

### Baldus' writings on the *lex Barbarius*

Baldus' position on Barbarius' case is extremely complex. But it left a deep mark, as it determined interpretations of the *lex Barbarius* for centuries to come, ultimately laying the ground for the modern doctrine of the *de facto* officer. After Baldus very little changed until modern times – hence Baldus' central position in the present work. The complexity of his reasoning, however, also meant that its subtler parts were progressively lost. All that remained was Baldus' conclusion and, of equal importance, the limits within which it could be applied.

#### 10.1 Two authors for one *repetitio*

Bartolus' *lectura* on the *lex Barbarius* was the last work to be considered before looking at canon law – and especially Innocent IV. Indeed, the influence of canon law marked a watershed in analysing the *lex Barbarius*, and ensured the lasting influence of Baldus' conclusions on the subject. The fact that Bartolus continued to be cited until modern times is easily explained: the most important writing on the *lex Barbarius*, a lengthy *repetitio*<sup>1</sup> of Baldus, was attributed also to Bartolus and printed in many editions of his commentary on the *Digestum Vetus*.

Jason de Mayno (1435–1519) said openly as much at the beginning of his *repetitio* on Dig.1.14.3, telling his readers that a *repetitio* of Baldus may be found in Bartolus' comment on the *lex Barbarius*.<sup>2</sup> In support of his conclusion Mayno advanced a single but strong argument: the style of the *repetitio*. The quotations

1 On the *repetitio* in general see *supra*, pt. I, §4.1, note 15.

2 Mayno, *ad* Dig.1.14.3 (*Excellentissimi iuris utriusq[ue] doctoris domini Iasonis de mayno Mediolane[n]sis Lectura in prima parte ff. veteris ...*, Venetijs, per Baptistam de Tortis, 1512, fol. 36va–b): ‘Primo aduerte quod reperitur quedam repetitio inserta in lecturis Bar(toli), et Panor(mitani) in c. cum dilecta de res(critis) (X.1.3.22) sepe eam allegat pro repeti(tione) Bar(toli) ... Nullatenus credo quod sit bart(oli), quia nimium discrepat a stillo (*sic*) bar(toli), maxime dum sepe allegat auctoritates Aristo(telis), Salusti et Ciceronis, quod est alienum a stillo bar(toli). Dico ergo quod vere est repetitio bal(di) et ita etiam est inserta in lecturis bal(di) et ibi in fi(ne) dicitur quo anno fuit per Bal(dum) perusii repetita et immo i(nfra) semper allegabo pro repeti(tione) Bal(di).’ Despite all this, when commenting on the following book of the *Vetus*, Mayno referred to the *repetitio* as written by Bartolus: *ad* Dig.2.13.6.1, *ibid.*, fol. 143va, n. 6 (where he attributes it to ‘Bar(tolus)’; while easy to make, the typo ‘Bar.’ instead of ‘Bal.’ seems

of Aristotle, Sallust and Cicero, argued Mayno, are wholly alien to Bartolus' style but perfectly suited to that of Baldus.<sup>3</sup> Mayno's argument was then reported almost verbatim by Diplovatatius without further explanation.<sup>4</sup>

Mayno was not new to questioning Bartolus' authorship of some passages of his *lectura* on the *Vetus*, especially in the first book. Another text that he singled out as clearly not of Bartolus, the comment on the *lex Omnes populi* (Dig.1.1.9),<sup>5</sup> is in fact today considered one of the few parts of the comment on the first book of the *Vetus* that was surely written by Bartolus.<sup>6</sup> As checking the authenticity of each and every single text of Bartolus' *opus* is a nearly impossible task, scholars looked at larger parts of it. With particular reference to the *Vetus*, a long tradition from Savigny<sup>7</sup> to contemporary scholars defended Bartolus' authorship,<sup>8</sup> despite some hesitation.<sup>9</sup> In arguing for Bartolus' authorship of the commentary on the first book of the *Vetus* printed under his name, Savigny

unlikely because repeated twice in the space of a few lines). I am grateful to Osvaldo Cavallar for our stimulating discussion of the problem of the *repetitio*'s style and its attribution to Baldus. Mayno's reference to Panormitanus (Niccolò de' Tedeschi) is also of some interest. It refers mainly to Panormitanus' *lectura* on an important decretal strictly related to the same subject, *Cum dilecta* (X.1.3.22). Compare the *repetitio* of Baldus with Panormitanus' *lectura ad X.1.3.22, § Quum dilecta* (*Super Primum Decretali[um] Librum Commentaria*, Basileae, 1477 [fols. 47v–49r]). A good part of Baldus' *repetitio* creeps into the text from [fol. 48v], though it skilfully blends in with Panormitanus' own reasoning. This was probably facilitated by the fact that both Baldus and Panormitanus were building on Innocent IV. On Panormitanus' reliance on Innocent see *infra*, pt. IV, §14.3.1.

<sup>3</sup> *Supra*, this paragraph, note 2. The only author brave enough to list Baldus' references of classical authors was Horn (1967), pp. 110–111 (on Aristotle) and p. 112 (on Cicero) – a more detailed breakdown *ibid.*, pp. 148–149. Sallust however does not appear in Horn's study. As to Baldus' knowledge of Aristotle see recently Conetti (2005), pp. 511–513, stressing the importance of the intermediation of Remigio de' Girolami (1235–1319).

<sup>4</sup> Thomas Diplovatatius, *Liber de claris iuris consultis*, s.u. 'Bartolus' (Schulz, H. Kantorowicz and Rabotti [eds., 1968], p. 275, ll.7–13). On the point see esp. Lepsius (2008), p. 228, note 12.

<sup>5</sup> Mayno, *ad Dig.1.1.9, § Omnes Populi* (*Lectura in prima parteff. veteris*, cit., fol. 14ra): '... Item aduerte quod lectura que attribuitur Bar(tolo) in hoc libro non fuit Bar(toli) sed alterius qui forte per eo legebat.'

<sup>6</sup> See for all Lepsius (2013), p. 178. This, incidentally, was also Diplovatatius' opinion, *Liber de claris iuris consultis*, s.u. 'Bartolus' (Schulz, H. Kantorowicz and Rabotti [eds., 1968], pp. 274–275).

<sup>7</sup> Savigny (1831), vol. 6, pp. 144–148 (pp. 162–165 in the 2<sup>nd</sup> edn of 1850).

<sup>8</sup> Esp. Paradisi (1960) pp. 27–29, and Calasso (1965), pp. 644–645. See further Lange and Kriechbaum (2007), p. 723, text and note 315, and Lepsius (2014), p. 605, note 10.

<sup>9</sup> Maffei (1963), p. 8, text and note 21. Cf. more recently Lepsius (2008), p. 228, note 12.

had doubts only in two cases. The first was precisely the *repetitio* on the *lex Barbarius*.<sup>10</sup>

After he denied Bartolus' authorship of his *lectura* on the *lex Omnes populi*, Mayno's credibility suffered a severe blow. Even the (admittedly, few) modern scholars who wrote extensively on the civil lawyers' approach to *lex Barbarius* mentioned Mayno's caveat in passing – if they did.<sup>11</sup> The irony is that Mayno was right. In the case of the *lex Omnes populi*, Mayno did not explain his reasons for denying Bartolus' authorship, nor did he suggest a different author.<sup>12</sup> By contrast, on the *lex Barbarius* he pointed to Baldus as the true author of the *repetitio* and was more careful in grounding his objection. The references to Aristotle, Sallust and Cicero also aroused the suspicion of a contemporary of Mayno, Felinus Sandeus (1444–1503). Like Mayno, Sandeus also remarked how the style of the *repetitio* would suit Baldus better than Bartolus.<sup>13</sup> Bartolus never quoted Aristotle directly: at times he was influenced by Aristotelian ideas, but always filtered them through the re-elaboration of others.<sup>14</sup> The references to Cicero and Sallust are all the more suspicious – it would be the single time in his entire opus where Bartolus referred to either of them.

Looking at the manuscript tradition offers limited help – or rather, complicates things. Unlike Bartolus, Baldus published his *repetitiones* within the corpus of his *lecturae*.<sup>15</sup> Often, the *repetitiones* appear only in the printed editions, and it is very difficult to trace their manuscript tradition. In any case, no known

10 Savigny (1831), vol. 6, p. 147 (p. 165 in the 2<sup>nd</sup> edn. of 1850).

11 Among the (few) authors who took notice of Mayno's warning, Rampazzo (2008), pp. 416–417, mentions it, but he does not seem to take a position on the matter (though he later ascribes the *repetitio* to Baldus, *ibid.*, p. 445).

12 Mayno, *supra*, this chapter, note 5.

13 Sandeus, *ad X.1.3.22 (Commentaria Felini Sandei ... in V. libr. Decretalium ... pt. 1, Basileae, Officina Frobeniana [1567], cols. 681–682, n. 3, § Lex Barbarius)*: 'Et adde Bal(dum) in rep(etitione) d(ictae) l(egis) Barbarius ... licet in certis lecturis Bar(toli) impressis attribuatur Bart(olo) illa repe(titio), sed est etiam in lecturis Bald(i), et forte melius, attento stylo.' Cf. also (and this time without hesitation) *ad X.1.3.2, § Periurus* (*ibid.*, col. 382, n. 5).

14 In his public law treatises Bartolus usually refers to Aristotle via Aegidius Colonna (c.1243–1316): see Bartolus de Saxoferrato, *De regimine civitatis* (Quaglioni [ed., 1983], q.2, ll.87–89 and 140–141, pp. 153 and 155 respectively). Other times he mentions only Aegidius, but the passages referred to are of clear Aristotelian origin: see again Bartolus' *De regimine civitatis* (*ibid.*, q.2, ll.420–422, and q.3, ll.453–454, pp. 167 and 168–169 respectively), and *De tyranno* (*ibid.*, q.12, ll.751–755, p. 212). A large part of *quaestio* 8 of the same *De tyranno* is effect a re-elaboration of what was written by Aegidius: compare Aegidius Colonna's *De Regimine Principum*, Romae, 1561, 3.2.10, with Bartolus' *De tyranno* (Quaglioni [ed., 1983], q.8, ll.444–544, pp. 196–202).

15 I am greatly indebted to Vincenzo Colli for his generous help (also) on this intricate matter.

manuscript of Baldus' commentary on the *Vetus* contains the *repetitio*. Bartolus' *lectura* on the *lex Barbarius* may be found in any manuscript of his commentary on the *Vetus* (at least, those that contain the first book of the *Digest*).<sup>16</sup> None of them contains the *repetitio* – with a single exception. One manuscript – the only one I could find – does contain the full *repetitio* on the *lex Barbarius*. The problem is that this manuscript is that of Bartolus, not of Baldus.<sup>17</sup> This manuscript perfectly matches the printed editions of the *repetitio* in Bartolus' editions.<sup>18</sup> However, the close similarity between manuscript and printed sources also means that the *repetitio* in the manuscript contains the same references to Cicero, Sallust and Aristotle as the printed editions.<sup>19</sup> This already might cast some doubt as to Bartolus' authorship. Further, the *repetitio* is not found after the *lectura*,<sup>20</sup> but with a group of *repetitiones* on the *Vetus* written at the end of the whole *lectura* on the *Vetus*.<sup>21</sup> It may therefore not be ruled out that the *repetitio* on *Dig.1.14.3* came from a different source and was just grouped together with the others. The part of the manuscript containing Bartolus' *lectura* on the *Vetus* is dated 1425,<sup>22</sup> and the hand seems to be fairly consistent also for the *repetitiones* that immediately follow the *lectura*. This single manuscript does not necessarily prove Bartolus' authorship of the *repetitio*. What it does suggest, rather, is that

16 E. g. BSB, Clm 547, *fols. 28ra–vb*; BNF, Lat. 4495, *fols. 33va–34va*; BNF, Lat. 4493, *fols. 26ra–va*; BSB, Clm 5476, *fols. 28va–29rb*; BAV, Urb. lat. 172, *fols. 43ra–vb*; Toledo 36–3, *fol. 21ra–vb*; Lat. Vat. 2594, *fols. 252ra–255rb*. On the contrary, Berlin Savigny 22 skips the first book of the *Digest*, and BNF, Lat. 4494 omits the first four books. Similarly incomplete is Bruxelles, II 1437 (on which see Feenstra [1962], p. 230).

17 BL Arundel 473, *fols. 247ra–249va*. The text bears the name of 'Bartolus doc(tor) legum' (*ibid.*, *fol. 249va*). Another manuscript of Bartolus' commentary on the *Vetus*, Lat. Vat. 2618, *fol. 244v*, contains a summary of the last part of the *repetitio* on *Barbarius*, that on its application to the notary's case. I am indebted to Susanne Lepsius for pointing me to both manuscripts.

18 As it will be seen shortly (*infra*, next paragraph), the printed editions of Bartolus and Baldus on the *repetitio* on the *lex Barbarius* are slightly different. The text of the *repetitio* in Arundel 473 is very similar to most printed editions of Bartolus, not of Baldus. It is possible that the text printed under the name of Bartolus comes from an earlier and better manuscript tradition, of which Arundel 473 might be the only known example.

19 BL Arundel 473, esp. *fol. 247va*.

20 Bartolus' *lectura* on the *lex Barbarius* is *ibid.*, *fols. 33ra–34ra*.

21 The *lectura* on the *Vetus* occupies most of the manuscript (*fols. 3ra–243rb*); the *repetitiones* (*ad Dig.1.3.32*, *Dig.1.7.22*, *Dig.1.14.3*, *Dig.2.5.2*, *Dig.2.8.11*, and *Dig.5.2.14*) are on *fols. 243va–256vb*. Thereafter the manuscript closes with Bartolus' *lectura* on *Dig.6.1*, *fols. 257ra–265rb*.

22 *Ibid.*, *fol. 243rb*. Together with the date of its composition, the manuscript also bears the name 'Iacobo de Cuero'.

the *repetitio* was circulating under the name of Bartolus in the early decades of the fifteenth century.

If the manuscript tradition does not solve the problem of the attribution (or rather, it would tentatively bend it towards Bartolus), we should look elsewhere. A very modest textual argument in favour of Baldus' authorship might be found in another part of his *opus*: hinting at the problem of the false notary, Baldus invited his reader to look at what he said on the *lex Barbarius*, where he wrote 'fully' (*plene*) on the subject.<sup>23</sup> Baldus' *lectura* was very concise on the point.<sup>24</sup> By contrast, the *repetitio* dealt with the subject in full (and we will devote much attention to it).<sup>25</sup>

There is however a different and rather obvious argument that would prove Mayno's conclusion – thus strongly suggesting Baldus' authorship of the *repetitio*. Leaving aside the style, the substance of the *repetitio* on Dig.1.14.3 goes completely against Bartolus' *lectura* on the same text, whereas it perfectly matches that of Baldus.<sup>26</sup> The *repetitio* consists of three parts: a lengthy and erudite introduction, a long discussion of the *lex Barbarius*, and a final section on other applications of the same principle. Even discounting the introduction (where the suspicious references to the classical authors are found), the rest of the text would stand in open contradiction with Bartolus' *lectura*. The point is important: the whole of Bartolus' *lectura* on the *lex Barbarius* openly conflicts with the *repetitio*. And, as far as the *lectura* is concerned, there is little doubt as to Bartolus' authorship.<sup>27</sup>

23 Baldus, *ad Cod.4.21.7, § Si solennibus (Baldi de Pervio Iurisconsulti clarissimi, super Quarto, et Quinto Codicis ... commentaria ... Lvgdvni [typis Gaspar & Melchior Trechsel], 1539, fol. 57ra, n. 2)*: 'Ego de hoc plene not(atur) ff. de offi(cio) preto(rum) l. barbarius (Dig.1.14.3).'

24 Baldus just hinted at the subject in the *lectura* on Dig.1.14.3 (*In Primam Digesti Veteris Partem Commentaria*, cit., fol. 56ra, n. 29–30).

25 *Infra*, §13.2.

26 Leaving aside some marginal additions at the very end of the *repetition*. Before dating the *repetitio* and wishing its author eternal rest, in a few lines (clearly added by some later hand) the printed text unwittingly contradicts the whole careful argumentation of the *repetitio*: the same public utility that inspired the validity of the deeds might well be invoked to consider that the prince made Barbarius truly praetor. Baldus, *repetitio ad Dig.1.14.3 (In Primam Digesti Veteris Partem Commentaria*, cit., fol. 58vb, n. 32): 'hic sit finis l(egis) propter vtilitatem. Ista ratio tangit intentionem partes litigantes, et ibi; tamen ista ratio tangit {effectum}, et causam efficientem, et ibi. Sed si illa ratio tangit intentionem creantis, cuius summum Imperium demostratur qu*< i>a* potest dispensare de officio in statu seruitutis et libertatis.' On the use of italics and curly brackets in the transcription of this *repetitio* see *infra*, next paragraph.

27 *Supra*, this paragraph, note 16.

Much to the contrary, accepting Baldus' authorship all contradictions would disappear. The *repetitio* deals in a single place with several issues that Baldus discussed in other parts of his writings, seeking to merge them together in a coherent and unitary discourse. While the main focus of the *lectura* is Barbarius, the *repetitio* moves from the slave to explore a variety of other instances. The *lex Barbarius* happens to be the best place to discuss them, but it is not a case of analogical extension of Barbarius' case to other similar instances. For Baldus, as we shall see, the *lex Barbarius* itself was but an adaptation of the Innocentian concept of toleration. The whole problem of the *lex Barbarius* was a question of representation: in the *repetitio* Baldus sought to clarify its application and, in so doing, set clear boundaries to its extension. This is probably why the *repetitio* builds on Innocent IV even more than the *lectura* (where the influence of Innocent was already extremely significant). While it is perhaps possible to get a superficial understanding of Baldus' *lectura* without knowledge of Innocent's thought, the same cannot be said for the *repetitio*. Without constant and in-depth reference to Innocent, the *repetitio* would make precious little sense.

Thus, while the only manuscript evidence would *prima facie* depose in favour of Bartolus' authorship, in the present work the *repetitio* will be considered as written by Baldus. Some editors paid attention to Mayno's caveat. In a few printed editions of Bartolus' commentary on the *Vetus*, between the *lectura* on the *lex Barbarius* and the *repetitio*, the editor put a note in large characters: 'this *repetitio* is not of Bartolus but of Baldus (as anyone familiar with Baldus' commentaries may notice here), and Jason [de Mayno] attests to that'.<sup>28</sup> Of course not all Bartolus' editions report this caveat.<sup>29</sup> Perhaps, not all editors were moved by Mayno's remarks. But the difference is often a question of sheer

28 'Haec repetitio non est Bar(toli) sed Baldi (ut cuilibet intuenti commentaria Bal(di) hic apparere potest) et testatur Iason': *Lucernae iuris Bartoli a Saxoferrato Commentaria in primam ff. Veteris partem ...* Lugduni [de Portonaris], 1538, fol. 61v; *Bartoli a Saxoferrato in Primam Digesti Veteris Partem Commentaria*, Augustae Taurinorum, Apud Haeredes Nicolai Beuilaquea, 1577, fol. 33v; *Bartoli a Saxoferrato in Primam Digesti Veteris Partem Commentaria Cvm Additionibus*, Basileae, 1588, p. 115. In the exemplar of the 1477 Milanese *editio princeps* of Baldus' *repetitio* on Dig.1.14.3 that I consulted (preserved in the Biblioteca Capitulare Feliniana of Lucca), at the beginning of the *repetitio* a hand writing reads: 'hec repetitio est posita in lectura Bar(toli) tamquam ab eo composita. Sed stillus est Baldi' (*Lectura super I. parte Digesti*, cit. *infra*, this chapter, note 38, fol. 83vb).

29 The Basel edition of the *Commentaria* of 1562 for instance does not report it (*Bartolus de Saxoferrato, Opera Omnia ...*, vol. 1, Basileae: Hieronymus Froben, 1562; anastatic reprint, Frankfurt am Main: Vico Verlag, 2007, p. 76).

timing: Mayno's caveat is in the *lectura* on Barbarius' case that he gave in 1485,<sup>30</sup> and published (most likely, in extended form) a few years later.<sup>31</sup> By then, Bartolus' work was already printed with increasing frequency, one edition following another with little time for careful checking. It comes as little surprise, for instance, that the late fifteenth-century Venetian editions of Bartolus' *lectura* on the Digest – published almost every year – printed the *repetitio* without forewarning.<sup>32</sup>

## 10.2 *Lectura, repetitio, additio*

If it were not for Baldus' crucial role in the interpretation of the *lex Barbarius*, there would be little point in making an in-depth analysis of the manuscript and printed editions of his work on it.<sup>33</sup> But given his importance, and the fact of the double attribution of his *repetitio*, we might say a few more words on the subject.

Baldus worked on the Vetus for most of his life. When he died (in 1400) he was still working on the second part of his *lectura Digesti veteris* (i. e. books 12–23 of the Digest).<sup>34</sup> The first part (books 1–11 of the Digest), which is more important for our purposes, also has a complex history. We know of two different manuscript versions of it. One was made in Perugia before 1390; the other (whose place of composition is not clear) contains new additions – sometimes even multiple ones on the same *lex* (i. e. *commenta reiterata*) – but omits other parts found in the Perugia version.<sup>35</sup> It is however important to stress that the manuscript tradition of Baldus' work on the Vetus is limited. As such, the most obvious criterion for verifying the authenticity of a specific *additio* found in printed editions – looking at the manuscripts – does not always work with Baldus. The same can be said for some of Baldus' *repetitiones* which, as said, he published together with the *lecturae*. This makes it all the more important to follow the printed editions.

Baldus' *lectura* on the first part of the Vetus was published in 1476 by Sixtus Riessinger in Naples.<sup>36</sup> For the first four books of the Digest (i. e. *pars prima*

30 *Infra*, pt. IV, §14.1.4, note 33.

31 The first edition of Mayno's commentary on the first part of the Vetus dates to 1492: Di Renzo Villata (2013), p. 997.

32 See e. g. the editions of 1478; 1479; 1480; 1488 (*fol. 25v–28r*); 1490; 1492 (*fol. 45r–48v*); 1493; 1494 (*fol. 36r–39v*); 1499. Cf. the Milanese edition of 1490.

33 In effect, the specific conclusions on this *repetitio* would just confirm the scheme proposed by Vincenzo Colli, whom I wish to thank for his generous help.

34 Colli (2005), p. 82, text and note 163.

35 Colli (2008), p. 245. Cf. Colli (2000), pp. 412–417; Colli (2005), pp. 70–73.

36 *Lectura super prima parte Digesti veteris*, inpressa neapoli ... per uenerabilem Sixtum riessinger ... die XXV Mai mille CCCC LXXVI.

*prime partis*), this is the *editio princeps* of his *lectura*.<sup>37</sup> The following year Andrea Zarotto published the same first part of Baldus' *lectura* on the *Vetus* in Milan.<sup>38</sup> This edition omits several texts that are present in the first one, but it also contains many additions (as well as *commenta reiterata*).<sup>39</sup> The 1476 Neapolitan edition contains only Baldus' *lectura* on Dig.1.14.3.<sup>40</sup> On the contrary, the 1477 Milanese edition has also his *repetitio* on the same *lex*,<sup>41</sup> which it reports as given in Perugia by Baldus in 1366.<sup>42</sup> If we think of his long career, it would therefore seem that Baldus wrote this *repetitio* when he was 39 or 40 years old, and so still relatively young.<sup>43</sup>

The Milanese edition of 1477 had a long-lasting fortune, as it was used for several important *incunabula* editions (especially the Milanese edition of 1488, the Venetian one of 1493, and the 1498 edition of Lyon), as well as the wealth of sixteenth-century editions of Baldus' *lectura* on the *prima prime partis* of the *Vetus*.<sup>44</sup> Pretty much all printed editions of Baldus' *repetitio* on the *lex Barbarius* (whether directly or indirectly) follow the 1477 edition. Since the 1477 edition is not particularly accurate on this text (it might have relied on a faulty manuscript), this effectively means that no edition of the *repetitio* on the *lex Barbarius* published under the name of Baldus is particularly good either. Ironically, the *repetitio* reads rather better in most editions of Bartolus, which must have followed a different manuscript tradition.<sup>45</sup>

37 Colli (2000), p. 410.

38 *Lectura super I. parte Digesti* [Mediolanii] Impressum atque expletum reperies die VIII. mensis Augusti [1477] nobili officina magistri Antonii Zaroti Parmensis.

39 Colli (2000), p. 410.

40 *Lectura super prima parte Digesti veteris*, 1476, cit. [fol. 35rb–37vb].

41 *Lectura super I. parte Digesti*, 1477, cit. [fol. 84vb–88rb].

42 *Ibid.* [fol. 88rb]: ‘Repetita est hec lex per egregium atque peritissimum utriusque iuris doctorem excellentissimum dominum Baldum de perusio sub Anno Mcclxvi in ciuitate Perusii cuius anima requiescat in pace.’

43 Baldus was born on 2 October 1327: Colli (2005), p. 27, note 6.

44 Colli (2000), p. 410.

45 Compare for instance the editions of Bartolus' *Commentaria* of Basel 1562 (Froben) and Basel 1588 (*ex officina Episcopiana*), and the late fifteenth-century editions of his *Lectura* printed in Venice (1478, 1479, 1480, 1488, 1490, 1492, 1493, 1494, 1499, all *apud Iunctas*; the last one, rather unusually, has a summary of the *repetitio* before its text: *fol. 37r*), Milan (1490), Lyon (c.1493), with Baldus' *Commentaria* in the Venetian editions of 1572, 1577 and 1599 (all *apud Iunctas*); the third was consulted in its anastatic reprint of 2004 (Goldbach: Keip Verlag). These editions match very well the manuscript version of the *repetitio* contained in the already-mentioned Arundel 473, *fol. 247ra–249va*: cf. *supra*, this chapter, note 18.

Baldus' (admittedly, few)<sup>46</sup> manuscripts on the *Vetus* report only his *lectura* on the *lex Barbarius*.<sup>47</sup> There is a single (limited) exception: the Munich manuscript BSB, Clm 6640. This manuscript contains two versions of Baldus' *lectura*. The first version corresponds mostly to its printed edition, but towards the end (when Baldus discusses more general issues of jurisdiction) it drifts away from it.<sup>48</sup> This last part of the first version of the *lectura*, however, is not present in any other known manuscript. The second version of the *lectura* in the same manuscript merges the first part of Baldus' (standard) *lectura* on the *lex Barbarius* and the second part of his comment on a close-by *lex* (Dig.1.16.4.2, on the office of the Roman proconsul).<sup>49</sup>

Our problems with Baldus and the *lex Barbarius* are not over: two new Venetian editions of 1506 and 1507 enlarged the Milanese 1477 edition with some more *additiones*.<sup>50</sup> There, a third text on the *lex Barbarius* appeared: a long *additio*, titled 'Additio Bal.' As with the *repetitio*, there is no manuscript tradition for this *additio*. Nonetheless (and unlike other *additiones* of these Venetian

46 Cf. Colli (2000), pp. 407–408.

47 Baldus' *lectura* on Dig.1.14.3 may be found in Madrid, BN 2137, *fols. 79ra–85ra*; Stralsund Hs 290, *fols. 80rb–86va*; BAV, Ross. 1163, *fols. 43rb–46rb*. BSB, Clm 3062 skips it, together with most of the last part of the first book of the Digest.

48 BSB, Clm 6640, *fols. 75vb–80ra*. From the beginning of *fol. 79ra* (–*fol. 56ra*, n. 34 in the Venetian edition of 1577) the manuscript begins to diverge from the printed edition, and the difference becomes increasingly pronounced towards the end.

49 The first part corresponds to the beginning of the standard printed text of Baldus' *lectura*: compare BSB, Clm 6640, *fols. 80rb–82va*, with the 1577 edition, *fols. 54vb–55va*, n. 1–17. Towards the end of *fol. 82va* in the MS, a sign divides two lines (which however run continuously). From the line below the sign (the fifth-last line of the column) the text is the same as the second half of Baldus' *lectura* on Dig.1.16.4.2 in any printed edition: compare the MS, *fols. 82va–84rb*, with the second part of Baldus' *lectura* on Dig.1.16.4.2, § *Profici autem* (in the 1577 printed edition, *fol. 61ra–vb*, n. 11–27). Although the manuscript combines two different *lecturae*, its reading makes perfect sense. The second part (the comment on Dig.1.16.4.2) is in fact a small treatise on the office of the proconsul. As Medieval jurists equiparated proconsul to the podestà (or rather, built the normative framework of the podestà around the Roman law provisions on the proconsul), Baldus' comment was a small treatise on syndication, dealing with the scope of the powers of the proconsul/podestà, and his liability. Cf. esp. Lepsius (2008), pp. 247–248.

50 The first edition was made in Venice by Gregorio de Gregoriis in 1506. This edition was then used for another Venetian edition of 1507 by Giorgio Arrivabene, and for a Lyon edition of 1508 by Jacques Sacon. Colli (2000), pp. 410–411, text and notes 8–10. Cf. also Colli (2005), p. 80, note 156. I was not able to look at the Gregoriis' edition but I could look at that of Arrivabene. It contains first the *lectura* (*fols. 56vb–59vb*), then the *repetitio* (*fols. 59vb–61vb*) and finally the 'new' *additio* (*fols. 61vb–62vb*).

editions), for the *additio* on the *lex Barbarius* there seems to be no reason to doubt of its authenticity.<sup>51</sup> The text of the *additio* – which will be examined more closely later on – is perfectly compatible with the *repetitio*, both in its style and especially in its approach and conclusions. At times (especially towards the end), the *additio* seems to elaborate further on what has already been said in the *repetitio*. This further elaboration hardly questions Baldus' authorship of either *additio* or *repetitio*. On the contrary, it would perfectly suit a scholar like Baldus, who never ceased to work on the *Vetus* – and thus who wrote about it for more than thirty years after the *repetitio*.

This *additio* assembles together two sets of glosses on the *lex Barbarius*. Among them, the second set is considerably longer. The first set of glosses<sup>52</sup> shortly sums up what has already been said in the *lectura* and may be safely neglected. Its only interest lies in the conspicuous number of references to Innocent IV – even larger than usual. The second set of glosses<sup>53</sup> is more interesting, especially as it shows other sources on which Baldus relied for his reading of the *lex Barbarius* (besides Innocent, that is). After a short summary of the Gloss,<sup>54</sup> it explains the *Ultramontani*'s interpretation, 'according to Petrus [de Bellapertica] and his followers',<sup>55</sup> as well as Jacobus de Arena.<sup>56</sup> The way Baldus reported Bellapertica in the *additio* would seem to suggest that (possibly unlike Bartolus) he looked at Bellapertica directly, and not through Cynus,<sup>57</sup> whom on the contrary he quoted seldom and sometimes even inaccurately.<sup>58</sup>

With the very marginal exception of a few lines in BSB, Clm 6640,<sup>59</sup> the whole known work of Baldus on the *lex Barbarius* is contained in the 1506 and 1507 Venetian editions. The present work is however based on a later Venetian edition, that of 1577. The 1506/7 editions provided the basis for a new and slightly improved edition of 1572, once again printed in Venice. With regard to the *lex Barbarius*, the main difference is that the 1572 edition adds some lines of

51 Some *additiones* in the 1506 and 1507 Venetian editions are not of Baldus but come from other authors: see Colli (2000), p. 411, note 9.

52 Baldus, *additio* on Dig.1.14.3 (*In Primam Digesti Veteris Partem Commentaria*, cit., fol. 59ra, n. 1–3).

53 *Ibid.*, fol. 59ra–vb, n. 3–15.

54 *Ibid.*, fol. 59ra–b, n. 3–4.

55 'secundum Pe(trum) et suos sequaces', *ibid.*, fol. 59rb, n. 5.

56 *Ibid.*, fol. 59ra–b, n. 4–5.

57 While Cynus reported everything that Bellapertica said, he did not always use his words. In the *additio*, Baldus looks at the *lex Iulia de ambitu* and reports Bellapertica's remarks against those who insisted that the *lex Iulia* did not apply in Rome. Unlike Cynus, Baldus reported Bellapertica's vocal protest against such a fraud ('trufe'): 'secundum Pe(trum) truffa est', fol. 59va, n. 11. Cf. *supra*, pt. I, §4.6, note 93.

58 *Infra*, §12.1, text and note 9.

59 *Supra*, this chapter, note 48.

the *repetitio* that, so far, were only present in the printed editions of Bartolus. In turn, the 1577 edition is nearly identical to the 1572 one, only very slightly improved. The choice of a later edition is also made to facilitate the reader, as the 1577 edition is remarkably easier to find than the 1506/7 ones.

Although more complete, the early sixteenth-century Venetian editions followed a different and possibly less accurate manuscript of Baldus' *repetitio* from that used in the 1477 Milanese edition. Not only are some citations wanting,<sup>60</sup> but sometimes sentences lack a few words, and some (though few) periods even lack full sentences. As already said, however, the text of the *repetitio* in the 1477 edition itself is not as good as that found in most printed editions of Bartolus. As such, the text of the *repetitio* (from Baldus' edition of 1577) will be integrated with that in Bartolus' printed editions. Having rejected Bartolus' authorship of the text, this might seem a paradox. Still, it is a useful one. The choice of Bartolus' edition was considerably easier to make: on the *repetitio* on the *lex Barbarius*, most of them are nearly identical. This work will use the 1588 Basel edition of Bartolus' commentary on the *Vetus*,<sup>61</sup> being one of the most accurate and easy to find.

While the text in the notes will normally follow Baldus' 1577 Venetian edition, words in italics will signal integration from the *repetitio* printed under the name of Bartolus. When on the contrary something is present only in the 1577 Venetian edition of Baldus, it will be reported in curly brackets. The notes will also give ample room to other places of Baldus' opus, so as to appreciate their closeness with the *repetitio*. Parentheses are used for abbreviations and to suggest the source of a quotation. Given the number of quotations from the *lectura*, *repetitio* and *additio* of Baldus on the *lex Barbarius*, the edition (Venetiis 1577) will be omitted in the notes.

Lastly, at the cost of stating the obvious, establishing a clear chronology between *lectura*, *repetitio* and *additio* is not possible. Any expression in the next chapters describing Baldus as 'returning' or 'coming back' to a specific point in the *repetitio* or the *additio* does not imply a chronology.<sup>62</sup>

60 And occasionally funny, as the reference to the *Decretum*'s chapter *Dilectissimi* (C.8, q.2, c.2), which in the 1570s editions is reported as 'Dulcissimi': Baldus, *repetitio ad Dig.1.14.3* (*In Primam Digesti Veteris Partem Commentaria*, cit., fol. 58vb, n. 32).

61 Bartolus [sed Baldus], *repetitio ad Dig.1.14.3* (*Bartoli a Saxoferrato in Primam Digesti Veteris Partem Commentaria*, 1588, cit., pp. 115–121).

62 It is more probable in fact that Baldus wrote his *repetitio* on the *lex Barbarius* before several other texts touching on the subject throughout his opus. In some cases this seems clear: the *repetitio* bears the date of 1376 (*supra*, this paragraph, text and note 42), and Baldus wrote his commentary on the *Liber Extra* only in the 1390s (*infra*, next chapter, note 64).

