besides Tiraboschi and the works mentioned above, p. 25), I am indebted to LIBRI, *Histoire des Sciences Mathématiques en Italie depuis la Renaissance des lettres*, Paris, 1838-41 (ed. 2, 1865); GIESEBRECHT, *De litterarum studiis apud Italos*, Berolini, 1845; OZANAM, *Documents inédits pour servir à l'histoire littéraire de l'Italie*, Paris, 1850; POUCHET, *Histoire des Sciences Naturelles au Moyen Âge*, Paris, 1853; BALL (W. W. R.), *A short account of the History of Mathematics*, London, 1888.

THE original impetus which imparted new life to the Schools of Italy at the end of the tenth or the beginning of the eleventh century was, in its essence, the same spiritual force which manifested itself North of the Alps in the teaching of Roscellinus and Abelard. But in Northern Italy that strange new birth of the world's energies took place under a totally different set of conditions and consequently gave rise to a movement in a totally different direction. In France the overthrow of Roman civilization by the barbarian conquest, followed by the ecclesiastical legislation of Charles the Great, had indissolubly associated Education with the Monasteries and the Cathedrals. In Italy Education was never as completely extinguished as had been the case in continental Europe North of the Alps. It was from the Italian Deacon Peter of Pisa that Charles himself took his first lessons; it was from Italy that he obtained the first teachers whom he imported into Gaul<sup>1</sup>. Some of these teachers were undoubtedly ecclesiastics; for it was the ecclesiastical Education of the North that Charles had especially set himself to reform. But it would appear that in Italy the educational tradi-

Contrast between the Trans-alpine and Cisalpine Renaissance.

<sup>1</sup> Pertz, *Mon. Germ. Hist.* SS. II. p. 456; Tiraboschi, *Storia della Lett. Ital.* III. 228 sq. This author even suggests that Alcuin himself obtained

his learning in Italy, but this is mere patriotism. In the Carolingian age Learning survived beyond the seas as well as beyond the Alps.

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## Lay Education in Italy.

tions of the old Roman world were by no means entirely broken off. The Carolingian enactments respecting the Cathedral and monastic Schools no doubt extended to Italy; but here they seem to constitute no conspicuous landmark in the history of education<sup>1</sup>. Church Schools of course existed<sup>2</sup>, and many of the famous Italian teachers of the dark ages were ecclesiastics. But here the Church Schools enjoyed no monopoly. In the cities of Northern Italy the race of lay teachers seems never to have quite died out: and it is certain that when the revival came, its most conspicuous effects were seen not in the Church Schools but in the Schools of independent lay Masters. In Italy we find no trace of the theory which looked upon Masters and scholars as *ipso facto* members of the ecclesiastical order, nor were they subject in any greater degree than other laymen to ecclesiastical supervision or jurisdiction. Many teachers might receive the tonsure to secure the valuable ecclesiastical immunities; but in the City-republics of North Italy there were ecclesiastical disabilities as well as ecclesiastical immunities; there were civil careers

<sup>1</sup> Roger Bacon says as to his own time: 'Atque domini legum Bononiæ et per totam Italiam volunt vocari magistri vel clerici, nec coronam sicut clerici habent. Uxores ducunt,' &c.—*Opera Ined.* ed. Brewer, p. 419. 'Nolunt' should probably be read for 'volunt.'

<sup>2</sup> Indeed, the system of ecclesiastical education adopted by Charles the Great seems to have been borrowed from Italy (Giesebrecht, p. 9). Later, in 826, Eugenius II ordered 'in universis episcopis subjectisque plebibus (i. e. the Archipresbyteral Churches) et aliis locis, in quibus necessitas occurrerit, omnis cura et diligentia adhibeatur ut magistri et doctores constituentur, qui studia literarum liberaliumque artium habentes, dogmata assidue doceantur' (Giesebrecht reads 'doceant'). Pertz, *Mon. Germ. Hist.* LL. II. add. p. 17.

Only a year before, schools—not apparently ecclesiastical—had been established in eight principal cities of Lombardy by Lothair, the smaller cities being each assigned to one of these centres. Pertz, LL. I. p. 249. Attempts were made to compel even the ordinary Parish Priests to establish schools in their parishes. Atto of Vercelli in the tenth century ordered that 'Presbyteri etiam per villas et vicos scholas habeant.' *Capitulari*, cap. 61 (Migne, T. 134. c. 40). Ratherius Bishop of Verona declares that he will not ordain any one who has not been educated 'aut in civitate nostra, aut in aliquo monasterio, vel apud quemlibet sapientem.' *Synodica*, 15 (Migne, T. 136. c. 564). The last clause indicates a freedom of private education hardly recognised in the North.

open to the ambitious citizen for which the ecclesiastical status would have been a disqualification<sup>1</sup>. Corresponding to the difference in the status of the teacher, there was a difference no less marked in the class from which scholars were drawn. It was customary for the Lombard nobility to give their sons a literary education at a time when the Knights and Barons of France or Germany were inclined to look upon reading and writing as unmanly and almost degrading accomplishments fit only for Priests or Monks, and especially for Priests or Monks not too well-born.

Connected with the wider diffusion of education South of the Alps was a certain difference in its subject-matter. In Italy as in France or Britain all education was held to be comprised in the seven liberal Arts, and the ground covered by the seven liberal Arts was much the same in all parts of Europe. But the relative importance of the different elements in this apparently comprehensive though really very meagre programme varied widely in accordance with the different bent and genius of North and South<sup>2</sup>. North of the Alps it was upon Dialectic—and especially upon Dialectic in its metaphysical and theological applications—that attention was concentrated. The famous teachers of the North from Scotus to Abelard, though most of them no doubt taught the whole of the narrow Encyclopedia of their time, were known chiefly as dialecticians. And when the revival of intellectual activity came, it showed itself at once in a revival of dialectical activity, of speculation, of theological controversy. In

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Its subject-matter.

<sup>1</sup> Thus while few of the civilians were *clerici*, the humbler class of teachers often took the tonsure to escape taxation. A City Statute at Bologna (Frati, II. p. 102) directs the Podestà to enquire 'omnes et singulos magistros qui sunt de civitate vel comitatu bon. qui doceant pueros et omnes illos qui dicunt se clericos vel conversos esse . . . et non habeant clericam (sic) vel tonsuram, et faciant extimare bona eorum.' The

same statutes exclude 'clerici' from the office of Notary or 'Tabellio.' Ib. p. 190.

<sup>2</sup> It is an indication of this difference that Charles the Great 'in discenda *grammatica* Petrum Pisanum, diaconum, senem audivit, in *ceteris disciplinis* Albinum cognomento Alcoinum, item diaconem, de Britannia,' &c.—Einhardi *Vita Karoli M.* (Pertz, SS. II. p. 456).

CHAP. IV, Italy on the contrary Grammar and Rhetoric absorbed a large part of the attention almost monopolised in the North by Theology and Logic. Ozanam is right in declaring that people have exaggerated the abyss which separates the Middle Age and the Renaissance<sup>1</sup>. Throughout the Middle Ages the 'literary Paganism' which seems to cling to the very soil of Italy always kept alive in the scholar's breast an attachment to the myths and poetry of Antiquity, which occasionally assumed a character as really Anti-Christian as the Paganism of the fifteenth century and more avowedly so<sup>2</sup>. Moreover, in the Dark Ages Grammar and Rhetoric had a practical as well as a literary side. In Italy these Arts were studied as aids to the composition of legal documents, as a preparation for the work of the notary and the pleader, rather than as the indispensable preliminary to the study of Scripture and the Fathers. Even Logic was regarded rather as a sharpener of the wits and a discipline for the word-battles of the Law-court than as the key to the mysteries of Theology: while Rhetoric was considered to include not merely instruction in the Art of persuasion and of literary composition but at least a preliminary initiation into the Science of positive Law. The Scholastic Philosophy and Theology of the later Middle Ages were the natural fruits of the seed sown in Northern

<sup>1</sup> 'On a poussé trop loin le contraste, on a trop élargi l'abîme entre le moyen âge et la renaissance. Il ne fallait pas méconnaître ce qu'il y eut de paganisme littéraire dans ces temps où l'on attribue à la foi chrétienne l'empire absolu des esprits et des consciences.' *Doc. inédits*, p. 28.

<sup>2</sup> Rodolphus Glaber relates an outburst of heresy under the year 1000 at Ravenna which seems to have amounted to an actual recrudescence of Paganism, excited by one 'Vilgardus dictus, studio artis grammaticæ magis assiduus quam frequens, sicut italicis mos semper fuit artes negli-

gere ceteras, illam sectari.' Virgil, Horace and Juvenal, or demons in the form of these poets, appeared to him in dreams and promised him a share of their glory, in consequence of which he 'cepit multa turgide docere fidei sacre contraria, dictaque poetarum per omnia credenda esse asserbat' (ed. Prou. Paris, 1886, p. 50). The heresy was only suppressed by much burning. As to the prominence of Grammar in Italy, see Giesebrecht *passim*: the only point on which his admirable monograph seems to need correction is his assertion (p. 22) that the Italians neglected Rhetoric.

France, England, and Germany by the Dialecticians of the Dark Ages. The revival of legal Science which is associated with the name of Irnerius was the natural outcome of the educational traditions which the cities of North Italy had inherited from that old Roman world to which alike in spirit and in constitutional theory they had never wholly ceased to belong.

In truth, the differences between the two educational systems, if such they can be called, are all explained by the one great contrast which is presented by the social and political conditions of the two regions. In Northern France<sup>1</sup> all intellectual life was confined to the cloister or to schools which were merely dependencies of the cloister, because the governing class itself was composed of but two great orders—the military and the clerical—in the latter of which alone was there any demand for learning. In Italy, in place of a régime of pure feudalism tempered only by ecclesiastical influence, there had survived all through the darkest ages<sup>2</sup> at least the memory of the old Roman municipal system, and with it at least the germ and the possibility of a free and vigorous municipal life. Hence, in Italy it was in the political sphere that the new eleventh-century activity first manifested itself; while the consequent or concomitant revival of culture took a correspondingly secular turn.

If the continued existence of the Roman Empire is the key to the history of medieval Europe at large, the continued existence (amid all social and political changes) of the Roman Law is the key to the history of the Lombard Cities and the Lombard Schools. Beneath all changes of external government, the continuity of city life was never quite destroyed. Successive waves of conquest—Roman, West-

<sup>1</sup> M. Thurot (*L'Organisation de l'Enseignement dans l'Un. de Paris*, p. 3) remarks that the contrast ought strictly to be drawn between the countries North of the Loire on the one hand and Southern France and Italy on the other. This is to a

great extent true, though, as we shall see, the educational system of Southern France stands in some respects midway between the Italian and the Northern system.

<sup>2</sup> For authorities to supplement and correct Savigny, see App. v.

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The contrast explained by the social condition of France and Italy respectively.

Continuity of Municipal Life in N. Italy

CHAP. IV, Gothic, East-Gothic, Lombard, Frank—had swept over them without destroying their limited Autonomy. The Goths had appropriated a share of the land, the Lombards a share of the produce: the castles of the invading hordes spread over the country. But within the walls of the towns at least the forms and the names of the Roman legal system maintained an unbroken continuity. It is true that Savigny exaggerated the extent of this continuity, and underestimated the transformation which the whole political and judicial system underwent at the hands first of the Lombard, then of the Frankish, invaders. But it is probable that the details of internal administration, and certain that the private relations of the native citizens, continued to be regulated by Roman law or Roman tradition. Whatever changes were made in the Magistracies, the Roman was still supposed to be judged according to Roman Law, the Lombard according to Lombard Law. In the period immediately after the barbarian invasions this state of things was more or less common to all parts of the Roman world. Eventually, however, the two races were everywhere fused. Where the barbarians formed a majority of the population, where the oppression and dispossession of the old inhabitants had been carried furthest, the Law of the invaders prevailed, or rather the place of Roman and national Law alike was taken by a multitude of varying local customs which had absorbed varying proportions of both the conflicting systems. Where the Roman element predominated, where the barbarian yoke was lighter and the Roman civilization more firmly established, there Roman Law sooner or later asserted itself<sup>1</sup>. To a certain extent this was the case in Southern Europe generally: the conditions of Burgundy and of the so-called *pays de droit écrit* partly resembled those of Northern Italy. But in some respects the position of the Lombard towns was peculiar to themselves. In the first place the cities were here more numerous, more populous and prosperous as

<sup>1</sup> Savigny, cap. ii. and iii. §§ 49, 50.



well as more independent than in any other part of Europe<sup>1</sup>; the Lombard invasion was a conquest rather than an immigration. Here the old municipal life died only to rise again with renewed vitality: the Romanised City-communities proved strong enough gradually to absorb a large part of the Germanic population, which passed into the position of a civic, instead of a feudal, Aristocracy. And here eventually the towns were able with more or less of Imperial assistance to throw off the yoke of the Lombard Counts, except where the milder rule of their own elective Bishops formed the stepping-stone to entire independence.

Several distinct chains of external circumstances combined with the social condition of the cities and the inherent vitality of their civic life to facilitate the development of the Lombard towns from mere municipalities into practically independent Republics. The first of these was the absorption of the Lombardic kingship into the Holy Roman Empire, and the gradual transformation of that Empire into a Germanic Monarchy whose possessors—except during an actual occupation of Italy by armed hosts—were without the power of permanently enforcing their high-sounding prerogatives. Thus when the cities were once emancipated from the rule of their Counts, they found themselves practically without a political superior. The attempt of the Hohenstaufen to convert their nominal Italian monarchy into a real one was finally frustrated by

Causes  
which  
fostered  
the City  
autonomy.

<sup>1</sup> To account for their position we must go back to the early distinction between Italy and the Provinces. The Italians were the *socii* of Rome: their *Municipia* retained their autonomy and continued to elect their own magistrates. The provinces were conquered dependencies. Autonomy was at first granted to a few provincial cities as a rare and exceptional privilege: though eventually such privileges were widely extended in Southern France and Spain—the countries whose civic life (and consequently whose uni-

versities) approximated most closely to those of North Italy. Gallia Cisalpina ceased to be a *provincia* after a.c. 43. Some limitations were, indeed, placed upon the autonomy of the cities, but these were afterwards extended to other Italian cities. As to Southern Italy, the absence of political life in the few large cities, the use of the Greek language, and above all the Norman and Saracen invasions, are the chief causes which explain its slight participation in the Revival of Roman Law.

CHAP. IV, the victory of the Lombard League at Legnano in 1176: § 1. the Treaty of Constance in 1183 secured the practical freedom of the cities. Another favourable circumstance was the long contest between the Emperors and the Popes. The co-operation of the Italian cities was of vast importance to both the contending parties, each of which was able to give some kind of constitutional sanction to any usurpation on the part of its allies which it might find it expedient to tolerate. By engaging on one side or other of this great struggle the cities succeeded on the whole in maintaining an Autonomy which often amounted to practical Sovereignty.

Political  
character  
of the  
intellectual  
Revival.

The intellectual Renaissance of the twelfth century found the Italian cities just entering upon this struggle for independence: the intellectual Renaissance was indeed only another side of a political Renaissance. As the Lombard cities awoke to a consciousness of their recovered liberty, their energies were absorbed by a political life as engrossing, as interesting and dignified, as it had been in the cities of ancient Hellas. And thus a career was opening itself to men who were neither Churchmen nor soldiers. In such communities it cannot be a matter of surprise that the revival of intellectual activity took a political, or at least a civil, direction. Just as the demand of the cloisters North of the Alps for speculative knowledge—for knowledge for its own sake, knowledge apart from all relation to social life, manifested itself in a revival of metaphysical and theological speculation and was ultimately met by the rediscovery of the forgotten Aristotle; so in the commercial and political society of the Italian cities there arose a demand for fruitful knowledge, for Science applied to the regulation of social life—for *civilization* in the strictest sense of the word. And this demand was met by a revived study of the long-neglected, but never wholly forgotten, monuments of Roman Jurisprudence. It is only in such communities that in the heart of the Middle Ages the purely mundane Science of Law could have awakened the enthusiasm—the genuine intellectual enthusiasm—which attended its study in the early days of the School of

Bologna: it is only in such communities that so democratic, so unhierarchical an institution as an autonomous University of Students could have sprung into existence.

It must not be supposed, indeed, that the intellectual movement in Northern Italy had no spiritual side, or that because men's minds were here little absorbed with metaphysical problems, their interests were purely material and utilitarian. On the contrary the struggle between the Empire and the Papacy was essentially a battle of ideas. But the questions at issue assumed the form of constitutional questions. Both sides appealed in support of their claims to antiquity and to authority rather than to abstract Reason; both sides derived large elements in their respective ideals as well as the weapons with which they fought for them in the legal literature of ancient Rome.

The old account of the revival of the Roman Law represents that the Pisans, upon the capture of Amalfi in 1135, discovered a MS. of the Digest or Pandects of Justinian, whereupon the Emperor Lothair II, with an intuitive recognition of the value of the 'find,' forthwith directed its contents to be taught in the schools and enforced in the tribunals. Since the time of Savigny at least<sup>1</sup> the baselessness of this story has been generally recognised. It is nearly certain that the celebrated MS. in connexion with which it is told, and which was removed to Florence after the capture of Pisa, had been in that city long before this event—according to the thirteenth-century jurist Odofredus, since the time of Justinian, when it was brought there from Constantinople<sup>2</sup>. The story, as

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Spiritual  
side of the  
movement.

Alleged  
discovery  
of the  
Pandects  
at Amalfi,  
1135.

<sup>1</sup> The fact was known to scholars long before. See e.g. Sarti, I. P. i. p. 3. The story finds a place in Gibbon's narrative (*Decline and Fall of the Rom. Emp.* chap. xliv), though he recognised that it was 'unknown to the twelfth century, embellished by ignorant ages, and suspected by rigid criticism.'

<sup>2</sup> The story of course breaks down with the explosion of the theory that

the Pandects were unknown in North Italy till the twelfth century. Moreover, it is inconsistent with the probable date of Irnerius' teaching. Nor is there any evidence whatever of the existence of the law of Lothair II enforcing the use of the Roman Law: the Bologna text of the Pandects shows the influence of other sources than the Pisan MS.: finally, the story about the seizure

CHAP. IV, commonly told, is one of those which are not merely not  
 § 1.  
 —•—•— literally true, but which possess what may be called the higher kind of historical falsity. It misrepresents the whole nature of the revival which we are studying, assuming as it does that the Roman Law, or at least the Pandects, had been hitherto as unknown in medieval Europe as the Laws of Manu. As a matter of fact, it may be broadly asserted that the Roman Law never ceased through what are called the Dark Ages of European History to be (subject of course to changes incident to the altered political status of the Roman citizens) the law of the conquered races, while it powerfully affected and entered into the composition of the laws of the conquering tribes.

Continuation  
 use of  
 Roman  
 Law in  
 Italy.

Most conspicuously, as might be expected from the political and social conditions, did the Roman Law maintain its authority in the Lombard towns of Northern Italy. Elsewhere later compilations (of which the most important was the *Breviarium*) were more frequently appealed to than the compilations of Justinian: in Italy the *Breviarium* was not introduced till Carolingian times, and even then it by no means superseded either the use or the authority of the Institutes and the Code<sup>1</sup>. There is abundant proof that these works were never entirely unknown from the fall of the Western Empire to the day of the alleged 'discovery'. They were known of course only in the sense in which books are known in an illiterate age; that is to say, there were learned men here and there whose writings exhibit an acquaintance with them. It does not of course follow that the whole of the learned class or the whole of the lawyer-class were familiar with the original sources, or that every Lombard town

at Amalfi rests on the statement of two chroniclers of the fourteenth century. Savigny, cap. xviii. § 35 sq. The Pisa MS. is now in the Laurentian Library at Florence. It forms the basis of the text of the Pandects.

<sup>1</sup> The *Breviarium* has been pub-

lished by Hänel under the title of *Lex Romana Visigothorum* (Lipsiæ, 1848). The Theodosian Code was also largely used.

<sup>2</sup> Savigny, cap. xiv. I have thought it unnecessary to reproduce the evidence for facts which are hardly disputed.

possessed a complete library of texts. The Pandects CHAP. IV,  
 were, indeed, unknown or unstudied, during the greater § 1.  
 part of this period, but their recovery dates from at least  
 half a century before the capture of Amalfi. Still, the  
 Roman Law was in all the Lombard towns at least in  
 part the recognised Law of the Tribunals: and some  
 knowledge of it was required for the exercise of public  
 functions. This knowledge was obtained in two ways. Traditional  
 To a large extent no doubt the Lawyer-class—the knowledge.  
*Judices*, the *Advocati*, and the *Notarii*—acquired their  
 knowledge of Law, not by attendance at Professorial  
 lectures but (like our English lawyers) by tradition  
 and practice<sup>1</sup>. But Law was also taught in the Schools, But Law  
 When we remember the enormous proportion of the in- also  
 tellectual energy of Europe which had been concen- taught in  
 trated on the study of Law during the latter days of Schools.  
 the Roman Empire, it would have been antecedently  
 probable that, wherever any education at all survived, some  
 elementary instruction in Law would have formed part of  
 that education. And as a matter of fact there are many  
 distinct traces of the continuance of legal instruction in the  
 Schools of the Dark Ages throughout Europe. In spite of  
 the rigid attachment of the English to their ancestral  
 customs, Roman Law (no doubt in some extremely rudi-  
 mentary form) is said to have formed part of the curriculum  
 of the School of York in the days of Alcuin<sup>2</sup>. Even in the  
 cloisters of saintly Bec it seems probable that Law was  
 among the subjects taught by Lanfranc, who afterwards

<sup>1</sup> Savigny (cap. ix. § 42), though aware that Roman Law was taught in the Schools, laid most stress on the traditionary mode of transmission: Fitting, while rightly emphasizing the extent and importance of the School teaching, declares (*Die Rechtsschule an Bol.* p. 33) that Savigny's statement that Law was learned by practice, would be no more true of the early mediæval period than of our own. The evi-

dence hardly warrants the assertion that the Italian lawyer of the tenth or eleventh century learned his law in the Schools to the same extent as the German lawyer of the present day. Indeed, Fitting himself insists much on the literary and introductory character of the School Law-teaching.

<sup>2</sup> For the rather slight evidence, see Savigny, cap. vi. § 135.

CHAP. IV, played so important a part in Romanising the Law of the English Church<sup>1</sup>, and it may have been at Bec that the Abbot Theobald acquired that enthusiasm for the Roman Law which led him as Archbishop of Canterbury to promote the study of the Roman Law-texts, hitherto comparatively little known in England, among the clerks of his own household. But all that has been said as to the political and social condition of Italy would prepare us to find that it was especially here that Law held its ground in the Schools. That Irnerius was not in any sense whatever the first teacher of Law in the medieval Schools of Italy was strongly insisted upon by Savigny; he quotes for instance the statement of Lanfranc's biographer that the future Archbishop studied at Pavia 'in the Schools of the Liberal Arts and of the secular laws according to the custom of his country<sup>2</sup>.' Our conception of the extent and importance of this pre-Irnerian Law-teaching as also of the pre-Irnerian Law-literature has been considerably widened by later researches. The universality of this practice of learning Law at School can be adequately

Law a  
part of  
Rhetoric.

<sup>1</sup> This is an inference from Lanfranc's fame as a lawyer and the fact that the celebrated Canonist Ivo of Chartres was his pupil. Robertus de Monte (Pertz, SS. VI. p. 485) merely says that Ivo heard him 'de secularibus et divinis literis tractantem,' and associates Lanfranc and Irnerius as joint discoverers of the Roman Law-books: 'Lanfrancus Papiensis et Garnerius socius eius, repertis apud Bononiam legibus Romanis, quas Justinianus imperator Romanorum anno ab incarnatione Domini 530 abbreviatis emendaverat, his inquam repertis operam dederunt eas legere et aliis exponere; sed Garnerius in hoc perseveravit, Lanfrancus vero disciplinas liberales et litteras divinas in Galliis multos edocens tandem Becum venit et ibi monachus factus

est.' Ib. p. 478 (an. 1032). The passage, in spite of the confusion of dates, is valuable as testifying to Lanfranc's high legal reputation. The opinions of Lanfranc are often cited by the Commentators of the *Papiensis* (Pertz, LL. iv. pp. xcvi, xcvi).

<sup>2</sup> 'Nobilis ortus parentela, ab annis puerilibus eruditus est in scholis liberalium artium et legum sæcularium ad suæ morem patriæ. Adlescens orator veteranos adversantes in actionibus causarum frequenter revicit torrente sacundie accurate dicendo. In ipsa ætate sententias depromere sapuit, quas gratanter iuris periti aut iudices vel prætores civitatis acceptabant. Meminit horum Papia.' Milonis Crispini *Vita Lanfranci*, cap. v. (Migne, T. 150, c. 39).

illustrated only by the accumulation of passages, quoted by Savigny, Giesebrecht, Ozanam, Fitting, and others<sup>1</sup>. If the evidence is not more abundant than it is, it is on account of the complete amalgamation of Law-studies with the ordinary educational curriculum. At least some rudiments of Law were everywhere taught in the 'Schools of the Liberal Arts' and by the Masters of these Arts. The old division of Rhetoric into the three branches, 'demonstrative,' 'deliberative,' and 'judicial' allowed the introduction of Law-studies under the last-mentioned category without requiring the addition of a new Art to the sacred Seven<sup>2</sup>. The characteristics of this scholastic Law-teaching may be inferred from its position as an element in the ordinary literary education. It must be remembered that the Law-texts were written in what was becoming more and more a dead language even to Italians. Hence the close association of this Law-instruction with Grammar<sup>3</sup> as well as with Rhetoric. Some linguistic culture was required to enable a Lombard youth to read the text of the Institutes, and more to enable him to draw a Latin deed; and if to the reading and writing of Law Latin we add the explanation of the technical terms arising in the text-books, some rhetorical rules of pleading, and practice in their appli-

CHAP. IV,  
§ 1.  
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<sup>1</sup> Some of these are given in Appendix iii.

<sup>2</sup> 'Tria sunt genera causarum, quæ recipere debet orator: demonstrativum, deliberativum, iudiciale.' Auctor ad Herennium, II. i. The metrical biographer of Adelbert VI, Archbishop of Mainz (1137-1141), adopts this distinction in speaking of his hero's studies at Paris including Rhetoric:—

'iudiciale genus causæ, quod abhorret egenus,  
quod tunc tractatur, cum iudex ius meditatatur.'

*Bibl. Rer. Germ.* ed. Jaffé, vol. III. p. 590.

<sup>3</sup> Thus the *Vocabulista* (circa 1060

A.D.) of Papias (Venet. 1496, fol.) explains a large number of technical terms both legal and logical. Cf. the lines of Theodulf, Bishop of Orleans (circa 798-821):—

'Rhetorica atque foro dextram protensa sedebat,

Turritæ atque urbis fabrica stabat ei,

Jura quod eloquio peragit civilia magno

Litibus et populi dedere frena solet.'

Dümmler, *Mon. Germ. Post. Lat. av. Carolini* I. (Berolini, 1881), p. 545. Cf. Alcuin, *Dial. de arte rhetorica* (Halm, *Rhetores lat. minores*, p. 525 sq.).

CHAP. IV, cation by means of imaginary cases, we shall perhaps obtain a fair idea of what was involved in the ordinary grammatico-legal education of the Schools before the time of Irnerius.

Legal  
literature  
before  
Irnerius.

When we turn from the Schools to the literary remains of this period, we enter upon a more debatable region. By making the most of such scanty abridgements or epitomes as have come down to us and by assigning early dates in doubtful cases, Fitting and others have attempted to demonstrate the existence of a considerable Jurisprudence<sup>1</sup>, not only in the age immediately preceding Irnerius but throughout the Dark Ages<sup>2</sup>. Most minds unbiassed by enthusiasm for an *a priori* 'law of continuity' will probably be disposed to acquiesce in the conclusion of Flach, viz. that the earlier treatises and glosses<sup>3</sup> brought in evidence

<sup>1</sup> Fitting, *d. Rechtssch. zu Bol.* p. 51, &c.; Chiapelli, *Lo Studio Bol.* p. 45 sq., 98 sq., 125, and his edition of the celebrated Pistoian gloss (*La Glossa pistoiese al Codice Giustiniano*, Torino, 1885 (*Mem. della R. Accad. di Scienze di Torino*, Ser. ii. T. 37: Conrat, *Epitome exactis regibus* (Berlin, 1884). The last writer, however, unlike Fitting, contends for a revolution in legal Science at the beginning of the eleventh century.

<sup>2</sup> In the Irnerian glosses we find such expressions as 'quidam dicunt,' 'solutio antiqua,' 'veteres praeceptores dicebant,' 'secundum quosdam.' See the passages in Chiapelli, pp. 45, 46, 55. There occur also allusions to an 'antiqua littera' which seem to point to a current text earlier than that bequeathed to the School of Bologna by Irnerius and his immediate successors (*ib.* p. 47). Chiapelli also collects initials or abbreviations appended to glosses which cannot be identified with any known Jurist, and which may therefore with some probability be

ascribed to unknown predecessors of Irnerius. He is, however, hardly justified in his assumption (p. 45) that pre-Irnerian law-teachers, or law-writers alluded to by later Bolognese doctors must have lived at Bologna wherever their habitat is not specified. The idea that Irnerius was the first of the Glossators dates from the time of Odofredus († 1265), who says: 'Sed dominus Yr. . . fuit primus illuminator scientie nostre, et quia primus fuit qui fecit glosas in libris nostris, vocamus eum lucernam iuris.' In Dig. Vet. de just. et jure L. jus civile (Lugd. 1550, T. I. f. 7 a). The statement is accepted by Savigny, cap. xxiv. § 207.

<sup>3</sup> Flach, *Études Critiques*, pp. 50, 102. I am much indebted to Prof. Flach's criticisms on Fitting and his School, which I have in the main accepted. He perhaps slightly underestimates the work which they have done in showing (1) the gradualness, (2) the pre-Irnerian, and even pre-Bolognese date of the legal Renaissance.



by the new School, where they do not date from the age of Justinian or a little later, are after all inconsiderable both in quantity and quality. They go to confirm Savigny's view of a continuous knowledge and practice of some parts of the Roman Law throughout the Middle Ages, but they do little to remove a prevailing impression of the general ignorance of the earlier half of this period. On the other hand, the more important of these writings, such as the *Exceptiones Petri*<sup>1</sup> and the *Brachylogus*<sup>2</sup> cannot be shown to be earlier than the twelfth or at the earliest the end of the eleventh century—that is to say to the first dawn of the legal Renaissance. And here it may be admitted that the new School has done something to confirm and emphasise the important fact that the revival dates from considerably before the time of Irnerius; and though Fitting and his followers are disposed to exaggerate the 'scientific' character of the earliest products of the legal Renaissance, it is true also that Bologna was not the very earliest seat of this revival. In fact the Law revival, in its commencement and its subsequent progress, exactly kept pace with the revival of dialectical activity North of the Alps; and the rise of the School of Bologna synchronises almost exactly with the rise to pre-eminent importance of the Schools of Paris. The Scholastic movement did not begin in Paris and the Civil Law movement did not begin in

CHAP. IV.

§ 1.

<sup>1</sup> This Epitome or Introduction to the study of Roman Law, known as the *Exceptiones legum Romanarum*, printed by Savigny in an Appendix to his *Gesch. d. Röm. Rechts*, is referred by Fitting (in the form in which it appears in the Tübingen MS.) to the School of Pavia and to circa 1063, but he regards it as a redaction of an early work belonging to the first half of the eleventh century. He identifies its author with Petrus de Ravenna, who appears with the title *Scholasticus*, *Scholasticissimus* or *Disertissimus* in various documents of 1021–1037. Fitting, *d. Rechtssch.*

*su Bol.* p. 60; *Ztschr. d. Sav.-Stift.* T. VII. Röm. Abth. Heft 2, pp. 42, 61 sq. Cf also Chiapelli, p. 78 sq.

<sup>2</sup> The *Brachylogus* according to Fitting was compiled at Orleans at the end of the eleventh or the beginning of the twelfth century. See Fitting, *d. Rechtssch. su Bol.* pp. 47, 67; and *Über die Heimat und das Alter des sog. Brach.* (Berlin, 1880). Its value is attested to by the twenty-three editions published between 1548 and 1829. For other pre-Irnerian Law-books see Fitting, l.c. pp. 59 sq.

CHAP. IV, § 1.  
 Bologna ; but though the movement may have been somewhat more gradual, and its earlier stages somewhat more important than has been commonly supposed, the latest researches do not detract very seriously from the epoch-making importance hitherto attached to the rise of the Bologna School.

Three places in Italy have been especially claimed as pre-Bolognese Schools of Law : Rome, Pavia, and Ravenna.

ROME.

To the city of Rome, indeed, the term School can be applied only in a somewhat vague and general sense. There is no real evidence of any systematic or professorial teaching of Law at Rome during the dark ages over and above the elementary school-teaching customary throughout Italy<sup>1</sup>. Odofredus represents the Studium of Law as having been transferred from Rome to Ravenna in consequence of 'the wars in the March'—that is presumably after the great burning of Rome by the Normans in 1084. Elsewhere he tells us that it was at this time that 'the books' of Law were transferred from the city of Rome to Ravenna<sup>2</sup>. Odofredus is not a very valuable authority for the events of the eleventh century, but we may probably recognise a certain element of truth in the general statement that at about this time Rome was superseded by Ravenna as the centre of the best knowledge and teaching of the Roman Law which then existed in Italy.

PAVIA.

The School of Pavia was famous from at least the beginning of the eleventh century. It was primarily a School of Lombard Law : but Roman Law was studied with much earnestness by the Lombard lawyers as a kind of universal code which might be called in to supplement and elucidate the municipal law of a particular nation<sup>3</sup>. The

<sup>1</sup> Fitting contends for a continued existence of the School founded by Justinian down to the time of Gregory VII.

<sup>2</sup> In *Infortiatum*, *ad L. Falcidiam* (Lugduni, 1650, T. II. f. 83). Cf. below, p. 112, n. 1.)

<sup>3</sup> Fitting, *d. Rechtssch. zu Bol.* p. 40. The fullest account of the School of Pavia is given by Merkel, *Gesch. des Langobardenrechts*, Berlin, 1850. Cf. also Boretius, *præf. ad Libr. Papiensem* (*Mon. Germ. Hist. LL.* iv. p. xciii sq.).

prominence of Roman Law at Pavia is shown by the fact CHAP. IV,  
 that the School was resorted to by foreigners who could § 1.  
 have had no object in studying the legal system of the Lom-  
 bards<sup>1</sup>. But after the decline of the School of Rome (in RAVENNA.  
 whatever sense such a School existed) Ravenna was unques-  
 tionably *the School par excellence* of Roman Law in Italy<sup>2</sup>.  
 There are faint traces of some kind of systematic organisa-  
 tion from at least the seventh century<sup>3</sup>. The School no  
 doubt declined for a time with the extinction of the  
 Exarchate, but in the ninth and tenth centuries many  
 notices of its Masters occur: and it was at its highest  
 celebrity in the second half of the eleventh century<sup>4</sup>.  
 Though it is contended that the School of Pavia and the  
 scientific study of the Law-texts practised by the Lombard

<sup>1</sup> In 1065 a Monk of Marseilles writes a letter to his Abbot in which he apologises for having betaken himself to the study of Law by alleging 'per totam fere Italiam scholares et maxime Provinciales necnon ipsius ordinis, de quo sum, quia plures [*lege* quamplures] legibus catervatim studium adhibentes incessanter aspicio.' Martène and Durand, *Ampl. Coll.* I. c. 470. He adds that he intends hereafter to go to Pisa 'ad exercendum ibi studium.' Later (1119-1124) a French scholar is represented in a Form-book as writing 'me exulem Papie studio legum—vel dialectice—alacrem.' Cf. Fitting, *Zeitschr. d. Sav.-Stift.* VII. Röm. Abth. Heft 2. p. 66.

<sup>2</sup> Here the poet Venantius Fortunatus studied in the sixth century. 'Ravennæ nutritus et doctus in arte Grammatica sive Rethorica seu etiam metrica clarissimus extitit.' Paul. Diacon. *De Gestis Long.* Lib. ii. c. 13. (ed. Waitz, Hannov. 1878, p. 79).

<sup>3</sup> A document of the Byzantine period speaks of a *Primicerius Scholæ Forensium Civitatis Ravennensis*. Marini, *Papiri*, No. 110. lin. 38. But *schola* need not imply education.

Other notices of Masters (*Magister, Scholasticus*) at Ravenna occur as witnesses in Fantuzzi, *Monum. Ravenn.*, Venezia, 1801, I. 215 an. 984; I. 229 an. 1002; II. 60 an. 1036. They appear associated with *tabelliones, iudices, &c.*, never with ecclesiastics. It should be observed that *Scholasticus* = a learned man, not necessarily a teacher (as is shown by the superlative *scholasticissimus*). This may be the case even with *Magister*.

<sup>4</sup> See the account by Petrus Damianus of his disputation in 1045 with the Ravenna jurists who took the anti-Church side on the question of the prohibited degrees, *De Parentela gradibus*, Opusc. viii. (Migne, T. 145. c. 191 sq.). Fitting considers that their opposition provoked the decree of the Lateran Council in 1063 (*Die Rechtss. zu Bol.* p. 39). In 1080 the Ravennese Petrus Crassus addressed a legal disquisition in defence of the Emperor against Gregory VII which is highly esteemed by Fitting (p. 40), to Henry IV for use at the Council of Brixen. It is printed by Ficker, *Forschungen u. Reichs- u. Rechtsgesch. Ital. &c.*, Innsbruck, 1868, IV. p. 106.

CHAP. IV, lawyers had much influence on the early Bolognese jurists, it is on the whole the School of Ravenna that we must look upon as the immediate predecessor of Bologna in the history of Roman Jurisprudence, as in some sense the Mother of the School which proudly styles itself the *Alma Mater Studiorum*<sup>1</sup>.

Ravenna a point of contact between old Rome and Lombard City-life.

At Ravenna the old traditions of Roman jurisprudence had been kept alive alike by its earlier connexion with the new Rome and by its later connexion with the Holy Roman Empire<sup>2</sup>. At Bologna—the point of junction between the Exarchate and the Lombard territory—these traditions came into contact with the new-born political life of the Lombard cities and with that development both of professional and of scholastic Law-studies which was one of the outcomes of the Lombard political activity<sup>3</sup>. To a large extent the revival of legal Science was common to all parts of Northern Italy. But in the Lombard cities the Roman Law had to contend for supremacy in the Schools as well as in the Courts with a rival Lombard Jurisprudence: it was not unnatural that the Roman Law should achieve its decisive victory in the most Roman of the Lombard towns.

Position of Irnerius.

Enough has been said to show the baselessness of the theory that Irnerius was the first teacher of the Roman Law in medieval Italy. The traditional ideas of intellectual history seem to admit of no epochs or new departures except in immediate connexion with a great

<sup>1</sup> A slight monograph on the *Origini dello Studio Ravennate* is published by Ricci, *Primordi dello St. d. Bol.* p. 201 sq. Its scientific relations to Bologna are discussed by Tarlazzi, *Scuole d. dir. rom. in Rav. ed in Bol.* in *Atti e Mem. della Dep. d. Sto. Pat. per la prov. di Romagna*, Ser. III. v. 4. p. 29; Fitting, *op. cit.* p. 38 sq.; Chiapelli, p. 38 sq.; Ficker, *op. cit.* vol. I. Abth. i, p. 104 sq.

<sup>2</sup> 'De Ottone, incertum Ine an II, constat palatium imperiale ab eo conditum Ravennæ, ut ex placito

Joannis Archiepiscopi placentini apud MURATORI, *Antiq. med. ævi*, diss. xxix. De Conrado etiam Salico narrat Wippo Ravennam illum intrasse et cum magna potestate ibi regnasse. WIPPO in *Vita Conradi* ap. PISTORI. *Rev. Germanic. Script.* t. iii. p. 471. Sarti, T. I. pt. i. p. 4.

<sup>3</sup> Chiapelli, p. 132 sq. Ficker (II. Abth. i. p. 139) traces the rise of the School of Bologna to an 'Anwendung der longobardischen Methode auf die Behandlung der römischen Rechtsquellen.'

discovery or a great name. As a matter of fact, Irnerius CHAP. IV,  
 'discovered' nothing at all. § 1.  
 'Revival' is a term more applicable to the life-work of Irnerius. But his true position is rather at the culmination than at the beginning of the revival. So far his position in the great movement with which his name is associated may be compared to that of Abelard in the speculative movement North of the Alps. But the pre-eminence of Irnerius in historic fame over his predecessors, his contemporaries, and his immediate followers is perhaps less due to the personal greatness of the man than was the case with Abelard. What was the exact position of Irnerius in the development of medieval Jurisprudence, we shall be better able to examine when we have collected together what is known of his immediate predecessors and of his own biography. We have seen that there was a medieval Jurisprudence before the rise of the School of Bologna: it remains to show that there was a Law-school at Bologna before Irnerius.

At this point it becomes important to bear in mind what has already been said as to the close connexion subsisting in the early medieval Schools between legal Science and general literary culture. BOLOGNA a  
School of  
Rhetoric  
and the  
Arts.  
 The earliest scholastic fame of Bologna was that of a School of the Liberal Arts; and it is very probable that in that School what may be called the juristic side of Rhetoric early began to occupy the most prominent place. At all events, by the year 1000 A. D. Bologna was already sufficiently famous as a Studium of Arts to attract Guido, afterwards Bishop of Acqui (1035-1070) to its Schools from a region as distant as the neighbourhood of Genoa<sup>1</sup>. In about the third quarter of the same century we hear of another future Bishop going to Bologna as a student of the Liberal Arts<sup>2</sup>. Even after the career of

<sup>1</sup> 'Ab ineunte igitur ætate Guido memoratus . . . studiorum causa Bononiam contendit. Ubi aliquot annis non minus sanctis moribus quam litterarum disciplinis incumbens socios et æmulatores sui in utroque studii honore devicit.' *Acta Sanctorum*, Jun., T. I. p. 229.

<sup>2</sup> S. Bruno, Bishop of Segni († 1123). 'Voluntate parentum se Bononiam transferens, liberalium artium doctrinæ vigilem curam exhibuit.' It is added that he studied both *trivium* and *quadrivium*, and afterwards, still apparently at Bologna, 'divinæ paginæ propensius operam

CHAP. IV, Irnerius had closed, Bologna was still famous primarily as a School of Literature: Law was only one, though here no doubt the main, element in general Education.

John of  
Salisbury's  
allusions to  
Bologna.

Nothing can more strikingly illustrate the importance of Bologna as a School of the Liberal Arts than the fact that a famous teacher of Paris should have thought it worth while to go to Bologna to study Dialectic. Yet such appears to have been the case. In one of those autobiographical fragments which give so peculiar an interest to his writings, John of Salisbury tells us that he studied Dialectic for two years in 'the Mount' of Ste. Geneviève under Alberic and Robert of Melun (1136-8). Later on, one of these teachers went to Bologna and 'unlearned' what he had taught, after which he went back to Paris and 'untaught' the same to his pupils<sup>1</sup>. Though the Dialectic of Bologna may well have been of a more practical and legal kind than the speculative Dialectic of Paris, John of Salisbury does not seem to be conscious that they were two distinct Sciences. How slowly the development of technical Jurisprudence threw into the shade the ancient repute of Bologna as a School of the Liberal Arts may also be illustrated by the fact that even in 1158 Frederick I speaks of scholars of 'various Arts' being attracted to the Lombard Schools from all parts<sup>2</sup>.

Bologna  
famous for  
*Dictamen*.

In the older Law-Schools of the medieval world, and particularly at Bologna, the gulf which according to our ideas separates technical and legal from general education

dedit.' A. S. S., Jul. (Tom. IV. p. 479). He had already been instructed 'singularibus disciplinis' in a Monastery.

<sup>1</sup> Deinde . . . adhæsi magistro Alberico, qui inter ceteros opinatissimus dialecticus enitebat . . . Sic ferme toto biennio conversatus in Monte, artis huius præceptoribus usus sum Alberico et magistro Roberto Meludensi . . . Postea unus eorum profectus Bononiam dedidit quod docuerat, siquidem et reversus

deducit; an melius, iudicent qui ante et postea audierunt.' *Metalogicus*, lib. ii. c. 10.

<sup>2</sup> See below, p. 145. As late as 1162 Bolognese Law is still looked on as a department of general 'literary studies': 'Pollebat equidem tunc Bononia in litteralibus studiis pre cunctis Ytalie civitatibus quatuor legum columpnis inter ceteros magnifice radiantibus.' Acerbi *Morenæ Continuatio*, &c. (Pertz, SS. XVIII. p. 639).

was bridged over by the existence of the rather curious Art known as *Dictamen*. *Dictamen* may be comprehensively described as the Art of Composition. The poetical branch of the Art had of course no special relation to legal pursuits<sup>1</sup>: but the *Dictamen prosaicum*, besides teaching general principles of literary composition, was specially occupied with the Art of letter-writing, and included not only rules for private epistolary correspondence, but also more technical rules for the compilation of official briefs or bulls and other legal documents. In an age wherein reading and writing were the accomplishments of the few, while all business transactions of any solemnity or importance were carried on in a dead language, it is obvious that the connexion between Grammar and Law was indefinitely closer than it is according to modern ideas<sup>2</sup>. *Dictamen* may be described at pleasure as a branch of Grammar or as a branch of Law. For this Art of *Dictamen* Bologna possessed a special notoriety; the School of *Dictamen* was the cradle of the special School of Law. Irnerius himself wrote a Notarial Form-book (*Formularium Tabellionum*)<sup>3</sup>. We also possess a work entitled *Rationes dictandi* written by the Bolognese Canon Hugo circa 1123<sup>4</sup>. But the most famous Bolognese Master of Rhetoric and *Dictamen* was Boncompagni, who lived as late as the beginning of the thirteenth century. The fact that in 1215 his *Rhetorica Antiqua* was solemnly read before the professors and students of Canon and Civil Law<sup>5</sup> shows at

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§ 1.  
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<sup>1</sup> Yet the two branches were often professed by the same person. Thus the Englishman Gaufridus wrote at Bologna, circa 1224, (a) a book on prosody or versification called *Poetria Nova*; (b) an *Ars Dictaminis*, sc. *Prosaici*. Sarti, I. Pt. ii. p. 601.

<sup>2</sup> By the Bologna City-statutes the 'Consules artis tabellionatus' are to examine candidates for the office of Notary 'qualiter (sciunt) latinare et dictare.' Frati, II. pp. 185, 188.

<sup>3</sup> Sarti, I. pt. ii. p. 505.

<sup>4</sup> Edited by Rockinger in *Quellen zur bayerischen und deutschen Geschichte*, Bd. IX. Abth. i. p. 53 sq. It is noteworthy that in the specimen letters which are given by the writer there are allusions to the scholastic fame of Bologna for Philosophy, Medicine, and *Dictamen*, none to the special teaching of Law.

<sup>5</sup> Sarti, I. pt. ii. p. 602; Rockinger, *Die Ars Dictandi in Italia* (*Sitzungsberichte d. bayerischen Akad. zu*

CHAP. IV, once the importance attached to the Art and the close connexion which still subsisted between this branch of the old comprehensive Rhetoric and the rising professional School of Law.

§ I.  
Pepo predecessor of Imerius.

The principal source of the once universally accepted view of Imerius as the sole originator of the Law-revival at Bologna, is a celebrated passage of Odofredus in which he speaks of Imerius as the 'first who taught in that city.' Yet Odofredus himself has preserved to us the name of one of Imerius' predecessors, Pepo, adding however that 'whatever his knowledge may have been, he was a man of no name<sup>1</sup>.' This contemptuous judgment of Odofredus is, however, hardly borne out by the scanty additional notices of Pepo which have come down to us<sup>2</sup>. One of

*München*, 1861, p. 134 sq.). The *Cedrus* and the treatise on *Notaria* are printed by Rockinger in *Quellen* &c., vol. IX. pp. 121 sq. It is observable as we look through these treatises that they become increasingly technical in the later Middle Ages. Before the middle of the thirteenth century *Notaria* had become a distinct Art or Faculty: Rolandinus, whose *Summa Notaria* became the text-book of the Art, successfully asserted the monopoly of Bologna citizens to the right of teaching it in 1284. According to Sarti (I. pt. ii. pp. 505-6), there were regular graduations in *Notaria*. The Notaries formed a Corpus or Guild in the days of Odofredus. Sarti, I. pt. ii. p. 506. Instruction in *Notaria* included the Elements of Law, e. g. the Institutes. Sarti, I. c.

<sup>1</sup> 'Signori, Dominus Yrnerius qui fuit apud nos lucerna juris, id est primus qui docuit in civitate ista, nam primo cepit studium esse in civitate ista in artibus: et cum studium esset destructum Rome, libri legales fuerunt deportati ad civitatem Ravenna, et de Ravenna

ad civitatem istam. Quidam Dominus Pepo cepit auctoritate sua legere in legibus; tamen quidquid fuerit de scientia sua, nullius nominis fuit. Sed Dominus Yr., dum doceret in artibus in civitate ista, cum fuerunt deportati libri legales, cepit per se studere in libris nostris, et studendo cepit docere in legibus, et ipse fuit maximus nominis; et fuit primus illuminator scientie nostre; et quod primus fuit qui fecit glossas in libris nostris, vocamus eum lucernam juris.' Odofredus, in I. *Jus Civile*, Dig. Vet. *De justitia et jure* (1550, T. I. f. 7).

<sup>2</sup> His name occurs in a Placitum of the Countess Matilda in 1072. 'Ibi eorum presentia venit Maurus Habas de Ecclesia Sancti Salvatoris de Monte Amiata, una cum Pepo Avvocato suo, et retulit,' &c. Document in Muratori, *Ant. It. II.* c. 955, and Ricci, No. II. Again in a similar document of 1078: 'Ibique in eo iudicio veniens Gerardus abbas sancti Salvatoris sito monte Amiata simul cum Pepo advocatore suo.' Ficker, *Forschungen*, iv. p. 103; Ricci, No. V.



the documents in which he appears as a 'legis doctor' CHAP. IV,  
and Assessor to a feudal Court<sup>1</sup> is said to exhibit as § 1.  
compared with others of the same or earlier dates a very  
superior legal skill and knowledge<sup>2</sup>. It is said that this is the  
earliest medieval document (1076 A.D.) in which the  
Digest is expressly cited as the ground of a legal decision<sup>3</sup>, His use of  
the Digest.  
and, if that be the case, it may reasonably be inferred that  
the revived study of the Digest which characterised the  
Bologna School dates not from Irnerius but from Pepo. ✓  
Pepo is the only Doctor of Law who can be positively  
proved to have been taught at Bologna, though allusions  
to other 'legis doctores' in Bolognese documents of about  
the same period may, or may not, be interpreted of actual  
teachers<sup>4</sup>.

The above cited passage and one or two digressions in Life of  
IRNERIUS.  
the garrulous Odofredus, together with a few allusions in  
documents or chronicles, constitute the whole of our authori-  
ties for the life and work of Irnerius. The one fact about  
his personal history which Odofredus tells us is that he was

<sup>1</sup> 'In presentia Nordilli missi domine beatrix ducis et marchionisse et iohannis uice comitis . . . in iudicio cum eis residentibus guilielmo iudice et pepone legis doctore,' &c. Savioli, vol. I. pt. ii. p. 123: Ficker, *op. cit.* IV. p. 99: Ricci, No. iii.: Muratori, *Ant. It.* III. c. 889. Cf. Fitting, *Die Rechtssch. zu Bol.* p. 84.

<sup>2</sup> What strikes the lay reader is the superiority of the Latinity to that of some other of the documents published by Ricci, which (if properly transcribed) are full of outrageous grammatical blunders such as are quite unparalleled in any legal documents of the later Middle Age which are known to me—another illustration of the fact that the 'revival of Roman Law' was merely one side of a revival of general education and culture.

<sup>3</sup> 'His peractis supradictus Nordillus, predicte domine Beatrix missus, lege digestorum libris inserta considerata per quam copiam magistratus non habentibus restitutionem in integrum pretor pollicetur, restituit in integrum ecclesiam et monasterium sancti Michaelis,' &c.

<sup>4</sup> The earliest published by Ricci is a deed of 1067, witnessed by 'Albertus legis doctor' (Ricci, No. i). An 'Iginulfus legis doctor' occurs in *op. cit.* No. iv. But Savigny (cap. vi. § 136) warns us against inferring the existence of a Law School from the mention of *legis doctores*, an expression which is sometimes a mere synonym of *index* or *causidicus*. This principle, not always sufficiently borne in mind by later enquirers, is unquestionably true of the earlier period, but it is not quite so clear of this period.

CHAP. IV, a Master of the Liberal Arts<sup>1</sup>, and this is completely in accordance with all that we know of the character of his teaching and of the state of legal education at the time<sup>2</sup>. Odofredus goes on to tell us that 'when the books of Law were brought from Ravenna, he began to study in them by himself, and by studying to teach the Laws, and he was a man of the greatest renown.' The literal truth of this account is quite out of the question. It is impossible to suppose that there were no Law-texts at Bologna before the time of Irnerius. Indeed, Odofredus refutes himself, for he admits that before Irnerius a 'certain dominus Pepo began by his own authority to lecture in the Laws.' If therefore there be any truth in this story of the importation of Law-books from Ravenna, it must have taken place in the time of Pepo and not in that of Irnerius; and it is quite possible that the Digest at least may have been first introduced into Bologna from Ravenna in the time of Pepo<sup>3</sup>.

Extent of  
Irnerius'  
originality.

There is great probability in Odofredus' view that Irnerius was to a certain extent self-taught. It cannot, indeed, for a moment be supposed that Irnerius derived no assistance from any of those earlier law books or glosses of which we have already spoken. In the scanty Irnerian glosses which

<sup>1</sup> 'Et debetis scire vos, domini, sicut nos fuimus instructi a nostris maioribus, quod dominus Yr. fuit primus qui fuit ausus dirigere cor suum ad L. istam. Nam dominus Yr. erat magister in artibus, et studium fuit Ravennae, et collapsa ea fuit studium Bononie. Et dominus Yr. studuit per se sicut potuit; postea cepit docere in iure civili et ipse fecit primum formularium, i. e. librum omnium instrumentorum: scripsit instrumentum emphyteuticum.' Odofred. in Codicem, *De SS. Ecd. Auth. Qui res* (T. III. f. 17).

<sup>2</sup> I do not know what authority Coppi (p. 54) has for making him 'maestro di grammatica a Ravenna.'

<sup>3</sup> It has indeed been established by

the critical investigations of Mommsen that the texts of the Digest which were current in the Schools of Bologna were all derived from a single original—the celebrated Pisan MS. which the later tradition supposed to have been captured at Amalfi, corrected from independent and sometimes better codices (*Digestorum Libri*, Præf., Berolini, 1870, p. lxiv. sq.). There is no reason why Odofredus' story of the importation of 'the books' from Ravenna may not to this extent be true. It is also worth noticing that this particular MS. of the Digest has no glosses; and this is no doubt the origin of the idea of Irnerius as the first of the Glossators.

have come down to us occur distinct allusions to the opinions previously expressed and to standing questions habitually discussed by his predecessors or contemporaries. If he had not heard of these discussions in the Schools, he must have met them in books. The literary or grammatical character of the glosses ascribed to Irnerius makes it quite probable that his legal knowledge was originally the acquisition of a scholar without practical training or legal education beyond what was obtained by every young Italian of his time in the Schools of the Liberal Arts<sup>1</sup>; the notion that he was as much without predecessors and without assistance in his legal studies as the Western Scholar dealing with a newly discovered language, is only a part of the general misconception of an uncritical generation to which the history even of its own School before Irnerius was rapidly becoming a blank relieved only by a few flashes of confused and incoherent tradition.

When all deductions are made from the exaggerated position accorded by a later age to the traditional founder of the Bolognese School, there can be no doubt of the importance of the epoch which is associated with his name. Unquestionably it was his lectures that first raised Bologna to European fame. Can we in any way explain this sudden emergence of Bologna into the position not merely of a great School of Law but of *the* School of Law *par excellence*? We have already dwelt upon the political and intellectual conditions which account for a great revival of the study of

CHAP. IV,  
§ 1.  
—+—

Reasons for  
growth of  
Bolognese  
School.

<sup>1</sup> This is illustrated by the historically worthless story that Irnerius was led to the study of the Civil Law by a dispute as to the meaning of the word *as*. 'Nonne duo passeret asse veneunt? propter quod verbum venit Bonon. studium civile, sicut audiui a domino meo.' Hostiensis (Henricus de Segusio) *Comment. in Decretalium libros*, Venet. 1581. *De Testamentis*, III. fol. 73. Cf. also the remark of Odofredus: 'Or, signori, plura non

essent dicenda super lege ista, Dominus tamen Ir., qui laicus fuit, et magister fuit in civitate ista in artibus, antequam doceret in legibus, fecit unam glosam sophisticam, que est obscurior quam sit textus.' In *Codicem* l. ult. *de in int. rest. min.* (Lugduni, 1650, T. III. f. 101 b). So Odofredus in *Dig. Vet. De iustitia et jure*, L. *Manumissiones*: 'hic glossat dominus Yr. elegantissimis verbis.' (T. I. f. 7 a).

CHAP. IV, Roman Law in Northern Italy; can we account for its concentration in the city of Bologna? Much influence must of course be accorded to the genius of the man. The less it is admitted that there was any new departure involved in the subject or the method of his lectures, the more must they have owed their attractiveness to their own intrinsic merits. The more emphatically it is denied that his undoubtedly valuable glosses mark an entirely new beginning in the development of medieval Law-literature, the more evident is it that Irnerius must have possessed powers as a teacher of which these scanty remains fail to give us any adequate idea. But the greatest of teachers is unable to raise a School even to temporary, much less to permanent, renown unless he appears at the right place and at the right moment—unless a concurrence of favourable circumstances second the personal attraction of the individual intellect. Even the career of Abelard was, as we have seen, only one of the causes which concurred to make Paris the intellectual centre of Northern Europe; and Irnerius, on the most favourable estimate, does not belong to the same intellectual rank as Abelard. A passage of the chronicler, Richard of Ursperg, supplies us with an important clue towards the solution of the problem. After speaking of the work of Gratian, he tells us that ‘at the same time dominus Irnerius at the request of the Countess Matilda renewed the books of the Laws, which had long been neglected, and, in accordance with the manner in which they had been compiled by the Emperor Justinian of divine memory, arranged them in divisions, adding perchance between the lines a few words here and there<sup>1</sup>.’

Patronage  
of Matilda.

The value to be assigned to a tradition of this kind, revealed to us nearly a century after the death of the persons

<sup>1</sup> ‘Eisdem quoque temporibus dominus Irnerius libros legum, qui dudum neglecti fuerant nec quisquam in eis studuerat, ad petitionem Mathildae comitissae renovavit: et secundum quod olim a divae recor-

dationis imperatore Iustiniano compilati fuerant, paucis forte verbis alicubi interpositis, eos distinxit, in quibus continentur instituta,’ &c. *Abb. Ursperg. Chron.* (Pertz, SS. XXIII. p. 342.)

to whom it relates, must depend entirely upon its accord-  
 ance or non-accordance with the probabilities of the case  
 and the facts known to us on more reliable evidence. Here  
 there is considerable probability in favour of the chroni-  
 cles's statement. The notion that Matilda founded the  
 School of Bologna in the sense in which later Emperors or  
 Kings founded Universities, is of course on the face of it  
 untenable. It has grown largely no doubt out of this  
 passage, but it is not really supported by its contents.  
 There is nothing improbable in the statement that Matilda  
 encouraged a Bologna Master, already of some repute as a  
 scholar and a teacher of the Liberal Arts, to apply himself  
 to the study and editing of the Roman Law-texts. And  
 there were political reasons which sufficiently account for  
 Matilda's wish to establish or foster a Law-school at  
 Bologna. Hitherto, as we have seen, Ravenna had been  
 the centre of Italian Jurisprudence: Ravennese Jurists  
 appear from the documents to have been constantly em-  
 ployed as advocates or assessors in the Italian law-courts.  
 It is just after the accession of Matilda in 1075 that we  
 first begin to meet the names of Bolognese Doctors in  
 Tuscan deeds: and after 1113 the Ravennese names dis-  
 appear altogether<sup>1</sup>. Ravenna, the seat of the Imperial  
 jurisprudence, the inheritor of so many Imperial traditions,  
 warmly embraced the side of Henry IV in the great con-  
 flict with the Papacy; when a Council was assembled at  
 Brescia in 1080 for the election of an anti-Pope, it was in the  
 Archbishop of Ravenna that the required anti-papal eccle-  
 siastic was found. Hence it is easy to conceive that  
 Matilda was anxious to enlist in her service a body of  
 lawyers less unfavourable to the Papal claims than the  
*causidici* of Ravenna; and the cause of Matilda was the  
 cause of Italian liberty. The ultimate result of the  
 anti-papal and anti-national attitude of Ravenna in this  
 encounter was the ruin of its School of Law. At that  
 moment Bologna was ready to step into the vacant place;

<sup>1</sup> Fitting, *d. Rechtssch. zu Bol.* p. 99 sq.

CHAP. IV, though the Bolognese Doctors were not permanently faithful to the Papal cause. If any further explanation is wanted for the supersession of Ravenna by Bologna as the headquarters of Italian Jurisprudence, it may be found in the final extinction of any Schools there may have been at Rome by the Norman conquest of 1084, in the neighbourhood of Bologna to Ravenna, and its immense superiority in accessibility and position to the isolated and marsh-girt city on the Adriatic coastland. Bologna lay, as a forged University Charter correctly states, 'at the intersection of four provinces—Lombardy, the March of Verona, the Romandiola, and Tuscany<sup>1</sup>.' To this day it is the point at which converge all the great lines of communication between the Northern entrances to Italy and its centre: in that age there was no place better situated for a meeting-place between the students of Italy and students from beyond the Alps.

Date of  
Irnerius'  
teaching.

The facts and dates of Irnerius' life are all quite in accordance with the chronicler's statement as to his connexion with Matilda. Though the name (variously spelt as Irnerius, Yrnerius, Gernerius, Warnerius, Wernerius, Varnerius, Guarnerius or Garnerius<sup>2</sup>) is Teutonic, there is no reason to doubt the common account that he was a Bolognese citizen by birth<sup>3</sup>. His name first occurs among the *causidici* in a *placitum* of the Countess Matilda relating to property at Ferrara in 1113<sup>4</sup>, and as a *judex* in various documents of the same kind under the Emperor Henry V ranging from 1116 to 1125. It was argued by Savigny that since Irnerius was in the Imperial service from 1116 up to the time at which his name disappears from the documents, his work as a teacher must have been over before the beginning of that period. This contention can

<sup>1</sup> Muratori, *Ant. It.* III. c. 22.

<sup>2</sup> Fitting, *Die Rechtssch. zu Bol.* p. 89; documents in Ricci.

<sup>3</sup> This is expressly stated. He is habitually described as 'de Bononia' or 'Bononiensis.'

<sup>4</sup> 'Causidici quoque Varnerius de Bononia, Lambertus, et Albertus seu (*sic*) amicus.' Document in Savioli, vol. I. pt. ii. p. 151; Ricci, No. xvii; see also Ricci, Nos. xx-xxv, xxvii, xxviii, xxxi, xxxiv.

hardly be admitted, since it assumes that the position of a CHAP. IV,  
teacher was inconsistent with occasional employment of § 1.  
a judicial character<sup>1</sup>. A more important reason for throw-  
ing back the teaching of Irnerius to the very beginning of  
the twelfth century or the end of the eleventh is the early  
occurrence of the epithet 'learned' as applied to Bologna  
and its Law School. Thus in 1119 an anonymous poet  
writes on the capture of Como :—

Docta suas secum duxit Bononia leges<sup>2</sup>.

Again, with reference to the year 1127 the same poet has  
the line :—

Docta Bononia venit et huc cum legibus una<sup>3</sup>.

It should be observed, however, that there is here no  
allusion to professorial teaching, but only to a reputation for  
legal learning: and it is certain that whether or not they  
were teachers, whether or not they had attended lectures  
on Law, the reputation of the Bologna lawyers was not in  
the first instance created by Irnerius. While it is probable  
that he had begun his work before the beginning of the  
century, even this is not certain: still less is there any  
positive evidence for placing the beginning of his career as  
a Law teacher as early as 1088—the year assumed by the  
recent Octo-centenary celebration at Bologna. If, how-  
ever, the University had been content to accept Pepo as its  
pious founder instead of Irnerius, Bologna would have  
been justified in fixing her Octo-centenary at a still earlier  
date.

It should also be mentioned that though the name of  
Irnerius does not occur in the documents after 1125, it is  
probable that he lived, and perhaps taught, to a somewhat

<sup>1</sup> Even non-legal teachers were often in request as assistants in legal business: e.g. 'Albertus grammaticus de sancto marino' is associated with the *Causidici* in 1113 (Ricci, No. xviii).

<sup>2</sup> Muratori, *Ital. SS.* V. p. 418, l. 211.

<sup>3</sup> *Ib.* p. 453, l. 1848. Early Bologna coins have the legend BONONIA MATER STUDIORUM, and somewhat later BONONIA DOCT: the ancient Seal of the City has the words PETRUS UBIQUE PATER LEGUMQUE BONONIA MATER. Sarti (1888), T. I. pt. i. p. 10.

CHAP. IV, later date. The Ursperg Chronicle speaks of him under the reign of Lothair II (1125-1138)<sup>1</sup>. But the most weighty reason for supposing that the scholastic career of Irnerius did not close when he entered the service of the Emperor is that only on that supposition can the 'Four Doctors' who come next to Irnerius in the succession of great Bologna jurists have been his actual pupils, as they are stated to have been by the chroniclers of the next generation<sup>2</sup>. On the whole, then, it would appear that the teaching of Irnerius may be assigned roughly to the period 1100-1130.

Irnerius.  
at Rome.

So far we have still left unmentioned the most striking incident in the life of Irnerius which has come down to us. On the election of Gelasius II in 1118 we find 'Master Irnerius of Bologna and many lawyers' taking a prominent part in the election of the Anti-pope Gregory VIII. They are represented by a contemporary chronicler as 'summoning the Roman people to the election of a Pope,' while 'a certain reader in the pulpit of S. Peter's by a prolix lecture expounded the decrees relating to the substitution of a Pope'<sup>3</sup>. This is the one piece of contemporary

<sup>1</sup> Pertz, SS. I. c. The *Chron.* of Burchard of Ursperg († 1226) is believed to rest on the earlier work of John of Cremona (Fitting, *l. c.* p. 96). Gervase of Canterbury similarly associates Irnerius and Gratian. (II ed. Stubbs, 1880, p. 385.) On the other hand, Robertus de Monte speaks of 'Lanfrancus Papiensis et Garnerius socius eius' ad an. 10321 (Pertz, SS. VI. p. 478.) But so gross a blunder can hardly count for much.

<sup>2</sup> Ricobaldus Ferrarensis (*circa* 1298), *Vita di Federigo I.* (Muratori, SS. T. ix. c. 371): Otto Morena ad a. 1158 (Pertz, SS. XVIII. p. 607). The probabilities of the case are a weightier argument than the Chroniclers' statement. Irnerius' fame would be hard to account for if he did not form a single teacher of

repute and if those who brought the School to the zenith of its fame owed him nothing. Of the illustrious 'four,' Bulgarfus died in 1166, Martinus before 1166, Jacobus in 1178, Hugo *circa* 1168. Fitting, *l. c.* p. 103. Gloria (*Monumenti d. Un. di Padova, 1222-1318*, pp. 107-8) identifies with our Irnerius the 'Warnerius missus domini imperatoris, delegatus ab ipso principe in iudicio iudicarie Montis silicis,' in the document of 1100 (Ricci, No. xi): but this is clearly the 'Guarnerius de Montesilicis' or 'comes Guarnerius' of Ricci xii, and therefore not the Jurist, unless (as Gloria suggests) the 'comes' is the blunder of the scribe.

<sup>3</sup> 'Magister Guarnerius de Bononia, et plures legis periti populum Romanum ad eligendum Papam convenit, et quidam expeditus lector



testimony which really justifies the personal importance CHAP. IV,  
traditionally ascribed to the reputed Founder of the School § 1.  
of Bologna. Whatever was the exact nature of his connexion with the Countess Matilda, this notice testifies to the completeness of his conversion to the Imperial cause. It would be vain to speculate as to the relative shares which the ideas embodied in the Imperial jurisprudence and the prizes of the Imperial service had exercised upon the mind of the Jurists. Certain it is that the early Bologna Doctors were all staunch Imperialists; and the patronage of the Emperors was at least an element in promoting the growth and prosperity of the School. If such patronage may not have done much to increase the prestige of the School in Italy, it may well have had its influence in attracting that swarm of German students who had the largest share in raising Bologna from the position of an Italian to that of a European or cosmopolitan seat of learning <sup>1</sup>.

We are now perhaps in a position to estimate the nature The  
of the epoch in the history of medieval Jurisprudence and Imerian  
of medieval education which is represented by the name of epoch, how  
Irnerius. Most of the titles to fame traditionally claimed far a new  
for him rest, as we have seen, upon no historical basis. He was departure.  
not the re-discoverer of the Roman Law, not even of the Pandects. He was not the first medieval teacher of Law, even at Bologna. He was not the first of the Glossators, probably not the first even of the Bolognese Glossators. There is, indeed, hardly any one respect in which Irnerius marks an absolute new departure.

How then does the rise of the Bologna School constitute

in pulpito S. Petri per prolixam  
lectionem decreta Pontificum de  
substituendo Papa explicavit. Qui-  
bus perlectis et explicatis totus po-  
pulus elegit in Papam quendam  
Episcopum Hispaniæ qui ibi aderat  
cum Imperatore.' Landulfus jun.,  
*Hist. Mediolan.* c. 32 (Muratori, SS.  
T. V. p. 502).

<sup>1</sup> Before the close of the thirteenth  
century (*circa* 1298) we find a  
chronicler speaking of 'lo Studio  
Bolognese, poco avanti in quella  
città per Henrico instituito.' Rico-  
bald. Ferrar. (Muratori, SS. T. IX.  
p. 371). There is probably a  
confusion between Henry IV and  
Henry V.

CHAP. IV, an epoch? In attempting to answer the question it must  
 § 1.  
 →→→ be premised that some of the changes which the Irnerian epoch introduced began a generation before Irnerius himself, and some were probably not completed till at least a generation after him.

Study of  
 Digest.

(1) In the first place the rise of the School of Bologna is marked by an increased prominence of the Digest—that is to say, of far the bulkiest, most elaborate and most important section of the Corpus Juris. The Digest was practically unknown before the time of Pepo<sup>1</sup>. Pepo was certainly acquainted with the 'Old Digest,' but we do not know that the whole of that work was known at Bologna in his time; and the peculiar division of the Pandects into the Old and the New Digest with the detached parts known as the *Infortiatum* and the *Tres Partes* make it tolerably certain that they must have been introduced into the Schools of Bologna in successive instalments<sup>2</sup>. It is quite probable therefore that the remaining parts of the Digest may have been first introduced by Irnerius<sup>3</sup>. The reputed founder of the

<sup>1</sup> Thus it appears that so eminent a canonist as Ivo of Chartres derived his extracts from the Pandects only from an epitome, published by Conrat from a British Museum MS. (*Der Pandekten- und Institutionen-auszug der brittischen Dekretalen-sammlung Quelle des Ivo*. Berlin, 1887). Fitting (*l. c.* p. 57) refers to Mommsen's Preface to the Digest (Berolini, 1868) as evidence of the existence of 'Vorbolognesischen Glossen' on the Digest: but Mommsen himself (p. lxxviii) places these glosses (which appear to consist entirely in various readings), 'aut decimo aut quod magis crediderim undecimo sæculo setate Irneriana.' The evidence which Fitting produces to show that the Digest was not unknown between the time of Gregory the Great and the middle of the eleventh century is of a very slender description. (See

his Art. in *Zeitschrift der Savigny-Stiftung*, T. VI. Röm. Abth. pp. 112, 113.)

<sup>2</sup> As Odofredus declares, in *Infort. ad L. Falcidiam* (T. II. f. 83).

<sup>3</sup> Fitting (*Die Rechtssch. zu Bol.* pp. 94, 95) thinks 'dass sich Irnerius einzelne Stücke der Justinianischen Gesetzgebung, wie etwa das Infortiatum, erst aus Ravenna verschafft hat, und dass so vielleicht in der Erzählung des Odofredus doch ein Körnchen Wahrheit steckt.' Chiapelli (pp. 40-56) collects allusions to earlier comments on the Codex, Dig. Vetus and Dig. Nov., but there is only one not very convincing instance from the Dig. Vetus (p. 54), and the passages cited in the Dig. Nov. do not really prove the existence of pre-Irnerian glosses. He also notices (p. 96) that the *Notulae*—short expository, grammatical or critical remarks—of the primitive

Bologna School may therefore have been the first Lecturer CHAP. IV, § 1. upon the *whole* Digest, and he may even have been the first Glossator on any portion of it. What this change implies will be understood when it is remembered that the Institutes were a mere introductory text-book and the Code a compilation of Imperial edicts—for the most part late Imperial edicts—while the Digest was composed of the *responsa* of the Jurists, and chiefly of the great Classical Jurists who made Roman Law what it was. Without the Digest the study of Roman Law was in a worse position than the study of Aristotle when he was known only from the *Organon*, or of Plato when he was known only from the *Phaedo* and the *Timæus*. The Digest alone adequately revealed the *spirit* of Roman Law.

(2) The emphasis now laid upon the Digest is only a detail in a more important change introduced into the spirit of medieval Jurisprudence by the Bologna school. We have already insisted upon the literary character of the earlier legal literature. From another point of view it might be styled philosophical. In many of the countries in which Roman Law was studied, it must be remembered that its enactments were merely called in to fill up gaps left by local laws or customs, to explain and to supplement in a more scientific and philosophical manner the inadequate provisions of the non-Roman or half-Roman codes or customs of the barbarian kingdoms<sup>1</sup>. At times, indeed, the Roman Law-texts were studied almost purely as a literary exercise. Even where, as among the Romanised inhabitants of the Italian cities, the old Roman Law was still theoretically current in its integrity, it was looked upon to a large extent as a kind of higher natural Law which owed its authority as much to its intrinsic reasonableness as to its express enactment. The very conflict of Laws

type embedded in the Accursian gloss are found more frequently in the Institutes and Code than in the Pandects, and more frequently in the Dig. Vet. than in the Dig. Nov.

Fitting) declares: 'Alienæ gentis legibus ad exercitium utilitatis et permittimus et optamus; ad negotiorum vero discussionem et resultamus et prohibemus.' (Bouquet, IV.

<sup>1</sup> A Visigothic Law (cited by p. 294.)

CHAP. IV, which in the Dark Ages prevailed among the mixed populations of the Lombard towns (where every one was supposed to be judged according to the law of his own race), tended to bestow this universal character upon the Law which, by virtue largely of its intrinsic superiority, was gradually asserting its supremacy over all rival systems. Hence it was natural that the Law-writers and Law-teachers should be more anxious to extract from the texts before them a principle which seemed to accord with their ideas of equity and natural justice than to interpret, in the spirit of the exegete or the mere practitioner, the actual letter of the texts: the Doctors of the early Middle Age often wrote rather as Publicists, Jurists, legislators than as mere lawyers: or, if they wrote as lawyers, they wrote in the spirit of the old Jurisconsults of the time when the *Responsa prudentum* were looked upon as actual sources of Law. At times they venture explicitly to criticise the provisions of the code before them, and to substitute rules of their own, as though fully on a level in point of authority with the rule which they so superciliously set aside. From the point of view of the Jurist, the Innerian epoch represents the beginning of a more close, critical and textual<sup>1</sup>—and at the same time more professional—study of the original sources of the Law.

Organiza-  
tion of  
legal  
Study.

(3) From the point of view of the historian of education, the epoch introduced by Innerius marks the beginning of the systematic study of the whole Corpus Juris Civilis as the regular curriculum of an ordinary legal education. Hitherto the ordinary text-books had been in parts of Europe the West-Gothic Breviarium, elsewhere the Institutes, together with the compilations or introductions composed by the older medieval teachers. It was at Bologna in all probability for the first time that lectures

<sup>1</sup> This return to the letter of the Imperial decrees no doubt tended to bring into prominence the source of their authority and so to emphasize the legislative prerogatives of the

Roman Emperor, whether we regard this attachment of the Bologna School to the *littera scripta* as the cause or the effect of its Imperialist proclivities.

were delivered on all parts of the Corpus, and that attendance at such a complete course of lectures became the indispensable equipment of a properly trained Civilian. The sections into which the Law-texts are still divided are expressly ascribed to Irnerius by Odofredus<sup>1</sup>. How far the system of legal education—the division of lectures into ordinary and extraordinary, the ‘Repetitions,’ the disputations, and the examinations—which we find in operation in the later University of Bologna may be traced back to the age of Irnerius, we have no materials for estimating. The examinations and the ceremonial of graduation are in all probability not earlier than the generation of Irnerius’ disciples. But at all events we may safely declare that the organization of legal education which extended itself in time to all the Universities of Europe and which has to a large extent descended to modern Universities, is the work of the early School of Bologna and that this work of organization was begun by Irnerius.

(4) We are merely describing another side of the same change when we trace back to Irnerius and his immediate followers the differentiation of Law-studies and Law-students from the Faculty of the Liberal Arts.

If the whole Corpus Juris was to be taught, it required the undivided attention of its students; henceforth the student of Law had no leisure for other studies, and the student of Arts no longer ventured to meddle with so vast and so technical a subject until mere school-education was over. There may, indeed, have been special Schools at which Law was taught by distinct teachers at such places as Pavia and Ravenna before the rise of the Bologna School. But from this time the distinction of the teachers and the students of Law from other teachers and students came to be much more sharply drawn and extended itself to all Universities and Schools at which Law was taught at all. The change was not indeed quite complete in the time of Irnerius. In his day *Dictamen* was still a prominent element in a legal education, and *Dictamen* included the

CHAP. IV,  
§ 1.  
→→→  
Separation  
of Law  
from  
general  
Education.

<sup>1</sup> See above, p. 116 n., and below, p. 208.

CHAP. IV, art of literary composition as well as the technical art of  
 §. I.  
 — the Notary. Even the notes of the 'Glossators' who followed Irnerius still retained something of the grammatical or literary character which marked the expositions of the Founder of their School. But in the main it is true that from the time of Irnerius Law ceases to be a branch of Rhetoric and therefore an element in a liberal education; it becomes a purely professional study for a special class of professional students.

A new  
 class of  
 Students.

(5) One consequence of this change—though we have little direct evidence on the subject—was no doubt the growth of a class of students older and more independent than the students of the earlier Middle Age. In this fact—when taken in connexion with the lay character and higher social position already characteristic of the Italian student—we may trace the germ of that most characteristic institution of Bologna, the Student-University. It was from the age of Irnerius, or at least very early in the century ushered in by his teaching, that men of mature age—men of good birth and good position—beneficed and dignified ecclesiastics<sup>1</sup> or sons of nobles—flocked from the remotest parts of Europe to the lecture-rooms of Bologna. Con-

<sup>1</sup> See for instance the *Acta Nationis Germanicae*, where on an average about half the students matriculated are beneficed ecclesiastics, the great majority of them being Dignitaries or Canons. It must, however, be remembered that by Canon Law a boy of fourteen might be a Canon of a Cathedral Church. Exceptional instances are mentioned of very young Bolognese students, such as Baldus who held a *repetitio* at 15 (Savigny, cap. lv. § 66): parallels to which might be found in the Oxford of the last generation. Phillpotts, afterwards Bishop of Exeter, entered as a Scholar of Corpus at 13, and Bethell (afterwards Lord Westbury) at Wadham at 14 in spite of the Warden's objection that they

'did not receive children.' The Statutes of Florence exclude from the right of voting students under 18. On the whole it appears that a majority of law-students in Italy were not younger than modern undergraduates, while the proportion of men considerably older was very much larger. It is curious, however, that the minimum age for the Doctorate was lower than that at Paris. The Paris M.A. was required to be 20 (see below, p. 453); while in Italy (though the Statutes are silent) Petrus Anchoranus (ap. Middendorp., *Acad. Celebr.* Col. Agrippinae, 1602, p. 141) lays it down that a Doctor must be at least 17 and of legitimate birth.

nected with this change in the position of the Law-students CHAP. IV,  
 was the rise of the Law-Doctor in Southern Europe to a § 1.  
—+—  
 position of marked superiority to that of all other Masters.  
 Legal knowledge possessed then, as it still possesses, a  
 political and commercial value to which no purely specula-  
 tive knowledge can pretend. No teachers perhaps in the  
 whole history of Education had hitherto occupied quite so  
 high a position in public estimation as the early Doctors of  
 Bologna ; their rise to this position marks an epoch not  
 only in the evolution of the University system but in the  
 development of the legal profession.

## § 2. GRATIAN AND THE CANON LAW.

CHAP. IV, On the Origines of the Canon Law I have consulted chiefly MAASSEN, § 2. *Geschichte der Quellen und der Literatur des canonischen Rechts*, T. I. Gratz, 1870; SCHULTE, *Geschichte d. Quellen u. Literatur des Canonischen Rechts*, Stuttgart, T. I. 1875, T. II. 1877, T. III. 1880; FRIEDBERG, *Corpus Iuris Canonici*, Lipsiæ, P. I. 1878, P. II. 1881; SARTI, *De claris Archigymnasii Bononiensis Professoribus*, 1889, T. I. P. ii. p. 317 sq.

The forged  
Decretals.

THE movement which is associated with the name of Gratian played as large a part in the development of the University system as the Irnerian revival of the Civil Law, and was destined to exercise perhaps an even more powerful influence over the course of European affairs. Twice in the course of its onward march the Papal Absolutism received a powerful impulse from literature: first from the publication of the pseudo-Isidorian Decretals in the ninth century, and now again in the middle of the twelfth from the publication of the *Decretum* of Gratian. By this comparison it is not intended to place the compiler of the *Decretum* on the moral level of the Isidorian forger. Though incorporating the pseudo-Isidorian and many other spurious documents, the *Decretum* was a perfectly *bona fide* compilation. From a very early period attempts had been made to codify the mass of Conciliar Canons, Papal rescripts, patristic *dicta*, and enactments of Christian Emperors, from which the Law of the Church had to be gleaned<sup>1</sup>. And in the eleventh and twelfth centuries the improved method and completeness of these compilations had fully kept pace with the advance of secular Jurisprudence. Among the more important predecessors of Gratian's work

Gradual  
Codifica-  
tion of the  
Canon Law

<sup>1</sup> An account of those which survive is given by Savigny (cap. xv. § 100 sq.); Schulte, vol. I. p. 29 sq.; Friedberg, I. p. xlii. sq. The earlier compilations consist simply of extracts from Canons or Rescripts arranged in chronological

order: but as early as the ninth century they begin to be arranged under the order of subjects, and these show the influence of the Civil Law in their arrangement, and also contain numerous extracts from the Institutes, &c. Cf. Maassen, p. 798 sq.



may be mentioned the *Decretum* of Burchard of Worms CHAP. IV,  
 (1012-1023), the *Collectio Canonum* of Anselm of Lucca § 2.  
 († 1086), and the work bearing the same title by Cardinal  
 Deusdedit (1086-1087)<sup>1</sup>. But the most complete of all  
 these earlier Collections were the two compilations,  
 known respectively as the *Panormia* and the *Decretum*,  
 ascribed to Ivo, a pupil of Lanfranc at Bec and after-  
 wards Bishop of Chartres<sup>2</sup> (1115), a city famous for its  
 school of classical literature almost before the dawn of  
 Parisian Science. In fact, the *Decretum* of Gratian,  
 which by its superior completeness and arrangement  
 rapidly supplanted all rivals, is little more than a re-  
 editing of the materials collected by a succession of  
 Canonists.

[The *Decretum* is one of those great text-books which, The *Decre-*  
*tum* of  
 Gratian.  
 appearing just at the right time and in the right place,  
 take the world by storm.] For in form it must be re-  
 membered that the *Decretum* is a text-book and not a code.  
 Its title is a *Concordantia discordantium Canonum*. While  
 its arrangement is more distinctly juridical than the half-  
 theological, half-legal compilations which had preceded it, its  
 method (unlike theirs) is distinctly Scholastic: and so far it Its scholas-  
 tic method.  
 may be considered as an attempt to do for Canon Law what  
 Peter the Lombard did a little later<sup>3</sup> for Theology proper  
 by the publication of the Sentences. Both works are only  
 fresh applications of the method inaugurated by Abelard.  
 The mighty influence of the *Sic et Non* is as palpable in the  
*Decretum* as in the Sentences. Gratian's method is to  
 present the reader with all the authorities alleged on both

<sup>1</sup> The two earliest collections of importance are (1) an anonymous *Collectio Anselmo dedicata* (883-897) and (2) the *libri duo de synodaliibus causis et disciplinis ecclesiasticis* (c. 906) by Regino, Abbot of Prüm. Friedberg, I. cc. xlii, xliii.

<sup>2</sup> The *Panormia* has been edited: (1) Basil. 1499, 4to. (2) Lovan. 1537, 8vo. (3) Lovan. 1561. fol. The *Decretum Ivonis* was printed at Louvain in

1561 and is included in Ivo's *Œuvres complètes*, Paris, 1647. Both are reprinted by Migne, tom. 161. The *Panormia* is unquestionably the work of Ivo; of the *Decretum* the authorship is more doubtful. Sarti, I. P. ii. p. 318.

<sup>3</sup> So Friedberg (I. p. lxxiv), though Schulte makes Gratian use the Sentences. Denifle dates the Lombard's work 1145-1150 (*Archiv*, I. p. 611).

CHAP. IV, § 2.  
 sides of every disputed question in Ecclesiastical Law. The most exaggerated statements of views the most opposed to those of the compiler are produced with all the freedom and ostensible impartiality employed by Scholastic Theologians in stating the arguments of the *advocatus diaboli*. Citations from Laws or writers whose authority the compiler would have disputed are given no less than rulings of the most unquestionable validity: it is even maintained that Gratian did not feel bound to exclude documents which he knew to be forged; his object being simply to present the reader with the evidence actually alleged by the conflicting parties. The compiler's object is to extract from the conflict of opinions the doctrine which from its superior authority, its more recent date, or its intrinsic reasonableness, may be taken to be the ascertained Law of the Church. Sometimes the writer's opinion is indicated in express words at the beginning or end of the citations, at others (when the case is clear) the authorities are left to speak for themselves<sup>1</sup>.

A Text-book, not a Code.

(Almost from its first publication the *Decretum* sprang into the position of a recognised text-book both in the Schools and in the Ecclesiastical Courts. But a text-book the *Decretum* always remained. | The authority due to the opinion of Gratian himself is the authority which in our own Courts is ascribed to Bracton or Coke: his own comments—the *context* as they are technically called—are appealed to in the Ecclesiastical Courts, either as a witness to the Common Law or traditional practice of the Church or as the opinion of an eminent Jurist, not as itself a binding authority. The several Canons or other extracts which form the substance of the book derive no authority from their insertion in the *Decretum* or their adoption by its compiler that they would not have possessed independently of such insertion

<sup>1</sup> The *Decretum* is divided into two parts. In the first the main outlines of the Law are collected. The second is occupied with the discussion of

*causa* or imaginary cases, each of which gives rise to a number of *questiones* which are discussed in a thoroughly Scholastic manner.

or adoption. Nevertheless it must be remembered that CHAP. IV, § 2. the authority of a text-book was in the Middle Ages something of which we have very little conception. To the medieval Doctor the *littera scripta* was an end of all strife not only on matters of faith but on matters of Science or speculation. The authority of Aristotle in Philosophy and of Hippocrates in Medicine was not less than that of S. Paul or S. Augustine in matters of Theology. In a world habituated to this reliance on authority, it is obvious what an accretion of strength was brought to the cause which its compiler represented by the appearance and universal reception of such a text-book on what had hitherto been the chaotic and ill-defined field of Ecclesiastical Law. That cause was, it need hardly be said, the cause of Papalism against Imperialism, and what in that age was practically the same thing (at least in Italy), the cause of ecclesiastical immunity against civil authority. Wherever Canon Law was studied at all, it had henceforth to be studied in a work which placed the decrees of the Roman Pontiffs practically on a level in point of authority with the Canons of General Councils or the consensus of the most venerable Fathers. Individual Doctors might differ from the views of Gratian, particular States or even particular Churches might refuse to accord to the decrees of the Roman Pontiff the reception which was given to them in the Courts of Rome or the Schools of Bologna, but nevertheless the eventual triumph of the *Decretum* is a monument of the victory, at least within the bosom of the Church, of the ideas for which Hildebrand contended against the Emperor Henry IV and S. Thomas against our own Henry II. The ideas of national independence and Royal prerogative such as had animated so many of the English Bishops in their opposition to Anselm and Becket, disappeared from the minds of a generation of churchmen whose education had been based upon the *Decretum* of Gratian.

Of Gratian himself and his life almost nothing is known. Life of Gratian. He was a monk in the Camaldunensian Monastery of

CHAP. IV, S. Felix in Bologna<sup>1</sup>. Lest mistaken inferences should  
 § 2.  
 → be drawn from this fact, it may be added that there is not the slightest trace of any School of Theology or of Canon Law in connexion with that or any other Monastery at Bologna<sup>2</sup>. Although commonly styled Magister, Gratian was not, so far as is known, a teacher at all, but a solitary penman. It is natural to conjecture that he may have been among the pupils of Innerius, but of this we know nothing. The *Decretum* is traditionally stated to have been published in the year 1151, but from examination of other works which appeared before that date, it seems to be generally agreed that the *Decretum* was completed at least as early as 1142<sup>3</sup>.

Date of  
Decretum.

Oppor-  
tuneness of  
its appear-  
ance.

We have said that the *Decretum* owed no small part of its success to its appearance at the right time and in the right place. In point of time it came about twenty years after the settlement of the long feud between the Papacy and the Empire in the matter of Investitures by the Concordat of Worms in 1122. It was this conflict—a conflict of antagonistic ideals of human society no less than of opposing armies—which gave so great an impetus, which imparted such intense interest and actuality, to the legal and canonical studies of the Innerian epoch. The outcome of that conflict was—for the present at least—a modified victory to the Church party. In theory, though not always in practice, the principle of the Concordat of Worms remained the accepted principle as to the relations between Church and State on this fundamental point throughout the Middle Ages. Thanks to Gratian's

<sup>1</sup> Sarti, I. P. i. p. 331. There are some traces of an earlier residence at Classe (Ravenna), *ib.* 332. The Canonist Huguccio, the Master of Innocent III, was also a monk of S. Felix, according to Sarti (I. i. p. 372), but his evidence does not seem to prove the statement.

<sup>2</sup> How far the Schools of Canon Law, before their definitive differentiation from Theology, were connected

with the Cathedral, it is more difficult to say. Bishop Lambert in 1065 gives an endowment to the Church in which occur the words 'Idcirco nostros canonicos in studiis intentos esse decrevimus.' Doc. ap. Sarti, T. I. pt. i. p. 6.

<sup>3</sup> Schulte, I. p. 48. Cassani (p. 192) says before 1141. The traditional 1151 rests upon the authority of a gloss. Sarti, I. P. ii. p. 336.

method of antagonistic citation, the whole history of the controversy, as well as its eventual settlement, could be studied by the medieval Churchman in a single work. To prove that the *Decretum* appeared at the right place, it is only necessary to say that it appeared at Bologna. Bologna was the centre of the Investiture controversy in so far as it represents an intellectual and not a merely physical antagonism. It was in the Bologna Jurists that both parties found their intellectual champions. Irnerius' application to the Civil Law seems to have been partially inspired by the need which the Countess Matilda experienced of learned defenders for the cause of the Church and of testamentary freedom: afterwards Irnerius and other Bologna Jurists are found playing a leading part on the Imperialist side. At the Diet of Worms the solution ultimately arrived at was chiefly the work of Lambert of Fagnano, citizen and Archdeacon of Bologna, afterwards Pope under the title of Honorius II<sup>1</sup>. Another great champion of the Church's cause was teaching Theology—in which Canon Law was then included—in the Schools of Bologna while Gratian was working in defence of the same cause in his laborious cloister, Roland Bandinelli, afterwards Pope Alexander III, whose *Summa* of Canon Law still survives<sup>2</sup>. Little as we know of the Bologna Schools of this epoch, there can be no doubt that these momentous questions of Constitutional Law in Church and State did much, both by the intellectual stimulus which they supplied and by the practical demand for trained lawyers which they created, to raise the Law-schools of Bologna to their proud pre-eminence. It is easy to understand how welcome such a composition as the *Decretum* would be to the defenders of the Papal cause; and, once accepted as the recognized text-book by Bologna, the prestige of the School secured the ecumenical reception of Gratian's work.

CHAP. IV,

§ 2.

Its influence due to the School of Bologna.

<sup>1</sup> The importance of Lambert in this controversy is pointed out by Cassani, p. 41 sq.: cf. Sarti, I. ii. pp. 636-7.

Lucius II was also a Bolognese.

<sup>2</sup> Edited by Thaner, *De Summa Magistri Rolandi*, Innsbruck, 1874.

CHAP. IV.      The connexion of the Canon with the Civil Law is almost  
     § 2.  
 Relation of Canon to Civil Law.      too vast a question to be touched upon here: but a few words as to the relation between the movement represented by Irnerius and the movement represented by Gratian are imperatively called for, to explain the position which these studies occupied in relation to each other and in relation to other University Faculties at Bologna and elsewhere.

(1) The Civil a source of the Canon Law.

The connexion between the formation of the *Corpus Juris Canonici* and the old Imperial Jurisprudence of Rome may be regarded from three main points of view. In the first place the Civil Law may be regarded as one of the actual sources of the Canon Law. The Civil Law of Rome had entered into the composition of the law of the Christian Church at every stage of its formation. Its subtle and unrecognized influence upon the forms, institutions and organization of the Christian Church—nay, in the West, even upon the very content of her Theology—dates from the earliest days of Gentile Christianity. Every growth of systematic Theology—at least in the Latin half of Christendom—deepened its influence. Then, in proportion as ecclesiastical bodies acquired property and became involved in complicated secular relations with one another and with non-ecclesiastical property-owners, a knowledge of Law became increasingly necessary to ecclesiastical persons. The conversion of Constantine imparted of course an immense impetus to this tendency<sup>1</sup>. The laws of the Christian Emperors became laws at once of the Church and of the State; the sanction of Christian Emperors gave the force of coercive jurisdiction to the rules of the Christian Society: the increasingly legal character of the Church's internal discipline tended to introduce the forms and procedure of the secular tribunals into the administration of the Christian Society and even into the relations of the individual conscience towards God. The extension of ecclesiastical jurisdiction to large classes of civil cases tended in the same direction. The barbarian conquests

<sup>1</sup> 'Der Begriff eines Kirchenrechts      liche Normen staatliche Anerken-  
 entstand in dem Momente, wo kirch-      nung fanden,' Schulte, I. p. 32.

promoted still further the fusion of Law and Theology. In an ignorant age the Bishops and clergy became, if not the sole, certainly the most learned, depositaries of Roman Jurisprudence. On the principle of personal Law recognized by the barbarian rulers, the clergy in Italy were as Roman citizens entitled to claim the privilege of trial by Roman Law; and, throughout the Middle Ages, the Roman Law was recognized as more or less applicable to the transactions and property of ecclesiastics and ecclesiastical corporations in proportion as the immunity of ecclesiastics from the jurisdiction of the Civil Courts was recognized at all<sup>1</sup>. The combined result of all these causes was that even before the appearance of the *Decretum*, the Roman Law, whether by actual embodiment in Canons or by practical recognition, already governed the forms and procedure of the ecclesiastical Courts and supplied the principles of action wherever property or civil rights were concerned. In fact it may broadly be asserted that everything in the Canon Law was Roman which was not of directly Christian or of Jewish origin.

From another point of view the Canon Law, as embodied in the *Decretum* of Gratian, may be looked upon as an imitation of the Civil Law. It was the systematic study of the compilations of Justinian in the Schools of Bologna which inspired the Curialist monk with the ambition to create for the Church a code no less complete, no less imposing, and no less scientific than the code of the State: and this object could only be effected by means of a still further infusion of Roman Law into the disciplinary system of the Western Church. Every fresh step in the development of the Canon Law after Gratian brought with it a still further infiltration of legal ideas, so that ere long a study of the Civil Law became an indispensable preliminary to the education of the Canonist, who became in conse-

CHAP. IV,  
§ 2.

<sup>1</sup> By Savigny (cap. iii. § 40; and cap. xv. § 95) these qualifications are omitted. If, as seems to be the case, Savigny refers to the 'Ger-

manic States' in the pre-Norman period, England at all events must be excepted; cf. Brunner, *Deutsche Rechtsgesch.*, Leipzig, 1887, I. p. 269.

CHAP. IV, quence less and less of a Theologian, and more and more of a lawyer.

§ 2.  
 (3) The Canon Law as a reaction against the Civil.

From a third point of view the *Decretum* may be said to represent a reaction against the ideas associated with the Civil Law. The influence of the revived study of the Imperial Codes in promoting the growth of Imperialist ideas in Italy may no doubt be exaggerated: but there can be no question about the reality of that influence, at least in the eleventh and twelfth centuries: we have already noticed the part played both by the Ravennese and the Bolognese Doctors in opposition to the claims of the Papacy. The advantage which the Empire derived from its possession of a venerable system of Law whose continuity was everywhere more or less completely admitted and in which the Emperor was recognized as the fountain-head of all authority, suggested to the partisans of the Papacy the idea of setting up an opposing system of ecclesiastical polity in which the Pope should take the place accorded by the Civil Code to the Holy Roman Emperor. By the labours of successive compilers culminating in the final work of Gratian, the Canon Law was for the first time erected into a system distinct from Theology on the one hand and from the Civil Law on the other.

Differentiation of Canon Law from Theology.

The importance of this change in the development of the University system at Bologna needs no comment. We have seen how Irnerius marks an epoch in the history of education by the differentiation which he effected between the study of Law and the study of the Liberal Arts. With the name of Gratian must in like manner be associated the differentiation of Canon Law from general Theology, of which it had been hitherto but an ill-defined department. There is abundant evidence that in the time of Gratian the study of Theology was carried on with as much vigour and in the same spirit at Bologna as at Paris. The enemies of Abelard complained bitterly that Abelard's books had flown across the Alps. The earliest Bologna Canonists were, as has been made more



than ever evident by recent researches of Father Denifle, Theologians as well. Rolandus, Omnibonus, and Gundulph composed books of Theological Sentences<sup>1</sup>, as well as books on Canon Law: and the two last were, as Theologians, avowed disciples of Abelard. Even Gratian himself (as we have seen) owed his method to the Abelardian influence. The Civil Law was hardly regarded as a proper study for ecclesiastical persons<sup>2</sup>. But after the time of Gratian all this was changed. | The study of the *Decretum* called into existence a class of teachers and students distinct alike from the Theologians on the one hand and from the Civilians on the other, but ultimately in much closer relation with the latter than with the former<sup>3</sup>.

✓ In the middle of the twelfth century the study of Theology was (it would seem) more or less closely connected with the Cathedral. But by the following century a College of Doctors in Decrees has been developed side by side with the College of Civil Law, and no less independent of the Cathedral and the Bishop. | The Cathedral chair of Theology no doubt remained, but from this period the study of Theology proper ceased to have any special importance at Bologna. In the thirteenth century the theological instruction was here practically confined to the Schools of the Mendicant Friars and had no organic connexion with the Universities

<sup>1</sup> All three collections exist in MSS. discovered or first described by Denifle. See his interesting Articles, in which ample extracts are given: *Archiv.* I. pp. 402 sq., 584 sq. *Die Sentenzen Rolands* are now edited by Gietl (Freiburg im Breisgau, 1892).

<sup>2</sup> See Ep. VIII of Petrus Blesensis (Migne, T. 207. c. 22) 'ad quemdam Priorem,' apologizing because in an address to his convent 'quædam interserui, quæ potius philosophum et ethnicum, sicut asseris, sapiebant, quam Christianæ fidei professorem.' The same writer, who had studied the Civil Law of Bologna, tries to defend himself by showing that 'Je-

remias propheta quasi in jure civili fuerit eruditus.' Yet he confesses that 'res plena discriminis est in clericis usus legum.' (Ep. xxvi, ib. c. 91). As to the later prohibition of the study to Priests, beneficed clergy, and monks, see Appendix xi. It was rendered entirely inoperative by wholesale dispensations.

<sup>3</sup> It was only gradually that the Canon and Civil Law came to be studied by the same persons. Pasci-poverus (fl. circa 1240-1250) is said to have been the first 'Utriusque juris professor': he wrote a 'Concordia juris canonici cum civili.' Sarti, I. pt. i. p. 173.

CHAP. IV, or Doctoral Colleges. Even the erection of a theological Faculty at a later date, of which I shall speak hereafter, made practically little change in the academical system. The intellectual movement which culminated in the rise of the Bologna School of Law was felt as powerfully by the Church as by the laity. Indeed, even in Italy, there were perhaps nearly as many clerks as laymen studying in the Universities: but after the age of Gratian the studies even of ecclesiastics took a predominantly legal turn; speculative Theology was abandoned in favour of the Canon and even the Civil Law: while the estrangement of the Canon Law from Theology kept pace with the increasing closeness of its union with the Faculty of Civil Law<sup>1</sup>.

The Canon Law and the 'lay spirit' of Bologna.

The contrast between the lay, democratic, Student-Universities of Italy and the hierarchically governed Church-schools of Paris and Oxford has been dwelt upon often enough. At times, however, a greater importance is given to the contrast than is warranted by the facts of the case. From a merely constitutional point of view, nothing can be more important than a correct apprehension of this fundamental distinction. But at times this constitutional difference is supposed to be a comprehensive key to the spirit of the respective Universities. / The spirit of Bologna is represented as free, enlightened, anti-Papal, anti-clerical, revolutionary. Paris is regarded as the home of narrow bigotry, theological conservatism, and ecclesiastical despotism. Such a representation arises from the importation of modern ideas into a period in which they were quite unknown. Bologna owed its fame as much to the Canon Law as to the Civil Law: and that School of Canon Law originated, as we have seen, in the triumph of all that is represented by the name of Hildebrand. Even in the Imperialist Civillian of Bologna there was hardly anything in common with the modern anti-clerical. Of the spirit of intellectual revolt, of freedom of thought

<sup>1</sup> Ægidius Fuscararius († 1289) is said to have been the first layman who taught Canon Law. Sarti, I. ii. p. 447.

and audacity of speculation, there was far more in the earlier days of Paris than there ever was at Bologna. If we speak of the 'lay spirit' of Bologna in contrast with the clerical spirit of Paris, we shall be nearer the mark, but it must be distinctly understood that the lay spirit was not necessarily anti-clerical or irreligious, and that the clerical spirit of the North was by no means always ultra-orthodox or submissive, still less Ultramontane. The Bologna Civilian is a representative of the lay spirit if by that is meant that his mind was entirely absorbed in the practical affairs of life to the exclusion of speculative questions; and hardly less might be said with truth of the Bologna Canonist. In the eleventh and twelfth centuries, Religion exercised at least as powerful an influence upon human affairs in Italy as it did in the North of Europe: but here even religious questions assumed a political shape. Bologna was absorbed with the questions about Investiture, about the relations of Papacy and Empire, Church and State, Feudalism and civic liberty, while the schools of France were distracted by questions about the Unity of Intellect, about Transubstantiation, about the reality of Universals.

The publication of the *Decretum* was merely the basis of a vast superstructure. Its importance is, in fact, largely due to its having suggested to the Papacy a new method of imposing its will upon Christendom. In 1234 a compilation of five books of Decretals, selected for the most part from the previous Decretals or rescripts of himself and his predecessors<sup>1</sup>, was published by Gregory IX and despatched to the Universities of Paris and Bologna with the command that they should be taught in the Schools<sup>2</sup>. In 1298 there followed the *Liber Sextus* of Boniface VIII. The *Corpus Juris Canonici* was completed by the addition

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<sup>1</sup> Though partly (like the *Decretum*) derived from earlier materials—Canons, Fathers, Imperial Laws, and Frankish Capitularies. Friedberg, II. cc. xi-xviii.

<sup>2</sup> Friedberg, II. cc. x. 2. The Code was the work of the Papal Penitentiary Raymund de Peñafort, and was really made from a number of previous collections.

The Decretals of Gregory IX.  
The Liber Sextus.

CHAP. IV, of the *Clementines* prepared by Clement V and published  
 § 2.  
 → by his successor John XXII in 1317<sup>1</sup>, and an unofficial  
 collection of later Decrees extending down to the time  
 of Sixtus IV and known as the *Extravagants*<sup>2</sup>. The  
 The Extra- Decretals of course occupy a different position in point of  
 vagants. authority from the *Decretum*. The *Decretum* was a text-  
 book: the Decretals were a code. But though the Decre-  
 tals carried with them the full weight of the Papal authority,  
 the extent to which they were practically enforced in the  
 ecclesiastical Courts depended upon the degree of recogni-  
 tion accorded to them by the Synods and Prelates, and  
 still more by the secular Princes, of various nations. Even  
 the Decretals had to be modified in their practical opera-  
 tion by the local custom of the more independent National  
 Churches and by their varying relations to the temporal  
 power<sup>3</sup>, while in the *Clementines* and the *Extravagants*  
 the exaltation of Papal and ecclesiastical authority was  
 carried to such a pitch that they conflicted with the secular  
 laws of every country in Europe.

The Canon It is, indeed, sometimes much too broadly asserted that  
 Law in the Roman Canon Law was only current in England in so  
 England. far as it was freely received by the Church of England and  
 embodied in her provincial Constitutions<sup>4</sup>. Though there

<sup>1</sup> There had been, however, a previous publication by Clement himself, but whether they were transmitted to the Universities before Clement's death in 1314, and how far they were altered afterwards, is disputed. See Ehrle in *Archiv*, IV. p. 361; Friedberg, II. cc. lvii-lxii; Denifle and Chatelain, *Chartularium Univ. Paris*. T. II. No. 708 et not., No. 754.

<sup>2</sup> These are divided into (1) the *Decretales Johannis XXI (XXII)*, made soon after the publication of the *Clementines*, and (2) five books of *Extravagantes communes*. Their arrangement in the form in which they were generally current and were included in the official 'Roman edition' of Gregory XIII, is due

to Jean Chappuis. Friedberg, II. c. lxiv.

<sup>3</sup> The English Courts, for instance, resisted the Canon Law requiring disputes as to rights of Patronage to be decided solely by the Ecclesiastical Courts and the reservation of every Civil suit in which an Ecclesiastic was involved to the Ecclesiastical Courts.

<sup>4</sup> The Bishop of Oxford, for instance, in his most interesting Lectures on the History of the Canon Law in England (Stubbs, *Lectures on Med. and Mod. Hist.* Oxford, 1886, p. 305) goes too far when he says that 'the great compilations are not received as having any authority in England.' Lyndwood's *Provinciale* is

were, no doubt, parts of it which remained practically inoperative, it is not disputed that, according to the law of the English Church (whatever the State might occasionally say to the contrary) an appeal lay from all inferior ecclesiastical tribunals to the Roman Court, where the cases were of course decided by the Canon Law; and the law of a Court of first instance cannot remain permanently and fundamentally different from the law of the appellate Tribunal by whose decision it is bound, even had the acknowledged jurisdiction of Rome been limited to the cognisance of Appeals, which was far from being the case<sup>1</sup>. It was the opposition of Kings and Parliaments and secular Courts rather than any claim to spiritual independence on the part of the Anglican Church herself that put obstacles in the way of the complete realization in England (as in most other countries) of the Curialist ideal.

But, whether recognized or not in the Courts, the whole of this marvellous jurisprudence of spiritual despotism was studied in the Faculties of Canon Law throughout Europe; and the Faculty of Canon Law was a Faculty which every University in Europe possessed. By means of the happy thought of the Bolognese Monk the Popes were enabled to convert the new-born Universities—the offspring of that intellectual new-birth of Europe which might have been so formidable an enemy to Papal pretensions—into so many engines for the propagation of Ultramontane ideas. Even in their earlier days the Universities often showed symptoms of

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§ 2.

Influence  
of the  
Canon Law.

not (as even the Bishop seems to suggest) 'the authoritative Canon Law of the realm' (*ib.* p. 309), but simply what it professes to be, a codified and annotated edition of the Provincial Constitutions, i. e. of such parts of the Canon Law as were peculiar to the English Church. It would be impossible to decide the simplest cases by the *Provinciales* alone (the important subject *De Jure Patronatus* is disposed of in three titles); and Lyndwood's notes habitually cite all parts of the Canon Law (including the

earlier Extravagants) and the continental Canonists as possessing as much authority in England as elsewhere, except where modified by the special custom or Canon of the English Church, such customs or Canons being usually due to lay pressure, e. g. a lay Court is allowed to decide a disputed title to Patronage.

<sup>1</sup> Professor Maitland refers me to Bracton, f. 412, where it is said that the Pope 'in spiritualibus super omnibus habeat ordinariam jurisdictionem.'

CHAP. IV, an anti-Papal spirit : at a later time they became the very  
 § 2  
 →→→ hot-beds of ecclesiastical revolt. But it was never in the ranks of the Canon Lawyers that the Papacy found its most formidable opponents. At all periods of the Middle Age it was the Canonists who filled the most important sees in Christendom : and herein lay one great cause of the failure of all Academic attempts at Church Reform. It was not so much the specific doctrines taught by the *Corpus Juris Canonici* that favoured Papal usurpations and ecclesiastical abuses of all kinds as the habit of mind which its study created. In all ages the lawyers, invaluable as a conservative force, have been as a body greater enemies of Reform than the Priests. The worst corruption of the Middle Age lay in the transformation of the sacerdotal hierarchy into a hierarchy of lawyers.

Its effects  
 on secular  
 Law.

And yet there is another side to the question. It may not be assumed that if the clergy of the later Middle Age had not become lawyers, they would have been devout Theologians or earnest Pastors. From the point of view of the Church no doubt the influence of the Canon Law stands almost wholly condemned to the modern mind : nor does the superiority of this ecclesiastical jurisprudence to that administered by the Civil tribunals (wherever the Roman Law was not in force), or its consequent extension to large departments of secular life, altogether destroy the impression that the development of the Canon Law was a retrograde movement—the most conspicuous triumph of that ecclesiastical reaction which to so large an extent managed to enlist the newly-born intellectual forces of the twelfth century in its service. It is only when we turn to the indirect influence of the Canon Law upon the practice and procedure of the secular Courts, and even upon the substance of the secular Law in the less romanized parts of Europe, that we must recognize in the Canon Law one of the great civilizing and humanizing influences of the later Middle Ages. It was chiefly through the Canon Law that the Civil Law transformed the jurisprudence of nearly the whole of continental Europe. Even so, its record is not

wholly favourable: some growth of despotic power in King and Lord, some decay of rude Teutonic liberty, the historian—especially the German historian—has been wont to trace to the influence of Roman Law, steadily increased by the growth of Universities, especially during the fourteenth and fifteenth centuries. We have to take ourselves back to a state of society in which a judicial trial was a tournament and the ordeal an approved substitute for evidence, to realize what civilization owes to the Canon Law and the Canonists with their elaborate system of written Law, their judicial evidence, and their written procedure. Even the very chicanery of the ecclesiastical Courts assisted the transfer of administration and judicature from the uneducated soldier to the highly educated man of peace. From this point of view the development of the Canon Law and its diffusion throughout Europe represent a very important stage in the triumph of mind over brute force.

So far I have spoken of Irnerius, of Gratian, and the School of Bologna; only by anticipation has there been any reference to the University the foundation of which is traditionally ascribed to Irnerius. This was perhaps the best way of emphasizing the fact that in the days of Irnerius no such thing as a University existed at all. When the University arose, and what in its origin the University was, must be investigated in the next section.

CHAP. IV,  
§ 2.  
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No Uni-  
versities  
as yet.

## CHAP. IV, § 3. THE ORIGINES OF THE JURIST UNIVERSITIES.

§ 3.

The Anti-  
quarian  
bias.

THE passion for ascribing an immemorial antiquity to the place of one's education, which has hardly yet been killed by the progress of historical criticism, is a passion of very early growth in the history of the human mind. In the Middle Ages, indeed, men found it difficult to believe that an institution which had existed since a time 'whereof the memory of man goeth not to the contrary,' had not existed from the remotest antiquity. When once the Universities had sprung up it was found impossible to picture to the historical imagination a state of things in which there were no Universities. Another inveterate prejudice of the human mind is the disposition to ascribe the origination of a great institution to a great man. Greek cities ascribed their origin to an eponymous hero; and, if tradition did not supply them with a name for him, they invented one. The medieval scholar, accustomed by the later practice to associate the origin of a University with a Charter of Foundation, was driven to postulate such a foundation where history recorded it not, and if the Charter was not to hand, the forged one.

The Theo-  
dosian  
legend.

By the thirteenth century, and probably early in that century<sup>1</sup>, this familiar logical process had resulted in

<sup>1</sup> The deeds are printed—one by Ughelli, *Italia Sacra* (1717), II. p. 9, the other by Muratori, *Ant.* III. c. 21. In these documents the authority of the Archdeacon over the Inceptions, first entrusted to that official in 1219 (see below, p. 223), is enforced as though it were still by no means beyond the reach of attack. The growth of this monstrous legend is elaborately traced by Chiapelli (cap.

1). The *ἀρχαιότης* of the Theodosian legend seems to be an older tradition as to the foundation of the City by Theodosius I or Theodosius II. In 1306 the Papal Legate Ancaldo was petitioned to confirm the Theodosian privilege: the Legate replied that he must first see the Privilege. Ghirardacci, I. p. 525. The forgeries were then already in existence.



a legend which attributed the foundation of the University of Bologna to Theodosius II and in the concoction of a Charter of Foundation by that monarch bearing date 433 A.D. Unfortunately for the success of this patriotic effort, the zeal of the forgers somewhat overshot the mark. Two distinct Charters were produced, both purporting to be issued by the same Emperor in the same year. Possibly in consequence of this contretemps, the Theodosian legend has never attained the same popularity or acceptance as the legends which make Charles the Great the Founder of Paris and Alfred the Founder of Oxford, the last of which still maintains a kind of underground existence in University Calendars, in second-rate Guide-books, and in popular Histories of England. The early date of the legend is worth noticing as an illustration of the extremely small value which ought to be attached to scholastic traditions of this type even when they are not capable of the same definite historical confutation which is possible in this case. A further discussion of this and other inconsistent legends or traditions as to the origin of the University would be neither interesting nor instructive. All that is really known as to the origin of the School has been placed before the reader in a preceding section. So far there has been not the faintest trace of any even rudimentary organization similar to that of the later University. Irnerius and his contemporaries, so far as we know, were private and unauthorized teachers; neither they nor their scholars belonged to any institution or enjoyed any legal privilege whatever. The first legal Charter in which the School receives even an implicit recognition is a Charter of the Emperor Frederick Barbarossa, known as the Authentic *Habita* and issued in 1158 at the Diet of Roncaglia, in which the Doctors of Bologna played a very prominent part.

(This Privilege has often been treated as a kind of Charter, if not as an actual 'foundation,' of the University of Bologna. But though there is no reason to doubt that this legislation was primarily intended for the benefit of the increasingly numerous body of law-students at Bologna, that city is not

CHAP IV.  
§ 3.  
Privilege of  
Frederick I.  
1158.

CHAP. IV, expressly mentioned in its provisions, and it is perfectly arbitrary to limit its actual scope to the Schools of that place<sup>1</sup>. In any case this document does not recognize the existence of a University whether of Masters or of Students at Bologna or anywhere else. It is a general privilege conferred on the student-class throughout the Lombard Kingdom. This Charter does, however, constitute an important indication of the growing importance and the independent position of the Doctors of Law, and was no doubt procured by the interest of the Bologna Doctors. Its provisions were suggested by the older privilege conferred by Justinian upon the scholars of Berytus<sup>2</sup>. Besides taking the scholars under the especial protection of the Emperor, it provides that in any legal proceedings against a scholar, the defendant is to have the option of being cited before his own Master or before the Bishop<sup>3</sup>. Attempts were made at

<sup>1</sup> As is done by Savigny (cap. xxi. § 63). This limitation is criticised by Denifle (vol. I. p. 49 sq.), whose view I have adopted. He there examines a story embodied in a Latin poem (partly printed by Giesebrecht ap. *Sitzungsberichte d. bayer. Akad. d. Wiss. Histor. Klasse*, 1879, II. p. 285), according to which Frederick granted some such privilege to Bologna, on the petition of the Scholars in 1155. He comes to the conclusion that the Charter meant is the Authentic *Habita* itself, some copies of which bear no date, and that the story grew out of the fact of Frederick's having been near Bologna in 1155. It is quite possible that the Privilege was asked for and perhaps granted in 1155, but formally promulgated at the Diet in 1158 (as is suggested by Kaufmann, *Gesch. d. Deutschen Universitäten*, I. p. 164). On the part played by these Bologna Doctors at Roncaglia, see below, p. 259.

<sup>2</sup> The enforcement of the Emperor's regulations is entrusted at

Constantinople to the Prefect, at Berytus to the *Præses* of the province, the Bishop and the 'legum professores.'

<sup>3</sup> 'Coram Domino vel Magistro suo, vel ipsius civitatis Episcopo.'—There has been much needless discussion as to the meaning of 'Dominus,' but there can be no doubt that it is a synonym for 'Magister,' though Malagola (*Monografia*, p. 39) still appears to understand it of the Rector. The use of this title (which was affected only by the Law-professors) shows that the Law-students were primarily in view; though the term Magister would include the teachers of other Faculties. Justinian had entrusted a disciplinary jurisdiction over students and copyists at the Law-school of Berytus to the Professors in conjunction with the *Præses* of the province and the Bishop. But it appears doubtful whether this is extended to ordinary criminal and civil proceedings. See the *Proœmium* to the Digest.

times to extend the first of these provisions to the scholars in the other parts of Europe, and in the Italian Universities this pre-University Charter was usually recognized as the basis of all the special privileges conferred on particular Universities by the States in which they were situated. Whatever privileges were afterwards granted to the Universities, whatever jurisdiction was conferred on their Rectors, the jurisdiction of the Bishop and the Professors was usually, at least in theory, maintained. But after the rise of the Universities the scholar was not allowed by their Statutes to decline the jurisdiction of his own Rector. Hence the choice of tribunal practically passed to the plaintiff, and was lost by the defendant scholar<sup>1</sup>. The jurisdiction of the Professors was found difficult to enforce, and that of the Bishop remained only in the case of scholars who were also clerks.

CHAP. IV,  
§ 3.

While the Authentic in no way recognizes the corporate existence of a College or Guild of Doctors, it does indirectly make it probable that some such Society must have by this time sprung into existence<sup>2</sup>. In the days of Irnerius the teaching office could (so far as can be gathered) be assumed by any one who could get pupils: he required no license or permission from any authority whatever, ecclesiastical, civil, or academical. We can hardly, however, suppose that the Emperor would have conferred important judicial functions upon an independent body of self-constituted teachers like our modern 'Professors' of Music or of Dancing. It is therefore probable that in Italy as in France at least some recognized course of study was demanded by custom before the pupil could become a Master, and that he was required to obtain the approval of the existing body of Masters and

Indications  
of a Society  
of Masters.

<sup>1</sup> *Stat.* p. 12.

<sup>2</sup> I cannot understand the ground of Kaufmann's statement that at the time of the Authentic 'Es gab also damals wahrscheinlich schon landsmannschaftliche Verbindungen unter den Scholaren' (*Deutsch. Univ.* I. p. 166: cf. p. 184). These 'Verbindungen'

he apparently regards as 'Anfänge von Korporationsbildung' (I. p. 184). It is quite possible that the beginnings of informal Associations may be as early as 1158, but of this there is no evidence—least of all can it be inferred from the *Habita*.

CHAP. IV, to enter upon the teaching office by some public, definite ceremonial, such as the later *Conventus* or Inception. } We may therefore consider it tolerably certain that at least the idea of a co-opting College or corporation of Doctors dates in some shadowy form from before the year 1158; } although the Masters may not yet have proceeded to such definite manifestations of corporate existence as the making of written statutes, and the election of common officers. } The Guild was already in existence, but was merely, so to speak, a customary Society, which existed in fact, though not on paper. { Such an inference is strongly supported by the analogy of Paris, where we have positive evidence of the existence of a customary Guild of Masters, some ten or twenty years later, though it was not till fifty years after that that a single written Statute existed, and not till a still later period that the Guild was sufficiently organized to elect officers or use a common seal. { At Bologna the first express evidence of the existence of such a Society of Masters comes in the year 1215, when we hear of Boncompagni's new book being read before the 'University of Professors of the Civil and Canon Law' } but the whole system of degrees which is known to have been fully established before 1219 implies the existence of such a Society in a rudimentary form at a much earlier date. Taking the degree of Doctor or Master in its earliest form meant simply the being admitted or made free of the Guild of Teachers by receiving from one of its members<sup>2</sup> the insignia of Mastership.

<sup>1</sup> The *Rhetorica Antiqua* of Boncompagni, who says: 'Recitatus equidem fuit hic liber, approbatus et coronatus lauro Bononiæ apud sanctum Johannem in monte in loco qui dicitur paradus anno domini 1215 septimo Kal. April. coram universitate professorum iuris canonici et civilis et aliorum doctorum et scolarium multitudine numerosa.' Ap. Rockinger, *Sitzungsberichte der bay. Akad. zu München*, 1861, p. 135.

The same writer, however, says: 'Tunc amici . . . ad Majorem Ecclesiam deverunt (*sic*). Et ita fuit Magistrorum et Sclolarium Universitas congregata' (ap. Sarti, II. p. 32)—which might be held to indicate that some loose organization of *Masters and Scholars* preceded the formation of the Student-Universities. Cf. below, p. 214.

<sup>2</sup> It is probable that, originally, any Master might admit any other

In the account of Boncompagni's recitation, to which I have already alluded, the Professors of the Civil and Canon Law are described as forming a single Universitas<sup>1</sup>. What were the exact relations between the two classes at this time, we do not know; eventually there were two wholly distinct Colleges—one of Canon and one of Civil Law, each with a Prior and other Officers, and a code of Statutes of its own. It is probable that the College of Canon Law was a later imitation of the Civilian organization. In most other Universities, however, the Doctors of Civil and Canon Law were united in the same College or Faculty, though the degrees were distinct.

CHAP. IV,  
§ 3.  
Doctors of  
Civil and  
Canon Law  
at first  
united.

Two decades later than the Charter of Frederick I, we meet with another official recognition of the Scholars, though it does not distinctly imply the existence of any Academical organization. In 1189 a Bull of Clement III confirms an already existing legatine Ordinance forbidding Masters or scholars to offer to the landlord a higher rent for a house already inhabited by scholars<sup>2</sup>. At a very early date it became customary for the rents to be fixed by arbitrators or taxors, two of them appointed by the scholars, and two by the town. It is difficult to say whether the above-mentioned Bull implies the existence of this system<sup>3</sup>, but we find a similar system established

Taxation  
of Students'  
rents.

person to the Mastership, but that this right was controlled by the customs of the Profession. It is possible that this state of things lasted longer in the Arts Schools than in the Schools of Law. Cf. the way in which Rolandinus speaks of his graduation in 1221: 'apud ipsos Bononienses in scientia literali nutritus, in Anno Domini MCC XXI illic a Bonocompagno meo Domino, et Magistro, natione et eloquentia Florentino, licet indignus, recepi officium Magistratus.' *Lib. Chronicorum*, ap. Muratori SS. T. VIII. c. 314.

<sup>1</sup> It is not implied that the mere use of the term *Universitas* proves the existence of a formal Guild: the

term *Universitas* might be used quite untechnically of any collection of persons: but the passage seems to imply that the Doctors of Law were a recognized class or official body.

<sup>2</sup> Savioli, II. ii. p. 160. So Decretal. Greg. IX. III. Tit. xviii. c. 1.

<sup>3</sup> It is ordered that 'a te frater episcopo et tuo quolibet successore hoc singulis annis in communi audientia Magistrorum atque scholarium recitetur.' This implies that Congregations of some kind were customary, but it also shows a very different relation existing between the Masters and their Scholars from that which we find a century later.

CHAP. IV, in the very infancy of other Universities and it obtained  
 § 3- in some schools which never grew into Universities at all.

The Magis-  
 terial Guild  
 and the  
 'Conven-  
 tus.'

The University of Bologna has already been described as a University of students. And it is quite true that at Bologna it was the Guild or rather Guilds of students which eventually succeeded in getting into their own hands the real control of the Studium in most of those matters which were at Paris settled by the Masters alone. But it cannot be too clearly understood that the Doctors of Bologna, probably at as early a date as the Masters of Paris, formed a Guild or Guilds of their own, and that it was not till a later period than that with which we are now engaged that the control of strictly Academical matters passed to the Universities of students. It was a mere accident that the term University was appropriated by the Student-guild, while the Doctoral Guilds were known as Colleges. The students did no doubt at last succeed in reducing the Masters to an almost incredible servitude. But there remained one function and one only over which the Doctors to the last retained an exclusive control, and it is of the greatest importance that this should be clearly understood. Even the domineering Student-guilds of Bologna left to the Masters the indefeasible right which every professional Guild possessed of examining into the qualifications of candidates for admission to the Profession. The Doctors examined the Candidate, gave him license to 'incept' or give his public probationary discourse, after which, if this further test was satisfactorily passed, he was received into the Collegium of the Doctors of Civil or Canon Law, as the case might be, being presented by an existing member in the presence of the rest with the insignia of his office. Such in its essence was the idea of the 'Conventus,' 'Principium,' or 'Inceptio'—the simple institution which formed the keystone of the whole University constitution. Unless its nature and meaning are thoroughly understood, the whole organization of medieval education will remain an unintelligible enigma. Postponing to a later date a detailed explanation of this part of the

Academic polity, we must now proceed to trace the CHAP. IV.  
origines of the Student-Universities. § 3.

The Student-University.

The Student-University which originated at Bologna forms a wholly new departure in the history of education ; the institution is as distinct from anything which preceded it as it is unlike any of the modern institutions which have nevertheless been developed out of it. It is not, however, difficult to explain the genesis of the new creation, if we bear in mind the character of the environment wherein it grew up. We have already contrasted the state of Society in the Lombard towns with that which prevailed in the feudal Monarchies of Europe. We have seen that traditions of education, and of legal education, survived among the noble families of Italy at a time when the French or Norman nobles were inclined to look upon reading and writing as rather effeminate luxuries, fit only for plebeian clerks. It is probable, if we may draw an inference from the state of things which we find established at a later date, that the teaching of Irnerius attracted somewhat older men and men of much greater wealth and social position than the boys who attended the Arts Schools of Paris. Into the Bologna Lecture-rooms the idea of discipline never entered at all. The associations of the School and of the Cloister were alike absent. The Professor was not originally the officer of any public institution : he was simply a private-adventure Lecturer—like the Sophist of ancient Greece or the Rhetor of ancient Rome—whom a number of independent gentlemen of all ages between seventeen and forty had hired to instruct them. If many of the students were ecclesiastics, they were most of them already beneficed—many of them Archdeacons or dignitaries in Cathedral Churches<sup>1</sup>: and they owed no ecclesiastical obedience to their teachers. But even more important than the age and status of the

<sup>1</sup> The German students were probably more predominantly ecclesiastical than the Italian. In the earlier period laymen predominate even

among the Germans, in the latter period ecclesiastics nearly all holding Canonries or other benefices. See the *Acta Nationis Germanicæ*, passim.

CHAP. IV,  
§ 3.  
Fostered  
by the poli-  
tical and  
social en-  
vironment.

students was the political condition of the city in which Innerius and his successors taught. The conception of citizenship prevalent in the Italian Republics was much nearer to the old Greek conception than that which prevails in modern States. Citizenship, which is with us little more than an accident of domicile, was in ancient Athens or medieval Bologna an hereditary possession of priceless value. The citizens of one town had, in the absence of express agreement, no civil rights in another. There was one law for the citizen; another, and a much harsher one, for the alien<sup>1</sup>. Prolonged exile was a serious penalty, to which a body of young men of good position in their own cities, many of them old enough to be entering upon political life, would naturally submit with reluctance. The Student-Universities represent an attempt on the part of such men to create for themselves an artificial citizenship in place of the natural citizenship which they had temporarily renounced in the pursuit of knowledge or advancement; and the great importance of a Studium to the commercial welfare of the city in which it was situated may explain the ultimate willingness of the Municipalities—though the concession was not made without a struggle—to recognize these Student-communities.

<sup>1</sup> The Town-Statutes eventually provided 'quod scolares sint cives et tanquam cives ipsi habeantur, et pro civibus reputentur, donec scolares fuerint, et res ipsorum tanquam civium defendantur . . . nec possint ipsi tanquam forenses nec eorum res detineri vel molestari occasione represalie concesse contra commune vel civitatem terre vel castri, vel banni dictis terris castris vel civitatibus dati, vel alicuius debiti pecuniarii.' *Stat.* p. 162. It is of course certain that no political rights whatever were conferred upon students: the provision that they should be treated as citizens was necessary to

secure them the ordinary protection of the law. Scholars who had resided over ten years at Bologna were sometimes granted actual citizenship: but then they lost their rights in the University. Savigny, cap. xxi. § 69, *note*. That the grievances against which the foreign student wanted protection were not merely sentimental, we are reminded by the frequent occurrence of a privilege exempting scholars from torture except in the presence of and with the sanction of the Rectors. See e.g. *Stat. Florent.* ed. Gherardi, p. 109. So at Padua, *Stat. Artist.* f. xxxiii. b.



Two other circumstances serve to explain the patience with which Bologna and other towns after her submitted to the erection of an 'Imperium in Imperio' within their own walls, and to confer an extensive civil, and sometimes even criminal, jurisdiction upon the elected officers of a Student-club. The first is the prevalence of the conception of 'Personal Law.' For centuries Lombards and Romans had lived together under different codes of law and different magistrates. At an earlier date it had been quite common for even three or four men to live in the same town and yet to be in matters of private Law members of as many distinct states: and respect for these personal rights had not entirely died out in the thirteenth century<sup>1</sup>. It remained in all its fulness as regards the clergy. This conception made it seem the less unnatural that alien-students should live under the jurisdiction of their own Rectors, just as in Eastern countries where there is a mixture of races foreigners are freely permitted to live under the jurisdiction of their own Consuls or their own Bishops. And then there is a fact which is, indeed, the most important clue to the origin of Universities here and elsewhere. The University, whether of Masters or of Students, was only a particular kind of *Guild*<sup>2</sup>: the rise of the Universities is merely a wave of that great movement towards Association which began to sweep over the cities of Europe in the course of the eleventh century.

CHAP. IV,  
§ 3.  
Recognition of Student-rights facilitated by the conception of Personal Law,

and by the contemporary Guild-movement.

And the ruling ideas of the age made the Guild a closer and more powerful association in an Italian city than it could be in a modern state. In the first place, the Roman Law conferred a legal existence upon 'Collegia' or corporations of three persons or more, without any special authorisation of the state. In some of the Italian cities the Guelph and Ghibelin party-clubs (at Bologna known

No Charter required.

<sup>1</sup> Savigny, cap. iii, § 30 sq.

<sup>2</sup> As late as the middle of the fourteenth century this was still so fully realized in the Italian cities that we find at Florence the Statutes of the

*Universitas Scholarium* subjected to the approval of the 'Approbatores Statutorum Artium (trades or crafts) comunis Florentie.' *Stat. Florent.* p. 135.

CHAP. IV, as Lambertazzi and Geremei), overtly aiming at violent changes in the government of the city, were as much recognized legal corporations as the Guilds of merchants or craftsmen<sup>1</sup>. Moreover, while the legal authority of modern Clubs and other Societies over their members is based for a most part upon a mere contract, in the Middle Ages it was based upon oath. And in the Middle Ages an oath meant a great deal more than it does in modern communities. Perjury was a mortal sin: and the oaths of obedience consequently enabled the Guilds to subject disobedient members not only to public 'infamy' and to spiritual penalties at the hands of their confessors but even to proceedings *in salutem animæ* in the Ecclesiastical Courts<sup>2</sup>. The combined force of the social and the spiritual penalties thus wielded by the Guilds was so enormous

Influence  
of Oaths.

<sup>1</sup> Ghirardacci, P. I. p. 248.

<sup>2</sup> In the Italian Universities, every offence prohibited by the Statutes is forbidden 'sub pœna periurii.' Thus at Bologna, even absence from Congregation involved perjury unless the offender paid a price of five *solidi* within eight days (*Stat.* p. 129). So at Paris the Rector, 'si dicti Scholares ipsas bursas solvere noluerint, et rebelles extiterint, contra ipsos procedere tenebitur tanquam perjuros et infames (Bulæus, IV. 232). Whether this implied the promotion of an ecclesiastical suit or (as seems probable) simply a public notification of the fact, but such proceedings would have been quite in accordance with Canon Law. The German Nation at Bologna provides that the 'cohercio' of the Bishop of Bologna or his Vicar shall be brought to bear upon 'contradictores,' but with the explanation 'quorum iurisdictioni circa executionem conservacionis predicatorum ordinamentorum ipsa natio specialiter se subiecit.' *Acta Nat. Germ.* p. 350. Here the right to promote a suit rests upon consent; but in Gloria, *Mon. della Univ. di*

*Padova* (1318-1405) II. pp. 223-227, are documents which seem to relate to suits before the Bishop concerning disputes in the College of Arts where the jurisdiction is founded entirely upon the oaths taken by its members. So in London we find that the Bishop's Court 'entertained suits exactly analogous to those of the trades unions at the present day, turning on the question how far it is a breach of oath for the sworn member of the Guild to impart the arts and mysteries of his Guild to outsiders' (Stubbs, *Lectures on Medieval and Modern History*, Oxford, 1886, p. 316). It may be observed that the dependence of University authority upon an oath secured for the Papacy an especial jurisdiction over them, even where (as in Italy) they were not wholly composed of ecclesiastics. As to the ecclesiastical jurisdiction in matters of oath or contract, cf. Fournier, *Les Officialités au Moyen Âge*. Paris, 1880, p. 86; and, for its importance in the development of English Equity, Fry, *Specific Performance of Contracts*, London, 1892, p. 8 sq.

that in the Italian cities they often became more powerful than the State. At Bologna the Revolution of 1228 gave them an important constitutional position; their magistrates were almost equal in authority to the magistrates of the Republic and almost independent of their control<sup>1</sup>. In such a state of Society, membership of a Guild was essential to personal security. If the students had not formed themselves into Guilds, if they had not insisted upon legal recognition and privilege for their officers, the position of scholars residing in a foreign city would have been well-nigh intolerable<sup>2</sup>.

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To the Professors and Students who were citizens of Bologna these considerations of course did not apply. The State was not disposed to abandon any part of its jurisdiction over its own citizens, nor the Universities to receive as citizens of the Academic Commonwealth students who were unable to give it an undivided allegiance. (Bolognese students retained their natural citizenship: Bolognese Professors were accorded a high position in the constitution of the Republic<sup>3</sup>. Both alike were excluded from the scholastic Guilds. \

Citizens excluded from the Universities.

Thus, by merely attending to the conditions or environment in which the Law-Universities grew up, the peculiar relations which subsisted in them between the students and the Professors, and again between the Bolognese students and those from a distance, receive adequate explanation. Even had we no knowledge of the actual history of the evolutionary process, it would be unnecessary to look upon this constitutional phenomenon, as it has too often been looked upon, with mere stupid astonishment, as a kind of historical *lusus nature*. Whatever surprise may be still felt at the appearance upon the page of

The Student-Universities can be explained.

<sup>1</sup> The most convenient account of the Bologna constitution is given by Savigny, cap. xx.

<sup>2</sup> M. Thurot well remarks that the University of Paris 'se constitua sous l'empire de cet esprit d'association qui produisait en même temps

les villes Lombardes, les communes de France, et les corporations de métiers.' *De l'organisation de l'enseignement dans l'Un. de Paris*, p. 3.

<sup>3</sup> The Constitution of 1245 made them *ex officio* members of the *Crederia* or Council of 600. Savigny, *l.c.*

CHAP. IV, History of an institution so startling to modern ideas as a Student-University will be removed by an examination of the actual facts, scanty as they are, which have come down to us with respect to the early history of the earliest Student-guilds of Bologna.

§ 3.

The two  
Law Uni-  
versities.

Elsewhere  
four Uni-  
versities.

From about the middle of the thirteenth century<sup>1</sup> the organization of Law-students at Bologna consisted of two closely allied but distinct *Universitates*—a *Universitas Citramontanorum* and a *Universitas Ultramontanorum*, each under a Rector of its own. We have no direct documentary evidence of the state of the Academic organization in the first half of the century. But we have evidence that in the Universities which were established elsewhere by schisms or migrations from Bologna there existed at the beginning of the century not two Universities but four. This was the case at Vicenza, where a colony from Bologna established itself in 1204 A.D., and in Vercelli which was colonised in 1228 from Padua, itself an earlier colony of Bologna. To anyone aware of the servile fidelity with which the institutions of a mother-University were reproduced in its daughters, the mere fact that there were four Universities at Vicenza and Vercelli would be a sufficient proof that at one time there had been four Universities at Bologna also<sup>2</sup>. But we are not left entirely to inference upon this fundamental point of our enquiry into the origin of Student-Universities.

So origin-  
ally at  
Bologna.

In 1217 we hear of the 'Scholars from the City' (i.e. Rome), Campania, and Tuscany as forming either a separate Society or more than one separate Society; but in any case it is clear that they are not embraced in the same organization as the other Italian students. What

<sup>1</sup> The earliest evidence of the change is in a city-statute of 1244. Frati, I. p. 367.

<sup>2</sup> Savigny conjectured that originally there were four Universities at Bologna, cap. xxi. § 616. When Kaufmann (I. p. 189) objects to Denifle's inferences from the Bull of 1217, because by 1250 we hear of a

single 'Universitas scholarium,' he appears to forget that the term *Universitas* does not necessarily imply a legal corporation, but may be applied to any collection of people. Kaufmann seems to me to exaggerate the solidarity of the Student-body both before and after 1250.

was the exact distribution of the students at Bologna at this time, it is impossible to determine with absolute certainty. But it seems highly probable that originally the four Universities were, (1) Lombards, (2) Ultramontanes, (3) Tuscans, and (4) Romans, in which last University the Campanians may have been included<sup>1</sup>. This view is supported by two facts. First, in the later united Cismontane University there were, as is evident from the Statutes, three original *Nationes*—the Lombards, Tuscans, and Romans, which were subdivided into smaller *Consiliaria*<sup>2</sup> (bodies electing one or more Councillors), while the Ultramontane University contained a much larger number of Nations—in 1265 fourteen<sup>3</sup>—each of which corresponded with a *Consiliaria* of the Cismontane University. Whether or not the united Ultramontane University arose by

<sup>1</sup> Sarti II. (1772) p. 58. If this view be accepted, of course the 'scholares de urbe, Campania et de Tuscia' (notice the omission of the preposition before Campania) will represent *two* separate Guilds, acting on this occasion in conjunction. The fact that a Bull is addressed to the three together does not, as Denifle assumes (l. p. 140), prove that they were embraced in one organization, any more than the existence of Papal Bulls addressed to the Masters and Scholars of Bologna proves that the Masters belonged to the Universities or the students to the Doctoral Colleges, or the fact that Bulls were often addressed to the Doctors of Civil and Canon Law at Bologna proves that there was a single College for both Faculties. Moreover, the earliest Statutes of the United Universities *prove* the original distinctness of the Lombardi: 'De Citramontanis vero iuxta morem antiquum natio Romanorum habeat sex (consiliarios), Tuschorum alios sex, reliquos habeat natio Lombardorum, quos per consiliarias sic dividimus, sicut nationis statutis est descriptum. (Stat. p. 16.)

Denifle further assumes from the language of the Bull that this Guild of the Romans, Campanians, and Tuscans had only just been formed (l. 140), and hence infers that the *Universitas* originated with the Ultramontani. The fact is not improbable, but the language of the Bull seems to me to establish nothing as to the length of time (when the question is between one year and twenty-five) during which the Guild or Guilds had been formed. Honorius III speaks of the original motive of their formation, but so does the University of Paris fifty years after its first institution. See below, p. 303 n. 1. The amalgamation-theory is supported by the employment of the term Rector, which was especially used to denote the Head of a federation of Guilds. See below, p. 164.

<sup>2</sup> Stat. pp. 16, 68.

<sup>3</sup> Gallici, Picardi, Burgundionenses, Pictavienses, Turonenses et Cenomanenses, Normanni, Catelani, Ungari, Poloni, Theotonicus, Yspani, Provinciales, Anglici, Vascones. Sarti, l. ii. (1772), p. 61.

CHAP. IV, amalgamation from these smaller Nationes, its later constitution bears no trace of having at any earlier period consisted of two or three separate Universities or Nations, whereas this is distinctly the case with the Cismontane University<sup>1</sup>. The second reason for supposing that the four Universities were originally constituted as above, is that the University of Medicine and Arts was to the last sub-divided into four Nationes only—Ultramontane, Lombard, Tuscan, and Roman<sup>2</sup>.

The various Universities probably arose at distinct periods.

The fact that there were originally four distinct Universities and that we find one or more of them acting in independence of the rest, makes it probable that they originated at distinct periods; and it is highly probable that the final emergence of two closely united Universities is but the last stage of a process of amalgamation by which the three Societies of Cismontanes and the numerous small Ultramontane Nations had reduced themselves to four large Societies<sup>3</sup>. The very distinct organization and exceptional privileges of the German nation<sup>4</sup> find their

<sup>1</sup> See above, p. 157, n. 1.

<sup>2</sup> *Stat.* p. 215. Denifle (I. p. 139) argues that since at Vicenza, Vercelli, and Padua, we find *one* University embracing all the Italians, while at Bologna there was certainly more than one Italian University, there must once have been more than four Universities at Bologna. I fail to follow the argument. The different distribution of Nationalities in these offshoots of Bologna may have been due to the composition of the seceding bodies of students. In the migrations, both from Bologna and from other Universities, the *number* of Nations (four) was always preserved, but their composition varied. His suggestion (*l.c.*) that the larger Universities may have arisen by amalgamation from smaller Nationes which after their union remained as subdivisions of the larger body, seems to me probable as regards the Ultra-

montane Nations only. Throughout, Denifle fails to recognize the marked distinction between the Ultramontane *Nationes* and the Cismontane *Consilioria*.

<sup>3</sup> For the similar federation of Guilds in London, see Brentano, Pref. to Toulmin Smith's *English Gilds* (E. Eng. Text Soc. 1870), p. xlix; but Mr. Gross (*The Gild Merchant*, I. p. 61 sq.) has now shown that it is a mistake to identify the Merchant Guild with the Municipality.

<sup>4</sup> In 1273 it is already claimed as an ancient privilege 'quod nobiles de Alamania non teneantur jurare rectori' (*Acta Nat. Germ.* p. 349). The accounts of 1305 allude to written privileges (*ib.* p. 58), while a 'privilegium quod nobiles Almanni non tenentur iurare rectori' is included in an inventory taken in 1442 (*ib.* p. 189). The Statutes speak generally of privileges granted by

most natural explanation in the supposition that it was the earliest of these national clubs and formed the nucleus round which other and younger bodies grouped themselves. Even in the fully developed Academic constitution, the Nations of the *Ultramontani* retained a much larger measure of individual corporate existence than either the three original Nations of the *Citramontani* or the smaller *Conciliaria* into which they were sub-divided<sup>1</sup>.

But whatever uncertainty there may be as to the early history of these Student-Guilds, the one fact about them which is certain is fortunately the one fact which it is of fundamental importance to grasp. They originated with non-Bolognese students; and this circumstance is by itself a sufficient clue to their *raison d'être*. It is probable, indeed, that it was the German students who first felt the need of mutual protection and co-operation<sup>2</sup>; but at all events the Guilds were formed by non-Bolognese students. The fact has been slightly obscured by the circumstance that the Universities eventually succeeded in asserting *some* authority even over the Bolognese scholars, though to the last they remained exempt from the oath of obedience to the Rector, without a vote in the University Congregations, and ineligible for University offices. To the last they were not in the strict sense *members* of those Corporations; originally they must have been wholly exempt from their authority<sup>3</sup>. The reason

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§ 3.  
The Universities  
were Guilds  
of foreign  
Scholars.

the Emperor (*ib.* p. 13): but no actual Charter appears to be preserved of earlier date than 1530, when Charles V wholly exempted the German nation from the Rectorial jurisdiction, and subjected them to that of their own Masters. At the same time the latter were created *ex officio* Counts of the Lateran, and granted the power of making Notaries and legitimating bastards (*ib.* p. 19 sq.). The nation retained its existence as a Student-organization till the Revolution terminated its existence just, it would appear, as

it was about to die by the less noble method of Bankruptcy. (Malagola, *Monografie*, p. 286.)

<sup>1</sup> *Stat.* p. 139.

<sup>2</sup> Cf. the words of Honorius III to the Tuscans and Campanians: 'Etsi multam honestatem, imo necessitatem, sicut asseritis, causa contineat, que vos ad contrahendam societatem induxit.' Sarti, II. (1772) p. 58. This 'necessity' would be likely to be still earlier experienced by the Germans.

<sup>3</sup> The earliest Bologna Statutes assert the jurisdiction of the Rector

CHAP. IV, of the exclusion is obvious. The Bolognese student no more wanted to be protected by a University than a young Englishman reading for the bar in London requires to be protected by a Consul. (The very existence of the University was due to the want of political status on the part of its members.) In exactly the same way we find foreign merchants<sup>1</sup> and other strangers in an Italian town forming themselves into Guilds for the prevention of quarrels among themselves and the promotion of their common interests.

Exclusion  
of Pro-  
fessors.

In the same fact is found the explanation of the other characteristic peculiarity in the organization of the Universities of the Italian type—the exclusion of the Professors from membership. The earliest Bolognese Professors were citizens of Bologna. Unlike Paris, whose political and commercial importance attracted student and teacher alike from distant lands, Bologna owed her scholastic fame to the accident (if it was an accident) that Irnerius and his first successors happened to live, and therefore to teach, at Bologna<sup>2</sup>. Had the earliest teachers been foreigners, they might have occupied important positions in the University:

over the Bononiensis (*Stat.* p. 12); cf. the *Stat.* of Lerida formed on the model of Bologna in 1300: 'cum te dicas civem Ilerdae, jurare non cogis universitatis statuta, licet dum in hoc studio fueris ad eorum observantiam tenearis.' Villanueva, *Viage Literario*, XVI. p. 229. So at Pisa and Florence the Rector must be 'forensis.' Citizens were forbidden to take the oath to the Rector on pain of confiscation and the ban by a Town-statute of 1245 (*Frati*, II. p. 29). Afterwards, a special oath merely binding them not to injure the University, &c. was imposed on the Bolognese student (*Bononiensis vel diocesanus*) and his name inserted in a 'matricula specialis.' *Stat.* p. 128 (cf. p. 132: 'Compaternitatem cum bononiensi cive vel diocesano nullus scholaris contrahat, nisi prius petita

licentia et obtenta a Rectore suo'). So they paid modified dues to the University officials on taking their degree, *ib.* p. 145.

<sup>1</sup> Especially German merchants. Denifle, I. p. 136; Simonsfeld, *Der Fondaco dei Tedeschi in Venedig*, Stuttgart, 1887. So there were *Universitates Judaeorum*, e. g. at Catania in Sicily before 1283 (*Documenti per servire alla Storia di Sicilia*, Palermo, vol. VI. p. 28); so at Messina (*ib.* p. 63), Syracuse (*ib.* p. 78), Trapani (*ib.* p. 89), &c.

<sup>2</sup> Thus the Bull of Honorius III in 1220 reminds the town 'quod ipsi gratuito ad studendum vestram pre-elegerint civitatem, que cum prius esset humilis, per eos ibidem congregatis divitiis fere supergressa est civitates Provincie universas.' Sarti, T. II. (1772). p. 57.



as it was, the students had to choose their office-bearers from their own number. At first the Professors were excluded not so much because they were Professors as because they were citizens. But at a very early period in the development of the Universities, we shall find the Bolognese Doctors allying themselves with the City against the students in the selfish effort to exclude from the substantial privileges of the Doctorate all but their own fellow-citizens. The antagonism of interest thus created between the Doctors and their pupils has much to do with the growth of the student domination. The Doctors, as citizens and as laymen, were connected with the City in a way wholly foreign to the traditions of northern Schools. It was through identifying themselves in the pursuit of a common pecuniary interest with the City rather than with the scholars that the Doctors of Bologna sank into their strange and undignified servitude to their own pupils.

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How entirely parallel to those of the non-scholastic Guilds were the original purpose and organization of the Student-Universities is best illustrated by the Statutes of the German Nation<sup>1</sup> which have fortunately come down to us. The original idea of the Universities became more or less obscured by the Academical power which they eventually acquired. The smaller National Associations naturally retained the more homely character of Clubs for mutual protection, assistance, and recreation, and for the performance of those religious functions which in the Middle Ages supplied the sanction for every social bond and the excuse for every convivial gathering. In these Statutes the object of the Guild is declared to be the cultivation of 'fraternal charity, mutual association and amity, the consolation of the sick and support of the needy, the conduct of funerals and the extirpation of rancour and quarrels, the attendance and escort of our *Doctorandi* to and from the place of examination, and the spiritual advantage of members<sup>2</sup>.' The Statutes of any

The original purpose of the University illustrated by Statutes of German Nation.

<sup>1</sup> For the position of these subdivisions of the University, see below, p. 184 sq.

<sup>2</sup> 'Hec nostra congregatio, utili-

CHAP. IV, ordinary religious Guild or Confraternity would define  
 § 3. its objects in precisely similar language. The Statutes before us go on to provide that the two Proctors of the Society shall visit sick members and (if necessary) make a special collection for their benefit, or apply the general funds of the Guild to that purpose, or, if they are not in need of assistance, at least alleviate their sufferings by their 'cheerful presence'.<sup>1</sup> The same officials are also required to adjust quarrels and to take measures, in the interest of other members, for compelling students who had left Bologna to satisfy their creditors.<sup>2</sup> But the liveliest picture of the ordinary purposes of the Guild is supplied by its accounts from the year 1292—one of the earliest and completest series of University documents of the kind which have come down to us.<sup>3</sup> The receipts are derived from entrance-payments varying, according to means, from five to sixty *solidi* or more, from fines, and from the occasional presents of a newly-mitred alumnus. The payments are chiefly devoted to convivial and religious purposes, wine and spices upon the great feasts either for the consumption of members<sup>4</sup> or the payment of the officiating clergy<sup>5</sup> and singers, candles for processions, charities to the poor, and other pious uses, such as an occasional vestment or ornament for the Conventual Church of S. Firmian habitually used by the Guild. Sometimes, however, a larger drain is made upon the resources of the Society by the expenses attending the rescue of a comrade lying fettered in the Bishop's prison.<sup>6</sup> These interesting

tatistamenetpubliceetprivate nequaquam expers credenda, presertim ex qua fraterna caritas, societatis amicitieque communicatio, infirmorum consolatio et egenorum subsidium, funerum deductio et rancoris simultatumque extirpatio, tum doctorandorum nostrorum in locum et ex loco examinis comitiva atque constipacio, bona spiritualia resultarent.' *Acta Nat. Germ.* p. 4.

<sup>1</sup> *Ib.* p. 6.

<sup>2</sup> *Ib.* p. 7.

<sup>3</sup> *Ib.* p. 36 sq.

<sup>4</sup> The juxtaposition of the following is significant: 'Item, pro malvasia (Malmsey) libras III. Item, pro vitris fractis,' &c. *Ib.* p. 133.

<sup>5</sup> 'Item pro vino propinando presbitero, qui nobis die illo missam cantavit ibidem, II solidos.' *Ib.* p. 36.

<sup>6</sup> *Ib.* p. 83. It was no doubt on some similar occasions that it was necessary to spend sixteen *denarii* in gratifications to the Bishop's Chap-

records enable us to realise the original purposes of the larger Universities of which the smaller National Unions were either the prototypes or the imitations<sup>1</sup>, though the former may have been too large for the frequent convivialities and fraternal intercourse of the smaller Societies.

To appreciate the fact that the University was in its origin nothing more than a Guild of foreign students is the key to the real origin and nature of the institution. It is also the starting-point for an enquiry into the date at which these Societies began to be formed. It was not till towards the end of the twelfth century that Guilds of any kind, Colleges of Arms and of Arts (as they were called), came into existence in the Italian cities. In the city of Bologna itself, for instance, the first allusion to the existence of a Guild occurs in 1174<sup>2</sup>, when we hear of a Lombard 'Societas armorum.' The probabilities of the case would suggest that some little interval would elapse between the formation of the Guilds of Arms and Arts and the imitation of them by the scholars. The only direct evidence available is derived from the silence of documents and other authorities—particularly of the Civilians who in their commentaries on the title *De Collegiis* might be expected to allude to the existence of a kind of Association the legitimacy or illegitimacy of which was a matter of considerable personal importance to themselves. Now the first of the long series of Jurists who comment upon the anomalous character of the *Universitas Scholarium* is Bassianus, who, towards the close of the twelfth century<sup>3</sup>, disputes the right of the scholars to elect a Rector. Thus the evidence all points to the conclusion that the earliest

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Date of the  
first Student-Universities.

lains or other domestics to get an audience ('pro copia episcopi'). *Ib.* p. 76.

<sup>1</sup> Denifle (I. p. 153) makes the Scholastic Guilds originate with the Germans. This would to a large extent explain the exceptional privileges of the German Nation: but the question turns in part upon the larger and very difficult question

whether the Guild was originally of Teutonic origin or a direct descendant of the Roman Collegia. On this question I do not feel competent to enter.

<sup>2</sup> Denifle, I. p. 159.

<sup>3</sup> As to the date of his life or writings nothing appears to be known except that he was a pupil of Bulgarus. Sarti, I. pt. i. p. 89.

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—♦—

*Universitas* of students originated with the foreign students of Bologna in the course of the last quarter of the twelfth century. Further than this it is hardly possible to push the enquiry; though there is probability in Denifle's opinion that the last decade of the century saw the birth of the first University of students<sup>1</sup>.

Their evolution spontaneous and gradual.

When, however, the spontaneous character of these Student-societies is taken into consideration it will become evident that the process of growth may have spread over a considerable time. Such Societies at first neither sought nor obtained charters, privileges, or incorporation from King, Bishop, or Municipality, any more than such permission is required for the establishment of a debating-society or a cricket-club among modern students. The University may, indeed, have originated in a definite meeting of the students from a particular country at a particular date: but it may equally have grown out of informal gatherings or indignation-meetings to concert measures for the release of an imprisoned comrade or for the punishment of an extortionate landlord. But we have no data for tracing the earlier stages of a process which may be considered to have been completed when the Society proceeded to elect its first permanent Rector. As to the date at which this fundamental step was taken, we can only say that it was before the close of the twelfth century.

Origin of the Rectorship.

The title of Rector was one which only began to be applied to various civic Magistrates and officers of Guilds after the revival of Roman Law-studies in the twelfth century. It was a term commonly used as the Latin equivalent of the Italian *Podestà*, to denote the elected Chief Magistrate or Dictator of a Lombard town<sup>2</sup>. It was also used of the Head of the whole federation of Guilds in a town, or of the Head of a single Guild<sup>3</sup>. In the Guilds

<sup>1</sup> Denifle, I. p. 160. Cf. Savigny, cap. xxi. § 65.

<sup>2</sup> Denifle, I. p. 147. Under the Empire *Rector* had been one of the regular terms for the Civil Governor

or *Judex Ordinarius* of a Province after Diocletian. Savigny, cap. ii. § 25.

<sup>3</sup> Thus at Bologna we hear of a *Rector Societatum* in 1194. (Savioli,

the term Rector is especially employed where the Society was placed under the government of a single Head, instead of (as was frequently the case) under a plurality of *Consules* or other officers<sup>1</sup>. All the associations of the word suggest a concentration of corporate power in the hands of a single individual. From the Guilds the expression was borrowed by the Universities, as it had been borrowed by the Guilds from the constitutions of the towns. The same was the case with the University *Consiliarii*, who are first heard of in 1224<sup>2</sup>. In fact, the whole organization of the University was exactly parallel to that of the Guilds, of which it formed merely a particular variety: while the organization of the Guilds themselves was in Italy largely a reproduction of the municipal organization of the cities. The Guild, whether of scholars or of the members of a political party or a particular trade, was a civic state in miniature, a *civitas in civitate*.

The jurisdiction of the Rector was in the main derived from the Statutes voluntarily enacted by the members, and from that formidable oath of obedience to them and to himself, on the significance of which we have already commented. At the same time the Rectorship was from the first looked upon as something more than the mere presidency of a private Society. According to the idea of the Roman Law (at least as understood in the Middle Ages), every trade or profession had a kind of intrinsic right to form a *collegium* and elect Magistrates of its own<sup>3</sup>:

Nature of  
Rectorial  
jurisdiction

II. Pt. 2, p. 177); at Perugia in 1223 of 'Bailivi, Rectores vel Priores fraternitatum, societatum, familiarum seu quarumlibet artium (Theiner, *Cod. Dipl. dom. temp. s. sedis*, I. 77); at Verona 'Prohibebo, quod nulum misterium (ministerium) de civitate seu districtu Veronae habeat vel habere possit gastaldionem vel rectorem, nisi qui sit de suo misterio, &c.' (*Liber juris civilis urbis Veronae script. 1228*, ed. Campagnola, 1728, p. 147). The last mentioned Stat.

probably originated in the twelfth century (see Denifle's note, I. p. 146).

<sup>1</sup> So Denifle, I. p. 146. But Accursius has a gloss on the passage of the Code quoted below: 'Pone in Campsorbibus Bon. qui suos habent consules sive rectores' (ed. Contius, Parisiis, 1576, c. 559).

<sup>2</sup> Savioli, III. pt. ii. p. 56.

<sup>3</sup> See the passage in the Code (III. Tit. xiii.): 'Periniquum et temerarium esse perspicimus, eos qui professiones aliquas seu negotiationes exercere

CHAP. IV, and the jurisdiction of these Magistrates over its members  
 § 3.  
 in matters relating to the profession or trade was recognized by the Town-governments even without any Charter or express enactment as a legal, and not a merely consensual, jurisdiction. And the scholars, in setting up a *Universitas* and electing a Rector, undoubtedly claimed for themselves what were considered the natural or intrinsic privileges attaching to all recognized trades or professions. In general there seems to have been no unwillingness on the part of the Lombard towns to recognize to the full the jurisdiction of these Student-guilds and their Rectors, except on the part of one particular class. These were naturally the Professors of Law themselves. A *Universitas* of students at once offended their legal susceptibilities and infringed upon what they considered their professional prerogatives. They did not dispute the right of a profession or trade to be under the jurisdiction of a Rector: but the students, they urged, did not form an independent trade or class by themselves. They were merely the pupils of the Doctors of Law. The right to elect a Rector and to frame Statutes binding at once upon the full members and the students of the profession belonged *de jure* to themselves, as it did *de facto* to their more fortunate brethren at Paris and elsewhere. The pupils of the Doctors had no more right to form a *collegium* and elect Magistrates than the apprentices of the smiths or the skimmers<sup>1</sup>. The protests of the Jurists, however, failed to check the growth of the institution. The University of students once formed was stronger than the handful of Professors. Townsfolk and

Opposition  
 of the  
 Professors.

noscuntur, iudicium ad quos earum professionum seu negotiationum cura pertinet, jurisdictionem et praeceptionem declinare conari.'

<sup>1</sup> See for instance the words of Azo, Lecture in Cod. ad L. fin. C. *de iurisdic.* (III. 13): ap. Denifle, I. p. 170: 'Ergo scolares, quia non exercent professionem sed sub exercentibus sunt discipuli, non possunt eligere consules, sicut nec discipuli

pellipariorum. Magistri ergo possunt eligere consules, quia ipsi exercent professiones. Savigny (cap. xxi. § 65) continues the quotation: 'Sic et faciunt fabri, in terra ista, et alia corpora quia eligunt ministeriales suos sub quibus possunt conveniri.' This opinion is embodied in the Accursian gloss. Other instances are given by Denifle, I. p. 170 sq.

Professors alike stood in awe of a body which by the simple expedient of migration could destroy the trade of the former and the incomes of the latter. The Jurists from the first recognize the *de facto* existence of the Rectorial jurisdiction; and, after the fourteenth century, men who had grown up as students under the Rectorial régime even attempted a theoretical justification of the anomaly<sup>1</sup>.

It must not be supposed that opposition to the Professors formed any part of the original *raison d'être* of the Universities. At first the Universities no more claimed authority over the Doctors or the control of strictly Academic matters than the Union Societies of Oxford and Cambridge, or the militant and beer-drinking corps of a German University. The Universities were formed for purposes of mutual protection and self-government, and had nothing to do with the *Studium*, which was managed by the *Collegia Doctorum* as much as at Paris. The jealousy of the Professors arose simply (so far as appears) from the fact that the students were attempting to do for themselves what the Professors (on the analogy of the relations ordinarily subsisting between Masters and their apprentices) claimed to do for them. But in process of time the Universities did gradually acquire a complete control over the Professors; and to a large extent usurped the powers elsewhere exercised by the Professorial body. By means of the terrible power of 'boycotting,' which they could bring into play against an offending Professor or a student who adhered to a 'boycotted' Professor, the student-clubs were masters of the situation. And when the Professors began

The Universities originally claimed no Academic authority.

<sup>1</sup> Cinus (ad *l. cit.*) after giving his own opinion against the scholars, says: 'Quidam moderni dicunt contrarium, quia scolares exercent professionem, ut in Aut. Habita, et quia eorum universitas est licita, et sic possunt dare jurisdictionem, ut ff. [i. e. Digest] *quod cujusque universitatis*.' (Venet. 1493.) So the earlier

Odofredus († 1265) admits 'tamen per legem municipale hujus civitatis scolares creant rectores.' In Cod. ad *l. cit.* (T. III. f. 148 a).

<sup>2</sup> The Statutes of the Student-universities sometimes prescribe the measures to be taken against a contumacious professor. Thus at Parma penalties are provided against a

CHAP. IV,

§ 3.

The Universities reduce the Professors to subjection.

to accept *salaria* from the Universities themselves or from the towns which stood in awe of the Universities in lieu of collecting fees from their scholars, they passed still more completely under the authority of the Universities and their Rectors. By these means the Universities were able to compel the Professors to take the oath of obedience to the Rectors, which gave a certain legal sanction to their subjection. This subjection was well established by the end of the thirteenth century, as is evident from the Statutes of Lerida: though the Doctors still continued to assert their theoretical superiority to the Universities<sup>1</sup>.

This subjection not undisputed.

It must be remembered, indeed, that in the Student-statutes we have merely the students' estimate of their own relations to the Doctors. And we can no more assume that this was identical with the view taken by the Doctors themselves than quotations from the writings of an ancient Bishop can be taken to represent the views as to the limits of Episcopal authority entertained by his Presbyters or by the Church at large. Thus, while it is expressly provided by the Student-statutes that they shall overrule all contradictory provisions in the Statutes of the Doctoral Colleges<sup>2</sup>,

scholar who attempts to graduate under a deprived Doctor. (*Mem. e doc. per la storia della Un. di Parma*, Parma, 1888, vol. I. p. xxxix.) It should be remembered that 'privatio' meant *social excommunication* as well as mere refusal of official recognition. Thus the above-quoted Statute of Parma provides that 'scholares teneantur eum vitare tanquam privatum omni commodo et honore Universitatis, et nullus Scholaris ipsum admittat in societate nisi obtentum in Universitate fuerit, ut predicatur' (*l.c.*).

<sup>1</sup> 'In universitate ista Bononiensi doctores subsunt rectori... Modo quaero, num quid Doctores subsint universitati? Breviter dicendum est quod non: nisi ex *prærogativa consuetudinis vel juramento*, quia jura-verunt obedire rectori.' Bartolus

(†1357), ad Auth. *Hubila*, (quoted by Savigny, cap. xxi. § 70).

<sup>2</sup> 'Cassa et irrita et inania statuta et consuetudines decernimus que doctorum collegium habuerit vel observaverit seu habiturum servatum vel facturum de novo fuerit contra statuta universitatis nostre et scolasticam libertatem.' *Stat.* p. 144. On the other hand, after the table of degree-fees, appears a clause respecting the Statutes of the Colleges. (*Ib.* p. 151.) The City enacted that their own Statutes should prevail over those of the Colleges, but the College-statutes over those of the Universities. (*Stat.* p. 156.) In one place in the University-statutes we find a clause 'secundum quod in statutis ipsius Collegii determinatum invenimus.'



the Town-statutes enact precisely the opposite. Moreover, it should be noticed that when the students seem to be most clearly usurping the functions of the Doctoral body in defining the conditions precedent to degrees, their enactments are in the main identical with those found in the Doctoral Statutes: just as many of the provisions by which the students seem to be legislating for the City and its Magistrates are mere embodiments of privileges conferred by the latter<sup>1</sup>. At the same time there can be no doubt that the real supremacy rested with the students; and the Statutes of the Colleges themselves in general adopted a sufficiently humble tone in their attitude towards the Student-Universities.

In so far as the claims of the Student-corporations rested on anything more than usurpation and their undoubted right to pursue their studies elsewhere in the event of disagreement with the town-authorities<sup>2</sup>, their legal and constitutional basis would be found in the Papal Bulls which from time to time confirmed the Statutes of the Universities, and subjected the impugners of them to ecclesiastical censures<sup>3</sup>. But little use seems practically to have been made of this Papal Privilege except as a weapon against the City in the earliest days of the University. The students seldom or never appealed, like the Masters of Paris, to ecclesiastical authority for assistance in enforcing their own internal discipline.

There was, as we have seen, nothing in the University as an institution to arouse the jealousy or hostility of the

<sup>1</sup> e.g. in the Statute *De domibus in quibus habitant scolares non destruendis* (pp. 126, 153). The whole of the Fourth Book of University Statutes is a reproduction of Town-statutes.

<sup>2</sup> Cf. the Stat. of Florence as late as 1472 in *Stat. Fiorent.* p. 24. The Rector is to insist on payment of the *salaria* by the City, 'Alias interdicat studium.'

<sup>3</sup> The first general confirmation dates from 1253. The bull was ad-

ressed to the Archdeacon of Bologna and a Dominican Friar. Sarti, T. II. (1772) p. 124. Other ecclesiastics were from time to time appointed Conservators of the privileges of the University, but their jurisdiction does not seem to have become so extensive as at Paris (Ghirardacci, T. I. p. 539; T. II. pp. 27, 66). Savigny, by the way, makes the Archbishop (!) of Bologna Conservator in 1326. Cf. below, chap. v. § 3.

CHAP. IV, Magistrates or City of Bologna. That the students should  
 § 3.  
 have a *collegium* and be governed by a Rector was completely in accordance with the political ideas of the time. The *Universitates* met with no systematic opposition from the municipalities of the kind which we shall find the Parisian University of Masters experiencing at the hands of the Bishop, Chancellor, and Church of Paris. The Bolognese government was quite content to concede to the Universities of Students what it conceded to other Guilds. But in certain respects the Universities demanded more than the City conceded to other Guilds. The Guilds were composed of citizens, who never thought of disputing the authority of the city-government, and who could not put themselves beyond its jurisdiction without losing both property and status. The Universities were composed of aliens, who refused to recognize the authority of the State in which they lived when it conflicted with the allegiance which they had sworn to their own artificial commonwealth<sup>1</sup>. One matter was pre-eminently a subject of contention between the City and University. The power of secession was cherished by the University as its great instrument of warfare against all manner of enemies. The City naturally wished to deprive it of this unfair advantage in its controversies with itself and to render its own prosperity independent of the good-will of an alien corporation.

The first  
 Migrations  
 originate  
 with  
 Professors.

In the first collisions between Town and Gown at Bologna it was, however, the Professors who were directly involved. Long before the close of the twelfth century we find a tendency in the Bolognese Professors to wander

<sup>1</sup> It was not merely in its relations with the City, as a whole, but in quarrels with individual citizens that the University could bring its powerful organization into play. Thus the Paduan *Statuta Artistarum* (fol. xxxiii. b) denounce the punishment of 'interdictio' (i. e. from intercourse with scholars) against anyone who

cites a scholar before the City Magistrates—the sentence to extend to the third generation of the offender's posterity. The same Statutes (fol. xxxii. b) enact that if a householder refuses to execute repairs after fifteen days' notice, the tenant is to repair, and deduct the expense from the rent.

abroad, whether in consequence of disputes with the town-authorities or allured by prospects of more liberal remuneration elsewhere. Thus Placentinus had left Bologna to establish schools first at Mantua, afterwards at Montpellier, in the third or fourth quarter of the twelfth century. And most of the numerous Law-schools which we find established in the Italian towns by the beginning of the thirteenth century, had apparently been founded by similar secessions of Doctors or students or both. The City was at last forced to bring to bear against the vagrant Doctors the usual medieval method of prevention—making the suspected party swear that he would not commit the apprehended crime<sup>1</sup>. The first time that this measure was adopted was in the case of Pillius. Getting wind of a negotiation with the neighbouring town of Modena for the purchase of the Doctor's services, the Magistrates assembled all the Professors of the School and compelled them to swear not to teach out of Bologna for the next two years. In spite of his oath, however, Pillius could not resist the renewed offers of Modena gold<sup>2</sup>. After this time such oaths appear to have been habitually exacted of the Doctors<sup>3</sup>; and from 1227 to 1312 the oath was regularly enforced by the Town-statutes upon all Doctors who intended to teach at Bologna<sup>4</sup>. At the beginning of the thirteenth century, however, the City found itself threatened with a much more formidable danger. Not merely individual Professors, but whole bodies of students, dissatisfied with their treatment at Bologna, entered into negotiations with other towns for the transference of the *Studium* to them. In 1204, after a secession of this kind to Vicenza, the City passed a Statute prohibiting citizens

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§ 3.

The Student-migration to

<sup>1</sup> Sarti, I. pt. i. pp. 77, 78. Savigny (cap. xxi. § 81) gives a list of the Doctors who took the oath. Cf. Savioli, II. pt. ii. p. 465.

<sup>2</sup> See extracts from Pillius in Sarti, I. pt. i. p. 84. Savioli gives 1188 as the date of Pillius' flight, but he appears to be established in Modena

before 1182. Savigny, cap. xxii.

<sup>3</sup> Sarti, I. pt. i. pp. 84, 85.

<sup>4</sup> Frati, II. p. 23. In 1312 the oath was abolished, but penalties for Doctors absconding during the time of their contract reappear in 1334. Savigny, cap. xxi. § 81; Ghirardacci, T. I. pp. 560, 561; T. II. pp. 11, 117.

CHAP. IV, from following the seceding scholars or from aiding and abetting similar secessions in future<sup>1</sup>. After the secession to Arezzo in 1215, in consequence of a great quarrel between the Lombards and the Tuscans<sup>2</sup>, or possibly in consequence of the measures which the city had adopted for the suppression of the tumults, the penalties of banishment and confiscation of goods were denounced against any scholar who should administer an oath to another binding him to leave the city if commanded to do so by him<sup>3</sup>. The Podestà required the Universities to incorporate the Town-statute with their own, by which means every student would be compelled to swear obedience to it. The 'scholars' especially aimed at were of course the Rectors<sup>4</sup>, who must have been empowered either by a permanent Statute or by some extraordinary resolution to demand such an oath as a means of securing a prompt and universal secession in the event of a request being refused or an injury going unpunished. One at least of the Universities, if not all, appealed to the Pope, who, in accordance with what became the universal policy of the Holy See, warmly espoused the cause of the scholars; and in 1217 a Bull was issued by the new Pontiff Honorius III—formerly Archdeacon of Bologna—urging or commanding the revocation of the obnoxious law, while the scholars were exhorted to leave the city rather than violate their

§ 3.  
Vicensa,  
1204.

Secession  
to Arezzo  
in 1215 pro-  
vokes fresh  
quarrels.

<sup>1</sup> Frati, II. p. 23. In 1211 we find a Statute passed, which, without directly naming the scholastic Universities, may possibly be directed against them, since in it citizens as well as strangers are forbidden to give a promise or oath 'de adiuvando unus alium;' the Societies of Arms and Arts being alone exempted from its provisions. Savioli, II. pt. ii. p. 464. At this time a clause was inserted into the Doctors' oath pledging them not to aid and abet secessions of scholars. Sarti, I. pt. ii. pp. 70, 71.

<sup>2</sup> 'Idco ego Rofredus Beneven-

tanus juris civilis professor ad preces et instantias sociorum meorum, nobilium de partibus Tusciæ, cum essem in civitate scilicet arretina,' &c.—ap. Sarti, I. pt. i. p. 139. Cf. *ib.* pp. 133, 134.

<sup>3</sup> 'Si quis scholaris vel alius aliquem scolare aliquo modo vel ingenio astrinxerit ut ei possit precipere de ducendo de civitate ista causa studii banniat,' &c. Frati, II. p. 25. Cf. Denifle, I. pp. 161–162; Savigny, cap. xxi. § 65.

<sup>4</sup> Explicitly mentioned in the Bull of 1220. See below, p. 173.

oaths<sup>1</sup>. It would appear from subsequent documents that the Papal intervention was unsuccessful, that the suppression of the Rectorship took effect, and that the scholars, for non-compliance with the demands of the citizens, were placed under the ban of the city, by which they became 'infamous,' lost their civil rights and were liable to the confiscation of all their goods. In fact it is probable that from 1217 to 1220, or at least for some time before the last-mentioned year<sup>2</sup>, there was a more or less complete dispersion of the *Studium*. In 1220 a fresh Papal remonstrance<sup>3</sup> induced the Town to yield so far as to repeal the penal enactments against the scholars and their Rectors, but it required that upon their accession to office the Rectors should swear not to entertain any project for the removal of the *Studium* from Bologna. The truce, if such it was, was of short duration, and in 1222 a great migration to Padua took place<sup>4</sup>. But in 1224 another Papal Bull<sup>5</sup>, combined with the efforts of the Emperor Frederick II to destroy the *Studium*<sup>6</sup>, seems practically to have resulted in the abandonment of the attempt to exact the suicidal oath from the Rectors, though the Statute requiring it remained on the City Statute-book till 1288<sup>7</sup>; though in the City-statutes, printed as a supplement to the University-statute of 1432, we still find the penalty of death denounced against any person whatever, whether citizen or stranger, who shall enter into a conspiracy for transferring the *Studium*, as also against any citizen-doctor over the age of fifty who shall without permission of the city magistrates leave Bologna for the purpose of lecturing elsewhere. If the offender were

CHAP. IV.

§ 3.

Migration  
to Padua,  
1222.

<sup>1</sup> Sarti, II. (1772), pp. 57, 58.

<sup>2</sup> Savioli records these events under 1220, but the documents do not indicate that any fresh measures were taken in this year.

<sup>3</sup> Savioli, II. pt. ii. p. 466. Cf. II. pt. i. p. 395.

<sup>4</sup> See below, chap. vi. § 4.

<sup>5</sup> Savioli, III. pt. ii. p. 56.

<sup>6</sup> See the Bull of Honorius III in 1227, requiring the Emperor to revoke his edicts against the Lombard league, 'et specialiter constitutionem factam de Studio et Studentibus Bononie.' Sarti, I. pt. ii. (1772) pp. 72-74.

<sup>7</sup> Denifle, I. 176.

CHAP. IV, a younger and therefore a less valuable Professor, the milder penalty of 200 ducats is substituted<sup>1</sup>.

§ 3.  
Recog-  
nition of  
Rectorship.

A full account of the relations between the University and the City of Bologna in the thirteenth century would form one of the most interesting chapters in the history of Universities. Unfortunately, the fragmentary and scattered details which have been given are all which can be collected. It seems that a fairly satisfactory *modus vivendi* was effected between the two bodies at about the middle of the thirteenth century, after a great collision provoked by the execution of a scholar, and also by the efforts of the Bolognese Doctors to convert their office into a lucrative monopoly<sup>2</sup>. Again the Rectorate was threatened; again the counter-threat of secession eventually prevailed. The Statutes of 1245, while taking precautions against the transference of the *Studium* and still continuing to prohibit oaths pledging the scholars to obey a Rectorial order for secession, fully recognize the right of the scholars to elect Rectors, though forbidding citizens to swear obedience to them. Students are accorded the private or *civil* (though of course not the *political*) rights of citizens; they are to be allowed to make a will or receive property under a will, to give evidence, and to do other 'legitimate acts'<sup>3</sup>. The Statutes of 1289 confer still further privileges upon scholars: exceptional steps are taken for the protection of their person and property, and the Podestà is even directed to enforce the Rectorial sentences in civil disputes between scholars<sup>4</sup>. At some time before 1432 the University appears to have succeeded in imposing upon the Podestà a special oath to respect and enforce the Statutes of the University: at all events the Rectors are required by the Statutes of the University to demand such an oath<sup>5</sup>.

<sup>1</sup> *Stat.* p. 157.

<sup>2</sup> Savioli, III. pt. i. p. 332.

<sup>3</sup> Frati, II. pp. 25-29.

<sup>4</sup> *Stat.* p. 163.

<sup>5</sup> *Stat.* p. 64. The Statute was introduced later than 1347. The

Town-Statutes of 1244 required the Podestà to swear obedience to all the Town's provisions in favour of the Studium. Frati, I. p. 369. The later Town-Statutes are not published.

The last important collision between Town and Gown at Bologna took place in 1321, when, in consequence of the execution of a scholar for the abduction of a rich citizen's daughter, the majority of the students, together with many Professors, seceded to Siena<sup>1</sup>. In the following year a reconciliation was effected; the City compelled its Podestà to receive discipline in the Dominican Church, and a chapel or church was built for the University by the grateful townsmen in memory of the event. The building was styled 'The Church of S. Mary of the Scholars in the Borgo of S. Mamolo,' though spoken of in the Statutes as the University Chapel<sup>2</sup>. The fact testifies to the vital importance of the University to the City<sup>3</sup>, and the consequent power wielded by the former.

Even for tracing the internal development of the University the materials are singularly scanty compared with those which we possess for the history of Paris. We know that a body of Statutes received the Papal approval in 1253. But the earliest collection of Statutes available until quite recently dates only from 1432. Enough might even then have been gathered by inference from the Statutes of daughter-Universities to demolish the rash assumption of Savigny<sup>4</sup> that the bulk of these Statutes had come down unaltered from the earliest days of the University. Father Denifle has, however, recently dis-

CHAP. IV,  
§ 3.  
Migration  
of 1321 :  
Peace be-  
tween Town  
and Gown.

Scantiness  
of data: the  
Statutes.

<sup>1</sup> Ghirardacci, II. pp. 5, 6.

Melloni, *Elenco delle Chiese della Città e Diocesi di Bologna compilato nel MCCCCLXVI* (Bologna, 1779, p. 18), and *Stat.* pp. 14, 61 notes. After 1529 the Church was styled S. Maria delle Grazie: it is now suppressed.

<sup>2</sup> The *Acta Nationis Germanicae* bear curious testimony to the frequency of Secessions or Migrations in the period immediately preceding this approximately permanent settlement. Under the year 1309 occur the words 'Nota, quod hic vacaverat natio tribus annis, quibus non fuit

studium' (p. 59), and among the accounts of 1308 (*l. c.*) is an entry 'pro sacco, in quo portabantur res nacionis in discordia, II solidos.' Under 1312 (p. 65) is a payment 'pro instrumento cautionis, quam fecimus nacioni dum timore novitatum cederemus de Bononia.' There is a similar entry in 1316 (p. 72); while under 1321 and 1322 there are payments connected with the secession to Imola (pp. 79-80). On this last see Banchi, *Giornale Storico degli Archivi Toscani*, Anno V. 1861, p. 237.

<sup>4</sup> Cap. xxi. § 61.

CHAP. IV, covered in the Chapter Library of Pressburg in Hungary, § 3. an earlier redaction of about half of this Statute-book. From the information supplied by these Statutes themselves, it appears that they were originally drafted by the celebrated Canonist Johannes Andreae, and published by the University in the year 1317. Additions were made to them in the years 1326, 1336, and 1346, and in the last-mentioned year they were subjected to a complete revision. The Pressburg MS. contains the form which was given to them in the academical year 1346-1347.

Statutes  
of 1317.

But a comparison of these Statutes with those of various Universities formed on the Bologna model in the period between 1317 and 1347 makes it clear that the changes introduced in 1347 were but slight. The re-editing consisted chiefly of additions, deciding moot points that had arisen in the interval, and which can generally be recognized by their interrupting the alphabetical arrangement of the original Statutes. When, however, we turn to the only extant collection of University Statutes believed to be copied from those of Bologna at an earlier date than 1317, we find little verbal coincidence with the collection of 1317. The University constitution in its main outlines—the Rectorial jurisdiction, the Nations and Consiliarii, the Student-supremacy over the Professors<sup>1</sup> and other institutions to be more fully described in our next chapter—are all found faithfully anticipated in the Statutes made for the University of Lerida in the year 1300<sup>2</sup>. But the actual Statutes are expressed in a different style and language, and are very much less bulky and detailed than the Bologna Code of 1317. It is from this epoch then that we must date the Code of Laws which continued with few modifications to govern the University of Bologna throughout our period.

<sup>1</sup> This supremacy was virtually recognized by Honorius III as early as 1224, where he speaks of the Doctors 'qui . . . stare ut tenebantur sententiæ rectorum con-

tempserunt.'—Savioli, III. pt. ii., p. 56.

<sup>2</sup> Published by Villanueva in *Viage Literario á las Iglesias de España*, T. XVI. p. 207.



In the following Section I shall content myself with giving a sketch of the University system as it is presented to us by the first collection of Statutes which we possess in their integrity—the Code of 1432. But the discovery of Denifle enables us to add that the account will in the main be applicable to the whole period between 1317 and 1432<sup>1</sup>.)

CHAP. IV,  
§ 3.  
—+—

It may be convenient here to explain that there was at Bologna a wholly distinct University of Students in Medicine and Arts, and a wholly distinct College of Doctors in those Faculties, which will be dealt with in detail hereafter. In the next two sections I am concerned only with the Jurist organization.

<sup>1</sup> See below, § 6.

#### § 4. THE CONSTITUTION OF THE STUDENT- UNIVERSITIES.

CHAP. IV,

§ 4.

Close  
union of  
the two  
Universi-  
ties.

It will be noticed at once on comparing the extant Statutes with the state of things disclosed by the isolated documents of earlier times that a great change has taken place in the mutual relations of the separate Universities. At the beginning of the thirteenth century the four Universities of Jurists appear as distinct as a number of separate trade-guilds. Though the city legislation against the administration of oaths pledging scholars to leave Bologna under certain circumstances was directed against all the Universities, it was (so far as appears) only by the non-Italian Societies that it was resisted: and other instances occur of independent action on the part of particular Universities. By the fourteenth century the Universities of Jurists (now amalgamated into the two Ultramontane and Cismontane Universities) though remaining theoretically distinct bodies, are practically almost fused into one. They have a common code of Statutes; they hold common Congregations; the Rector of either University is empowered, in the absence or default of his colleague, to act on his behalf<sup>1</sup>; they have even (it would seem) one common seal<sup>2</sup>. Though they have no common Head, the two Universities have become practically as much one body as the four Nations of Paris<sup>3</sup>.

The jurisdiction of the Rector was originally based upon

<sup>1</sup> *Stat.* p. 63 *et passim*.

<sup>2</sup> *Stat.* p. 127.

<sup>3</sup> It would seem that this state of things came into existence at about the close of the thirteenth century. In 1273 the Ultramontanes in their separate Congregation discuss a proposed alteration in their permanent Statutes (*Acta Nat. Germ.* p. 349). In 1301 we read of a 'liber statutorum scholarium ultramontanorum et citramontanorum' (*ib.* p.

350). In 1306 the Ultramontanes are said 'statuere et declarare *ad hoc*' (*ib.* p. 352), but its resolution related merely to an internal dispute between its constituent nations and does not seem to have involved any alteration in its permanent Statutes. Except where the contrary appears from the context, I shall employ the term University to denote the combined Universities of Jurists.

the Statutes of the University and derived its sanction CHAP. IV,  
§ 4. from the penalties which the University as a private society had in its power to inflict on its own members, including the spiritual penalties in which transgressors were involved by their oaths of obedience. In accordance, however, with the prevalent ideas as to the authority of *collegia* and the inherent power of their members to elect Consuls or Rectors, the Republic recognized the authority of the Rectors over their students and directed its own Magistrates to enforce their sentences. This applied, however, only in the first instance to causes in which both parties were members or public servants of the Universities. But the Universities claimed more than this. They claimed for the Rectors an exclusive jurisdiction in all cases in which a scholar was involved either as plaintiff or defendant<sup>1</sup>. Such a demand the Republic naturally resented, and there remained a permanent contradiction upon this point between the Statutes of the University and those of the City<sup>2</sup>. Citizens may at times have elected to cite a Scholar before the Rector: but it is improbable that the Rectors ever succeeded in getting their jurisdiction *in invitos* acknowledged where a citizen was defendant. The Statutes of 1432 require the Rector to demand of the Podestà an oath to respect the privileges of the University and to enforce the Rectorial sentences<sup>3</sup>, but in the practical ap-

<sup>1</sup> Sometimes, but not always, the Italian University Statutes admit the household (*familiars*) of scholars to their privileges, e. g. at Florence *Stat.* p. 22. So apparently at Bologna, *Stat.* p. 163.

<sup>2</sup> Cf. *Stat.* p. 57 with the Extract from the Town-statutes, *ib.* p. 163. Such collisions between the Town-statutes and those of the Scholars could probably be found in most Italian Universities. Sometimes the Universities expressly claim to override those of the town. Thus at Florence the Rector is to bear arms 'non obstantibus .. Statutis vel re-

formationibus Populi et comunis Florentie in contrarium loquentibus' (*Stat. Florent.* p. 28). In 1366 we find the Rectorial jurisdiction sanctioned by the City Statutes with the express exception of the right to bear arms or 'ire de nocte' (*ib.* p. 149). In 1403, however, licenses to bear arms might be granted to the *familiars* of the Rector (*ib.* p. 181.) At Ferrara the Rector's House is to be a sanctuary for criminals (Borsetti, I. p. 379).

<sup>3</sup> 'Item mandabit sententias Rectorum vel alterius ipsorum executioni.' *Stat.* p. 183.

CHAP. IV, plication of this enactment there remained no doubt the old  
 § 4. diversity of interpretation between the imponent and the  
 taker of the oath ; though, from the variations observable  
 on this point in other University Statutes, it is probable  
 that at Bologna itself there may have been fluctuations  
 in the practical limits of the Academical jurisdiction at  
 different times.

The Rector  
 bound to  
 exact  
 penalties.

So completely was the Rector's jurisdiction dependent upon the Statutes that his functions were, in many cases, almost purely executive. When the Statutes denounced deprivation or expulsion upon Professor or student, the Rectors had no discretion in inflicting it. The power of restoring a deprived Doctor was reserved to the University itself<sup>1</sup>. Similarly when the amount of a fine was fixed by Statute, it was regarded as a debt to the University incurred *ipso facto*. If the Rector failed to collect it, he became himself indebted to the Society to the same amount, and at the scrutiny held at the end of his term of office was required by the Syndics appointed for that purpose to make good the deficiency<sup>2</sup>. All students—with a peculiar exception in favour of Bishops and high dignitaries—were bound to give information if any breach of the Statutes came under their notice<sup>3</sup>. At the *Syndicatus* on the expiration of his office complaints might be made against the Rector by Professors or Scholars, and the Rector was personally liable in damages to individuals whom he had annoyed by excessive zeal just as he was liable to the Society for his omissions<sup>4</sup>.

No criminal  
 jurisdiction.

Criminal jurisdiction even over its own members—still less over citizens—the Universities do not seem to have secured<sup>5</sup> until the fifteenth century, when it was conceded

<sup>1</sup> *Stat.* p. 110.

<sup>2</sup> *Stat.* pp. 60, 67 sq., 149. This is one of the innumerable adaptations from Italian civic practice. The same method was adopted with the Podestà.

<sup>3</sup> *Ib.*

<sup>4</sup> For a most curious record of

such a *syndicatus*, see *Statut. Florent.*, pp. 425-438.

<sup>5</sup> 'Jurisdictionem ordinariam Rectores habeant in scolares in causis civilibus' (*Stat.* p. 56). In a later addition (p. 181) there is an elaborate scale of fines for various forms of injury to the person or dignity of the

where both parties were scholars. | In the late additions CHAP. IV,  
§ 4.  
to the Statutes of 1432 we find, moreover, a provision that  
a student shall not be arrested (except for treason) without  
the permission of the Rector, that he shall not be dragged  
through the streets, and that he shall be admitted to bail  
when accused of carrying arms<sup>1</sup>.

There was, indeed, a large class of citizens on whom the Interdict.  
Statutes did impose penalties. By a judicious employ-  
ment of the mighty power of interdict or 'boycotting',<sup>2</sup> the  
University had acquired jurisdiction over the landlords of  
Students' houses in matters affecting their relations with  
the students<sup>3</sup>, and over all classes of tradesmen or work-  
men engaged in the production of books<sup>4</sup>. With these

Rector, culminating in the provision that any one who assaults that official 'cum armis et sanguinis effusione citra mortem vel mortale vulnus poenam manus et centum lib. bonon. incurrat.' But from the context it appears that the University was merely 'puniri curare et usque ad finem prosequi' before the City Magistrates. In 1411 the Rector's criminal jurisdiction over scholars is recognised by the city (*ib.* p. 168). So later (*ib.* p. 195): 'Et talis gerens se pro Bidello trudetur carceribus domini Potestatis per spacium trium dierum per Rectores Universitatis nostræ.' A Privilege of Paul III in 1544 gave the Rectors jurisdiction in all non-capital criminal cases in which a scholar was involved. *Stat. Jur. Bon.* pp. 97, 98. Savigny (cap. xxi. § 74) says that the right of the Rectors to punish small offences was never contested, but gives no proof of such a right being recognized except in the case of offences against the Statutes, which do not provide for the punishment of offences against the ordinary Law.

<sup>1</sup> *Stat.* p. 184.

<sup>2</sup> At Padua a person who violates the privilege of the University

'per scholas publicetur et comertio scholarium interdicatur.' *Stat. Artistarum*, f. xxxvi. The penalty of 'Privatio' sometimes extended to the fifth generation. *Stat. Univ. Jur. Patavini Gymn.* 1550, f. 51.

<sup>3</sup> The town recognizes the system of joint-taxation (*Stat.* p. 160), but it denies the University's right of Interdictio, at least in certain cases (p. 161), while the University Statutes denounce it against the 'hospites' of houses near which an outrage on a scholar is committed, even if the owner was not personally responsible (p. 124). Under the Papal Bull authorizing the taxation (see above, p. 149) disputes about lodgings might be taken before the Spiritual Courts, but the University denounces perpetual interdiction against an interdicted landlord invoking their help (*Stat.* p. 125).

<sup>4</sup> 'Scriptores, miniores, correctores et miniorum repositores atque rasores librorum, ligatores, cartolarii et qui vivunt pro universitate scholarium.' *Stat.* p. 59. The town-statutes require that disputes between scholars and *scriptors* shall be settled by the Podestà (*Stat.* p. 162).

CHAP. IV, exceptions the jurisdiction of the Rector was confined to the members of the University; and even over Students this jurisdiction was very strictly limited and defined by Statute. The penalties which he could inflict consisted in ordinary cases of fines, or in serious cases of expulsion or 'privation,' together with the power of pronouncing a Student perjured. In the last two cases, the assent of a majority of the Council was required. In the enforcement of his civil penalties, the Rector was dependent upon the assistance of the Podestà and his officers<sup>1</sup>.

The Pro-  
fessorial  
Jurisdic-  
tion.

As has been already said, the jurisdiction conferred by the Authentic *Habita* upon the Professors was always legally recognized, however much out of harmony with the later relations in other respects between the Professors and their domineering pupils. By the decree of Frederick I this jurisdiction extended apparently both to criminal and civil matters. This interpretation of the law was, however, much disputed by the citizens: and a great feud between the Lombards and the Tuscans early in the thirteenth century, when (according to the Jurist Odofredus) there were 10,000 students at Bologna, compelled them for a time to renounce a criminal jurisdiction which they found themselves incapable of enforcing. This jurisdiction had been, however, nominally resumed in the time of Odofredus († 1265 A.D.), though it is probable that it was very much of a dead letter<sup>2</sup>. At all events the Professors

<sup>1</sup> Cf. *Stat. Fiorent.* p. 430, where a student complains that the Rector 'misit pro familia domini Potestatis, uno mane, dum esset dominus Andreas in scolis ad audiendum, et eum de Studio ignominiose et vituperose capi fecit et duci ad Palatium et in carceribus detru-di,' &c., for which excess of zeal the Rector was heavily fined by the Syndics.

<sup>2</sup> 'Sed per scholares et doctores renunciatum est Bononiæ quantum ad criminales, et sic servatur exceptis clericis qui suo non potuerunt privilegio renunciare.' Accursius in

Cod. iv. tit. 13 *Habita* Verb. *si litem* (ed. Contius, Parisiis, 1576, c. 750). 'Or, signori, videtur quod hec constitutio quantum ad verba loquatur in civili et in criminali, nam vidi hoc in civitate ista tempore Domini Azonis quod scholares poterant declinare forum in causa criminali, et erant hic tunc temporis bene x. millia scholarium. Sed scholares renuntiaverunt huic privilegio tempore Domini Azonis et fuit renunciatum tali ratione, quia inter Lombardos et Tuscos fuit maxima discordia et maximum bellum, ita quod domini doctores non pote-

would be entirely dependent upon the co-operation of the Town authorities for the enforcement of any sentences that they might venture to pronounce. The right secured by the *Habita* of citing a scholar before the Bishop was no doubt intended primarily for clerks, though originally the alternative appears to have been always open to a plaintiff-student; but in practice it was seldom claimed except by ecclesiastics. And at no time was either clerk or layman allowed to decline the Rector's jurisdiction if cited before him by the other party<sup>1</sup>. As, however, the Canon Law forbade the exercise of any jurisdiction by a layman over a clerk, the University Statute provided that the Rector should be himself a clerk<sup>2</sup>. We shall have occasion again to speak of the medieval conception of *clericatus*, which is, indeed, of great importance in the appreciation of the relations between the Universities and the Church. Here it will be sufficient to say that any student could become a clerk and so acquire the immunities of an ecclesiastic by merely receiving the tonsure from a Bishop,

CHAP. IV.

§ 4.

The Rector  
a clerk.

rant se intromittere in puniendo eos ;  
... sed in civili bene habent adhuc  
suum hodie privilegium. Sed hodie  
reversum est ad pristinum statum :  
tamen deus velit quod non faciant sibi  
male adinvicem, nam per dominos doc-  
tores male puniuntur illa maleficia.'  
Odofredus, *Super Codicem* (T. III.  
f. 204). Auth. *Habita*. He adds  
that the privilege applies only to *scholares qui studiorum causa peregrinantur*, hence not to *Bonomienses*. Accursius (c. 1220) treats even the Bishop's jurisdiction as obsolete 'quantum ad delicta,' *Authenticorum Collatio* III. tit. 4 (Parisii, 1576, c. 133), though this must be understood with an exception in favour of clerici. Odofredus *ad Dig. Vetus Const. Omnium* (T. I. f. 4) assumes that even a lay scholar may still be cited before the Bishop. The clerical privilege is enforced by Bull in 1252 (*Archiv f. Kirchengesch.* IV. p. 245).

<sup>1</sup> *Stat.* p. 57.

<sup>2</sup> The above explanation of the proviso is clearly given by the jurist Baldus and adopted by Denifle, I. 87. Savigny (c. xxi. § 72), who never could understand what a *clericus* meant in the Middle Ages, rejects it, and says that *clericus* must mean merely 'scholar.' But compare the following Statute of Ferrara (Borsetti, I. 367) : 'Et si fieri posset, sit (Rector) qui promotus sit ad primos ordines ecclesiasticos, scilicet ad primam tonsuram et quatuor Ordines Minores et hoc quo convenitur (*lege* conveni-  
enter) Judex competens Scholaribus fieri queat.' For the importance attached to the tonsure and clerical habit, cf. *Stat. Florent.* p. 437, where it is pleaded in the Archbishop's Court that 'non potuit nec potest dictus magister Ieronimus gaudere aliquo privilegio clericali, et maxime quia jam diu ivit sine habitu et tonsura clericali.'

CHAP. IV, adopting the clerical dress, and remaining celibate. The  
 § 4.  
 Rector of a University of students was usually a beneficed ecclesiastic—a Dean or Archdeacon or Canon for instance<sup>1</sup>. In such cases he would have to be at least in minor orders: but he might be a *clericus* without being even in minor orders.

The  
 Nations.

We have already alluded to the subdivision of the two Universities into Nations. In the earliest Statutes we find the Citramontani divided into three nations only, the Romans, the Tuscans, and the Lombards: but these are further subdivided into *Consiliariæ*, or smaller local divisions, each of which elected one or two Councillors<sup>2</sup>. By 1432, however, these *Consiliariæ*, seventeen in number, are occasionally spoken of as distinct Nations, though traces of the earlier arrangement still remained in the Statute book<sup>3</sup>. As early as 1265 the Ultramontani were divided into fourteen Nations<sup>4</sup>. In 1432 there were sixteen Ultramontane Na-

<sup>1</sup> Thus, at the time of the Reformation of the Statutes in 1432 we find that both Rectors are scholars in Canon Law, one being Dean of Troyes, the other Provost of a collegiate Church (*Stat.* p. 47). At Florence, in 1487, we find the *minimum* age reduced to nineteen (*Stat. Florent.* p. 15).

<sup>2</sup> 'Statuimus quod consilarii sint numero triginta octo, scilicet decem et novem ultramontani, et totidem citramontani. De ultramontanis autem quod solitum est servetur. De citramontanis vero iuxta morem antiquum natio Romanorum habeat sex, Tuscorum alios sex, reliquos habeat natio Lombardorum, quos per consiliarias sic dividimus, sicut nationis statutis est descriptum.' *Stat.* p. 16.

<sup>3</sup> The above-cited words are repeated nearly *verbatim*, except that the allusion to the Statutes of the Nation disappears and the Councillors are redistributed as follows: 'Natio Romanorum habeat octo, Tuscorum

sex, et natio Lombardorum quinque. Quas nationes per consiliarias sic dividimus, videlicet: Nationes vero sunt decem et septem, sex Romanorum, sex Tuscorum et quinque Lombardorum. Romana continet sub se has nationes: Nationem Romanorum, nationem Abrucii et terre laboris, apulie et calabrie, marchie inferioris, marchie superioris, item totius insule Sicilie. Natio Tuscorum habet sub se sex nationes, scilicet Florentinam, pisanam et lucanam, senensem, ducatum, ravenatam et venetorum. Natio lombardorum quinque nationes, cum vocibus contentis sub illis, scilicet ianuensium, mediolanensium, tessalonicam, longobardam et celestinam' (*Stat.* p. 68). Rome and Sicily have each two councillors. So in *Stat.* p. 50 the Ultramontane Consiliariæ are distinguished from the Cismontane Nations.

<sup>4</sup> See doc. in *Acta Nationis Germ.* p. 347. The Nations are Gaul, Picardy, Burgundy, Poitou, Touraine and Maine, Normandy, Catalonia,



tions<sup>1</sup>, each electing one, or in a few cases two *Consiliarii*<sup>2</sup>. In early times these Nations (which we have seen reason to believe were in reality earlier than the two great Federations into which they were ultimately merged), were, like the Nations of Paris, distinct corporations with Statutes, officers, and meetings of their own. But (except in the case of the specially privileged German Nation) they here appear to have lost much of their importance and autonomy, though they must have held Congregations of their own for the election of *Consiliarii*<sup>3</sup>.

It is obvious that so enormous a body as the whole body of Law-students could not meet so frequently as the Parisian University of Masters. Many matters therefore which were at Paris dealt with by the University itself were at Bologna left to the Rectors and *Consiliarii*, who jointly formed the ordinary executive body of the University. The consent of one Rector and a majority of the Councillors was necessary to the calling of a congregation<sup>4</sup> —a provision which of course gave them the initiative in all University legislation. Upon the requisition of two Councillors, the votes were taken by ballot<sup>5</sup>. The concur-

Hungary, Poland, Germany (Teuthonici), Spain, Provence, England, Gascony. Poitou and Gascony were merged and assigned two councillors by the agreement made in this year (ib. p. 348).

<sup>1</sup> The names are now (*Stat.* pp. 70, 71): (1) Gaul, (2) Portugal and the Algarve, (3) Provence, (4) England, (5) Burgundy, (6) Savoy, (7) Gascony and Auvergne, (8) Berry, (9) Touraine, (10) Aragon and Catalonia with Valencia and the Majorcas (two councillors), (11) Navarre, (12) Germany (two councillors), (13) Hungary, (14) Poland, (15) Bohemia, (16) Flanders. The Statute speaks of nineteen ultramontane councillors, but only eighteen are accounted for.

<sup>2</sup> From the expressions 'habeat unam vocem et unum conciliarium,' 'habeat duas voces,' &c. (*Stat.* p. 68),

it would seem as if the voting was by Nations as at Paris (below, p. 405 sq.), but the Statute *De modo partiti ponendi in Universitate* proves the contrary (*Stat.* p. 130). Possibly the expression may be a survival.

<sup>3</sup> The Statutes of 1432 limit the 'festivitates Nationum que non sunt descripte inter festa universitatis' and abolish the 'officia prepositorum seu priorum Nationum seu consiliariorum ultramontanorum per que etiam Rectorum iurisdictio per tempora extitit multum impedita' (*Stat.* p. 139). We know from the *Acta Nat. Germ.* that the independent existence of the specially privileged German Nation was quite unaffected by this Statute: how it affected other nations we do not know.

<sup>4</sup> *Stat.* p. 60.

<sup>5</sup> *Stat.* p. 57.

CHAP. IV, rence of a majority of the Council was, as has been said, necessary before the Rector could pronounce the sentence of deprivation, or declare a Doctor or scholar perjured <sup>1</sup>.

Election of Rector. The Rector was chosen biennially by that method of indirect election which bore so prominent a part in the constitutions of Italian Republics. The electors were the ex-Rectors, the newly-elected Councillors, and an equal number of special delegates. The voting was by ballot, a Dominican Priest acting as returning-officer <sup>2</sup>. The Rector was required to be a 'secular clerk, unmarried, wearing the clerical habit <sup>3</sup>, of five years standing in the study of law, and at least twenty-four years of age <sup>4</sup>. The Rector took precedence over all Archbishops and Bishops (except the Bishop of Bologna) and even over Cardinals <sup>5</sup>.

Rectorial expenses. The expenses of the office must have been in proportion to its dignity, the only salary attached to it being a moiety of the fines exacted by its occupant <sup>6</sup>. The Rector was expected to live with a certain amount of state; he was bound, for instance, by Statute to keep at least two liveried servants <sup>7</sup>. But the most serious expense was incurred in connexion with the festivities of the Installation-day. If we may transfer to Bologna the custom of Padua, the ceremony took place in the Cathedral, where, in presence of the assembled University, the Rector-elect was solemnly invested with the Rectorial hood by

<sup>1</sup> *Stat.* p. 50.

<sup>2</sup> *Stat.* pp. 49-51.

<sup>3</sup> 'Clericus non coniugatus, habitum deferens clericalem, ac nullius religionis appareat.' *Stat.* p. 49.

<sup>4</sup> 'Qui . . . vigesimum quintum sue etatis attigerit' (*Stat.* p. 49). Savigny wrongly gives the minimum age as twenty-five (cap. xxi. § 72).

<sup>5</sup> *Stat. Jur. Bon.* p. 90. The Legate and the Vexillifer Justice are also placed above the Rectors. Cf. Ghirardacci, II. p. 424.

<sup>6</sup> *Stat.* p. 60. It appears that it had been at one time customary for the University to grant a *subventio*

towards the Rector's expenses. This is forbidden by the Statutes of 1432 (pp. 53, 54), unless the insufficiency of the Rector's purse is proved. But later it appears that it was customary to elect the Rectors to Student-chairs of 100 *libre* — a salary which was doubled when the two Rectorships were amalgamated, and largely increased in the sixteenth century. Malagola, *Monografie*, pp. 52, 53: *Stat.* p. 181.

<sup>7</sup> *Stat.* p. 256: the title *Rector Magnificus* does not begin to be used till the end of the fifteenth century. Malagola, *Monografie*, p. 47.

one of the Doctors : after which he was escorted in triumph by the whole body of students to his house ; where a banquet, or at least wine and spices, awaited the constituents to whom he owed his exalted office<sup>1</sup>. It is worth mentioning as an illustration of the continuity of Academic custom that this 'deductio' with the subsequent 'wine and spices' was prescribed not only by the Statutes of Universities which directly copied those of Bologna, but by the ancient customs both of Paris and of Oxford<sup>2</sup>. At the latter it is observed in a somewhat shrunken form at the inauguration of the Vice-Chancellor, and of the Proctors. But in the Italian Universities the festivities at the Rectorial Inauguration were on a much vaster scale than anything that could have been provided by a poor Master of Arts in a Master-University. At Padua a tilt or tournament was held at which the new Rector was required to provide two hundred spears and two hundred pairs of gloves for the use of combatants. The Statutes of the Bologna University of Arts and Medicine forbade the Rector to feast those who escort him home, to give a banquet to more than twelve persons on the day of his election, or to 'dance or make to dance with trumpets or without' for a month after that event<sup>3</sup>. In the terms of this prohibition we may probably read a picture of the rejoicings which were permitted in the case of the wealthier University of Jurists. A still more curious and no less expensive feature of the entertainment as conducted in the sixteenth century was the custom of setting upon the newly-elected Rector, tearing his clothes off his back, and then requiring him to re-

<sup>1</sup> *Statuta Universitatis Juristarum Patavini Gymnasii*, 1550, f. 11.

<sup>2</sup> Facciolati, *Synagmata*, p. 17 sq. *Stat. Jur. Pat. l. c.*

<sup>3</sup> 'Tripudiare aut tripudiarum facere cum trombis vel sine vel cum aliis instrumentis, de nocte, cum dopleriis vel sine, directe vel indirecte.' *Stat. p. 221*. What is to dance 'in-

directly'! The Artists' Statutes of 1486 at Padua (*Stat. Artistarum Academia Patavina*, fol. 3 b, 4 a) require the Rector to provide a *collatio* for the whole University, and to find at least 800 spears for the tournament, at which he awarded prizes compulsorily given by himself and the *Doctores legentes*.

CHAP. IV, deem the fragments at an exorbitant rate. The Statute of 1552, which was passed to restrain 'the too horrid and petulant mirth' of these occasions, does not venture to abolish the time-honoured 'vestium laceratio'<sup>1</sup>. These are a few examples of the extortions to which the newly-elected Rector was exposed. The Statutes of the various Universities abound with regulations as to the number of servants that the Rector shall keep, the value of his liveries<sup>2</sup>, the quality of the wine that he should provide at his Installation banquet, and the like. Altogether, there is little cause for surprise that students eventually became as anxious to avoid the Rectorship as English country gentlemen are to escape the burdensome honour of the Shrievalty. The acceptance of the office by students of sufficient means was made compulsory, and elaborate precautions had to be taken to prevent those who had this unwelcome greatness thrust upon them from absconding before the expiration of their year of office. The Rector was, therefore, not allowed to leave the city without the permission of his Council, or without giving sufficient security for his return<sup>3</sup>.

Accept-  
ance com-  
pulsory.

Decay of  
the Rec-  
torship.

In the middle of the fourteenth century we already find an instance of the two Jurist-rectorships being held by a single individual. Towards the end of the fifteenth century this arrangement became the rule instead of the exception. In the sixteenth century the difficulty of obtaining candidates able to perform such expensive duties, together with the growing hostility of governments to Student-rectorships, led either to a great reduction in the

<sup>1</sup> 'Vestem quoque abripi atque etiam lacerari non prohibemus dummodo sciant hi qui lacerarunt nihil hinc exigi posse, &c. Qui vero integram detulerunt, contenti discedant pecunia eis danda per rectorem que non sit minoris summe scutorum sex intotum.' *Stat. Jur. Bon.* (1561) p. 103.

<sup>2</sup> So at Ferrara, where he is also to keep a horse 'vel mulam honora-

bilem.' Borsetti, I. p. 376. He is also to provide a 'collationem laudabilem' to appease the 'altercationes' that were wont to arise at Rectorial elections, but it may be doubted whether the 'vinum dulce optimum' was the best means of securing that end.

<sup>3</sup> *Stat.* p. 65. Cf. the elaborate Statute *De excusatione electi*, p. 53.

splendour and dignity of the office, or to its permanent discharge by deputies—often Professors—who were not expected to maintain the state invariably associated with the actual Rectorship. At Bologna several instances of the appointment of a Vice-Rector occur in the later medieval period, and after 1580 this arrangement became permanent. After 1609 the Rectorial duties were discharged by a deputy known as Prior, elected by the students for a single month only<sup>1</sup>. In 1742 the Rectorship was revived, but only to be conferred upon the Cardinal-legate of Bologna. This arrangement is a sufficient indication of the practical extinction of the student-liberties: still in this their earliest home the whole Student-constitution lasted in a shadowy form down to the Revolution<sup>2</sup>. In the University as in the State the sixteenth century everywhere (except to some extent in England) broke down the old medieval liberties as well as the medieval licenses which those liberties had too often sheltered: but the last vestiges of them often lived on till they were swept away—only too ruthlessly—by that mightier Revolution which was to bring back in a more advanced form the liberty which they had once enshrined.

The supreme governing body of the Society was the Congregation of the two Universities, i.e. the whole body of students with the exception of poor men who lived 'at others' expense<sup>3</sup>. The Universities in their earliest days had no buildings of their own, and the fact is one which is of primary importance for the appreciation of the genius and history of the institution. Their power depended wholly upon the facility with which they could move from town to town: and when a University or a large section of it had decamped from the place, there were no effects left

<sup>1</sup> Malagola, *Monografia*, pp. 34, 133 sq. There was an isolated revival of the Rectorship in 1604. *Ib.* pp. 60, 205.

<sup>2</sup> *Ib.* pp. 72, 205 sq. After many vicissitudes (*ib.* pp. 75–81), the Rectorship is now re-established, but

the Rector is of course no longer elected by the Students.

<sup>3</sup> 'Viventes sumptibus alienis . . . ut sunt socii doctorum bononiensium et scholarium bonon., repetitores et similes.' *Stat.* p. 147.

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behind for the authorities to attach. In the earliest days of the Universities, the lecture-room or school was simply a hired apartment, or the private house of the Doctor<sup>1</sup>. None of these schools of course were large enough to hold the entire body of students. For great solemnities, such as Doctoral Inceptions, the Cathedral was used. For ordinary Congregations a Convent or a Church had to be borrowed. At Bologna the usual place of meeting was the great convent of S. Dominic (the burial-place of the Saint), in the sacristy of which the common chest and seal of the University were kept<sup>2</sup>. Attendance at these Congregations was compulsory. When a question was laid before the Assembly by the Rectors, every member had the right of speaking, but the Rectors had the power of 'closure,' and might 'impose silence on too prolix speakers<sup>3</sup>.' The votes were taken by ballot with black and white beans<sup>4</sup>.

Perma-  
nence of  
the Sta-  
tutes.

It must not be supposed that University legislation was to the students of Bologna the weekly employment that it has become to the resident M.A.s of Oxford and Cambridge. As in the old Greek and medieval Italian Republics, the Constitution provided most effectual checks against hasty or over-frequent legislation of a permanent

<sup>1</sup> The will of Bonrecuperus Porrus († 1278) contains a clause: 'Et si decederet sine liberis legitimis masculis voluit et iussit ut domus ipsius testatoris in qua ipse moratur sic existat separata per murum a domo alia testatoris in qua morantur scholares et sunt schole,' ap. Sarti, I. pt. i. p. 215. So Sarti tells us that Odofredus 'Scholas habuit peramplas in suis aedibus, quarum aliquando mentionem ingerit in commentariis ad Pandectas.' *Ib.* p. 166.

<sup>2</sup> *Stat.* pp. 127, 189: Ghirardacci (I. 525) says the usual place was 'al luogo de S. Dominico.' Was this the Church or the Piazza outside? No room in the Convent would have been large enough. The only approach to a University building

which existed in medieval times was a 'Statio Universitatis' in which the Rector sat and the Notary had his office, but there is no evidence that it was actually the property of the University. *Stat.* pp. 81, 83. The Rector held his Court in the 'Statio bidellorum generalium'—probably the same place. *Ib.* p. 85.

<sup>3</sup> 'Possint tamen Rectores nimium prolixis in sermone silentium imponere.' *Stat.* p. 61.

<sup>4</sup> 'Priusquam ad fabas albas et nigras perveniatur.' *Stat.* p. 61. Cf. p. 130. At the beginning of every Congregation four Consiliarii were chosen who with the Rectors determined the form in which the question should be put ('forma partiti'). *Stat.* p. 60.

character. The Statutes could only be altered once every twenty years, when eight *Statutarii* were appointed to conduct the revision and to publish the new Code, which passed into law without any further confirmation by the University. In the intervals between these revisions, changes could only be made by the unanimous consent of the University upon a proposal already approved, first by the Rectors and Councillors, and then by a body of twenty-four members of the University named by them. A still more self-denying ordinance was the provision that in this case the consent of the Doctors was also necessary<sup>1</sup>.

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One of the most curious parts of the University system was the institution of *Peciarii*<sup>2</sup>. The *Peciarii* were six in number. Their duty was to supervise the *Stationarii* or keepers of book-stalls. The Stationer was compelled periodically to submit his MSS. to the inspection of this board, and the Stationer was liable to a fine of five Bologna *solidi* for every incorrect copy which he produced. Students who might detect clerical errors in their books were bound on pain of perjury to give information against the Stationer: and both Doctors and Students were bound at all times to lend their books to the *Peciarii* for the purpose of collation. The actual correction of the MSS. was carried out by the *Correctores peciarum*. The Stationer's primary business was to let out books on hire to scholars, the rate of hire being determined by the University Statutes<sup>3</sup>. So far the regulations are mainly applicable to books produced by the writers in the Stationers' employment. But a very large proportion of the book-trade in the Middle Ages was a second-hand trade. Books were dearer, but much more durable, than at the present day. In the sale of second-hand books, however, the Stationer was not allowed to reap the enormous profits made possible by the modern

<sup>1</sup> *Stat.* pp. 76-78.

<sup>2</sup> The following regulations are from *Stat.* pp. 75, 76.

<sup>3</sup> Six *denarii* were paid for the loan of a *quaestio* (for how long does not appear), and the Stationer might

demand a 'pignus' of twice the value. (*Stat.* p. 76). A list of prices for the hire of books is given in *Stat.* p. 91, sq. A complete Digest costs 32 *solidi*, the Institutes 2s.

CHAP. IV, system. He occupied the position not so much of a trader as of an agent acting on behalf of the owner, and was remunerated by a fixed commission which was defrayed half by the buyer and half by the seller<sup>1</sup>. In the sale of new books he likewise, it would appear, served as a middleman between the buyer and the writers. A continual supply of fresh scholastic literature was ensured by the provision that every Doctor, after holding a 'disputatio' or 'repetitio' should, on pain of a fine of ten golden ducats, write out his argument and deliver it to the General Bedel of the University, by whom it was transmitted to the Stationers for publication<sup>2</sup>. Some similar regulation in our own Universities might be found a more effectual stimulus to research than much 'endowment' and many 'visitatorial boards.' The *Stationarii* were subject to a number of other minute regulations, most of which we shall find substantially reproduced at Paris, with a view of securing an adequate supply and keeping down the prices. Paternal government was in this matter carried so far that books above a certain value might only be sold in presence of the University notary<sup>3</sup>.

Taxors.  
(*Taxatores*  
*Hospicio-*  
*rum.*)

Of the remaining University officials the most important were the Taxors, who, jointly with arbitrators appointed by the city, fixed the rents of houses used by scholars. Five years' 'interdiction to scholars' was the penalty of refusal to abide by the decision of the arbitrators or any other infringement of the regulations of the University<sup>4</sup>. This system of taxation was, as has been seen, very early recognized by Papal authority. Traces of it are found in other places even before the rise of the Universities, and it soon became universal in all University towns whether of the Parisian or of the Bologna type. Landlords were not

<sup>1</sup> Six *denarii* on each *libra* up to 60, afterwards four. *Stat.* p. 89.

<sup>2</sup> *Stat.* p. 109.

<sup>3</sup> *Stat.* p. 87. In Fournier, *Stat. et Priv. des Univ. Françaises*, I. No. 150. is a contract for the sale of a book as elaborate as a conveyance

of a landed estate.

<sup>4</sup> *Stat.* pp. 121 sq., 160. Four *proxenetae* were also appointed by the Universities to assist students in finding lodgings and the employment of other intermediaries was forbidden. *Ib.* p. 123.



the only class of citizens against whose exactions the Universities sought to protect their members. Both the University and the Town Statutes provide for the appointment by the University of four licensed Merchants or money-lenders or (as they might be no less correctly termed) pawnbrokers, who were privileged to lend money to students<sup>1</sup>.

The other officials employed by the University but not selected from the student-body were the two *Massarii* or Treasurers<sup>2</sup>, the *Notarius*<sup>3</sup>, the *Syndicus* or common Advocate (a lawyer who also acted as legal assessor to the Rectors<sup>4</sup>) and the *Bidelli Generales*<sup>5</sup> (one for each University). The functions of the first three pretty well explain themselves. The duties of the *Bedels* were fairly analogous to those of the venerable and picturesque functionaries who bear the same name in our own Universities, except that they performed some of the duties now entrusted to the Clerk of the Schools and others which have fallen into desuetude. Thus, besides preceding the Rectors on public occasions, collecting the votes in Congregation, and so on, the *Bedels* went the round of the schools, to read Statutes and decrees of Congregation, announcements of lectures by students, lists of books which the *Stationarii* or individual students had on sale and other matters of general interest. He was remunerated by a special *collecta* to which all students were required to contribute the customary amount.

The *Bedelship* is among the most ancient of Academical offices—perhaps as ancient as the Rectorship. It is found

<sup>1</sup> *Stat.* p. 64, *De electione mercatorum*. The nature of their functions is explained in the Town-statute (*Stat.* p. 161), which exempts from military service 'quatuor mercatores vel feneratores qui mutuunt eis pecuniam.' So at Florence, a *Fenerator* is to be elected 'cum quo paciscatur de salario usurarum; qui Scholaribus mutuunt sub usuris, pro minori quantitate lucri quam alii

feneratores mutuunt, tempore opportuno.' *Stat. Fior.* p. 34. Scholars were here forbidden to borrow from other money-lenders.

<sup>2</sup> *Stat.* pp. 19, 20.

<sup>3</sup> *Stat.* p. 79 sq. He kept the Matricula, and recorded the acts of the University.

<sup>4</sup> *Stat.* p. 79.

<sup>5</sup> *Stat.* p. 84 et passim.

CHAP. IV, in all medieval Universities without exception. In fact, an allusion to a *bidellus*<sup>1</sup> is in general (though not invariably) a sufficiently trustworthy indication that a School is really a University or Studium Generale. It is interesting to observe that in spite of the decay of most that is medieval in the continental Universities the Bedels of Bologna and the other Italian Universities still appear upon public occasions with the ponderous maces which they have borne from medieval times, and which retain almost exactly the form familiar to Oxonian or Cantabrigian eyes.

Special  
Bedels.

Besides the General or University Bedels, each Doctor had a 'special Bedel' of his own, who looked after his school, opened and shut the door, swept it out twice a month, strewed the floor with straw in winter and carried his Doctor's books to the school. He was remunerated by a *collecta* from his Master's pupils. Both the special and general Bedels preceded the Rectors at funerals or other University processions<sup>2</sup>.

Few dis-  
ciplinary  
Statutes.

The Statutes of the Student-Universities naturally do not regulate the private life of students with the same detail as the College-statutes or even the later University-statutes of Paris and Oxford. The students of Bologna lived in their own houses and entirely after their own fashion. The usual practice was not to take lodgings in a citizen's house like the modern extra-collegiate student, but for parties of students (*socii*) to hire the whole house together and make their own arrangements as to servants, furniture<sup>3</sup> and the like<sup>4</sup>. To live in a townsman's house (*ad contubernia* or *ad*

<sup>1</sup> Often spelt *pedellus*, whence the *Pedel* of the German Universities. It is derived of course from *pedum* (a stick).

<sup>2</sup> *Stat.* pp. 84, 85. Cf. *Stat. Fiorent.* pp. 68, 81, 96.

<sup>3</sup> What this furniture was may be gathered from a Statute of the College of Spain at Bologna: 'Cameram quoque unusquisque predictorum fulcitam habeat expensu collegii lectisternio uno, matalatio uel cultra,

cooptorio plumari et linteaminibus de tela grossa, archobanco, studio (a desk) et paleis pro lecto necessariis.' He is allowed to buy additional furniture at his own expense. *MS. Stat. f.* 13b. (See below, p. 200, n. 4).

<sup>4</sup> At Lerida the Bedel is required to introduce the new-comer to a suitable *Socidas*. *Stat. ap. Villanueva, Viage Literario*, XVI. p. 223. So at Bologna a student 'going

*cameram*) was the exception<sup>1</sup>. The principal disciplinary regulations which we do find relate to two subjects—the wearing of arms and the practice of gambling: quarrelling and gambling were no doubt the most prevalent, or at all events the most troublesome, vices among Italian students. The wearing of arms at Congregation is prohibited: but, mindful that without them the life of a student would not always be safe, the Statutes allow any one who fears his enemy's stiletto privately to inform the Rector and so obtain leave of absence<sup>2</sup>. The Statutes against gambling are extremely strict. 'With a view of obviating the loss of money' attendant upon the practice, it is made an offence even to watch a game of dice played in public. Students are forbidden to enter or to keep gaming-houses, and the latter prohibition is expressly extended to Doctors<sup>3</sup>. There is also a very curious provision that a student was not even to play in his own house during the three months before 'going down' for good or (as it was technically styled) 'going home a wise man,' or again for one month after taking his degree<sup>4</sup>. Was the legislator anxious to provide against the exceptional temptations to frivolity and dissipation which the close of an Academic career brought with it, or was he influenced by a merely prudential desire to protect the remaining students against irrecoverable debts of honour? In the Student-University of Lerida scholars are forbidden to entertain or be entertained by actors or pro-

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—+—

down' is required to deliver his key not to the landlord but to his 'socii.' *Stat.* p. 125.

<sup>1</sup> *Statuta Juristarum Patavin Gymnasi*, 1550, f. 119. If the analogy of Paris may be trusted it was customary only with the poorest students. (Cf. below, p. 475.)

<sup>2</sup> *Stat.* pp. 130, 131.

<sup>3</sup> *Stat.* p. 133 (*De ludo taxillorum*). There is, however, an exception in favour of playing 'ad scacos (chess) vel ad tabulas causa recreationis.' (What was the principle of the dis-

inction between 'taxilli' and 'tabulæ'?) The provisions against professional gambling were not uncalled for: 'Joannes Bassianus . . . nonnumquam pannis exutus, nudus remanebat in alea.'—Guil. de Pastrengo ap. Sarti, I. pt. i. p. 90.

<sup>4</sup> 'Adjicientes quod nullus doctorari volens, vel sapiens recedere infra duos menses ante suum recessum vel conventum audeat ludum in hospitio suo tenere, vel aliis ludentibus consentire nec etiam post doctoratum per mensem.'—*Stat.* p. 133.

CHAP. IV, § 4. fessional jesters, except at Christmas, Easter and Whitsuntide, or at the Inceptions<sup>1</sup>: even at these times they might only provide them with food, but not with money, in return for their professional services. The thrifty students of Lerida are also forbidden to ride to the schools or to keep a horse, though a mule is allowed. The Statutes even prescribe the number of courses to which they might entertain their friends, and the maximum price of their clothes<sup>2</sup>. At Bologna the regulations, so far as extant, were less inquisitorial.

Academical dress.

The Statutes relating to costume must be regarded more in the light of sumptuary regulations than as a requirement of 'academical dress.' The 'Cappa' or other outer garment was required to be of 'statutable or black' stuff<sup>3</sup>, the penalty for the violation of this Statute being much higher than the ineffectual Oxford five shillings. Hoods were not limited to graduates, but a miniver hood was the especial distinction of Rectors and Professors. The former were

<sup>1</sup> 'Mimis, jocularibus, istrionibus, militibus qui dicuntur salvatges, cœterisque truffatoribus, &c.' Villanueva, *Viage Literario*, XVI. p. 230. The clause as to the Rectorial and Doctorial inaugurations was repealed in the following year, *l. c.* p. 233.

<sup>2</sup> *Ib.* pp. 233, 234.

<sup>3</sup> 'Damnosis scholarum sumptibus providere cupientes, statuimus quod nullus scholaris . . . emat per se vel per alium pannum alium quam qui vulgariter vocatur pannus de statuto vel de panno coloris nigri, quem pannum pro habitu superiori, cappa, tabardo vel gabano vel consimili veste consueta pro tunc longiore veste inferiori et clausa a lateribus ac etiam fibulata seu maspillata antèrius circa collum portare teneantur infra civitatem sub pœna trium librarum bonon.' (*Stat.* pp. 132, 133.) It is difficult to explain the contradiction between the insistence in this

Statute upon *black*, and the fact that in the medieval illumination reproduced in *Acta Nationis Germanicæ* the majority of the Students are represented as coming to the Proctor to be sworn attired in long *red* gowns. Was this a privilege of the German Nation or of nobles? The Statute at Florence simply requires 'omnes de uno eodemque colore panni' (*Stat. Fior.* p. 97.) The form of both the Doctoral and Student *Cappa* may be seen in the beautiful tombs of the Doctors which form the most characteristic feature of the Bologna Churches. There is usually a recumbent effigy of the Doctor above, while below he is represented as lecturing (seated) to his students sitting at slightly sloping desks or narrow tables, very much like those of a modern lecture-room. Some of the College Statutes, even in Italy, insist on the 'clericalem habitum.' (Facciolati, *Fasti*, p. xx.)

required to wear their hoods whenever they appeared in public, but in summer were allowed to exchange them for cooler hoods of silk<sup>1</sup>. On state occasions at least, the Doctors of all Faculties wore robes of purple and miniver, while the Rectors were robed in scarlet or scarlet and gold.

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If the discipline which the free and independent students of Bologna imposed upon themselves exhibits few indications of extraordinary strictness, the same cannot be said of the discipline which they imposed upon their subjects—the Professors. Whatever view, as a matter of constitutional theory, the Doctors might take of their relations with the students, it is certain that while the latter were in no way bound to obedience to the Prior or College of the Doctors, the Doctors were compelled, under pain of a ban which would have deprived them of pupils and income, to swear obedience to the Students' Rector<sup>2</sup>, and to obey any other regulations which the Universities might think fit to impose upon them. While not entitled to a vote in the University Congregation, the Professor was liable to 'privatio' or expulsion from a Society to whose privileges he had never been admitted<sup>3</sup>. At any moment his lectures might be interrupted by the entrance of the Bedel to serve a summons on the Professor to appear before the Rector, or to read a Rectorial proclamation to the students or a new Statute of the Student-University to which his consent had not been asked but to which his obedience was none the less required. A scholar was, indeed, obliged as the con-

Bondage  
of the Pro-  
fessors.

<sup>1</sup> *Stat.* p. 55. At Padua the Rector of the Artists is to wear a robe of scarlet silk in summer, and a scarlet robe of some thicker material (*de grana*) in winter (*Stat. Artist. Pat.* f. iii, b. iv. a), while the Rector of the Jurists wears robes embroidered with gold as well as fur. (*Colle, Storia dello Studio di Padova*, I. p. 104; Malagola, *Monografie*, p. 87). Later we hear of a Rectorial hood of gold brocade. *Ib.* p. 62. In the time of Gaggi, Doctors of Divinity wore the *Almutilium violaceum*

(a tippet) and Doctors of the other Faculties had the privilege 'uti Varris (ermine) et torque aurea.' In processions of the College, the Bedels carried gold maces before them.

<sup>2</sup> *Stat.* p. 99. A Doctor, neglecting to take the oath, 'non possit eo anno facere collectam suam et ultra hoc Rectorum arbitrio puniatur.' *Ib.* p. 100.

<sup>3</sup> A ban which sometimes extended even to the descendants of the offender.

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dition of enjoying the privileges of 'scholarship' to attend lecture at least three times a week: but a Professor requiring leave of absence even for a single day was compelled to obtain it first from his own pupils and then from the Rectors and *Consiliarii*: and if he proposed to leave the town, he was required to deposit a sum of money by way of security for his return<sup>1</sup>. He is expressly forbidden 'to create holidays at his pleasure<sup>2</sup>'; and his scholars are bound on pain of perjury to give information against a truant Doctor<sup>3</sup>. By the City-regulations, moreover, for each day on which he failed to secure an audience of five for an ordinary lecture, or three for an extraordinary one, he was treated as absent and incurred the appointed fine accordingly<sup>4</sup>.

Punctuality enforced upon Professors.

Punctuality is enforced with extreme rigour. The Professor was obliged to begin his lecture when the bell of S. Peter's began to ring for mass, under a penalty of 20 *solidi* for each offence<sup>5</sup>, though he has the privilege of beginning at an earlier hour if he pleases; while he is forbidden to continue his lecture one minute after the bell has begun to ring for tierce. To secure the observance of this Statute a more effectual means is adopted even than that of fining the Doctor: his pupils are required under a penalty of 10 *solidi* each to leave the Lecture-room as soon as the bell begins.

Mode of lecturing prescribed by Statute.

Even in the actual conduct of his lectures the Doctor is regulated with the precision of a soldier on parade or a reader in a French public library. He is fined if he skips a Chapter or Decretal: he is forbidden to postpone a difficulty to the end of the Lecture lest such a liberty should be abused as a pretext for evading it altogether. In medieval as in modern times Lecturers had a tendency

<sup>1</sup> *Stat.* p. 109.

<sup>2</sup> 'Nec festa pro libito faciant.' A penalty of 40s. is provided 'pena periurii non obstante.' *Ib.* p. 101.

<sup>3</sup> *Ib.* p. 110.

<sup>4</sup> 'Punctetur perinde ac si eo die non legisset.' Dallari, I. p. xxii.

<sup>5</sup> 'Nec audea[n]t tardare ad veniendum post pulsationem dicte campanæ ad scolas pena XX solidorum.' *Stat.* p. 105.

to spend a disproportionate time over the earlier portions of a book, and so leave none for the rest. With a view of checking this practice, an expedient was adopted at Bologna which became universal in the Law-Universities of Southern Europe<sup>1</sup>. The Law-texts were divided into portions known as *puncta*; and the Doctor was required to have reached each *punctum* by a specified date. At the beginning of the academical year he was bound to deposit the sum of 10 Bologna pounds with a banker, who promised to deliver it up at the demand of the Rectors: for every day that the Doctor was behind time, a certain sum was deducted from his deposit by order of these officials. With a view of enforcing obedience to this and other Statutes on the part of the Doctors, a Committee of students (*Denunciatores Doctorum*) was appointed by the Rectors to observe their conduct, and report their irregularities to the Rector<sup>2</sup>.

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Compelled  
serve  
puncta.

The Colleges which played so large a part in the development of the Northern Universities were comparatively unimportant in Bologna and the other Italian Universities. They were as a rule smaller foundations than the Colleges of Paris and Oxford, and they remained to the last (what all Colleges were originally intended to be) eleemosynary institutions for the help of poor students, boarding-houses and not places of education. A small College of Avignon was founded in Bologna in 1267 by Zoen Tencarius, Bishop of Avignon, for eight students, three of whom were to be Canons of his Cathedral<sup>3</sup>; but it does not seem clear whether its members originally lived

Colleges.

Coll. of  
Avignon,  
1267.

<sup>1</sup> This provision occurs only in the earlier Statutes (p. 42), but the institution is implied in the later Statutes (pp. 78, 79). The meaning of the expression 'ut puncta per eos bene servantur' has to be inferred from the Statutes of other Universities.

<sup>2</sup> *Stat.* pp. 23, 78, 79. The stakeholder was known as the *Depositarius*

(Dallari, I. p. xxiv). The students profess to be actuated by anxiety for their masters' spiritual welfare. The Statute begins 'Christiano cuique sed precipue sacre legis doctoribus periculosum noscentes esse perurium' (*Stat.* p. 78).

<sup>3</sup> Sarti, I. pt. ii. (1888), p. 416; I. pt. ii. (1772), pp. 118-123.

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Coll. of  
Brescia.College  
of Spain,  
1367.

in community, or merely received pensions: in any case the property of the scholars was held in trust for them by the Bishop of Avignon. The College of Brescia was founded by Guglielmo de Brescia, Archdeacon of Bologna, in 1326<sup>1</sup>, and the College of Reggio by the Physician, Guido Bagnoli di Reggio, in 1362<sup>2</sup>. But the first College, on a scale at all approaching that with which we are familiar in the English Universities, was the College of Spain, founded by the will of the great Spanish Cardinal, Egidio Albornoz, (once Archbishop of Toledo, but compelled to fly from the tyranny of Peter the Cruel, and afterwards Papal legate at Bologna), who died in 1367<sup>3</sup>. This College appears to have been the model of many others in Italy and Spain. In the sixteenth century we may infer from the privileges which the University conferred upon its Rector, that it had acquired some faint shadow of the prestige enjoyed by the Sorbonne and the College of Navarre at Paris or at Oxford by the foundations of Wykeham and Walsey. The College of Spain may be taken as a type of the College-constitution in Universities of the Bologna type<sup>4</sup>. A short account of its organization and arrangement may therefore be worth giving.

Statutes  
of 1377.

In the Statutes as revised by Papal delegates in 1377 it is provided that the College shall consist of thirty scholars—eight in Theology, eighteen in Canon Law, and four in Medicine. The scholars held their places for seven years, except in the case of a Theologian or Medical student who

<sup>1</sup> Sarti, I. pt. ii. p. 523: Orlandi, p. 89. It was afterwards merged in the Collegium Gregorianum founded by Gregory XI in 1371. Cf. Ghirardacci (II. 302, 307), who prints the Statutes. They provide for thirty Scholars of Law and six Chaplains. The lecture-fees of Scholars are to be paid out of the foundation—a rather unusual provision in the North.

<sup>2</sup> Malagola, Pref. to *Stat.* p. xiii.

<sup>3</sup> Ghirardacci, T. II. p. 285 ff. Savigny in his list mentions this College

twice over under different names (cap. xxi. § 72).

<sup>4</sup> The printed Statutes are of the sixteenth century; no earlier Statutes were known to be extant. In 1889, however, I found that the statutes of 1377 were contained in MS. No. 5383 of the Philipps Library at Cheltenham (catalogued as '*Statuta Bononiensis*'). Their provisions are materially different from the printed edition.



wished to stay up and lecture as a Doctor. The scholar-  
ships were divided among the numerous Spanish dioceses  
in which the founder had held preferment. The patronage  
was vested in the Bishops and Chapters of those dioceses  
together with two members of the Alborno family, i.e.  
the head of the house and any member of it who was a  
prelate, or if more than one were prelates, then the superior  
or senior prelate. The qualification for election was  
poverty<sup>1</sup>, and competent grounding, 'at least in Grammar.'  
In the case of the Theologians and Medical students,  
Logic was also required, and if they had not heard Philo-  
sophy before, their first three years of residence were to be  
devoted mainly to that Faculty<sup>2</sup>. An entrance examina-  
tion was held, and the College was at liberty to reject  
nominees who failed to satisfy these requirements. Every  
scholar received daily a pound of moderate beef or veal or  
other good meat with some 'competent dish,' the larger  
part at dinner, the smaller at supper<sup>3</sup>. Wine, salt, and bread  
were at discretion; but the wine was to be watered in  
accordance with the Rector's orders<sup>4</sup>. A portion of the  
allowance for meat might be applied by the Rector to the  
purchase of salt meat or fruit. We may charitably hope  
that the College availed itself of this provision on Feast-  
days and on the Sunday before Lent, when the above men-  
tioned 'portions' of meat were doubled. On Fast-days the  
ordinary allowance was to be spent on fish and eggs. At  
a 'congruous time' (not further defined) after dinner and  
supper respectively, the College re-assembled for 'collation,'  
when drink was 'competently' administered to every one<sup>5</sup>.

<sup>1</sup> i. e. his income (unless he were Rector) must not be 'ultra summam quinquaginta florenorum auri Bononiensium'. *MS. Stat. f. 5 b.*

<sup>2</sup> The printed Statutes add that the Scholars must be 'Ancient Christians'—a provision redolent of the Moorish wars and the fanaticism which they engendered.

<sup>3</sup> 'Carnium castratarum uel utilinarum mediocrum uel aliarum

bonarum . . . cum aliquo ferculo competenti. ' *MS. Stat. f. 12 b.*

<sup>4</sup> 'De uino autem Rectoris arbitrio temperato, panem, et sal habeant in prandio et in cena quantum uoluerint et conueniat honestati,' *l. c.*

<sup>5</sup> 'Post prandium uero et post cenam quolibet die hora congrua signo campane in modum cibali ad iussum Rectoris uel eius uices gerentis pulsato, ad collationem

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Besides commons, each scholar received every autumn a new scholastic 'cappa, sufficiently furred with sheep-skin,' and another without fur, and with a hood of the same stuff and colour as the cope<sup>1</sup>, at the beginning of May; and there was an annual allowance of twelve Bologna pounds for candles, breeches, shoes, and other necessities. Poor scholars of the founder's kin have a peremptory claim to a vacant scholarship; while any scholar of the Albornoz family residing in Bologna becomes the 'Protector' of the College with certain visitatorial powers, and the right to a seat in the College 'Chapter.' If he is twenty years of age, these powers are to be exercised on his own responsibility: if under twenty, he is to act by the advice of his tutor, but may none the less be present at College meetings to gain experience.

Democ-  
ratic con-  
stitution  
of the  
College.

So far the regulations of the College of Spain are of very much the same character as those of medieval College-statutes in our own magisterially-ruled Universities. When we come, however, to those respecting the mode of internal government, all is changed. The Bologna College is governed as democratically as the Bologna University. Scholars under eighteen years of age are, indeed (as was the case in many Universities), to have no vote, though they might be present at Chapters. But the Rector is to be elected annually by ballot; like the Rector of the University he is to be at least twenty-four years of age and a clerk.

conueniant et prebeatur potus cuilibet competenter.' *MS. Stat. f. 13 a.*

<sup>1</sup> 'Una capa scolastica et noua et foderata sufficienter pellibus pecudis, ut studentes Bononienses habere communiter consueuerint': the other to be 'sine foderatura de panno statuti coloris eiusdem et capuceum de competenti panno eiusdem eciam coloris, ualoris quinque solidorum.' (f. 13 a.) The printed Statutes (Bonon. 1558, f. xviii.) order that Scholars 'utentur veste ex panno nigro . . . talaris sit et manicata, qua forma nunc doctores, olim cum hoc primum in

Collegio fuit institutum etiam scholastici Bononienses uti uidebantur, et focali quod dicitur caputeus ex hyacinthino panno qui morellus vulgo nuncupatur . . . quibus vestibus et focali semper uti debeant, quocumque sive ad scholas sive per urbem iuerint et quacumque hora diei.' It is obvious that the form of the dress has considerably altered since the fourteenth century. A black gown with a cherry-coloured silk scarf (by way of 'focale') is still worn by students of the College on state occasions.

He is assisted by *Consilarii* elected in the same way: but in important matters such as the alienation of property, the consent of the whole College is necessary. In fact the constitution of the College is the University constitution in miniature. But though establishing this system of popular government, the Cardinal-founder was not of opinion that democracy necessarily meant weak government or no government at all. The discipline prescribed by the Statutes is decidedly stricter than that contemplated by the Oxonian or Parisian Statutes of the same period. There was a Chapel served by four Chaplains; two masses were to be said daily, one before and one after the 'Ordinary' lecture, and presence at one or other of these was to be compulsory, besides attendance at Matins and Vespers on holidays and at Vespers on Vigils. Daily attendance at lecture is enforced by fines. The monastic silence and Bible-reading are observed in Hall<sup>1</sup>. Lateness in returning to College at night is visited by a day's 'penitence on bread and water,' a second offence by three days' bread and water, and a third offence entails expulsion. A Chaplain who stays out of College for a night loses half his year's salary, besides being condemned to three days' bread and water. A nocturnal exodus by the window involves immediate expulsion. For an assault on a brother-scholar, the penalty was no less than five days in the stocks and one day's penance on bread and water to be eaten sitting on the floor of the Hall<sup>2</sup>. For an assault resulting in effusion of blood or for assisting in the quarrels of others, the penalty was doubled. The punishment of the stocks is not mentioned in English or Parisian Colleges till the sixteenth century, though these Colleges contained boys much younger than were usually to be found in the College of Spain. It may be added that women are warned off the premises—including even the Chapel—in language as

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Strict discipline.

<sup>1</sup> It is, however, expressly provided that Scholars may be either *clerici* or *laici*.

<sup>2</sup> 'Quinque diebus stent in cipo

ligneo saltem cum uno pede et die qua extrahentur in pane et aqua coram omnibus in terra peniteant.'

(*MS. Stat. f. 27 a.*)

CHAP. IV, ferociously ungallant as could be culled from the Statutes  
 § 4. of the rudest northern disciplinarian<sup>1</sup>.

The Col-  
 lege sur-  
 vives.

The College of Spain still flourishes upon its ancient site in sumptuously adorned buildings of the sixteenth century, whose quadrangle, Chapel, Hall, and students' rooms still testify to the continuance on a small scale (there are only five or six students) of the College life with which we are familiar in the English Universities. Indeed, the College of Spain reproduces the medieval type far more faithfully than any English College: for all its members are graduates in Arts, none of them teachers, but all students in Law. The College is now under the control of the Spanish Government, which sends to it candidates for the diplomatic service who have taken the B.A. degree in a Spanish University.

Later  
 Colleges.

The Colleges continued to be exceptionally few at Bologna—fewer even than in other Italian Universities—throughout the medieval period. The names of only two others are recorded as founded before 1500<sup>2</sup>—the *Collegium Gregorianum* founded by Gregory XI in 1371, and the *Collegium Ancaranum* founded by Pietro d'Ancarano, Doctor of Decrees, in 1414<sup>3</sup>. It was only in the fervour of the Catholic Reaction that Bologna began to be a City of Colleges. One explanation of the paucity of the Bologna Colleges is no doubt to be found in the selfish policy pursued by the Bologna Government towards foreign students who were here deprived of all chance of a career as teachers. One of the numerous seventeenth century Colleges—the little house founded by John Jacobs for Flemish students in 1650<sup>4</sup>—still survives to assist the more magnificent

<sup>1</sup> 'Et quia mulier est caput peccati, arma diaboli, expulsio paradisi et corruptio legis antique et propterea omnis eius conuersacio sit diligencius euictanda, Interdicimus,' &c. (MS. Stat. f. 20 a.) Dancing is forbidden 'quia secundum sanctorum patrum sententiam in coreis diabolus facilius illaqueat homines' (l. c. 27 b).

<sup>2</sup> See the Statutes in Ghirardacci,

II. p. 308 sq. Here also we find the Students' Lecture-fees paid out of the foundation.

<sup>3</sup> Orlandi, *Notizia*, p. 89. Cf. Ghirardacci, II. p. 603: *Stat.* p. 200.

<sup>4</sup> *Statuta seruanda a Iuuenibus Belgis qui admissi fuerint in Collegium Jacobs Bononia fundatum an. 1650 sub titulis SS. Trin. Reformati*, A. D. 1829, &c.

College of Spain in bearing testimony to the cosmo-  
 politanism of the old medieval Universities. Thus at  
 Bologna, all but alone among continental Universities, in  
 one of the two great original homes of University life, there  
 survive specimens of the true medieval College, reduced to  
 smaller dimensions than of old, but retaining more com-  
 pletely the old form and purpose of a medieval College  
 than the more famous but more altered foundations which  
 form the especial glory of our English Universities.

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## § 5. THE ORGANIZATION OF THE STUDIUM.

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§ 5.

The Guild  
of Doctors  
acquires a  
monopoly.

We have seen reason to believe that the Guilds of Doctors were in their origin somewhat more ancient than the Guilds of foreign students. By some process which we are quite unable to trace the old liberty of unlicensed lay teaching, in which the School of Bologna originated, came to an end. In the teaching profession, as in so many others, trades-unionism ultimately triumphed over liberty of contract, and the right of teaching became practically, if not theoretically, restricted to those who had been made free of the teaching Guild<sup>1</sup>. This restriction was the foundation of the system of Academical degrees. [The degree was in its origin nothing more than a qualification to teach. But when, in consequence of the general advance of civilization and enlightenment which marked the twelfth century, the services of learned men came to be in general request, it was natural that this certificate of competency should be valued for other than teaching purposes. In the course of the twelfth century the style of Master came to be regarded as a title of honour which it was not beneath the dignity of a Bishop or a Cardinal to prefix to his name.

Multiplica-  
tion of  
titular  
Masters.

If we may judge from the number of persons who enjoyed this designation in the second half of the century, we may infer that it had already become pretty common for a 'degree' to be taken—to use the modern expression—by persons who had no intention of devoting themselves, or at least of permanently devoting themselves, to the work of teaching. We may presume that this was the case at Bologna as well as at Paris, though the Masters of the

<sup>1</sup> The liberty of private teachers of Honorius III, in 1219. See below, p. 223.  
may perhaps be considered to have been legally terminated by the Bull

Civil or Canon Law were never so numerous as the Parisian CHAP. IV,  
 Masters of Arts. But at Bologna the distinction between § 5.  
 simple 'graduates,' who had no intention of permanently  
 devoting themselves to the teacher's office, and actually  
 teaching Doctors, was from an early period much more  
 sharply drawn than at Paris and Oxford. The number of  
 actual teachers of Law at Bologna was always compara-  
 tively small: enormous crowds attended the lectures of  
 a single Professor; the teacher's chair was here a coveted  
 and lucrative prize. At Paris, in consequence of the mul-  
 tiplication of Masters of Arts, the remuneration that could  
 be got by teaching was small, and a difficulty was experi-  
 enced in getting a sufficient supply of teachers. Hence it  
 was left open to anyone to teach who chose, and it was  
 even necessary to compel graduates to reside and teach for  
 a time to ensure a sufficient number of lecturers. At  
 Bologna, on the contrary, the distinction between the  
*Magistri* or *Doctores legentes* and the *Non-legentes* was  
 fundamental. ¶ The teaching Doctors of Bologna very

Teaching  
 confined to  
 an inner  
 circle of  
 Doctors.

soon passed into something like the position of a modern  
 Professoriate, and the rights of the Doctor or Master as  
 such fell more and more into abeyance. ¶ The various steps  
 of this process must now be investigated, so far as the scanty  
 data at our disposal admit. As to the use of these alter-  
 native titles, it may be observed that at Bologna the title  
 most affected was Doctor, rather than Professor or Master.  
 ( At first the title Master was used by other Faculties than  
 the legal, but eventually the term Doctor became universal.  
 The Doctors of Law were also frequently called 'Domini.'  
 A scholar would speak of his Master as 'Dominus meus';  
 but the mere use of the term 'Dominus' does not imply  
 a Master: in Italy it is often applied to mere students.  
 It is characteristic of the different relations in which the  
 Master stood to his class at Bologna that the Parisian term  
 'Regens' is here rarely used.

Before, however, the successive changes in the position of  
 the teaching body can be understood, it is absolutely neces-  
 sary to explain a distinction between two classes of lectures

'Ordinary'  
 and  
 'Extra-  
 ordinary'  
 Lectures.

CHAP. IV, which originated at Bologna, and which afterwards spread, with more or less modification, to all the Universities of Europe. (The lectures were divided into 'Ordinary' and 'Extraordinary.' Ordinary lectures were those given in the morning: Extraordinary lectures in the afternoon.) Originally this distinction of time corresponded with a distinction between what were considered the more essential and the less essential of the Law-texts. The Ordinary books of the Civil Law were the first part of the Pandects technically known as the *Digestum Vetus* and the Code: the extraordinary books were the two remaining parts of the Pandects known respectively as the *Infortiatum*<sup>1</sup> and the *Digestum Novum*, together with the collection of smaller text-books known as the *Volumen* or *Volumen Parvum*, which included the *Institutiones* and the *Authentica* (i. e. the Latin translation of Justinian's Novels), the Lombard *Liber Feudorum*, and a detached fragment of the Code known as the *Tres Libri*.

Origin of  
this distinction.

This distinction between the various parts of the Digest is purely arbitrary. The *Infortiatum*, though its ending corresponds with a natural transition in the subject-matter, begins in the middle of a book. It is obvious on the face of it that the division must have originated in an accidental separation of some archetypal MS.—probably of the original Bologna copy of the great Pisan codex. According to a tradition which has already been alluded to, Imerius began his work as a teacher by lecturing on a MS. of the Old Digest, which was the first to arrive from Ravenna; while the *Infortiatum* came to Bologna later and the *Digestum Novum* (we may presume) last of all<sup>2</sup>. The

<sup>1</sup> The *Dig. Vetus* extends from the beginning to the end of Lib. XXIV. tit. ii, the *Infortiatum* thence to the end of Lib. XXXVIII. tit. iii, the rest of the Pandects being the *Dig. Nov.* There is an extremely arbitrary section known as the *Tres Partes* (beginning in the middle of a paragraph), so called from its commencement at the words *Tres Partes* in *L. Quer-*

*batur*. 82. D. *ad L. Falcidiam*. The *Tres Partes* is sometimes treated as part of the *Infortiatum*, sometimes as a distinct portion.

<sup>2</sup> See above, pp. 112, 122. Of the various explanations of 'Infortiatum' Mommsen accepts the view 'Id est auctum'; he sanctions the above explanation of the division. *Digest. Libri*, 1866. I. Pref. p. lxxii.



distinction must in any case have originated in some accidental circumstance of the kind: and the matter is only noticed here because it seems probable that the distinction between Ordinary and Extraordinary books originated in the same historical fact. The Ordinary are not intrinsically more important than the Extraordinary, but they must have formed the main or exclusive subject of the Doctoral lectures in the early days of the School, the *Infortiatum* and the *Digestum Novum* being successively introduced at a later period. In the Schools of the Canon Law the Ordinary books were the *Decretum* and the Five Books of Decretals published by Gregory IX, the Clementines and Extravagants being Extraordinary<sup>1</sup>.

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Similar distinction in Canon Law.

Ordinary lectures were reserved to Doctors, but Extraordinary lectures on certain limited portions of the Law-texts might be given also by Scholars of a certain standing, after being 'admitted to read' such lectures by the Rector. By delivering such a course of lectures a Scholar became a Bachelor. The term was at first probably a popular term applied to any senior student who was shortly intending to proceed to the Doctorate: eventually it obtained the more definite and technical meaning already mentioned<sup>2</sup>.

Doctors and Bachelors.

<sup>1</sup> *Stat.* p. 159. At Paris only the *Decretum* was ordinary, which was no doubt once the case at Bologna. See below, chap. v. § 4. Kaufmann (*l. p.* 213), on the authority of Odofredus ('licet insolitum sit querere a dominis sive doctoribus in mane de eo quod legant in mane, peto veniam'), holds that questions might be asked at extraordinary and not at ordinary lectures. This is not impossible, but I do not feel sure that the distinction is not one between the lectures proper and the afternoon *repetitiones* on the morning lecture. The lectures of Odofredus on the *Infortiatum* certainly show no difference in style or manner from those on the *Dig. Vat.*

Hugolinus makes it the duty of the student 'socium querentem pati cum benignitate' (ap. Savigny, *l. c.*).

<sup>2</sup> Many absurd definitions of the word *Baccalarius* or (according to the earlier spelling) *Baccalarius* have been given. The actual etymology of the word seems to be doubtful; but there can be no doubt that the general meaning of the word *Bachelor* at the time when it came to be applied—first in common usage, and eventually as a formal designation—to students authorized to teach by way of preparation for the mastership, was 'a young man,' with the special sense of apprentice or assistant (e.g. the landless man who worked for a *colonus*). 'En réa-

CHAP. IV, § 5. We are now in a position to trace the process by which the simple Doctorate was gradually shorn of its prerogatives and degraded from an office—carrying with it the full rights of teaching, of membership in the Doctoral College, and of control over the extension of those rights to others—into a mere honorary distinction or 'degree.' This revolution was the effect of three distinct changes:—

Doctors  
originally  
dependent  
upon fees.

(1) We know in reality very little of the teaching system of the University—or indeed of any other parts of its organization—in the thirteenth century. But enough evidence has come down to us to make it clear that the teacher was absolutely dependent for support upon his *collecta*, i.e. the fees paid to him by his pupils<sup>1</sup>. The ordinary practice was for a Professor to employ a couple of scholars to negotiate with the other students as to how much each was to pay: but at times a large body of students would make their own terms with the Professor, and divide the cost among themselves. The amount of the honoraria was not even approximately fixed by custom, and at times we find learned Professors of the highest reputation haggling with their scholars over these payments in a highly sophist-like and undignified manner<sup>2</sup>.

lité,' says M. Thurot (*L'Organisation de l'enseignement dans l'Un. de Paris*, p. 137), 'ce terme signifiait apprentissage.' We everywhere meet with the institution of the Baccalaureate or pupil-teachership before the name occurs in formal documents. It probably arose as a slang term: cf. the list of students 'qui legunt extraordinarie et *vulgariter* *Bachalarii* vocantur,' in a document of 1297, ap. Sarti, I. ii. (1772) p. 105. At Paris we likewise find the *institution* before the name. See below, p. 443.

<sup>1</sup> Ghirardacci (I. p. 77) speaks of 'molti Dottore da publico stipendiati' in 1150, but produces no evidence.

<sup>2</sup> 'Anno MCCLXIX die Jovis XIII exeunt. April. Albertus qu. (sc. *questor*) dn. Odofredi doct. leg. fuit

confessus recepisse a dn. Viviano . . . scholare bonon. quinquaginta libras bonon. quas in solidum cum mag. Gorlano suo fratre ei dare tenebatur ex instrumento manu Ugolini qu. Ugolini Presbiteri notar. Item xxxvi libr. bonon. pro parte sua et dicto suo fratri contingente de debito quadringentorum libr. bonon. quas in solidum cum pluribus scholaribus dicto dn. Odofredo dare tenebantur ratione collectae ex instrum. Mich. Vineiguerrae notar. *Ex Memor. Com. Bonon.* ap. Sarti, I. pt. i. p. 166. 'Bene scitis quod cum doctores faciunt collectam, doctor non querit a scholaribus, sed eligid duos scholares, ut scrutentur voluntates scholarium: promittunt scholares per illos. Mali scholares nolunt solvere quia dicunt, quod per procuratorem

Thus, for instance, we find the eminent Jurist Odofredus CHAP. IV.  
§ 5 announcing at the termination of a course of lectures, that next year he would give no afternoon lectures at all, because he had not found the scholars good pay-masters: 'they want to profit,' he pathetically explains, 'but not to pay. All want to profit, but no one will pay the price<sup>1</sup>.' The introduction of the system of *Salaria* paid by the State seems to have arisen elsewhere than in Bologna. The neighbouring towns in their eagerness to rival the Academical fame of Bologna, would make overtures to a Bologna Doctor, and invite him to come and lecture in their midst: and afterwards, when the great scholastic migrations began, the Universities through their Rectors would make a contract with the

Fees  
partially  
superseded  
by *Salaria*.

non queritur actio domino.' Odofredus in l. *Si procuratori*: Dig. *De verb. obligat.* ap. Sarti, l. pt. i. p. 167. And the Doctor is much concerned to prove that he has a right of action against 'bad scholars' who would not pay. Franciscus Accursius obtained absolution for himself and his late father for having lent money to students in hopes of obtaining 'majores collectas', Sarti, l. pt. ii. (1772) and from the words of Odofredus—'contra doctores qui mutuant pecunias scholaribus ut audiant eos'—it would seem that this was a frequent practice (ad L. *Omnia omnino crimina* Dig. *de off. praef. urbis*, T. I. f. 27 b). So another Doctor leaves a sum of money to the poor 'ex questu, quem feci in Scholis, quia multis et variis modis peccatur in Scholaribus habendis' (Sarti, l. pt. ii. 1772, p. 76). We find Doctors (not of Law) subletting their 'Schools and Scholars' in a very curious fashion (Sarti, l. (1769) pt. i. p. 245; pt. ii. pp. 110, 131). Franciscus Accursius gives two Chances to a Minorite Church on behalf of the souls of the Scholars, 'a quibus aliquid iniuste percepit tam Laicorum quam Clericorum dantium de bonis eorum propriis eidem non secundum dictum.' Sarti, l. pt. ii.

(1772) p. 95. Sometimes there is a contract for board and lodging as well as instruction: 'An. MCCLXVIII Mag. Gerardus de Cremona Doctor Grammaticæ promittit Adamaro Tebaldi de Villa S. Attredii docere eum in scientia Grammaticæ et daresibi libros quos legerit in Scholis et victum in duodena secundum quod alii Scholares habuerint et dare cameram a festo S. Michaelis ad omnem annum pro pretio libr. xxiii. Bonon. de quibus habuit lib. x.' Ex *Memor. Com. Bonon.* ap. Sarti (1769), l. i. p. 511. So 'aliquem ex Scholaribus intrinsecus abitantibus in dictis Scholis cum dicto Mag. Petro,' l. c. pt. ii. p. 110.

<sup>1</sup> Odofredus in *Dig. Vet.* (ad L. fin. D. *de divorciis*), T. II. f. 192, 'Et dico vobis quod in anno sequenti intendo docere ordinarie bene et legaliter, sicut unquam feci; extra-ordinarie non credo legere; quia scholares non sunt boni pagatores; quia volunt scire, sed nolunt solvere, juxta illud; "Scire volunt omnes: mercedem solvere nemo." Non habeo vobis plura dicere: eatis cum benedictione Domini.' In the preceding sentences Odofredus alludes to the custom of attending a Mass of the Holy Ghost after the completion of every 'Book' in lecture.

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town selected, in which, together with facilities for the hiring of houses, exemptions from taxation, immunities from the ordinary Courts and the like, the payment of certain *stipendia* to the Professors was stipulated for. Eventually the Bolognese Republic found it necessary to imitate the liberality of its neighbours. The first recorded instance of such a payment occurs in 1280, when the Spanish Canonist Garsias agreed to lecture for one year at a salary of 150 *libræ*<sup>1</sup>. The contract was originally made by the students, but at their petition the Republic undertook the payment, and in 1289 two permanent chairs were endowed with salaries of 150 and 100 *libræ* respectively *per annum*<sup>2</sup>. The election of the Professor was annual and was left to the students, which must have been, at all events, an excellent system for keeping the teacher up to the mark.

Appoint-  
ment to  
salaried  
chairs.

The chairs were at first few in number, poorly endowed, and conferred only on strangers (*forenses*), no such measures being necessary to keep Bologna citizens from straying abroad in search of higher pay. Gradually, however, the number and amount of the *salaria* were increased: and as the power of the purse thus passed from the students to the City, the control of the former over the elections was gradually withdrawn, and the nomination appropriated by the State<sup>3</sup>. In 1381 we find as many as twenty-three salaried

<sup>1</sup> Sarti I. i. p. 481. The first Civis who received a Stipendium—a small one of fifty *libræ*—was Joannes Passavantius, in 1289. *l. c.* p. 498.

<sup>2</sup> The first Doctors elected were the Canonist Altigradus de Lendinaria and the better-known Civilian Dinus. Sarti, I. pp. 255, 491. In 1297 Guildinus de Patralata is offered 500 *libræ*. *Ib.* p. 495. In 1305 the number salaried has risen to seven besides six (in various Faculties) appointed by the Council. Ghirardacci, I. p. 504.

<sup>3</sup> At first it seems clear that the *Salaria* did not supersede the *collected* (Sarti, I. pt. i. p. 256); afterwards the practice seems to have varied.

The Canonist Hostiensis (*Summa in decretal. tit. de magistris*, n. 7, Lugduni, 1597, f. 288 b) raises the question 'utrum a scholaribus collectam facere vel levare possit?' and answers, 'quod sic, si non percipiat salarium de publico,' or if the Master is poor. On the other hand we find a Bolognese Student, Wardus de Clusio, in 1324-5, paying 'Domino meo Ray. Doctori pro suo salario . . . unum florenum. Item dedi Domino Belvisi' (evidently a Bachelor) 'pro bancis et domo . . . decem solidos.' Clossius, *Codicum MSS. Dig. vet. descriptio*. Vimarise (1818), 8. pp. 16-18 (Savigny, xxi. § 94). The contracts with Garsias certainly allowed

Doctors of Law, receiving payments varying from 100 to 620 *librae*<sup>1</sup>, the total grant for all Faculties amounting to 63,670 *librae*. At this time the fact that one of the twenty-one salaried Law Professors had been elected by the University is mentioned as something exceptional<sup>2</sup>. The appointment of the Doctors and the general management of the Studium in its relations to the State were eventually entrusted to a board known as the 'Reformatores Studii'<sup>3</sup>. In the course of the fourteenth and fifteenth centuries such a body (under that or some similar name<sup>4</sup>) was established by the City Government or Prince in all Italian Universities, and the real control of the University more and more passed to

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The Reformators.

him 'collectas facere' (Sarti, I. pt. ii. (1772) p. 131). At Padua, by the Townstatute of 1283 (Facciolati, *Fasti*, p. vi), salaried Doctors are forbidden to charge anything except 'pro medio pensione'; but we hear of a *collecta* in the later Statutes f. 15 b. At Lerida in 1300 A. D. the payment to the salaried Decretist is 'ad minus tempore collectæ viginti turo-nenses argenti' (*Stat. ap. Villanueva, Viage Literario*, xvi. pp. 220, 221). At Florence there were some 'Doctores ordinariæ legentes' who received a *collecta* limited to one florin a head *per annum*; others were forbidden to take anything. (*Stat. Fior.* pp. 65, 66.) So at Perugia (*Doc. per la storia dell' Univ. di P.*, p. 32), though here *civis* were exempted from the *collecta*. At Bologna a non-doctor 'extraordinariæ legens' is forbidden to demand fees (*Stat.* p. 111), which may be thought to imply that Doctors might receive them, but possibly not the salaried Doctors. In 1437 Eugenius IV assigned a particular tax—the 'datum gabellæ grossæ mercantiarum'—to the payment of the Salaria (Bull. of Pius V. ap. Gaggi). Kaufmann's inference from the passage of Odofredus (quoted above, p. 211, n. 1), that 'die

Scholaren hatten die ausserordentliche Vorlesung eines Professors frei, dessen ordinaria sie hörten und bezahlten' (I. p. 209), is unwarranted. Odofredus merely states that he did not find his afternoon lectures pay sufficiently to make it worth his while to continue them.

<sup>1</sup> Ghirardacci, II. pp. 389, 390. The year before the University had itself attracted the Civilian Guido Suzarino by the offer of 300 *libra*, Sarti, I. pt. i. p. 185.

<sup>2</sup> Ghirardacci, T. II. p. 389. The Canonists and Medicals still retained a larger share in the elections. The Statutes of the College of Spain provide: 'Hec autem in canonistis et medicis qui solent per suas uni-versitates eligi locum uolumus obtinere.' *MS. Stat.* f. 6 b.

<sup>3</sup> Dallari, I. p. xix. Earlier we find the elections made 'per dominos Antianos . . . et per collegia dominorum Confaloniorum et Massariorum artium civitatis Bononie.'

<sup>4</sup> Such as 'Gubernatores Studii' or 'Tractatores Studii.' In the smaller Studia the Universities were from the first more closely dependent on the State, of which they were the creatures, than at Bologna or Padua.

CHAP. IV. this body of external Governors, which by the sixteenth or  
 § 5. seventeenth century succeeded in destroying the Student  
 autonomy or reducing it to a shadow. After the full establishment of the Papal domination in Bologna a supreme control was exercised over the University by the Legate and the 'Sixteen'.<sup>1</sup>

Restriction of Right of Promotion. (2) The 'right of promotion,' i.e. of taking part in the admission of other Doctors, which had originally no doubt (if we may trust the analogy of Paris and the probabilities of the case) been enjoyed by all Doctors, came to be restricted to a small inner circle, who were limited in number and who filled up the vacancies in their body by co-optation<sup>2</sup>. By the earliest extant Statutes of the Civil Law College (published in 1397) their number is fixed at sixteen<sup>3</sup>, together with three supernumeraries who possessed the right of voting in all matters except graduations (in which they could only participate during the absence of any of the sixteen), and who succeeded to vacancies as they occurred. The College of Canon Law in 1460 consisted of twelve members, to which three supernumeraries were added in 1466<sup>4</sup>.

Restriction to Bolognese Citizens. (3) Membership of the College and admission to the most valuable salaried Chairs were alike restricted to Bologna citizens<sup>5</sup>. Both these restrictions probably had

<sup>1</sup> The consent of the Legate was required for an additional holiday. *l.c.* p. xxiii. An official was appointed to keep an eye on the Professors, and inform the Reformers as to their attendance, &c.

<sup>2</sup> The process by which this change was effected is far from clear; but it would seem as if at first the attempt was made to exclude even from the honorary Doctorate all Bolognese citizens except relatives of Doctors. Sarti, I. pt. i. pp. 291, 300. At all times the number of Bolognese citizens who might be promoted was limited. *Stat.* p. 386. In part the exclusion was perhaps accounted for by the

efforts of the dominant political party to exclude their opponents. Cf. Ghirardacci, T. I. p. 327. It is clear that by 1304 the College was already limited to Bolognese, since in that year the City and University united to force it to admit new members. Ghirardacci, T. I. p. 464. It would appear that at present *all* Bolognese Doctors became *ipso facto* members of the College.

<sup>3</sup> *Stat.* pp. 370, 371.

<sup>4</sup> *Stat.* pp. 336, 353.

<sup>5</sup> 'Vere et naturaliter cives civitatis Bononie origine propria, paterna et avita'—*Stat. of Civil Law College* in 1397 (*Stat.* p. 370, cf. p. 391).

their origin in the fact that Irnerius and the other Doctors CHAP. IV,  
 who made the fame of the School were citizens of Bologna, § 5.  
 and this original nucleus of Bolognese Professors was assisted  
 by all the resources at the disposal of the Republic in the  
 patriotic effort to reserve for their own countrymen the  
 substantial emoluments, while they freely distributed to  
 strangers the honorary distinctions, of their world-famous  
 Studium. Attempts to narrow the teaching body had  
 been made before the year 1259, but in that year the  
 Doctors were compelled to swear (no doubt under pressure  
 from the students) that they would not prevent external  
 Doctors duly elected by the Universities from filling a chair  
 at Bologna<sup>1</sup>. Eventually, however, the City enacted that  
 Ordinary lectures on Ordinary books should be reserved  
 to Bolognese citizens<sup>2</sup>; and also that admission to the  
 Colleges should be similarly restricted<sup>3</sup>.

So long as the Doctors limited their efforts to creating  
 a monopoly for the Bolognese, their interests were identical  
 with those of the City and were accordingly supported by  
 the Municipal authorities. It appears, however, that from  
 the first the ultimate object of the Professorial clique was to  
 reserve the substantial endowments of the Studium to mem-  
 bers of their own families. The preferential right of sons  
 of Doctors to succeed to vacant chairs is expressly claimed  
 by the Jurist Accursius<sup>4</sup>. In 1295, however, we find the City  
 interfering to prevent the Faculty promoting their own sons  
 or nephews<sup>5</sup>; and similar interpositions compelled the

Efforts to  
 make the  
 Profes-  
 soriate  
 hereditary.

<sup>1</sup> 'E si decretò finalmente, che a qualsivoglia straniero invitato per via legittima degli studenti sarebbe libero il presentarsi, ed ascendere col favo loro le Cattedre,' Savioli, III. pt. i. p. 333. They also swore 'non ricevessero degli Alunni compenso alcuno per dichiararli capaci del Magistero' (ib.).

<sup>2</sup> *Stat.* p. 159 (cf. p. 391). In Canon Law the restriction was extended to extraordinary books if read at ordinary hours, *Stat.* p. 337. There were, however, as late as 1347, four

Chairs—two ordinary and two extraordinary—to which the Universities elected; and to two of these (one ordinary and one extraordinary) 'forenses' alone might be nominated, *Stat.* pp. 36, 37. This Statute disappears before 1432.

<sup>3</sup> *Stat.* pp. 336, 370.

<sup>4</sup> In *Codicem L. 4. de adv. div. judic.* (ed. Contius, cc. 353, 354).

<sup>5</sup> At this time it appears to have been necessary for the Faculty to obtain leave from the city authorities before carrying out a promotion of

CHAP. IV, Doctors to admit outsiders in 1299<sup>1</sup> and 1304<sup>2</sup>. At the date of the earliest Statutes of the Civil Law College (1397) the privileges of Doctoral families are found to be much restricted. As a general rule, only one Bolognese citizen might be promoted to the Doctorate in any one year: but sons, brothers and nephews of Doctors are exempted from this provision<sup>3</sup>. On the whole then it appears that the actual monopoly of the Doctoral families was destroyed, but there can be no doubt that from about the middle of the thirteenth century the Professoriate of Bologna became largely hereditary. The effects of this restriction upon the prosperity of the School we shall see hereafter: but the most fervent believer in hereditary institutions will hardly augur well of the experiment of an hereditary Professoriate.

Collegia  
in other  
Universi-  
ties.

From the nature of the case this limitation to citizens could not be imitated in new and struggling Universities. The object of Bologna was to reap the full pecuniary benefit of an established prestige; towns which had a reputation to create, were anxious to entice Doctors from other cities. All the Universities organized on the Bologna model had a limited College or 'Faculty of Promotion,' but it was not always restricted to citizens<sup>4</sup>, while in some cases citizens were actually excluded from the salaried Chairs<sup>5</sup>.

The Stu-  
dent  
Chairs.

A very peculiar and anomalous feature of the Bologna constitution as it is presented to us in the Statutes of 1432 now demands a word of explanation. This anomalous

Bologna citizens: on this occasion leave was granted on condition that the new Doctors should be 'della parte della Chiesa, e de' Gieremei di Bologna . . . ò non fossero figliuoli, fratelli, ò nepoti di detti Dottori.' Ghirardacci, I. p. 327. Not all the Professors were on the Guelf side. When the city imposed differential taxes upon the Lambertazzi party, the descendants of the Accursii were specially exempted on petition of the Universities—Sarti, T. I. p. ii. (1772) p. 76.

<sup>1</sup> Alidosi, pp. 223, 224.

<sup>2</sup> Fantuzzi, *Scritt. Bologn.* II. pp. 48, 49, 331.

<sup>3</sup> *Stat.* p. 386. There is no similar provision in the Statutes of the Decretist College published in 1460. The earlier canonists were unmarried ecclesiastics.

<sup>4</sup> At Florence this restriction at one time existed, but was modified in 1404 and repealed in 1417, *Stat. Fiornt.* pp. 182, 195.

<sup>5</sup> e.g. at Florence in 1392, *ib.* p. 172.



feature is the existence of six salaried Chairs for which only students or Bachelors were eligible. Its origin must be sought in the events of the year 1338. In that year, Bologna, having expelled the Legate, had fallen under the power of Taddeo Pepolo. Its tyrant siding with the Ghibelines, the City was laid under an interdict, a sentence which forbade the legal continuance of the Studium. A body of the students, however, seceded to Castro Pietro and there elected six of their own number to take the place of the silent or scattered Professors<sup>1</sup>. Upon the return of the seceders, the City found it advisable to allow the chairs to continue, perhaps as a solatium for the loss of the University's right to elect to the regular Professorships<sup>2</sup>. In the course of time, however, it was found that these elections led to serious encounters in the streets between armed supporters of the rival candidates, to infinite perjury, and to the election of undeserving and illiterate candidates, perhaps popular athletes or the like. Henceforth the lot was substituted for election<sup>3</sup>, a remedy which might have been considered worse than the disease, had not the chance of delivering one of these lectures been looked upon as more valuable than the privilege of listening to them<sup>4</sup>.

I must now try to give the reader some connected account of the career of a Law-student at Bologna, from the time of his Matriculation to his graduation. 'Matriculation' it should be observed, i. e. the placing the name of the student upon the 'Matricula' or list of members of the University, was originally peculiar to the Student-universities; because only in them was the student a full member of the University. At Paris and Oxford only the

<sup>1</sup> 'De mense Aprilis Dominus Raynerius de Forlivio Doctor Legum, et sex Scholares electi ad legendum et tenendum Studium in Castro S. Petri propter interdictum Studii, iverunt ad dictum Castrum, dicta occasione, et multi Scholares iverunt ad intrandum ibi.' (Matt. de Griffonibus, *Memoriale Historicum*, ap. Muratori, SS. XVIII. c. 163.) Cf. *Stat.* p. 95.

<sup>2</sup> The origin of these chairs explains the fact that one of them, though held by a student, was 'ordinary.' *Stat.* p. 95 sq.

<sup>3</sup> *Stat.* p. 188 sq.

<sup>4</sup> By the city-regulations of 1475 students are required to 'prove their poverty' by two witnesses before becoming candidates. Dallari, I. p. xxiii.

The Student's career: Matriculation.

## CHAP. IV,

§ 5.

Hours of  
Lecture.

Masters were really members of the Corporation: consequently there was no *Matricula* of students. At Matriculation, the student took his oath of obedience to the Rector<sup>1</sup> and at the same time (it goes without saying) paid a fee—at Bologna amounting to twelve *solidi*<sup>2</sup>.

It is difficult to reproduce the time-table of a medieval institution, since the time of day was more frequently indicated by the hour at which the bells rang for such a service at such a Church than by the clock or the sun-dial. At Bologna there appear to have been three Lecture-hours daily. The first and most important Lecture of the day—the 'Ordinary' lecture—began at the hour of the 'morning bell' for mass at S. Peter's and lasted till the bell began to ring for tierce (presumably about 9 a.m.). It must therefore have lasted at least two hours and possibly longer<sup>3</sup>. In the afternoon, there might be two lectures of two hours and one-and-a-half hours respectively, the time being 2-4<sup>4</sup> p.m. and 4-5.30 in winter, 1.30-3 p.m. and 3.30-5 p.m. in summer.

The period from tierce till 1.30 or 2 p.m. was thus left vacant for dinner and siesta: but it is probable that Extraordinary lectures might be given after tierce. Other University Statutes provide for a lecture at this time in addition to the two hours or two-and-a-half hours' lecture in the morning<sup>5</sup>. It should be observed that there was this difference between the two legal Faculties as to the distinction between Ordinary and Extraordinary lectures. In Civil Law the Ordinary books were reserved for the Ordinary hours: in Canon Law, since the bulk of the Ordinary books far exceeded that of the Extraordinary, Extraordinary lectures might be given on Ordinary books. The books were

<sup>1</sup> *Stat.* p. 128.

<sup>2</sup> *Stat.* p. 73.

<sup>3</sup> By the city-regulations of 1475 the Salaried Doctors are required to lecture for one or two hours '*secundum quod disponunt statuta Universitatis predictæ*.' Dallari, I. p. xxii. At Padua the Doctor must lecture for two hours (*Stat. Jur. Pat.* l. 76 b).

Students are forbidden '*bancas pulsare*' to enforce an earlier termination.

<sup>4</sup> '*In hora vigesima intrent scolæ, et in eis legendo stent usque ad vigesimamsecundam horam.*' *Stat.* p. 105.

<sup>5</sup> e.g. at Ferrara. Borsetti, *Hist. Gym. Ferrar.* I. p. 434.



CHAP. IV, rent contradictions, adding any general principles of Law (to be extracted from the passage), commonly called 'Brocardica<sup>1</sup>,' and any distinctions or subtle and useful problems (*questiones*) arising out of the Law with their solutions, as far as the Divine Providence shall enable me. And if any Law shall seem deserving, by reason of its celebrity or difficulty, of a Repetition, I shall reserve it for an evening Repetition.'

Glosses.

In the above account there is, however, no mention of a very important feature of all medieval lectures—the reading of the 'glosses.' By the Bologna Statutes the Doctor is required to read the 'glosses' immediately after the text<sup>2</sup>. The 'dictation' of lectures in the 'Ordinary' hours was strictly forbidden<sup>3</sup> and the extant lectures of Bologna Doctors are thoroughly familiar and conversational in style. The 'repetitiones' alluded to by Odofredus consisted in a more detailed and elaborate discussion of some particular question arising out of a recent lecture. Any Doctor might give a Repetition in extraordinary hours whenever he pleased: but the salaried Doctors were required to arrange by rotation among themselves for a Repetition every week on some day on which no Ordinary lectures were given<sup>4</sup>. In Lent Repetitions were suspended and disputations took their place<sup>5</sup>. At these disputations,

Repetitions.

Disputations.

the Doctor maintained a thesis against all comers. The Rectors presided and determined the order of precedence when two rose at once. The precedence was settled by degree or standing, but nobles who sat on the front bench at lecture took precedence over all but Doctors<sup>6</sup>. The Students' disputations, which were presided over by a Doctor, took place on holidays<sup>7</sup>.

<sup>1</sup> Sarti explains the word by 'generales regulæ quasi loci communes.'

<sup>2</sup> *Stat.* p. 105.

<sup>3</sup> *Ib.* At Padua the Doctor 'post horam lectionis teneatur summarium lectionis, vel questionis disputare, dictare' (*Stat. Jur. Palav.* ff. 79, 80), also to answer questions handed to him in writing (f. 77); and in 1474

he is required 'ad se reducendum post lectionem ad conferendum et ad circulos more artistarum' (*ib.* ff. 78, 79). These 'circuli' seem to have been informal disputations or discussions among the students presided over by a Doctor.

<sup>4</sup> *Stat.* p. 106.

<sup>5</sup> *Stat.* p. 107.

<sup>6</sup> *Stat.* p. 108.

<sup>7</sup> Dallari, I. p. xxiii.

Holidays were of frequent occurrence. To obviate the inconveniences arising from the caprices of the ecclesiastical Calendar, it was prudently provided that there should be a holiday on every Thursday when no Festival recognized by the University occurred during the week: but on such days Repetitions and disputations might be held. While Doctors were peremptorily forbidden to lecture on Saints' days, students, whose lectures there was of course no moral or legal obligation to attend, were allowed to lecture whenever they would. The scholastic year opened with a Mass of the Holy Ghost<sup>1</sup> in the Dominican Church on the morrow of St. Luke, i.e. October 19th, while the Long Vacation, unlike the luxurious recess of Oxford and Paris, did not begin till September 7th<sup>2</sup>. There was a Vacation of ten days at Christmas, a fortnight at Easter, and three days at the Carnival, which was afterwards extended to three weeks<sup>3</sup>. Bologna also enjoyed two days' holiday at Whitsuntide, in place of the short vacation allowed at the beginning of May in other Italian Universities for medical purposes<sup>4</sup>.

CHAP. IV.  
§ 5.  
Holidays.

After five years' study a student of Civil Law might be admitted by the Rector<sup>5</sup> to lecture on a single title of the

Bachelor-  
ship.

<sup>1</sup> Which the Friars were required to say 'sine nota proliza.' *Stat.* p. 101.

<sup>2</sup> In the time of Odofredus the Long Vacation seems to have begun earlier and to have lasted a little longer. Savigny, cap. xxi. § 92.

<sup>3</sup> *Stat. Jur. Bon.* p. 106.

<sup>4</sup> Borsetti, *Hist. Gym. Ferrar.* I. 418, 419. Fabroni, *Hist. Acad. Pisan.* I. 446. At Ferrara the May Vacation is described as 'pro potionibus sumendis more solito'; at Pisa it is more bluntly styled 'vacatio Purgationum.' At Pisa there was also a week at Midsummer.

<sup>5</sup> Elsewhere the admission to Bachelors' degrees belonged to the Masters, very rarely to the Chancellor. So at Vienna, 'Ordinamus

quod ad solos Doctores et non ad alios spectet . . . Baccalarios creare.' Kink, *Gesch. d. h. Univ. zu Wien*, II. p. 136. The candidate having held a 'repetition,' and responded to opponents, was solemnly admitted by a Doctor (*ib.* p. 146).

This was probably the original custom at Bologna, where an early city Statute provides that no one 'sinatur regimen inchoare (i.e. to become a Doctor), nec aliquis Doctor legum *det ei librum suum*, nisi primo juret,' &c. ap. Sarti, I. ii. (1772) p. 222. A Bachelor was originally simply a student allowed to teach in a Master's School—a pupil teacher. Thus it is said of S. Richard, Bishop of Chichester, who studied at Bologna in the early years of the thirteenth century,

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§ 5.

Civil or Canon Law, or on a whole book after six years. A Canonist could similarly lecture on a single title after four years of 'hearing,' or on a whole Decretal after five years. The License of the Rector to 'read' a title or book or rather the completion of such a course of lectures made a man a Bachelor. Bachelors admitted to read a whole Book or Decretal might give a Repetition<sup>1</sup>. They might lecture twice a week<sup>2</sup>. Before presenting himself for admission to the Doctorate, a Bachelor must have given a course of lectures or at least a Repetition, must have completed eight<sup>3</sup> or at least seven years of study in Civil Law or six years for the degree in Canon Law. But time spent in the study of one Law was accepted in reduction of the time necessary for graduation in the other, and it was possible to become a Doctor of both Civil and Canon Law (*Doctor utriusque iuris*) in ten years<sup>4</sup>. Bachelor-lectures were apparently looked upon rather in the light of academical exercises for the Lecturers than as means of instruction for the pupils. It was sometimes necessary for an ambitious student who was anxious to have an audience to bribe scholars to come and sit under him by gifts or loans of money<sup>5</sup>. No examination or formal test was ever required at Bologna for the Baccalaureate, which was altogether much less of a distinct 'degree' and of much less importance than it eventually became in the Academical system of Paris or Oxford<sup>6</sup>.

In the earliest period the Masters of Bologna had en-

that 'mellea Canonum fluentia sic hausit, quod Magister suus, infirmitate detentus, ad lectiones suas vice sua continuandas, prae omnibus discipulis suis dictum Richardum elegit.' A. S. Ap. 3. T. I. p. 278.

<sup>1</sup> Stat. p. 111.

<sup>2</sup> Stat. p. 112.

<sup>3</sup> So by the Civil Law College Statutes, p. 382. The University Stat. of 1432 adds 'vel ad minus per septem annos' (p. 113).

<sup>4</sup> According to the Stat. of 1432 (p. 113).

<sup>5</sup> Sarti, I. i. p. 231.

<sup>6</sup> On this point Kaufmann (I. p. 361 sq.) has some good remarks. When he makes the Bachelorship more of a distinct degree at Oxford than at Paris, the remark is only true in respect of the Bachelorship of Arts, which perhaps gained additional importance from the fact that here alone was it conferred by the Chancellor. As to the explanation of this peculiarity of Oxford, see below, chap. xiv. § 1.

joyed the same freedom as any other professional Guild in admitting or rejecting candidates for membership. They alone conducted the Examinations, and conferred in their own name the license to teach: and the student thus licensed became an actual Doctor by receiving the 'book,' the symbol of his office, from an existing member of the Guild. This unfettered liberty of the Bologna Doctors was, however, out of harmony with hierarchical ideas: it was contrary to the general principle of Canon Law which claimed—though in Italy it had scarcely succeeded in securing—for the Church a certain control over education: and it was contrary to the analogy of the Schools North of the Alps, particularly of the great University of Paris, where the *licentia docendi* had always been obtained from the Chancellor of the Cathedral Church. Accordingly, in 1219 Honorius III, himself a former Archdeacon of Bologna, enjoined that no promotion to the Doctorate should take place without the consent of the Archdeacon of Bologna<sup>1</sup>, who was probably the Head of the Chapter School<sup>2</sup> as well as of the Chapter itself. The innovation was accepted without opposition, perhaps on account of the accident that the Archdeacon's stall was at the time filled by a distinguished Bolognese Canonist, Gratia Aretinus<sup>3</sup>. In 1270 an attempt was made on the part of the Doctors to throw off the yoke<sup>4</sup>, but, with this exception, the relations between the Arch-

CHAP. IV.  
§ 5.  
License  
and  
Doctorate.

Honorius  
III intro-  
duces au-  
thority of  
the Arch-  
deacon,  
1219.

<sup>1</sup> Doc. in Sarti, I. ii. (1772) p. 59. At the same time the Archdeacon received a faculty for absolving scholars excommunicated for assaults on clerks. *Ib.*

<sup>2</sup> It would seem that the Archdeacon was occasionally called 'Cancellarius,' and already exercised a kind of honorary and informal presidency over the Studium. Cf. the words of Buoncompagni, who, in 1214, read his *Rhetorica novissima* 'in presentia venerabilis fratris Henrici Bononiensium episcopi, magistri Tancredi archidiaconi et cancellarii, capituli et cleri, et in presentia doc-

torum et scholarum,' &c. (ap. Rockinger in *Sitzungsberichte d. bay. Akad. zu München*, 1861, p. 136). In the Church of Bologna the Archdeacon ranked next to the Bishop. See *Stat.* p. 417.

<sup>3</sup> Savigny (cap. XXI. § 83) thinks that the right was meant to be a personal concession to the then Archdeacon, but the document does not prove this.

<sup>4</sup> See the 'compromise' referring the dispute (which had led, as usual, to a scene in church) to the arbitration of the Bishop, in Sarti, I. ii. (1772) 106; Savioli, T. III. ii. p. 433.

CHAP. IV, deacon on the one hand, and the Doctors and the University on the other, present a striking contrast to the chronic hostility which prevailed between the Chancellor and University at Paris. The comparatively wealthy students of Bologna were less disposed to resent the pecuniary exactions of the Archdeacon, and enforced them by their Statutes. The Archdeacon on the other hand, content with an accession of dignity and an enormous increase of income, does not appear after 1270 to have seriously attempted to interfere with the actual conduct of the Examinations over which he presided.

Import-  
ance of  
the change.

It is hardly necessary to comment on the importance of the Bull of Honorius III in the history of the University system throughout Europe. By that Bull and the imitation of its provisions in favour of other Schools the Universities throughout Europe were, so to speak, brought within the ecclesiastical system. Graduation ceased to imply the mere admission into a private Society of teachers, and bestowed a definite legal status in the eyes of Church and State alike. The gulf which had hitherto separated the free lay system of education in Italy from the ecclesiastical system of Northern Europe was to some extent (more, it is true, in form than in substance) bridged over. By the assimilation of the degree-system in the two great Schools of Europe, an archetypal organization was established which supplied a norm for all younger Universities. It came to be a recognized requirement of every University organization that it should have an official duly commissioned by public authority to confer the license. And a further step was taken in the same direction in 1292, when a Bull of Nicholas IV conferred on all Doctors licensed by the Archdeacon of Bologna the right to teach not only in Bologna but throughout the whole world<sup>1</sup>. Henceforth the Universities passed from

<sup>1</sup> The Bull is also noticeable as recognizing the Doctorate as a permanent rank which a man retained even when he had ceased to teach : ' ut quicumque ex Universitate vestra apud Civitatem predictam per Archi-

diaconum Bononien., vel ejus Vicarium, prout est ibidem hactenus observatum, examinatus et approbatus fuerit, et docendi ab eo licentiam obtinuerit in Jure Canonico, vel Civili, ex tunc absque examinatione,



merely local into ecumenical organizations: the Doctor-  
 ate became an order of intellectual nobility with as distinct  
 and definite a place in the hierarchical system of medieval  
 Christendom as the Priesthood or the Knighthood. The  
 Archdeacon henceforth occupied the same relation to the  
 University of Bologna that the Chancellor of the Cathedral  
 occupied towards the University of Paris: and in course of  
 time it became usual to speak of the Archdeacon of Bologna  
 and the officials charged with similar functions elsewhere  
 as Chancellors of their respective Universities: in a Bull of  
 1464 this phraseology even receives the sanction of Papal  
 authority<sup>1</sup>. By this time the term 'Universitas' or rather  
 'Universitas studii' was coming to be usual as a synonym  
 of Studium or Studium Generale. But originally it should  
 be remembered that the Archdeacon or Chancellor was not  
 an official, or even *ex officio* a member, of either the Univer-  
 sity of students or the Doctoral Colleges<sup>2</sup>. He was rather  
 an external representative of the Church's authority over  
 the Studium. The only jurisdiction which he exercised in  
 connexion with the school besides that of presiding over  
 the promotions, was that of absolving for assaults on clerks,  
 an offence for which absolution was by Canon Law reserved  
 to the Holy See. The faculty for this purpose was con-  
 ferred upon the Archdeacon by a Bull of Honorius III at  
 the same time as the right of promotion<sup>3</sup>.

CHAP. IV,  
 § 5.

The Arch-  
 deacon  
 eventually  
 styled  
 Chancel-  
 lor.

The account which must now be given of the graduation  
 ceremony at Bologna relates to the period in which it was

Process of  
 Gradua-  
 tion.

vel approbatione publica, vel privata, aliquo vel alio novo privilegio regendi atque docendi ubique locorum extra Civitatem Bononien. predictam liberam habeat facultatem, nec a quoquam valeat prohiberi, et sive velit legere sive non, in facultatibus prelibatis, pro Doctore nihilominus habeatur.' Sarti, I. ii. (1772) pp. 59, 60. The privilege was confined to the Faculties of Canon and Civil Law, yet it was never disputed that Bologna was a *Studium Generale* in Arts and Medicine also.

<sup>1</sup> 'Universitatem Studii Bononie, cui archidiaconatum ipsum pro tempore obtinens, ut illius maior Cancellarius, preesse dignoscitur.' (*Stat.* p. 417.) In the same Bull he is styled 'caput et Cancellarius Universitatis dicti studii.'

<sup>2</sup> If a Doctor of the College of Canon Law received this appointment he ceased to be a member of it, unless dispensed by a unanimous vote. *Stat.* p. 343.

<sup>3</sup> Doc. in Sarti, I. ii. (1772) p. 59.

CHAP. IV, presided over by the Archdeacon. Of the earlier procedure we know nothing: but in all probability the main outlines of the ceremony were already established before the introduction of the Archidiaconal presidency. The process of graduation consisted of two parts, (1) The private Examination, (2) The public Examination or Conventus.

The Private Examination.

The private Examination was the real test of competence, the so-called public Examination being in practice a mere ceremony. Before admission to each of these tests the candidate was presented by the Consiliarius of his Nation to the Rector for permission to enter it, and swore that he had complied with all the statutable conditions, that he would give no more than the statutable fees or entertainments to the Rector himself, the Doctor or his fellow-students, and that he would obey the Rector. Within a period of eight days before the Examination the candidate was presented by 'his own' Doctor or by some other Doctor or by two Doctors to the Archdeacon, the presenting Doctor being required to have satisfied himself by private examination of his presentee's fitness. Early on the morning of the examination, after attending a Mass of the Holy Ghost, the candidate appeared before the assembled College and was assigned by one of the Doctors present two passages (*puncta*) in the Civil or Canon Law as the case might be<sup>1</sup>. He then retired to his house to study

<sup>1</sup> It will not be necessary to give a separate reference for every detail of the above account: I may refer generally to the University Statutes, pp. 116-119, and those of the Colleges, pp. 344-346, 383-386, and Gaggi. For the elucidation of the somewhat perplexing Statute *De punctis in privata examinatione*, the Statutes of Montpellier (*Cartulaire*, I. p. 314 sq., cf. also p. 389 sq.) and other Universities, are almost indispensable, e.g. the *Stat. Varia Civ. Placentia*, pp. 565-8; Fabroni, *Acad. Pisan. Hist.* I. pp. 431, 457. which show the universality of this system

of *punctorum assignatio*. At Bologna it dates from before 1289. See the doc. in Sarti, I. ii. (1772) p. 106. It also obtained in the Medical School of Montpellier, Astruc. p. 86, and in the Law Faculty at Vienna. Kink, *Gesch. d. h. Univ. zu Wien*, II. p. 147. So at Cologne, where the candidate was allowed eight hours' study and to give his lecture in the evening. Bianco, *Die alte Un. Köln* I. *Anl.* p. 53. Something like a survival of this system is said to be found at Salamanca (see Graux, *Notices Bibliographiques*, Paris, 1884, p. 335), and Coimbra, where candidates are re-

the passages, in doing which it would appear that he had the assistance of the presenting Doctor<sup>1</sup>. Later in the day the Doctors were summoned to the Cathedral or some other public building<sup>2</sup> by the Archdeacon, who presided over but took no active part in the ensuing examination. The candidate was then introduced to the Archdeacon and Doctors by the presenting Doctor or Promotor as he was styled. The Prior of the College then administered a number of oaths in which the candidate promised respect to that body and solemnly renounced all the rights of which the College had succeeded in robbing all Doctors not included in its ranks. The candidate then gave a lecture or exposition of the two prepared passages: after which he was examined upon them by two of the Doctors appointed by the College<sup>3</sup>. Other Doctors might ask supplementary questions of Law (which they were required to swear that they had not previously communicated to the candidate) arising more indirectly out of the passages selected, or might suggest objections to the answers<sup>4</sup>. With a tender regard for the feelings of their comrades at this 'rigorous and tremendous Examination' (as they style it) the students by their Statutes required the Examiner to treat the examinee 'as his own son.' The Examination concluded, the votes of

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quired to lecture on three questions chosen by lot from a large number, and to meet objections, answer questions, &c., three hours' preparation being allowed.

<sup>1</sup> 'Et die extimationis [*leg. examinationis*] ipsius scholaris teneatur dictus doctor presentans ire ad domum dicti scholaris et eum iterum examinare et ipsum audire super legibus eidem in punctis assignatis.' *Stat.* p. 384. In the time of Gaggi, the candidate was still further assisted by knowing that one of a limited number of *puncta* was sure to be set, and was coached in the preparation of his apparently written exposition.

<sup>2</sup> The Statutes seem to contem-

plate that the ceremony took place in the Cathedral: Gaggi, however, speaks of an examination 'in Palatio DD. Antianorum,' and of a *doctoratio* 'in Palatio ipsius Gubernatoris.'

<sup>3</sup> By the Statutes of Padua (*Stat. Jur. Patav.* f. 94), the '*puncta*' were to be taken from the first '*utilis materia*' which occurred after the place at which the book was casually opened.

<sup>4</sup> The function of the Examining Doctors is only distinguished from that of the rest by the University Statutes. In the College Statutes of 1387 all the Doctors in turn are to argue with the candidate (*Stat.* p. 385).

CHAP. IV, the Doctors present were taken by ballot and the candidate's  
 § 5. fate determined by the majority, the decision being an-  
 —+—+— nounced by the Archdeacon.

Relation of  
License to  
Doctorate. A candidate who had passed the private, and had been  
admitted to the public Examination, became a Licentiate.  
Normally and naturally the Licentiate proceeded to the  
ceremony which made him a full Doctor after a very short  
interval: but the expense of this step sometimes compelled  
candidates to postpone it, while others (in spite of statutory  
prohibition) went off and took it at a cheaper University<sup>1</sup>.  
 Public  
Examina-  
tion. On the day of the *Conventus*, or public Examination<sup>2</sup>, the  
love of pageantry characteristic of the medieval and espe-  
cially of the Italian mind was allowed the amplest grati-  
fication. Shortly before the day appointed the candidate had  
ridden round the city to invite public officials or private  
friends to the ceremony or to the ensuing banquet, preceded  
by the Bedels of the Archdeacon and of the Promotor or Pro-

<sup>1</sup> The Paduan Statutes allow a Licentiate of Bologna to receive the insignia at Padua. *Stat. Jur. Patav.* f. 95 b. In the 16th century, however, when Padua had far surpassed Bologna in scientific prestige, the Paduan charges were higher than Bologna. Ferrara was much cheaper. A student of this period, George Wagner, thus writes: 'Laurea, seu doctoratus gradus, ut vocant, Patavii sine maximo sumptu suscipi non potest: nam collegio Doctorum amplius 43 sc. numerantur et subductis aliis impensis sumptus fere ad 50 sc. excurrunt. Bononiæ paulo minus numeratur, Senis circiter 34 sc., Ferrariæ vix ultra 28, sed hæc urbs, nec literis nec studiosorum frequentia celebris, vulgo miserorum refugium vocatur, qui suæ inscitiae conscii alibi alliam rigorosi examinis, ut dicunt, subire non audent. Qui Patavii et Bononiæ insiguntur, apud Italos in precio, sed nec contemnuntur Doctores Senonenses ob Academiæ quondam florentissimæ et professorum qui eam

illustrarunt auctoritatem.'—ap. *Nuovi Documenti riguardanti la Nazione Alemanna nello Studio di Bologna*, ed. Luschin von Ebengreuth, Modena, 1884. There are two important Articles by the same writer on the German students at Bologna in *Sitzungsberichte d. Kais. Akad. d. Wissenschaften*. Ph-Hist. Cl. B. 118, 124.

<sup>2</sup> Kaufmann (l. p. 364) well points out that there was a certain difference between the License of Paris and that of Bologna. At Bologna the License conferred at the *Privata* was merely a License to proceed to the *Publica*; at Paris it was the actual *Licentia docendi*, which at Bologna was only given in the *Publica*. Consequently the Archdeacon presided at both functions; whereas at Paris the Chancellor (except in the Faculty of Theology) took no part in the Inception. It should be added that the *Publica* is occasionally described as a *Principium* in Universities of the Bologna type.

motors. The Statutes, indeed, forbade on this occasion the blowing of trumpets or other instruments, but on the actual day of the Conventus no such sumptuary limitation was imposed. On that day the candidate was accompanied to the Cathedral by the presenting Doctor, and by his 'socii' or fellow-students lodging in the same house with him. The idea of the 'Conventus,' or 'Public Examination,' was essentially the same as that of the ceremony known as the 'Principium' or 'Inceptio' in the Northern Universities. That idea was derived from the principle of the Roman Law according to which a man was invested with the *de facto* possession of his office by an actual and solemn performance of its functions. At the same time and by the same act the new Doctor was recognized by his colleagues and received into the teaching Guild or brotherhood, though at Bologna (as has been explained), by the period with which we are dealing, that admission had ceased to carry with it a practical right to the full exercise of the Doctor's teaching functions.

Arrived at the Cathedral, the Licentiate delivered a speech and read a thesis on some point of Law, which he defended against opponents who were selected from among the students, the candidates thus playing for the first time the part of a Doctor in a University disputation. He was then presented by his Promotor to the Archdeacon, who made a complimentary oration, and concluded by solemnly conferring the license to teach the Civil, Canon, or both Laws as the case might be, by the authority of the Pope and in the name of the Holy Trinity. In pursuance of the license thus conferred, he was then invested by the Promotor with the *insignia* of the teaching office, each no doubt with some appropriate formula. He was seated in the Magisterial chair or *cathedra*. He was handed the open book—one of the Law texts which it was his function to expound. A gold ring was placed upon his finger, whether in token of his espousal to Science or in indication of the Doctor's claim to be the equal of Knights, and the Magisterial *biretta* placed upon his head: after which the Pro-

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The Ceremony.

CHAP. IV, motor left him with a paternal embrace, a kiss, and a benediction<sup>1</sup>. The ceremony concluded, both Universities were required to escort him in triumph through the town, surrounded no doubt by a mounted cavalcade of personal friends or wealthier students, and preceded by the three University pipers and the four University trumpeters<sup>2</sup>.

New  
Guildsmen  
required to  
pay their  
footing.

A fuller knowledge of the customs and ritual of the Italian guilds would perhaps reveal a tolerably close analogy between these ceremonies of the Conventus and those by which other Guilds of merchants, professional men or craftsmen received a new member into their brotherhood. In obedience to an inveterate instinct of human nature, members so admitted, while welcomed with effusive cordiality, were also expected to pay their footing. The earliest custom was no doubt to send presents of robes to the Doctors,

<sup>1</sup> 'Cum paterna benedictione conferri pacis osculum consuetum; in nomine Patris et Filii et Spiritus Sancti, amen.' *Stat. Fiorent.* p. 439, where the ring is explained, 'in signum desponsationis utriusque scientie, canonice scilicet et civilis.' At Padua we find the ring described as 'signaculum fidei quam debent sacris jussionibus professores.' *Gloria, Mem. di Padova*, 1318-1405, II. p. 267. In the Medical Faculty at Montpellier the Doctor was also invested with a golden girdle. Astruc, *Mém. de la Fac. de Méd. à Mont.* p. 88. At Valladolid, the Doctorand 'gradum sibi conferri humiliter deprecetur, et Patrinus ipsum Cancellarium oratione quadam ad illud faciendum, et dandum sibi facultatem ac potestatem insignia tribuendi, exoret, et mox Cancellarius conferat gradum, quo dato novus Doctor Thronum conscendat,' &c. See *Estatutos, &c. de Valladolid*, 1651, p. 33, where the whole ceremony is minutely described. Here the new Doctor kisses the Chancellor and every Doctor present. The ceremony in Spain included investiture with

gloves, a golden cincture and golden spurs ('non tantum in signum nobilitatis equestris, sed ut magis ac magis per assiduum studium continuumque laborem ad honorem conservandum exciteris'), and finally with the sword ('ut . . . officium et munus tibi concessum tuendi Regem, Legem, et Patriam accurate adimpleas'). See the formulae in use at Alcalá, ap. de la Fuente, *Hist. de las Universidades en España*, II. p. 620. Cf. *Cartulaire de l'Un. de Montpellier*, I. p. 373: 'dicunt quod unus doctor non potest incedere comode sine uno scutifero.' Charles V conferred on the College at Bologna the right of conferring actual knighthood upon Doctors, while the Doctors of the College were themselves *ipso facto* knights and counts of the Lateran. At the same time the College received the widely diffused Imperial privilege of legitimating bastards. Gaggi, *ad init.*

<sup>2</sup> In the case of poorer students it would seem that these ceremonies were dispensed with. See the *Stat. de recipiente librum in secreto* (p. 119).

Bedels, and other officials taking part in the ceremony: CHAP. IV, but by the date of our Statutes these presents were com- § 5. muned into money payments, though a fixed quantity of cloth of a certain specified colour might still be substituted for some of them; and in addition to the regular fees there Fees and presents. were also some customary presents,—a cap, gloves, and a present of sweetmeats to each of the Doctors and to the Archdeacon, while the Prior of the College claimed a ring<sup>1</sup>. But the greatest expense of all was the banquet which the new Doctor was expected to give to his colleagues and University friends. Banquet. Even more magnificent entertainments, such as tilts or tournaments, were at times provided by wealthier students<sup>2</sup>. At some of the Spanish Universities the incepting Doctors were required to provide a bull-fight for the amusement of the University. The immense scale on

<sup>1</sup> So at Pisa, the candidate is required to send each Doctor a box full of comfits, of 1 lb. weight (*Scatulam unam referlam Libra una confectorum*). Fabroni, *Acad. Pisan. Hist.* I. p. 477. At Bologna the Archdeacon received 12 lib. 10s. from each candidate at each Examination (*Stat.* p. 150), the University 30s., each Doctor 40s. at the private and 20s. at the Public Examination, the presenting Doctors 10 or 12 ducats. A host of minor officials of the Universities, the Doctors, and the Archdeacon, had also to be remembered. One poor student annually received the Doctorate *gratis* (pp. 181, 348). There were also certain exemptions for sons or brothers of Doctors; and for all citizens the fees were much lower. *Stat.* p. 145. Many of these expenses depended partly upon the inclinations of the owner. Thus the Statutes of the Spanish College forbid the provision of refreshments for the Examiners: 'Panis uero uel uinum in dicto priuato examine uel in disputationibus uel repeticionibus

per eos fiendis . . . de bonis Collegii alicui nullatenus errogetur: ymo etiam de proprio facere reprobamus, quia tales uanitates et pompe nedum in pauperibus scolariis set etiam in diuiditibus (*sic*) sunt per sapientes et uiros laudabiles reprobate et per statuta uniuersalia (?) studii bonoñ. prohibite.' *MS. Stat. f. 6 b.* A Statute of Toulouse, on the other hand, makes compulsory a payment of 8 *grossi* to the Capitouls' jesters or mummers ('quatuor mymis dominorum de capitulo eadem die, si dicti domini veniant ad aulam'); besides a payment to the three ordinary 'mimi.' Fournier, *Stat. des Univ. Franç.* I. No. 772.

<sup>2</sup> These are forbidden by the Statutes: 'Nullus autem scolaris, in alicuius civis vel forensis scolaris publica, se pro chorea vel brigata seu hastiludio faciendis vestire audeat vel tunc eques hastiludere'; and the Doctorand is to swear 'quod die qua equitat invitando pro publica recipienda non faciat hastiludere seu brigardare.' (*Stat.* p. 116.)

CHAP. IV, which these Inception-rejoicings were carried out may best  
 § 5.  
 → be estimated from the fact that the Council of Vienne in 1311 passed a Canon limiting the expense of such entertainments to '3000 pounds Tournois<sup>1</sup>.' It should be added that besides the legitimate expenses of graduation, bribery was by no means unknown in the Bologna Examinations<sup>2</sup>.

Survival of Inception-ceremonies. In our English Universities, conservative as they are in many things, every trace of the ceremony of Inception has at length unhappily disappeared; only the preliminary ceremonial of the License survives. Fragments of the old ritual survive in different parts of Europe. In the Scotch Universities Doctors are created by *birettatio*: at Bologna honorary Doctors are still invested with the *anulus*. Still more of the full medieval ceremonial survives in the Spanish Peninsula, and at Coimbra Doctors of Law or Medicine are said even now to enter upon their office with the full medieval pageantry of book and ring, *cathedra*, *biretta*, and *osculum pacis*<sup>3</sup>.

<sup>1</sup> 'Tria millia Turonensium argenteorum' or 'circa 500 libræ Bononienses.' Clem. 2. *de magistris*. See Savigny's note, cap. xxi. § 82.

<sup>2</sup> The Jurist Francis Accursius took the precaution to get a Papal absolution for the 'munera' which he and his father had received from L. Faminando. Sarti, I. pt. ii. p. 96.

<sup>3</sup> Some of these ceremonies sur-

vive (I am informed) in Spain, but not the kiss; as to Coimbra, see *Notice Historique de l'Un. d. C.* p. 172. Oxford still retained the creation of Doctors, by the cap, ring, kiss, &c., in 1654. *Diary of John Evelyn*, ed. Bray, I. p. 290. The ceremonial has also been revived at Louvain, see below, chap. ix. § 9.



§ 6. THE UNIVERSITIES OF MEDICINE, ARTS, AND THEOLOGY. CHAP. IV.  
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One of the most striking differences between the Academical system of Bologna and that of the Northern Universities lies in the mutual relations of the various Faculties. In the organization which originated under the very peculiar circumstances of Paris, but which has eventually spread over Europe, the Doctors and Students of all Faculties are embraced in a single body and subject to a common Head and a common government. In ancient Bologna there was absolutely no constitutional connexion between the Faculty of Law on the one hand and that of Arts and Medicine on the other, except the fact that the students of each Faculty obtained their degrees from the same Chancellor, the Archdeacon of Bologna. The Student Universities with which we have been hitherto engaged were composed of Law-students only, the Colleges composed solely of Doctors of Civil and Canon Law. The organization of the Law-Students and the Law-Professors attained a developed form far earlier than that of the Students and Doctors of Medicine or the Liberal Arts. The Doctors of Arts were no doubt from an early period sufficiently organized to conduct graduations very much after the same fashion as the Doctors of Law. But the Students long remained without any recognized organization of their own. In the thirteenth century, indeed, if we may trust to the analogies of Padua and Lerida, the Jurist Rectors with characteristic insolence claimed jurisdiction over the students of other Faculties<sup>1</sup>.

Entire separation of Law from Arts and Medicine.

Students of Arts and Medicine originally subject to Law Universities.

<sup>1</sup> As to Padua see below, chap. vi.  
§ 4. At Lerida, the Statutes (1300 A.D.) provide that 'quamvis scolares cives civitatis istius, necnon phisici et artistæ, et alii multi non sint de stricto corpore universitatis studii

nostri quantum ad ordinationes sive statuta condenda, debent tamen Rectoris subesse judicio et universitatis statuta servare.' Villanueva, *Viage Literario*, T. XVI. p. 226.

CHAP. IV, The necessities of the struggle by which the latter eventually won their independence may partly account for the curious fact that the Medical Students were members of the same University as the Students of the liberal Arts, including even the mere school-boy Grammarians. But since there was a similar relation between the Doctors of the two Faculties, the explanation must also be sought in the close relations of the two branches of study which obtained in Italy.

Rhetoric  
and Gram-  
mar im-  
portant but  
prepara-  
tory.

[We have seen that the Law-School of Bologna was itself only an outgrowth of a more ancient and very famous school of Rhetoric and Grammar. Rhetoric and Grammar always remained important subjects of instruction in Italy; throughout the Middle Ages they were far better and more thoroughly taught than in Northern Europe, where the new Aristotle and its attendant Scholasticism threw all literary studies into the shade. But after the rise of the Law-school at Bologna, Rhetoric and Grammar came to be looked upon mainly as a school-boy preparation for the higher professional studies; and the importance of their Professors who, unlike the lawyers, were entirely dependent upon teaching for an income, was proportionately diminished. Logic was also regarded as a useful discipline for the future lawyer: but the new Aristotle—the study of Physics, Metaphysics and Moral Philosophy—was in no way an essential or usual preliminary to a legal education: nor were these speculative studies or the degrees to which they led ever able in Italy to attain anything approaching the importance which they occupied in the less materially-minded Universities of Northern Europe. But there was another study whose practical value commended it not less strongly to the utilitarian sympathies of Italian citizens than the study of Law: and that was the study of Medicine. Its development in Northern Italy was somewhat later than the Law-revival: and its practice, though almost as lucrative, never led to the same political or ecclesiastical distinction as a legal career. The status of the Medical Doctors and the Medical Universities of

Unimport-  
ance of  
Philoso-  
phy.

Except as  
a prepara-  
tion for  
Medicine.

Bologna always remained inferior to that of the Jurists. Nevertheless Bologna occupies a very important place in the history of medieval Medicine—a position second only to that of Salerno and Montpellier. And the study of Medicine according to medieval notions was closely bound up with the study of the Aristotelian Physiology, and consequently with the whole of the Aristotelian Philosophy. Aristotle, regarded in Northern Europe chiefly as the basis of speculative Philosophy and as the indispensable propædæutic for the Scholastic Theologian, was in Italy studied largely as constituting the scientific basis of Medicine. Hence the intimate connexion in all Italian Universities between Medicine and Arts.]

The names of Physicians are of frequent occurrence in Bologna documents from the beginning of the eleventh Century, and from about the end of it some of these bear the title of *Magister*<sup>1</sup>. At the beginning of the thirteenth Century we hear of a *Medicus Vulnerum*, Hugh of Lucca being induced by an offer of 600 *libræ* to come to Bologna as a Public Surgeon—a sort of Military Surgeon and Police Surgeon combined<sup>2</sup>; his son Theodoric and many other members of his family were also eminent Surgeons<sup>3</sup>. Some of the early Physicians were ecclesiastics<sup>4</sup>, others laymen.

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Growth of  
Medical  
School at  
Bologna.

<sup>1</sup> The first recorded *Medicus* styled *Magister* is said to be Jacobus Brittoniensiensis. Sarti, I. pt. ii. p. 527.

<sup>2</sup> In 1214. Sarti, I. pt. ii. p. 531; II. p. 146. Cf. the City Statute in Frati, I. p. 47, which provides that in cases of violence 'a magistro dental-salvi medico [a dentist] vel a magistro ugone de lucha vel ab aliquo alio medico plagarum quesitum fuerit,' &c. Ozanam (*Docs. inédits*, p. 5) notices the numerous lay physicians mentioned in the Archives of Lucca (Brunetti, *Codice dipl. Toscano*, No. 68 sq.) between the eighth and eleventh centuries. Lucca no doubt received the Arabic medicine from Spain or Southern France. Brunus

came from Calabria (Raige-Delorme and Dechambre, *Dict. Encyc. des Sciences Méd.* Art. Bruno), another channel of communication with the East. All the early Bologna Physicians and Surgeons came from other towns.

<sup>3</sup> Sarti, I. pt. ii. p. 537 sq.

<sup>4</sup> The prohibition of the study to the Priests, Monks, and beneficed Clergy addressed by Honorius III to the Bishop of Bologna in 1219 (see Appendix xi) shows its growing importance, but did little to check the practice denounced, since dispensations were freely granted. Theodoric, though a Friar, was allowed to make a fortune by the

CHAP. IV, But at first the profession seems to have had little connexion with the regular Academical Schools. It is not till the second half of the century that teachers of Medicine assumed the title of Doctor or Professor<sup>1</sup>, that graduations can be shown to have taken place<sup>2</sup> and the School to have been organized after the fashion already established in the schools of Law and Arts. It was, it would appear, at about this time that the study of Medicine, hitherto pursued at Bologna empirically and traditionally, began to be undertaken by men philosophically trained in the Schools of the Liberal Arts and to be based upon the writings of the classical Physicians and their Arabian imitators or corrupters. The foundation of a scientific School of Medicine at Bologna is generally associated with the name of Thaddeus of Florence who began to teach in that city about the year 1260<sup>3</sup>.

exercise of his Art, which he appears to have practised even after becoming a Bishop. *Ib.* pp. 537-541.

<sup>1</sup> From 1222 we begin to find a class styled *Medici Physici*—a title used apparently to distinguish the scientific Physicians alike from the ordinary empirical practitioners and from the *Medici Vulnerum* or Surgeons (Sarti, I. pt. ii. pp. 520, 555): the title *Medicina* or *Physica Professor* or *Doctor* begins to be used about the middle of the century (*ib.* pp. 463, 464) and implies a distinct imitation of the titles assumed by the *Doctores Legum*. In the *Rationes dictandi* of Hugo Bononiensis is a letter from a Master to his Scholars in which he wishes them 'Ypocratis prudentiam et tullianam eloquentiam.' Rockinger, *Quellen zur bayer. u. deutschen Gesch.* Vol. IX. Abth. i. p. 63.

<sup>2</sup> One of the first academically trained physicians who taught at Bologna was Nicolaus de Farnham, who, after teaching at Paris and Oxford in Arts, professed Medicine (*rexerat*) at Bologna (Mat. Paris,

*Chron. Maj.* ed. Luard, IV. p. 86; Sarti, I. pt. i. p. 535), and became Bp. of Durham in 1241. It does not follow that there was a separate graduation in Medicine. As to Graduation in Arts, see above, p. 148.

<sup>3</sup> 'Hæc potissima Thaddæi laus fuit quod primus ex nostris Medicinam cum Philosophia arctissimo federe conjunxisse visus sit.' (Sarti, I. ii. p. 555.) Marvellous stories are told of his wealth and professional exactions. He received 3000 *libra* to attend a patient at Modena (see the contract in Sarti, II. 1772, p. 153): and would not go to Rome to attend the Pope for less than 100 golden ducats *per diem* (Villani, *Vite d' uomini illustri Fiorentini*, Firenze, 1826, p. 24). His bequests of books (Sarti, I. ii. p. 559: I. ii. 1772, p. 158) suggest that this teaching was largely based on Avicenna, but he at times consults the original Greek as well as the Arabic versions of the Greek physicians; he is even said to have made a translation of the Nicomachean Ethics into Tuscan—a trans-

It was no doubt in consequence of this revolution that the College of Doctors in Medicine and Arts, and the University of students in the same Faculties, began to acquire a fresh importance, if not their first definite organization. Graduation in Arts was certainly practised before 1221<sup>1</sup>, that is to say regular Inceptions took place, and so at least in a rudimentary form some Guild or College of Doctors must have existed. But we have no proof of the existence of a distinct Medical graduation till the days of Thaddeus<sup>2</sup>, though in each case the custom of Inception probably dates in some form or other from a much earlier period. (The first evidence of the existence of an organized joint-College of Doctors of Medicine and Arts and of a joint-University of students is supplied (as is so often the case in University history) by a daughter-University—that of Padua, where Rolandinus read his book before the assembled Masters and students in 1262<sup>3</sup>. Whether the Medical University of Bologna at this time had no Rector at all or whether the Medical Rector was subject (as was certainly the case at Padua) to the over-lordship of the Jurist Rectors, it is certain that the Medical University did not at first enjoy the same legal recognition and privilege as the Universities and Rectors of the Jurists. In 1295 we find the Jurists successfully opposing the pretensions of the Medical University to elect an independent Rector like themselves, and it was not till 1306 that the

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Graduation  
in Arts and  
Medicine.

The Col-  
lege of  
Arts and  
Medicine.

The Stu-  
dent Uni-  
versity and  
Rector.

lation which is severely criticised by Dante (*Convito*, Tratt. I. cap. 10). Special privileges were granted to his scholars by the City in 1283. Sarti, I. ii. p. 557. It is difficult to know what Coppi can mean by saying (p. 82) that 'fino dal secolo XIII la scuola bolognese fu esclusivamente giuridica.'

<sup>1</sup> See the passage quoted above, p. 148.

<sup>2</sup> Gulielmus Brixiensis 'a Padua recedens conventum suscepit in Medicinis Bononiæ sub Magistro

Tatheo, Medico præcipuo tunc ibidem.' Engelbertus Abbas, ap. Pez, *Thes. Anecd. Nov.* 1721, I. c. 430.

<sup>3</sup> *Chron.* xii. 19 ap Muratori, SS. VIII. c. 360 (cf. below, chap. vi. § 4). The first express mention of the *Collegium Magistrorum* (of Arts and Medicine) at Bologna appears to occur in 1292. Sarti, I. pt. ii. p. 558; I. pt. ii. (1772), p. 155. The gift of the translated Arabic and Greek Philosophers and Mathematicians by Frederick II would imply a tolerably definite organization. Doc. in Sarti, I. ii. (1772), p. 163. But the

CHAP. IV, independent jurisdiction of the Medical Rector was recognized by the City and the rival Jurist-corporations<sup>1</sup>.

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Constitution like that of Jurist College and University. The Medical College and University, when once their constitution was developed, were mere imitations of the corresponding institutions among the Jurists. The exact parallelism which exists between the two organizations will make it unnecessary to do more than notice a few points on which the account already given of the Jurist organization is inapplicable. The Medical University claimed to embrace every student in Medicine, Surgery, 'Notaria,' Philosophy, Astrology, Logic, Rhetoric or Grammar residing in the City of Bologna, and to exercise jurisdiction over the teachers of all those Faculties. It is, indeed, obvious from the language of the Statutes, as well as probable from the nature of the case, that there were many more or less irregular Schoolmasters who with their pupils neglected to take the oaths to the Rector and get themselves put upon the Matricula. But the constitutional right of the University to control the humbler order of Masters and scholars does not appear to have been contested. It imposed few restrictions and conferred important privileges.

Only the Medical Students had votes in Congregation. Although scholars in all the above-mentioned subjects were subject to the Rectorial jurisdiction and the University Statutes, and entitled to University privileges and protection, only the students of Medicine were full citizens of the Academical Republic: they alone were 'Scholars of the University' and entitled to vote in Congregation; the rest were only *subditi* or subjects of the University<sup>2</sup>. But students of a certain standing in any Faculty were allowed to take part with those of the superior Faculties who had passed through the inferior in the election of their own Professors, except in the case of students of Grammar.

letter is also attributed to Manfred. See below, p. 359, *note*.

<sup>1</sup> Ghirardacci. I. pp. 329, 388.

<sup>2</sup> *Stat.* pp. 287, 288. At Florence a curious and invidious distinction is drawn between the Medical stu-

dent and the Artist. The former's oath in a civil dispute is to be taken 'usque ad quantitatem unius floreni auri': the Artist's only to a smaller amount. *Stat. Fiorent.* p. 23.

Moreover, all above the Grammarians were qualified to vote in the Rectorial elections except the students of Rhetoric, who were only allowed to elect twelve representatives to vote with the students of Medicine and the higher Arts<sup>1</sup>.

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The relations between the Professors and the students are exactly the same as those contemplated by the Jurist Statutes. Even the schoolboys possessed, it would seem, at least theoretically, the same rights against their Schoolmasters as the students of Medicine or Philosophy, except that the Statutes which conferred them were made by their older brethren, the students of Medicine. But the power of the Medical Student-University does not seem quite so entirely beyond question as the power of the Universities of Jurists. The Statutes occasionally admit that they are not always implicitly obeyed, and complain somewhat querulously of the 'arrogance' of Masters who defied the University and the extreme penalty which it had the power to inflict, i.e. 'privation<sup>2</sup>.' The only way in which the University could enforce its privation upon a non-salaried Doctor was by threatening his scholars with a like penalty if they refused to leave their deprived instructor; but since the scholars of Arts had not the full privileges of membership in the Guild, it is clear that the hardship of exclusion must have been rather sentimental than substantial.

Relation of  
Students  
and Doc-  
tors.

The Medical Statutes claim for the students the right to elect to all chairs salaried by the Municipality, though here they are directly contradicted by the counter-claim

Students  
elect Pro-  
fessors.

<sup>1</sup> *Stat.* pp. 305, 306. In 1378 a distinction was drawn between Medical students who lived at their own expense and those who lived at the expense of others, (i.e. on charity or as dependents or servants). But by an agreement arrived at in 1379 an elaborate system of indirect election to the Rectorship is prescribed, so as to give a preponderating weight to the students of indepen-

dent means. Ghirardacci, II. 377. It is curious that the statute of 1378 should be so early disturbed. At Padua 'nullus nisi qui pervenerit ad quartum decimum ætatis suæ annum' was allowed to vote. Priests, Regulars, and 'famuli' or 'mercenarii' were also excluded. *Stat. Artist. Patav.* fol. 1 b.

<sup>2</sup> *Stat.* p. 256.

CHAP. IV, of the Magisterial College. So far as historical records go,  
 § 6.  
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Salaries.

Salaries appear to have been first extended to other Faculties than Law in 1305, when they were bestowed upon Doctors in Grammar, Physics and 'Notaria<sup>2</sup>.' In 1321 we hear of Antonio de Virgilio being appointed with a 'large salary' to lecture upon Virgil, Statius, Lucan, and Ovid, an indication of the enormously higher position occupied by Classical studies in the Italian as compared with the Northern Universities; and at about the same time a salaried Professor of Rhetoric lectured on Cicero<sup>3</sup>. Soon afterwards salaries of 100 *libræ* were voted to Professors of Philosophy, of Astrology, of Medical Practice, of Natural Philosophy<sup>4</sup>. At a later time the Salaries, as in the case of the legal Faculties, increased in number and amount; but it would appear that here also the appointment to the majority of them was eventually lost by the students<sup>5</sup>. The highest Salaries paid in Medicine were nearly, but not quite, equal to the Salaries enjoyed by eminent Doctors of Law; and were generally higher than the salaries for Arts. The fees payable to Doctors of the various Faculties, whether salaried or otherwise, were limited by Statute. The Lecturer in Logic might charge anything up to 40 *solidi Bononienses*, the Doctor of Grammar up to 30. The latter, however, might add to his profits by taking boarders; though there was no obligation for the Grammarian any more than for any other scholar to reside in a house kept by a Master<sup>6</sup>. The fee for the medical lecture was, strange to say, lower than that for the lecture on Grammar, being limited to 20 *solidi*<sup>7</sup>, probably because the Medical Doctor addressed a large audience, while the Grammar-boy required 'individual at-

Lecture  
fees.

<sup>1</sup> See above, p. 213, note 2.

<sup>2</sup> Ghirardacci, I. p. 504.

<sup>3</sup> *Ib.* II. pp. 17, 18, 19.

<sup>4</sup> *Ib.* II. p. 56.

<sup>5</sup> In 1383 it is specially mentioned that two of the twenty chairs in Medicine and Arts were filled by student-

election. *Ib.* II. p. 398: Dallari, I. p. 45.

<sup>6</sup> *Stat.* pp. 248, 249.

<sup>7</sup> *Stat.* p. 253. For reserved seats ('*si fuerit scholaris in bancha Rectoris vel in banchis anterioribus*') a florin might be charged.



tention.' In Philosophy, the fees were fixed not by the year but by the course, varying from 40 *solidi* for the *De Animalibus* to five for the *Œconomica*<sup>1</sup>.

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§ 6.

Next to the entire separation of the legal Faculty on the one hand from the Faculties of Arts and Medicine on the other, the most distinctive peculiarity of the Italian University-system was the relation in which the Professors of the various Sciences represented by the Medical University stood towards each other. In the Northern Universities Medicine ranked with Theology and Law (though the lowest of the three) as a 'Superior Faculty'; all Masters of Arts, whether they actually taught Philosophy or Logic or Grammar, possessed equal rights as members of the Faculty of Arts. Grammar was hardly a Faculty at all. Some of the Universities claimed authority over the Grammar Schools; in some there was even a ceremony of graduation in Grammar<sup>2</sup>. But the Master of Grammar had no rights in the University. At Bologna a much more complicated system prevailed. There was a Collegium, composed—like the Colleges of Canon and Civil Law—of a limited number of Bolognese citizens, which possessed an exclusive right of examining candidates for the Doctorate in all the Faculties embraced in the Medical University<sup>3</sup>. This College consisted, it would appear, only of Doctors in Medicine or full Doctors in Arts, i.e. those who had graduated in all the liberal Arts<sup>4</sup>; though those who were Masters of Arts only, of course, took no part in the Medical Examinations, and had not the full rights of the Medical Doctors. But besides this complete graduation in all the liberal Arts, it was possible

Relation of  
Medical  
to Philo-  
sophical  
and other  
Doctors.

<sup>1</sup> *Stat.* p. 252 (for extraordinary Lectures only).

<sup>2</sup> See below, vol. II. chap. xiv.

<sup>3</sup> See the Statutes of the College (dated 1378), *Stat.* p. 425 sq.

<sup>4</sup> *Stat.* pp. 257, 445. The Medici and the Artistæ are spoken of as the two 'membra' of the College: the Doctors of Arts are apparently in-

cluded in the number above given, but the relation between the two bodies is somewhat obscure. In the lists of the Paduan College (*Gloria, Monumenti della Univ. di Padova, 1318-1405*, T. I. p. 78 sq.), there are Doctors of Medicine only, Doctors of Medicine and Arts, and a few of Arts only.

CHAP. IV, at Bologna to graduate in, and obtain authority to teach,  
 § 6.  
 some of the subjects embraced in the Arts' curriculum without taking up or being examined in the rest. We thus hear of Doctors of Philosophy, of Astrology, of Logic, of Rhetoric, and of Grammar, the Faculties being enumerated in what appears to have been considered their relative dignity<sup>1</sup>.

Graduation not essential for teaching inferior Arts. It should be added that, though graduation in the lower Arts was recognized, it was not essential. Though the University claimed to extend both its privileges and its control to the humblest Schoolmaster in the City, the monopoly of graduates extended only to the higher Faculties and Arts; the teacher of Grammar or Surgery was not required to have graduated in the University, but merely to have put his name upon its Matricula<sup>2</sup>.

Scientific side of the twelfth-century Renaissance. Two of the subordinate subjects which fell within the jurisdiction of the Medical University demand special notice—Astrology and Surgery. The scientific side of the twelfth century Renaissance has often been too much ignored; it is the peculiarity of scientific writing that it is doomed to almost complete oblivion the moment it is superseded, even when the theories which it contains are permanently accepted—still more so when they are exploded. Nevertheless, modern Science has its roots in the intellectual revival of the twelfth century as much as modern culture and modern Learning and modern Philosophy: and of the scientific side of this revival Italy was the centre. This branch of the movement began, indeed, before the twelfth century. It was in Italy that the Latin world first came into contact with the half-forgotten treasures of Greek wisdom, with the wisdom which the Arabs had borrowed from the Greeks and with original products of the remoter East. Of the Medical School of Salerno we have already spoken. It was probably in Italy and through the Arabic that the Englishman Adelard of

<sup>1</sup> *Stat.* pp. 287, 488, 489, &c. According to Sarti, actual degrees were given in 'Notaria,' but this does not

appear from the Statutes, though we hear of scholars in that Art.

<sup>2</sup> *Stat.* p. 254.

Bath translated Euclid into Latin during the first half of the eleventh century<sup>1</sup>. At about the same time modern musical notation originated with the discoveries of the Camaldunensian Monk Guido of Arezzo<sup>2</sup>. In the first years of the following century the Algebra and the Arithmetic which the Arabs had borrowed from the Hindoos<sup>3</sup> were introduced into Italy by the Pisan merchant, Leonardo Fibonacci<sup>4</sup>; and this learned intercourse between East and West was still further promoted by the Imperial sceptic, Frederick II. It was to this Arabo-Greek influence that Bologna owed its very important School of Medicine and Mathematics—two subjects more closely connected then than now through their common relationship to Astrology<sup>5</sup>.

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<sup>1</sup> Libri, II. p. 48. The same writer remarks (II. p. 203), 'il faut se borner à constater ce fait peu connu, qu'il y a eu au quatorzième siècle, en Italie, un nombre tel de personnes qui ont écrit sur les diverses branches des mathématiques, qu'il serait difficile de croire que ce nombre ait jamais été surpassé dans aucun autre siècle. . . . On pourrait retrouver encore les titres de plusieurs centaines d'ouvrages de mathématiques écrits au quatorzième siècle par les Italiens.'

<sup>2</sup> See Angeloni, *Sopra Guido d'Arezzo*, Parigi, 1811, p. 62, &c. His works are edited by Gerbert, *Scriptores Ecclesiastici de Musica*, Typis San-Blasianis, 1784. T. II. p. 1 sq.

<sup>3</sup> The Arabs appear to have added little in substance to Greek Geometry and Indian Arithmetic and Algebra. It is worth noticing that the Indian contribution to Mathematics was made by the Aryan conquerors within the first two or three centuries after the conquest. (Ball, *Hist. of Mathematics*, pp. 141, 142.) Even the Jews, with all their capacity for absorbing Aryan Mathematics, Medicine, and Philosophy, originated

little or nothing in the purely intellectual sphere.

<sup>4</sup> Libri, II. p. 20 sq. The preface of his *liber Abbaci* is given in Appendix viii. Ball remarks (*Hist. of Mathematics*, p. 153): 'In all these early works [of the Arab School] there is no clear distinction between arithmetic and algebra, and we find the account and explanation of arithmetical processes mixed up with algebra, and treated as part of it. . . . This arithmetic was long known as *algorism*, or the art of Alkarismi [an Arab Mathematician, who wrote c. 830 A.D.], which served to distinguish it from the arithmetic of Boethius; and this name remained in use till the eighteenth century.'

<sup>5</sup> How important was the constitutional connexion between the Arts Schools (including Mathematics) and Medicine, we are reminded by the fact that Galileo began life as a Medical student at Pisa. Libri, IV. p. 171. On the Mathematical School of Bologna, Libri (IV. p. 98) remarks: 'On ne saurait se dispenser de faire remarquer ici combien l'école de Bologne a été utile aux progrès de l'algèbre; c'est là que sont sortis Ferro, Ferrari, Bombelli et Cataldi,

CHAP. IV, § 6.  
Astrology. Bologna did not become important as a School of Medicine till the close of the thirteenth century, when the power of Salerno had begun to decline, and the popularity of the Arabic medical writers was at its height. The effect of the new influence—in so far as it was really Arabic and not a revival of Greek Medicine and Surgery in an Arabic dress—was on the whole distinctly detrimental to the progress of Medical Science. It contaminated the quasi-scientific Medicine of Hippocrates and Galen with a mass of astrological superstition: it was considered necessary for the Physician to ascertain what would be his patient's critical days and to modify his treatment according to the aspect of the heavens<sup>1</sup>. We have already seen that Astrology was one of the regular Faculties of Bologna: there was a salaried Professor of Astrology, one of whose duties was to supply 'judgments' *gratis* for the benefit of enquiring students<sup>2</sup>. The position of an astrological Professor in a medieval University must have been a delicate one; for the scientific prediction of future events which might be practised and taught by ecclesiastic or layman under the patronage of the Church shaded off into the Necromancy and the materialistic Fatalism on which the Church had no mercy. The most distinguished occupant of the Astrologer's chair at Bologna—the Prince of medieval Astrologers—Cecco d' Ascoli, ended his days at the stake in 1327, a victim of the Florentine Inquisition<sup>3</sup>.

qui tous ont enrichi cette science de quelque notable découverte. Malheureusement leurs concitoyens semblent les avoir tout-à-fait dédaignés. Leur nom est à peine enregistré dans les bibliographies les plus étendues.'

<sup>1</sup> 'Oportet Medicum de necessitate scire ac considerare naturas stellarum et earum conjunctiones, ad hoc ut diversarum ægritudinum et dierum criticorum habeat notiones quoniam alterabilis est equidem ipsa natura secundum aspectus et conjunctiones corporum superiorum.... Medicus sine Astrologia est quasi ocu-

lus, qui non est in potentia ad operationem.' Cicco Asculanus in *proom. Astrolog.* ap. Sarti, I. pt. ii. p. 523.

<sup>2</sup> *Stat.* p. 264.

<sup>3</sup> Gio. Villani, *Hist. Fiorent.* ap. Muratori, XIII. c. 625. His encyclopædic Italian poem *L' Aarba* was printed at Venice in 1481, &c. There is nothing in the Statutes to support Libri's assertion (II. p. 193) that there were at Bologna two distinct chairs of Astronomy and Astrology. Libri (*l.c.*) has an interesting account of Cecco's really considerable knowledge of Physical Science.

Although the astrological bias of Bologna was not an improvement from a medical point of view, we must not despise the illusions through and by means of which all truth has to be reached. It was at Bologna, it would appear, that Copernicus, though a student of Canon Law, began the calculations which founded modern Astronomy<sup>1</sup>, and the University had already produced in Copernicus' Master, the Cardinal Nicolas of Cusa<sup>2</sup>, one of those anticipators who herald the approach of every great scientific revolution. In the department of Medicine it was only or chiefly on account of its increased attention to Surgery that the fourteenth century represents a period of progress: and in the history of medieval Surgery Bologna holds an important and very distinguished place. There were surgical writers at Bologna as early as the second half of the thirteenth century whose works continued in sufficient circulation to be included among the earliest productions of the Venetian press and to be often reprinted up to the middle of the seventeenth century<sup>3</sup>. The theoretical part of these books

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§ 6.  
Astrology  
injurious to  
Medicine,  
but not un-  
fruitful.

Progress  
of Surgery.

<sup>1</sup> See the interesting monograph of Malagola (*Monografia*, p. 367 sq.).

<sup>2</sup> He became a Scholar of Law in 1437 and afterwards expounded an Astronomical system according to which the sun moved. *Ib.* p. 431. According to Libri (III. p. 99) Novara and a Neapolitan Jurisconsult discovered independently the change in the axis of the earth's rotation. He makes Novara Copernicus' Master.

<sup>3</sup> Among these were the above mentioned Theodoric of Lucca, whose work was, however, largely based upon the earlier Paduan teacher Brunus, and the more important Gulielmus de Saliceto (fl. c. 1270). Gui de Chauliac, the famous fourteenth-century surgeon of Montpellier, speaks of these two Surgeons as the chief representatives of the school 'qui indifferenter omnia vulnera cum vino exsiccabant,' a treatment based upon the Galenian doc-

trine that 'siccum vero sano est propinquius, humidum vero non sano.' There were, however, at Bologna representatives of the older Salerno school, which treated wounds on the principle that 'Laxa bona, cruda vero mala' (a Hippocratic maxim); of these the most important was Roland of Parma (a pupil of the Salernitan Roger), who was the first Bolognese writer on Surgery. (Sarti, l. pt. ii. p. 536 sq.; Raige-Delorme et Dechambre, *Dict. Encycl. des Sciences Méd.* Art. Bruno.) The 'Chirurgia Magna' of Brunus and the 'Chirurgia' of Theodoric and of Roland were published with the 'Chirurgia' of Gui de Chauliac at Venice, in 1497, &c. It is a curious fact that the Bishop-Physician Theodoric paid special attention to Veterinary Surgery: he wrote a *Mulomedicina* and a *de cura Accipitrum*. (Sarti, l. pt. ii. p. 544.)

CHAP. IV, was based upon the Arabic authors who derived them for  
 § 6. the most part from the late Greek writer Paul of Ægina :  
 but it is the especial glory of the Bolognese Medical School  
 that it was the earliest home of real anatomical enquiry.  
 It was one of the first schools at which the old religious  
 prejudice against dissection succumbed to the advance of  
 Dissection. the scientific spirit<sup>1</sup>. Dissection was practised at Bologna  
 at least as early as the time of Thaddeus; and the later  
 Statutes make provision for somewhat more frequent  
 'Anatomies' than were customary in other Universities  
 Mundinus. even in the South of Europe<sup>2</sup>. Mundinus, the Father  
 of Modern Anatomy, was one of the earliest teachers of  
 Surgery at Bologna, and his 'Anatomia' remained the  
 standard text-book on the subject for more than two  
 centuries. It was the ordinary practice in the Italian  
 Universities for a Medical Doctor to read the relative  
 parts of this treatise while the Professor of Surgery per-  
 formed the dissection and another Doctor pointed out to  
 the students the various bones or muscles as they were  
 named by the reader<sup>3</sup>. By the Statutes of Florence food  
 and wine and spices were to be provided to keep up the  
 spirits of Professors and Students during this unwonted  
 ordeal<sup>4</sup>. The importance of Surgery in Italy as compared

<sup>1</sup> Not, however, without a struggle: 'Ante hunc (Mundinum) obsoleta quasi erat secandorum humanorum cadaverum consuetudo nimirum contra Græcorum barbaram immanemque feritatem atque audaciam publico supplicio condemnatos avidè impetrantium, ut in seditionem quasi concitatis, lex tandem injuncta infamiae pœna vetavit, ne quis exuviis denudata cadavera imposterum ferro scindere et ut exta videret, auseret aperire.' Gulielmus, *De claris Bononiae Anatomicis Oratio*, Bononiæ, 1737. For further information, see the elaborate work of Medici, *Compendio storico della Scuola Anatom. di Bol.* (Bologna, 1857) p. 8 sq.

<sup>2</sup> It was arranged that every Medical student of over two years' standing should be able to attend an 'Anatomy' once a year, twenty students being admitted to see the anatomy of each man, thirty of each woman. *Stat.* p. 289. Some other Universities had to be content with the body of a single criminal *per annum* for the whole body of Students.

<sup>3</sup> e.g. at Padua (Facciolati, *Fasti*, p. xlviii: *Stat. Artist.* t. xxvii b). The method is described in some University Statutes, and depicted in the woodcuts prefixed to many early editions of the old Medical writers.

<sup>4</sup> *Stat. Fiorent.* p. 74.

with its neglect in the Northern Universities is indicated by the different position occupied by its teachers. Not only was Surgery taught by Doctors of Medicine, but the latter were allowed to engage in surgical practice, an employment which was looked upon by the Doctors of Paris as a degrading manual craft, entirely beneath the dignity of a sage learned in all the wisdom of Aristotle and Galen<sup>1</sup>. At the same time the mere Surgeon who was not also a Physician was in an inferior position. Examinations in Surgery were held by the Medical Faculty, and licences to practise granted to those who passed them: but such qualified Surgeons did not apparently rank as Doctors of Surgery<sup>2</sup>.

The subjects in which the Medical student was examined for his degree were simply the 'Liber Tegni' (i.e. τέχνη ιατρική) of Galen and the Aphorisms of Hippocrates, on each of which the candidate was required to give one 'lectio<sup>3</sup>.' The custom dates perhaps from a period previous to the introduction of the Arabian Medicine; it may be presumed that in the ensuing discussion the candidate might be required to show a knowledge of the other books lectured on in the Schools. Among these the 'Canon' of Avicenna had the first place; but they included also other works of Galen and Hippocrates

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The Medical Curriculum.

<sup>1</sup> Stat. p. 444.

<sup>2</sup> Stat. pp. 442, 443. What was the exact position of the 'Doctor Chirurgie' is not at all clear. In the College Statutes of 1378 (p. 443) we hear of 'promoveri ad examen Chirurgie' as if it was possible to take a degree in Surgery only: on the other hand in the College Statutes of 1395 (p. 471) it is ordered 'quod nullus possit audeat vel presumat legere in scientia medicine Bononie, tam in physica quam in cirusia, nisi fuerit doctoratus in eadem scientia medicine, videlicet in physica.' The Student-Statutes (p. 254), after laying it down that no one who is not 'conventuatus' may teach at Bologna, adds 'salvo

quod legentes in gramatica vel Chirurgia non teneantur ad predicta, nisi esset pro utilitate Universitatis scholarium.' In Gloria, *Mon. d. Padova*, 1318-1405 (II. p. 289) is a diploma conferring 'auctoritatem ubique legendi . . in eadem facultate cyrugie.' It is clear, therefore, that there were degrees in Surgery only, but that at Bologna the *Doctor legens* in Surgery was required to be also M.D. At Padua, no one was allowed to practise Surgery who was not either *Doctor Cyrugia*, or a student of three years' standing who had 'seen' a Doctor practising for one year. Stat. Art. Patav. f. xxvii b.

<sup>3</sup> Stat. p. 439.

CHAP. IV, besides those above mentioned, and a medical treatise  
 § 6. of Averroes<sup>1</sup>. The two *lectiones* of candidates for the  
 Examination in Surgery were upon a part of Avicenna and  
 upon the 'Surgery' of Brunus<sup>2</sup>. Among the books lectured  
 on appear also the 'Surgery' of Galen and the seventh  
 book of the 'Almansor' of Rhazes<sup>3</sup>.

For the degree of Doctor in Medicine, the candidate was  
 required to be twenty years of age, of five years' standing  
 in the study of Medicine, and 'sufficient in Arts.' If he  
 had been licensed in Arts, four years' study of Medicine  
 sufficed. He must also have lectured on some medical  
 'tractate or book' as a Bachelor, and have responded or  
 disputed at least twice in the Schools<sup>4</sup>. The Medical  
 Statutes of some Universities further require that as a  
 Bachelor he should practise for a year under the supervision  
 of 'some famous Doctor'<sup>5</sup>.

Course in  
 Philoso-  
 phy.

The subject-matter of the Arts course was so exactly the  
 same as that of Paris that it will be best to treat in detail  
 of the medieval philosophical curriculum when we come to  
 deal with the University which was its head-quarters. It  
 will be enough to say here that in the Italian Universities  
 parts only of the Aristotelian treatises<sup>6</sup> were lectured on

<sup>1</sup> 'Legatur de libro *coliget* [i. e. *Kitāb al Kollijāt* or *Universalis de Medicina*] primo prohemium,' &c. *Stat.* p. 275 et not.

<sup>2</sup> 'Pro prima lectione super tertia parte fen quarti canonis Avicenne, et pro secunda parte cirugie Bruni.' *Stat.* p. 443.

<sup>3</sup> *Stat.* p. 247. It may be presumed that the 'Cirugia Avicenne' is the same as the portion of the Canon mentioned above.

<sup>4</sup> *Stat.* p. 433.

<sup>5</sup> e. g. at Padua, *Stat. Artistarum*, f. xxix a: cf. a Statute of Angers, 'Nullus non graduatus præsumat ordinare seu administrare quamcunque medicinam digestivam, laxativam seu etiam confortativam, nec alias quovis modo infirmum visitare, causa

curse, excepta prima vice, nisi cum Doctore vel Licentiatto, si aliqui fuerint presentes.' *Statuts des Quatre Facultés de l'Un. d'Angers*, Angers, 1878, p. 38. Here the Bachelor was either non-existent or not reckoned a 'Graduate.'

<sup>6</sup> *Stat.* p. 274. The Paduan Artist-statutes of 1486 (*Stat. Art. f. xxxiii bis*) introduce a number of Text-books by recent writers, mostly Paduan teachers: 'deputati ad sophistariam teneantur legere logicam pauli ueneti questiones strodi cum dubiis pauli pergulensis et pro tertia lectione regulas seu sophismata tisberi.' Radulphus Strodius is said to have been a Scotch Fellow of Merton, afterwards a Dominican, who travelled through France, Italy, and the Holy Land



instead of the whole: while the actual examination was limited to still smaller portions<sup>1</sup>. Moreover, the course seems to have been got through in a much shorter time—four years instead of a real or nominal seven. But, while the Italian Universities never rivalled the Scholastic fame of Paris, Rhetoric, Mathematics, and Astrology flourished more vigorously in the Italian Universities than in the North. In the former subject the text-books at Bologna were the *De Inventione* of Cicero and the treatise *Ad Herennium* then attributed to the same writer<sup>2</sup>, or the compendium of it compiled by the Friar Guidotto of Bologna.

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§ 6.

Astrology was so interpreted as to include Mathematics<sup>3</sup>. Astrology and Mathematics.

The subjects prescribed were:—

(1) A work on Arithmetic or Algebra, styled *Algorismi de minutis et integris* [? of Gerard of Cremona].

(circa 1370) 'contra Wiclef dogmata acriter disputans' (Fabricius, *ad voc.*; Brodrick, *Memorials of Merton Coll.* p. 214). He is mentioned as a poet by Chaucer ('the philosophical Strode,' *Troilus*, l. 1869): and his poem 'Pearl' is edited by Gollancz (London, 1891). Paul of Pergolæ was a Venetian philosopher contemporary with Paul of Venice. M. Hauréau, *Dict. des Sciences Phil.*, *ad voc.*, questions whether the 'Dubia' ascribed to Paul of Pergolæ is not really the work of the better-known Paul of Venice. The above allusion seems to show the doubt to be unnecessary. Tisberus is the Oxonian Heytisbury, as to whom see Poole in *Dict. of Nat. Biogr.* XXVI. p. 327, Wood's *City of Oxford*, ed. Clark, l. p. 346 note. At this time it is observable that both in the Theological and the Philosophical Faculties (as in so many German Universities), there were separate sets of Lectures for Thomists and Scotists; the Paduan Statute (*l.c.*) provides: 'Volumus quod deputati ad legendum theologiae unus legat secundum viam sancti thomæ alter secundum viam

scoti. Et similiter deputati ad methaphisicam.' Scotus was himself much influenced by the Averroistic Philosophy.

<sup>1</sup> 'Qui examinari voluerit in artibus omnibus simul, ordine servato supradicti statuti, prima die recipiat puncta pro prima lectione in libro metaphysice et pro 2<sup>a</sup> lectione in mathematicis in libro sp[h]ere; in 2<sup>a</sup> vero die pro prima lectione in loyca in libro posteriorum, pro secunda lectione in gramatica in prismatico minori.' *Stat.* p. 489. At Florence the whole of the *Organon* is read, to which was added the *Tractatus* and *Fallacia* of Thomas Aquinas (*Stat. Fior.* p. 65).

<sup>2</sup> The former was styled the *Rhetorica vetus*, the latter the *Rhetorica nova*. *Stat.* p. 488 et not.

<sup>3</sup> There was a chair of Arithmetic whose occupant was required 'omnem mensuram terre et muri et generaliter cuiuslibet laborerii communis Bononie mensurare et agromensare, et etiam omnes rationes communis Bononie male visas et chalcultas revidere et reformare.' Dallari, l. p. 5.

(2) Euclid, with the Commentary of the thirteenth-century Geometrician, Johannes Campanus de Novara.

(3) The tables of Alfonso X, King of Castile, with the 'Canons' [of Giovanni di Sassonia].

(4) The *Theorica Planetarum* [? of Gerard of Cremona, or Campanus de Novara's free translation of Ptolemy's *Almagesta*].

(5) The *Canones super tabulis de lineriis*, i.e. rules for the use of astronomical tables to determine the motions of the heavenly bodies, by John of Linières or Lignières of Amiens (fl. 1330 A.D.).

(6) The *Tractatus astrolabii* of Messahala or Maschallah [a Jewish Astrologer of the ninth century].

(7) Alchabicius [fl. c. 850 A.D.: probably his *Isagoge* to judicial Astrology, translated by Gerard of Cremona].

(8) The *Quadripartitum* and the *Centiloquium* of Ptolemy with the Commentary of Haly, which were works upon judicial Astrology.

(9) A certain *Tractatus Quadrantis*. [On the use of the Quadrant.]

(10) A work on Astrological Medicine or Medical Astrology, which bore the title, very characteristic of the Arabs and their followers, *de urina non visa* [by Gulielmus Anglicus or Grisauntus]<sup>1</sup>.

(11) Portions of the *Canon* of Avicenna<sup>2</sup>.

Repetitions  
and Repeti-  
tores.

Characteristic of the Arts course at Bologna was the prominence of the *Repetitiones*. A *Repetitio* in Medicine and Arts was apparently somewhat different from the exercise so called in the Law-schools. It was, as a rule, not given by the Master himself but by a 'Repetitor' who attended the lecture and then repeated it to the students afterwards and

<sup>1</sup> Said to have been the father of Urban V. (fl. 1350) Fabricius *ad voc.*

<sup>2</sup> *Stat.* p. 276. I am indebted to Malagola for some of the above explanations. According to Boncompagni (*Della vita e delle op. di Gerardo Cremona*, Roma, 1851) the

*Theorica planetarum* is the work of Gerardus Cremonensis of Sabbionetta (thirteenth cent.), not of the earlier Gerardus Cremonensis or Carmonensis [of Carmon in Spain], the translator of the medical works of Avicenna, &c.

catechized them upon it<sup>1</sup>. Every Doctor teaching Law was obliged to have a 'Repetitor generalis' attached to his chair<sup>2</sup>; besides these official 'Repetitores' there were 'Repetitores speciales' who may be considered the private Tutors or 'coaches' of the period<sup>3</sup>. The 'Repetitores' at Bologna occupied to some extent the position of the Bachelors in the Northern Universities<sup>4</sup>. Although students of a certain standing in all Faculties could be admitted to give extraordinary lectures by the Rector, and by so doing become Bachelors<sup>5</sup>, the Bachelorship possessed much less importance in the Bolognese Schools of Arts and Medicine, than in the Schools of Paris or even in the Law-School of Bologna.

The last peculiarity of the Italian Universities which has to be noticed was the absence, in their earliest days, of a Theological Faculty. Ecclesiastics attended the Universities as much in Italy as in France; but in Italy, after the rise of the Canon Law, the study of Theology proper was completely overshadowed by the practical studies of Law and Medicine. Many of the greatest Schoolmen were Italians by birth; but Theology rarely flourished on Italian soil. Just as among secular studies the practical and the literary prevailed over the speculative, so in Italy ecclesiastical studies flourished chiefly in their practical, their

Theology in thirteenth century left to Friars.

<sup>1</sup> 'Teneatur etiam repetere lectiones, scilicet de mane et in nonis usque ad pascha, et examinare de sero.' *Stat.* p. 253.

<sup>2</sup> *Stat.* p. 251.

<sup>3</sup> *Stat.* p. 253.

<sup>4</sup> But the Repetitores were more decidedly attached to the particular Master than Bachelors: they were in fact in the position of Assistant-Masters in the School of their chief. See the curious deed of scholastic partnership in Sarti, I. ii. (1772) p. 11.

<sup>5</sup> *Stat.* p. 272. Nothing seems to be said of 'Responsions,' or any preliminary Examination in the Statutes, but at Padua we find a

student supplicating 'quod possit acedere ad examen—absque responsione questionum et lecturis librorum, Gloria, *Mon. d. Padova* (1318-1405) II. p. 267. So *ib.* p. 273, and the *Statuta Artistarum* of 1465 (fol. xxviii) provide 'Rector autem in Baccalariis ab ipso creandis ex auctoritate qua fungitur antequam illi gradum Baccalariatus conferat in eius presentia super duobus punctis sibi assignatis, per duos idoneos Doctores Legentes quos ipse Rector elegerit, diligenter examinari faciat, quibus si approbatus fuerit illi gradum Baccalariatus conferat, et privilegium per notarium nostrum fieri mandet.'

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## § 6.

social, their political applications. For secular Churchmen Canon Law took the place of Theology. Pure Theology was abandoned to the Regulars, that is, for the most part, to the Mendicant Friars, who taught and studied not, as in France, in Universities where they had to hold their own against scholastically trained seculars, but in purely conventual Schools. Here too it may be said that the practical interest was predominant; unlike the speculative secular Doctors of Paris and Oxford, the Friars studied as a preparation for the work of the preacher and the confessor. While the seculars were fighting for the rights of the Church against the Empire or the Municipalities, the Friar alone sought to bring other weapons to bear upon the souls of men than those of Excommunication and Interdict.

No Theological Faculty till 1352.

Throughout the thirteenth and the first half of the fourteenth century, the Italian Schools of Theology had no official relations with the Universities of the Studia in which they were placed<sup>1</sup>. The policy of the Popes preserved for Paris and the English Universities their practical monopoly of Theological graduation. Friars might prepare themselves for their Theological degrees wholly or partially in other convent Schools, but they had to go to Paris to graduate<sup>2</sup>. Bologna obtained its Theological Faculty from Innocent VI, in 1352<sup>3</sup>. A little later, the Schism altered the relations between Paris and the Papacy; and the Roman Popes sought to weaken the great School of the Avignon obedience by granting Bulls to authorize theological graduation both in the existing and in the newly created Universities; while after the Schism the same policy was continued by the Pontiffs of reunited Christen-

<sup>1</sup> They were no doubt open to such secular Students as chose to attend them: but these were probably few. We hear that S. Richard, Bp. of Chichester, *circa* 1241 'ad Theologiam se contulit Aurelianus in domo Fratrum Prædicatorum ad-discendam.' *Vita*, ap. A. S. Ap. 3.

T. I. p. 279. For another case at Padua, see Pex, *Thes. Anecd. Noviss.* L. c. 43. See above, p. 8, n. 1.

<sup>2</sup> Papal bulls were frequently granted to exempt Friars from all or part of the requisite residence and exercises.

<sup>3</sup> Doc. in Ghirardacci, II. p. 268.

dom who had discovered at Pisa, at Constance, and at Basle, that Paris was now a rival rather than a supporter of the Papal Autocracy. But the establishment of these Faculties of Theology in Southern Europe made little real change in the constitution of the Studia. Theology was still taught and studied almost exclusively by the Mendicants<sup>1</sup>. The few secular students of Theology continued, it would appear, to be members of one of the already existing Universities<sup>2</sup>, but the latter never attempted to extend their despotic sway over the Professors of Theology. The College of Theological Doctors was wholly independent alike of the Student-Universities and of the other Colleges. On the other hand its Doctors naturally stood in a closer relation to the Chancellor, who was in this case the Bishop of Bologna<sup>3</sup>. The Archdeacon had nothing to do with the licensing of Theological Doctors.

In the following Chapter we shall see how important in their effect upon the history of Italian culture were the purely constitutional relations of the various Faculties to one another—the predominance of law-studies, the separation of Theology from the secular Arts-schools, the close alliance between the Faculties of Arts and Medicine. Rather perhaps we ought to say that these constitutional arrangements are but the external counterpart and concomitant of deeply seated tendencies of the North-Italian genius.

<sup>1</sup> Ghirardacci, II. p. 278, &c. That a secular, however, could become a Doctor and teacher at Bologna is shown by the provisions of the Statutes of the College of Spain (*MS. Stat. f. 6 b*). The printed Statutes of 1536 provide for a permanent chair of Theology in the College (*ff. xxi b, xxii a*).

<sup>2</sup> It is usually stated that they belonged to the University of Arts. The student in Theology would often be already a member of that University, but it appears that he

might be in the Jurist-University. A Privilege (*ap. Malagola, Monografie, p. 257*) granted in 1741, enabled the German Nation to present a poor scholar from its own members for gratuitous graduation in Theology.

<sup>3</sup> At Padua, the Dean and College of Theology could not make Statutes without the consent of the Bishop. Gloria, *Mon. di Padova, 1318-1405*, I. p. 83: so the Bishop admits to the Bachelorship ('*ad lecturam libri sententiarum*'). Gloria, *l.c.* II. p. 151.

## § 7. THE PLACE OF BOLOGNA IN THE HISTORY OF CULTURE.

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§ 7.

—+—  
The great-  
age of  
medieval  
Jurispru-  
dence.

In many respects the work of the School of Bologna represents the most brilliant achievement of the intellect of medieval Europe<sup>1</sup>. The medieval mind had, indeed, a certain natural affinity for the study and development of an already existing body of Law. The limitations of its knowledge of the past and of the material Universe, were not, to any appreciable extent, a bar to the mastery of a Science which concerns itself simply with the business and the relations of every-day life. The Jurist received his Justinian on authority as the Theologian received the Canonical and Patristic writings, or the Philosopher his Aristotle, while he had the advantage of receiving it in the original language. It had only to be understood, to be interpreted, developed, and applied. The very tendencies which led men of immense natural powers so far astray in the spheres of Theology, of Philosophy, and still more of Natural Science, gave a right direction to the interpretation of authoritatively prescribed codes of law. An almost superstitious reverence for the *littera scripta*; a disposition to push a principle to its extreme logical consequences, and an equally strong disposition to harmonize it at all costs with a seemingly contradictory principle; a passion for classification, for definition and minute distinction, a genius for subtlety—these, when associated with good sense and ordinary knowledge of affairs, are at least some of the characteristics of a great legal intellect. Moreover, the exercises which were of such doubtful utility in other branches of knowledge formed an excellent course of legal

<sup>1</sup> In the following account of the correct and supplement him by medieval Jurists I rely mainly on later authorities (see above, pp. 90, Savigny, though I have tried to 91).

education. The practice of incessant disputation produced a dexterity in devising or meeting arguments and a readiness in applying acquired knowledge, of comparatively little value to the student of History or Physical Science, but indispensable to the Advocate and even to the Judge. While it fostered an indifference to the truth of things fatal to progress in Theology or Philosophy, it gave the pleader the indispensable faculty of supporting a bad case with good, and a good case with the best possible, arguments<sup>1</sup>.

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In estimating the place of the Civil Law in the history of medieval culture, we must carefully distinguish between its cultivation as a science and its pursuit as a profession. During the most brilliant period of its cultivation as a science its Professors were almost all congregated in Bologna itself. That period embraces the century and a half after its revival by Irnerius. It was in the hands of the 'Glossators'—of Irnerius, of the famous 'Four Doctors' of whom we shall have more to say hereafter, of Rogerius, Placentinus, Azo and Hugolinus—that the most real progress was made. The works of these men are, perhaps, the only productions of medieval learning to which the modern Professor of any science whatever may turn, not merely for the sake of their historical interest, not merely in the hope of finding ideas of a suggestive value, but with some possibility of finding a solution of the doubts, difficulties and problems which still beset the modern student.

The Glossators.

One important part of the work of the School of the Glossators was the formation of a sound text. In no other department of knowledge did the medieval mind show itself capable of judicious textual criticism. The Jurists of Bologna made frequent pilgrimages to Pisa to consult the celebrated 'Florentine' Codex<sup>2</sup> of the Pandects. By diligent collation of this and other MSS. there was gradually formed what was known as the *Textus Ordinarius* or Vulgate of

Textual criticism.

<sup>1</sup> It is interesting to observe that the old 'Moots' or arguments by Students under the presidency of a Benchers have recently been re-

vived in the English Inns of Court.

<sup>2</sup> So called since its removal to Florence, after the Florentine conquest of Pisa.

CHAP. IV, the Civil Law, the text which was henceforth so jealously guarded by the 'Peciarii' of the Universities and which has formed the basis of all subsequent editions down to quite modern times.

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Democratic  
Revolution: De-  
cline of the  
School.

Good sense and knowledge of affairs were, it has been said, conditions of progress in the study of law. It was just during the period when the Jurists of Bologna were most conspicuous as statesmen in a free Republic that their labours produced really valuable results. Before the middle of the thirteenth century there occurred at Bologna, as in most of the other Lombard republics, a great democratic Revolution. The chief power in the State passed out of the hands of the aristocracies into the hands of the people<sup>1</sup>; and in the popular governments the Jurists enjoyed a less commanding position<sup>2</sup>. The Doctors more and more degenerated as teachers into mere legal schoolmen, as Jurisconsults into mere practitioners. The use or abuse of the forms of Dialectic, the imitation of the subtleties, the intricacies, the interminable elaboration of the Philosophers exercised a malign influence upon their work. Jurisprudence—like every other department of human knowledge (including even Grammar and Medicine<sup>3</sup>)—became Scholastic: while the formation of a semi-hereditary Professoriate tended to the extinction of originality and genius in the School of Bologna. And to these causes of the decline of the Science ought perhaps to be added the innate tendency of medieval learning to a sort of crystallization. Reverence for authority was harmless when the only authorities were the original sources of law. When the same reverence was extended to the glosses as had before been bestowed on the text, progress was at an end. The gloss of Accursius exercised upon the Civil Law the same narrowing in-

The  
Accursian  
Gloss.

<sup>1</sup> i. e. as in ancient Athens, the citizens, not the actual population. See Symonds' *The Age of the Despots*, London, 1875, p. 131.

<sup>2</sup> Thus Odofredus complains that 'Quando plebei hujus civitatis volunt facere sua statuta non plus vocarent

prudentes quam tot asinos et ideo ipsi faciunt talia statuta que nec habent Latinum nec sententiam.' Ad. leg. *Lex est, Dig., de orig. jur.* (T. I. f. 10).

<sup>3</sup> Well pointed out by Kaufmann, *Gesch. d. Deutschen Un.* pp. 25, 73 sq.



fluence which the 'Sentences' of Peter the Lombard had on Theology. This gloss was a selection, and as we are assured by Savigny not altogether an intelligent selection, of the glosses of previous writers. Yet a century later the Professors had come to busy themselves more with this Gloss than with the text. Instead of trying really to develop the meaning of the text, they aimed at a tediously exhaustive recapitulation and criticism of all the Glosses and comments they could collect. In short, they lost sight of the end and aim of their work, which consequently became more and more stagnant and pedantic<sup>1</sup>.

The mere mass of matter accumulated by his predecessors must have weighed upon the unfortunate Professor of a later age, crushed his originality, and narrowed the sphere within which originality could be exercised. The truth is that the exigencies of Academic lecturing upon text-books tend of themselves to produce a vast quantity of unnecessary commentation<sup>2</sup>. Where much has been well said, it is hard to say anything fresh that is both original and important: comments must perforce be either unoriginal or superfluous. No doubt comments, analyses, paraphrases, illustrations, applications, which are of no permanent value, may be useful simply as a means of impressing the substance of an author upon the mind of pupils. Lectures of this character are not commonly, in modern times, given to the world. In the Middle Ages, however, when it was possible to produce a dozen copies of a book at the same proportionate

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Multiplication of Commentaries.

<sup>1</sup> A fifteenth-century writer complains: 'Scribunt nostri doctores moderni lecturas novas, in quibus non glossant glossas, sed glossarum glossas. Et hodie in lecturis suis transponuntur jam dicta. Quod enim unus in una lege ponit, alius ponit in alia per eadem verba, vel paulo distantia.' Ap. Sarti, I. i. p. 155.

<sup>2</sup> Thus the sixteenth century Jurist Alciatus (*Opera*, Francofurti, IV. 1617, c. 866) notices the contrast between the glossators and the fourteenth cen-

tury Doctors who 'diffusius omnia attigerunt . . . non usque adeo tamen, ut omnia in unum locum congregarent: dumtaxat vacationum diebus aliquam legem iterum interpretandam accipiebant quam diffusius disputarent, ideoque Repetitiones dixerunt: et hodie omnes repetitiones sunt nihilque plerisque dictum videtur, si quidquam omisum fuerit, quod commodius in alium locum reservetur. Unde efficitur ut singulis annis paucas admodum leges interpretemur.'

CHAP. IV, cost as to produce a hundred or a thousand, the temptation  
 § 7.  
 to the publication of lectures was greater. To this cause we may perhaps owe the publication of large quantities of matter contrasting unfavourably with the terseness, the freshness, the good Latinity, the close contact with the original texts which impress the modern student of the older medieval Jurists.

The most famous Jurists.

It must not be supposed that the estimate which has been given of the relative importance of the earlier and the later medieval Jurists corresponds with the reputation which they enjoyed in the Middle Ages themselves. The greatest legal reputations of the Middle Ages were made in the period which begins with Accursius. In the estimate of the later medieval world, the greatest authorities (next to Accursius himself) were such men as Odofredus, Dinus, Cinus, Bartolus, Baldus, and Jason<sup>1</sup>: and it is to no small extent the very success of these men (especially of the Bartolists) in adapting the Roman Law to the needs and the customary practice of their own time that diminishes their value as scientific commentators. Nor must it be supposed from what has been said as to the altered position of the Bologna Jurists after the democratic Revolution that Lawyers and Law-professors no longer played an important part in public life: but their influence was of a different kind. The effect of the study of Roman Law upon the progress of Imperialistic ideas has sometimes been exaggerated. It is chiefly in the earliest period that this influence can be traced. In the later Middle Age as many Civilians were Guelph as Ghibelline. But it is a fact that the most famous of the early Glossators were Imperialists, and in their case it is perhaps no mere fancy to connect their politics with a bias derived from their special studies. Imerius, as has been mentioned, played an important part

Political influence of the earliest Jurists.

<sup>1</sup> Savigny's somewhat enthusiastic admiration of the Glossators may be qualified by the remarks of Berriat-Saint-Prix (p. 286 sq.) who, however, has no higher estimate of their

successors, the Bartolists. The great disqualification of all medieval Interpreters was of course their inadequate knowledge of classical antiquity.

in the Imperial service. The four Doctors, the most celebrated of his immediate successors—Bulgarus, Martinus, Jacobus, and Hugo—were prominent Imperialist politicians, and the two former were intimate friends and advisers of Frederick Barbarossa. It was (according to the common but uncertain tradition) by the advice of the Four Doctors that the celebrated attempt was made to reimpose the neglected 'regalian rights' upon the Lombard towns, at the Diet of Roncaglia in 1158. The Doctors, if they did not answer as Roman Lawyers, certainly answered as lawyers<sup>1</sup>. They earned the undying hatred of their fellow-citizens as traitors to the liberty of their country.

From this period the position of the great Professors as Bolognese statesmen was no doubt altered, but Jurists were still in request both in Bologna and other Italian cities as Judges and Magistrates, as Assessors or Ambassadors, or simply as consulting lawyers<sup>2</sup>. A large and very lucrative part of the business of the great Law-doctors consisted in giving 'consultations' whether to private enquirers or to Princes and Cities on matters of public and constitutional Law. In truth, if the purely scientific and the purely political greatness of the Bologna School belongs pre-eminently to its earliest period, it was at a much later period that its influence was most widely diffused, though it was an influence now exerted indirectly through a multitude of daughter-Universities whose Professors often

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Influence  
of later  
Jurists.

<sup>1</sup> Ghirardacci, I. p. 80: Sarti, I. pt. I. (1888), p. 37: Savigny, cap. 24 and 28, points out that these rights were founded on Lombard, not on Roman, Law, and vehemently defends the counsel of the Doctors. Perhaps, while disposed to deny altogether the imperialistic tendency of the study of the Civil Law, the great Jurist is really illustrating its effect upon his own mind.

<sup>2</sup> Study at a University was usually required by the Italian cities as a qualification for judicial posts. Cf. the Stat. of Bologna in 1158 (Frati,

I. p. 119): 'Nullus possit esse Judex Communis, nec vocari ad aliquod dandum consilium, nisi ipse studuerit in scolis V. annis in legibus.' So in France, 'Nemo in Gallia admittitur in Judicem aut Advocatum nisi in utroque aut altero jure Doctor aut Licentiatu fuerit, iis solum Dignitatum porta in Curiis Gallie supremis aperta est sicut et apud reliquas nationes (paucissimis exceptis) soli juris Romani Consulti Judicum et Advocatorum munera exercent.' Duck, *De usu Jur. Civ.* f. 102 b.

CHAP. IV, eclipsed the reputation of their Alma Mater. The great  
 § 7.  
 work of the Universities—in Southern Europe at least—  
 was the training of educated lawyers: the influence of  
 Bologna and of the Universities generally meant the in-  
 fluence of the lawyer-class upon social and political life.  
 To estimate the extent and value of that influence would  
 lead us too far astray from our immediate subject. We  
 must be content to state in general terms that wherever  
 the Civil Law was more or less recognized as the law of the  
 secular courts—in Italy, Southern France, Spain, Germany,  
 and (at a later date) Scotland—the men who aimed at being  
 Advocates and Judges went to the Universities, just as  
 lawyers and country gentlemen alike went to the London  
 Inns of Court in the days when the Inns were in fact  
 what they were sometimes expressly called, a University  
 of English Law. And the Universities were almost as  
 much the nurseries of practical lawyers in many countries  
 governed by customary Law, as for instance in the French  
*pays de droit coutumier*, in which the Civil Law was used  
 to explain and to supplement a local custom often itself in  
 part of Roman origin. Even where the Civil Law com-  
 manded least respect in the secular courts, its study was still  
 indispensable to the Canonist. The study of the Civil  
 Law was indeed forbidden to Priests by Honorius III<sup>1</sup>.  
 The Canonist accordingly who looked forward to an eccle-  
 siastical career usually went through the course of Civil  
 Law or at least spent some years in its study before taking  
 Holy Orders and entering upon the proper studies of his  
 own profession, though it was easy for an individual or  
 even for a whole University to obtain dispensation from  
 the prohibition<sup>2</sup>. While the Science of Civil Law rapidly

<sup>1</sup> Savigny speaks as if this prohi-  
 bition was altogether inoperative, at  
 least at Montpellier. But it was  
 fully respected at Oxford and Cam-  
 bridge, as is evident from the provi-  
 sions as to Orders in the Statutes  
 of Trinity Hall and New College.  
 It is possible that Savigny forgets

that in the Middle Ages a Canonry  
 or a Rectory might often be held  
 by a Deacon or a Clerk in Minor  
 Orders.

<sup>2</sup> These bulls were often granted  
 for a term of years, such a course  
 being the more remunerative to the  
 Holy See.

degenerated and the Civilians no longer held the place they had once occupied as Italian statesmen, the importance of the profession of the Canon Law continued to increase, until it reached the zenith of its influence in the days of the Avignon Papacy, though here also the period of scientific progress has ceased. Distinction in Canon Law at the Universities and practice at the Bar of the Ecclesiastical Courts constituted the great avenue to fame and preferment.

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In the fifteenth century Roman Law began to attract attention as a branch of Roman literature, and to be studied by Politian and others in its connexion with Roman History and antiquities; but the scientific and historical study of Roman Law made little progress till the time of Alciatus and Cujas. The history of this later revival is a part of the history of the Renaissance. And if in Italy the Renaissance was contemporary with the Middle Age of Northern Europe, it closes the Middle Age of Italy, and we must abstain from entering upon the origins of the mighty movement which was destined, after a long struggle, to extinguish scholasticism beneath a torrent of execration and contempt, and to destroy or transform throughout Europe that medieval University system which it is our present object to sketch.

The study  
of Law  
and the Re-  
naissance.

It was through the Civil and Canon Law that the School of Bologna exercised its most powerful, at least its widest, influence over the course of human affairs. It would, however, be a great mistake to look upon Bologna as purely a School of Law. We have, indeed, seen that from the time when Canon Law became fully differentiated from Theology, no secular Studium of Theology of any importance existed at Bologna. In the Academic organization a Faculty of Theology had no place till 1352. The consequences of this constitutional peculiarity were of the highest importance. From the Schools of Bologna strictly theological speculation was practically banished, and with it all the heresy, all the religious thought, all the religious life to which speculation gives rise. The prominence of

The Canon  
Law.

Neglect of  
Theology.

*passing*  
 CHAP. IV, legal studies in the South of Europe and of Theology in the North is a fact of decisive importance in determining the destinies of the Western Church. In the Middle Ages Theology was, if not the foe of the Papacy, at least a very dangerous and suspected ally. The Latin Church received her laws from Rome, her Theology from Paris and Oxford. It was only in the hands of the Dominican Friars—and not quite always even then—that Theology could be reckoned upon as a safe ally of Papal pretensions. Wherever Theology was studied by Seculars—in France, in England, and in Germany—revolt came sooner or later. It was not by Theology so much as by Law—by her inheritance of those traditions of Imperial Jurisprudence which had subtly wound themselves round the common Faith of Europe—that Rome established her spiritual monarchy. The Canonist was by his profession a champion of the power which had created his class. No Canonist (with the doubtful exception of Cranmer) ever headed a reform-party or inaugurated a religious movement and no religious movement was ever originated or fostered in an Italian University.

Speculation finds a refuge in the Schools of Medicine.

On the other hand, the speculative thought which at Paris was cultivated in the Schools both of Theology and of Philosophy by philosophically trained ecclesiastics, was in Italy abandoned to Schools of Philosophy taught by laymen and chiefly attended by future Physicians. In Italy Medicine was a more distinct and a more flourishing profession than in Northern Europe; medical men were not as a rule ecclesiastics; and the Faculties were quite independent, in so far as any profession was independent, of ecclesiastical authority. The popularity of the Arabic Medicine carried with it the popularity of Arabic Astrology and Arabic Philosophy. And the Philosophy of Averroes, the most famous of the Arabs, was (in a popular if not in a strictly philosophical sense) a system of Pantheism, and a Pantheism of a materialistic rather than a spiritualistic complexion. In theological Paris, as we shall see, Averroism was for a time a source of serious alarm. But long before the close of the thirteenth century

the triumph of the orthodox Monotheism in the Parisian Schools was complete. Averroes was remembered chiefly as the Commentator, and was regarded, indeed (his theological errors duly excepted) as one of the accredited expositors of the accredited Philosophy of the Church<sup>1</sup>. But Averroes, the champion of the 'Unity of Active Intellect' and all the heresies and infidelities associated with that Pantheistic theory, ceased after the thirteenth century to have any formidable influence over the thought of Paris. In Italy it was far otherwise. To the Schools of Arts and Medicine in Italy Averroes was not merely 'the Commentator.' The authority ascribed to his characteristic doctrines equalled that attributed throughout Europe to Aristotle himself: here the Averroistic Aristotle well nigh superseded not merely the actual Aristotle but the Aristotle of Albert and of Aquinas. To the Italian mind of the Middle Ages Averroes presented himself, as he does in the poetry of Dante and the painting of Orcagna, as the incarnation of all heresy. Some of the foremost leaders of Averroistic thought both in and out of Italy were Friars or Churchmen<sup>2</sup>: some made distinctions and attempted to minimize the heterodoxy of the Averroistic theses; others saved themselves, sincerely or insincerely, by the convenient assumption that what was philosophically true might be theologically false. And in some cases the reserve was quite sincerely made. The authority of Averroes stood almost as high with Savonarola and with

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roism in  
Italy.

<sup>1</sup> See below, p. 368. The Statute there cited must qualify what Renan (*Averrois*, p. 425) says as to the neglect even of the Comments of Averroes in France. At Paris in the fourteenth century Averroistic influences were felt almost exclusively, (1) among the Franciscans, (2) in the English Nation, i.e. not in the dominant School; and even here they produced no irreligious movement.

<sup>2</sup> Two Oxford Doctors, the Carmelite John of Baconthorpe, known as

*Averroistarum princeps*, and Walter Burleigh, were much influenced by Averroes, but their own influence was much greater in Italy than in England. Renan, *Averrois*, p. 318 sq. Two of the leaders of Italian Averroism were Friars, the Servite Urbano of Bologna, and the Augustinian Paul of Venice. The first denied the most dangerous Averroistic doctrine of the Unity of Intellect, the latter maintained it in its most uncompromising form. *Ib.* pp. 343-47.

CHAP. IV, Cajetan as with the most heterodox of the lay Averroists<sup>1</sup>.

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But there cannot be the smallest doubt that under the name of Averroism a thinly-veiled materialism which treated the most fundamental doctrines of Christianity with no more respect than the myths of Paganism became fashionable among the cultivated Physicians and so to a large extent in cultivated Italian lay society—and not always in lay society only—particularly in that north-east corner of Italy which included Bologna, the Mother of Italian Science, her twin-sister the Venetian University of Padua, and gorgeous, materialistic, worldly Venice herself. The philosophical scepticism of the Renaissance period was, indeed, very largely due to the working of the old leaven of Averroism which had long been fermenting beneath the superficial orthodoxy of medieval Italy. The new leaven of Humanism and the purer Hellenistic Philosophy which Humanism brought with it encountered a no less strenuous opposition from the lay, sceptical, materialistic Scholasticism of the South than from the clerical, orthodox, metaphysical Scholasticism of the North<sup>2</sup>.

Dependence of the Averroists on authority.

We need not go back to the Middle Ages to find that the adherents of a dominant Philosophy—even a negative philosophy—are quite as prone to an immovable conservatism and a bigoted attachment to the tradition of a School as the adherents of a dominant Theology. But it is, indeed, characteristic of the Middle Ages that an unreasonable subservience to authority was carried quite as far among the sceptics as among the orthodox; they differed only in the choice of authorities. To the Italian Physician—sceptical in Religion, but capable of enormous superstition in an astrological direction—Averroes was as infallible whether in Medicine or in Metaphysics as was the Bible in matters of Faith and Aristotle in matters of

<sup>1</sup> Renan, *Averroès*, pp. 350, 351.

<sup>2</sup> Petrarch, in particular, maintained a furious polemic against the Averroists and the Physicians. He even refuses to be cured on Arab

principles, or by drugs with Arabic names. See his *Contra medicum quendam invec.* (*Opp.* Basileæ, 1559, p. 1093, &c.; Renan, *Averroès*, p. 329 sq.)



Philosophy to the Parisian ecclesiastic. But though the deference to authority is now less avowed, it would be easy to illustrate from every period in the history of modern Philosophy the truth of the statement that authority counts for quite as much in the formation of philosophic as it does in the formation of theological opinion.

Indeed, in the Italian Schools of Philosophy, Scholasticism offered a perceptibly more vigorous resistance to the encroachments of Humanism than was the case elsewhere. The reign of Scholasticism lasted longest in the country where the reaction against it first began. In the School of Padua an Averroistic Scholasticism of the driest and most pedantic type lasted in a tolerably vigorous condition far into the seventeenth century<sup>1</sup>, even after the reign of Scholasticism had been substantially overthrown in the Schools of Paris, of Germany, and of England, by Ramus, by Descartes, by the Humanists, and by the Reformation<sup>2</sup>.

Persistence  
of Scholas-  
ticism in  
Italy.

This curious fact illustrates the extreme tenacity of educational traditions. A Philosophy, a mode of thought, a habit of mind, may live on in the lecture-rooms of Professors for a century after it has been abandoned by the thinkers, the men of letters, and the men of the world. The contrast which we have drawn between the history of Scholasticism in Italy and its history in Northern

Tenacity  
of educa-  
tional  
tradition.

<sup>1</sup> According to Berriat-Saint-Prix (p. 315) exactly the same phenomenon is exhibited by the history of Italian Jurisprudence. The Humanism which had produced the School of Alciatus and Cujas in France, did not extinguish the legal Scholasticism of the Bartolist type till the middle of the seventeenth century or later.

<sup>2</sup> The mode of thought characteristic of the School of Padua, was really in full vogue in the fourteenth century, though the period in which the School stands out with the strongest individuality—because in greater contrast with other Schools

—was later. It is usually considered to have been founded by Gaetano of Tiena (1387-1465). (Renan, *Averroës*, p. 347). Renan treats Peter of Abano (writing in 1303) as its real founder. (*Ib.* 326.) In justification of the whole of the preceding paragraph, I must be content to refer generally to the same admirable work, which should be read by anyone who wishes to realize the seething mass of free-speculation which really underlay the smooth surface of medieval orthodoxy. His estimate requires, however, some qualification. See below, p. 342 sq.

CHAP. IV, Europe also illustrates another important truth in the history of Education, i.e. the close connexion between great educational reforms and religious movements. The rapidity with which Humanism conquered in the Schools of Italy and Germany was due to its association with the cause of the Reformation. It was not till the counter-Reformation had raised up a body of educational reformers in Catholic Europe that Humanism triumphed over Scholasticism in the Schools of the laity and considerably limited its dominion in the Schools of the clergy.

Downfall  
of Scho-  
lasticism  
completed  
by Positive  
Science.

One other influence ought to be mentioned as completing the downfall of Scholasticism in its last stronghold; and that is the progress of positive Science. Italy was not more decidedly the earliest home of Humanism than she was the earliest home of modern Science. And here too—here even more perhaps than on its literary side—the course of the movement was determined by the traditions of Italian education in the Middle Ages. It was Astrology-loving Italy that produced Galileo: it was the University of Mundinus that produced Galvani: it was a continuation of a medieval tradition that made Montpellier and Padua the centres of European Medicine in the sixteenth and seventeenth centuries. The Renaissance was no doubt from one point of view a reaction against the ideas and tendencies of the Middle Ages: but the direction which a reaction assumes is determined by the direction of the forces against which it reacts: the reformer is as much indebted to his environment as the conservative. The Renaissance was none the less indebted to the traditions of classical education, of medical and legal study, of student-freedom, of municipal patronage, of lay teaching and lay speculative culture, which we have found to be characteristic of the Italian University-system, because it was a reaction against many of the traditions of which the Universities, even in Italy, were the depositaries.

Science  
originates  
in the  
medieval  
Schools of  
Medicine.

Influence  
of Renais-  
sance: con-  
tinuity of

The Renaissance undoubtedly made its influence felt in the Schools long before the period which has been chosen as a *terminus ad quem*; but it was not till the sixteenth

—even if we should not say the seventeenth—century that it succeeded in revolutionizing that medieval system of education which it has been our business to study. The Renaissance lies beyond our province. It will be enough to have pointed out to what a large extent the peculiarities of the Italian system contributed to pave the way for that movement and to make Italy its earliest home. Enough has already been said to show how decided, all through the medieval period, was the predominance in Italian education of human and practical, of linguistic and literary interests as compared with the theological and speculative tendencies of Parisian and Teutonic culture. In the Arts Schools of Italy the study of antiquity, the half-regretful looking back to antiquity, never quite died out. The Schools of Italy could no more escape from the traditions of the old Roman culture than the architects of her Churches and her Palaces could avoid the unconscious influence of Classical Art even when most vehemently striving after the ideals of the ruder but more vigorous North. The revival of Roman Law studies in the eleventh century was itself but one phase of the return to antiquity which I have ventured to call the first Renaissance: and throughout the Middle Ages the Schools of Roman Law, in spite of their invasion by the methods and traditions of Scholasticism, were training the Italian mind for that second return to antiquity which is known as the Renaissance *par excellence*. The more deeply the history of the Italian Middle Age is studied, the more shall we discover to justify the striking saying of Ozanam that in Italy the night which intervened between the intellectual daylight of antiquity and the dawn of the Renaissance was but ‘une de ces nuits lumineuses où les dernières clartés du soir se prolongent jusqu’aux premières blancheurs du matin’<sup>1</sup>.

For the limits which I have imposed upon myself there is a double justification. In the first place, although in Italy the earlier phases of the movement lie within our

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intellectual  
life in Italy.

Reasons  
for stop-  
ping at Re-  
naissance.

<sup>1</sup> *Doc. inédits*, p. 78.

CHAP. IV, § 7. chronological limits, it would be unsatisfactory to attempt to trace its beginnings and suddenly to break off at some arbitrarily selected date: it is best to deal with the history of the Italian Universities in the fourteenth and fifteenth centuries only in so far as they still belonged to the medieval world. In the second place, although the progress of the Renaissance may be traced in the foundation or increased importance of Chairs for Rhetoric or Poetry or Dante or Classical Literature in the Universities of Arts, yet in the main Humanism was not primarily in Italy a University movement. Its earliest home was rather in Courts or princely Houses, in cultivated social circles or dilettante 'Academies' than in the Schools—in Tuscany rather than in Lombardy—in artistic, dreamy, Platonic Florence than in stately, scientific, scholastic Bologna<sup>1</sup>.

<sup>1</sup> I should have made more use in this section than I have been able to do of Flack's most interesting brochure, *Cujas, les Glossateurs et les*

*Bartolistes*, Paris, 1883, had it come into my hands earlier. He supports Savigny's high estimate of the Glossators.