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The Legal Status of foreigners and the ‘Albinaggio’ Right in the Intermediate Age: Between Doctrine and Practice*

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Abstract

From a legal and historical point of view, the condition of the foreigner can be investigated in multiple ways. Here we are considering the ‘albinaggio’ right, which allowed the King or the feudal lord (according to countries and times) to collect the inheritance of any non-naturalized foreigner who had died in the territory under his Lordship. The Church excluded this right within its territory and in 1220 Frederick II released the *constitutio Omnes peregrini* - later included by the jurists from the Bolognese school in the *Codex Justiniani* - that implemented the common rules of succession to foreigners’ possessions. The historical evolution of the ‘albinaggio’ right has been the aim of several studies, but it is necessary to investigate the theories elaborated by the legal science which after 1220 had to deal with the contents of imperial and ecclesiastical law. In addition, the contents of the articles of statute law of this era will be analyzed.

Keywords

Legal status of foreigners, ‘Albinaggio’ right, *Constitutio Omnes peregrini*, Statutory law, Medieval legal doctrines.

SUMMARY: 1. Historical preambles. 2. The position of the Church and the *constitutio Omnes peregrini*. 3. Medieval legal doctrines. 4. Princely and statutory law and the ‘albinaggio’ overcoming.

1. Historical preambles

Currently, when we talk about a foreigner we mean the person who belongs to a foreign country according to their citizenship, though enjoying the same civil rights of the citizens of the country where he is living, provided there exists the reciprocity and the respect of the rules contained in some specific laws¹. However, said condition has been reached only in current times, when the maturity of thought corresponds to the maturity and the civilization of political systems. Numerous are the topics that can be investigated from a historical point of view, in regards to the condition of foreigners, and on this matter the historiography has widely dwelled². Here we

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¹ *Disposizioni sulla legge in generale* preliminaries to the Italian civil Code (R.D. 16.03.1942, n. 262), art. 16.

² See Storti Storchi, C., “Aspetti della condizione giuridica dello straniero negli statuti lombardi dei secoli XIV-XV”, *Archivio storico lombardo. Giornate della Società storica lombarda*, series XI, 2 (1985), pp. 9-66; Ead., *Ricerche sulla condizione giuridica dello straniero in Italia dal tardo diritto comune all’età preunitaria. Aspetti civilistici*, Milano, 1990; Ead., “The Legal Status of Foreigners in Italy (XVth-XVIth Centuries). General Rules and their Enforcement in Some Cases Concerning the *Executio Parata*”, *Of Strangers and Foreigners (Late Antiquity-Middle Ages)* (L. Mayali, M.M. Mart, eds.), Berkeley, 1993, pp. 97-135; Ead., “Foreigners in Medieval Italy”, *Citizenship and Immigration: Proceedings of the Conference Held at the University of Milano, Law Faculty November 7-9, 1996* (V. Ferrari, T. Heller, E. De Tullio, eds.) Milano, 1998, pp. 27-36; Ead., “Stranieri ed ‘estrangei’ nelle legislazioni germaniche”, *Le relazioni internazionali nell’alto medioevo, Spoleto, 8-12 aprile 2010*,

are far more interested in the right of ‘albinaggio’ or ‘aubena’ (*jus albinagii, droit d’aubaine*)³ - that traces back to the Medieval age - that closely regards the succession of properties belonging to the foreigner and to those subjects who became expatriates through immigration⁴. By virtue of this right, the feudal Lord or the King (according to ages and countries) gained the non-naturalized (*albanus, aubain*) foreigner’s properties who had died within the territory under his lordship, so that he could reassert his own whole authority over the *dominium*⁵. In a broader sense, and especially in France, this expression indicated the legal incapacities of foreign people, in terms of chance of succession and decision over their own possessions as act of their last will, according to the stock phrase: “*peregrini in Gallia non succedunt nec eis succeditur*”. Being *extraneus* the foreigner was denied both the active *testamenti factio* and the passive.

In brief, the validity of this state underlines, above all for the former ages the exclusion of the foreigner from civil and political rights, which the State laws would give to the local citizens only, and sometimes from some natural rights as well, as happened in the deprivation of the weregild, hence regarding also the lack of protection in the foreigner’s life. In ancient times the

Spoleto, 2011, pp. 383-441; Ead., “Alcune considerazioni sul trattamento dello straniero in età medievale e moderna tra flessibilità e pragmatismo”, *Ius peregrinandi. Il fenomeno migratorio tra diritti fondamentali, esercizio della sovranità e dinamiche di esclusione* (M. Meccarelli, P. Palchetti, C. Sotis, eds.), Macerata, 2012, pp. 123-148; Ead., “Motivi e forme di accoglienza dello straniero in età medievale”, *Ai margini della civitas. Figure giuridiche dell’altro tra medioevo e futuro* (A.A. Cassi, ed.), Soveria Mannelli, 2013, pp. 61-77.

³ Pertile, A., *Storia del diritto italiano dalla caduta dell’Impero romano alla codificazione*, III, *Storia del diritto privato*, Torino 1894², pp. 187-203, especially p. 194.

⁴ On the ‘albinaggio’ right or ‘aubena’ (*albanagium, albinatus, aubenagium*), as indicated in the Italian language (Fr. *droit d’aubaine*; Sp. *derecho de forastero*; Grm. *Fremdlingsrecht* o *Heimfallsrecht*; Eng. *Escheatage*), and, more in general, on the legal status of the foreigner, besides what has been cited in the previous notes, see the following studies, to which we refer also for further bibliographical indications: Du Cange, C., *Glossarium mediae et infimae latinitatis*, Parisiis, 1840, *sub voces* “Albanagium, Albenagium, Albinatus, Aubenagium”; Volpicella, L., *Del diritto di albinaggio*, Napoli, 1848; Morpurgo, “Sulla condizione giuridica dei forestieri in Italia nei secoli di mezzo”, *Archivio Giuridico* 9 (1869), pp. 249-287; Capuano, L., *Dell’Albinaggio: memoria letta alla Reale Accademia di scienze morali e politiche*, Napoli 1887 (= “Albinaggio”, *Enciclopedia giuridica italiana*, I,II, Milano, 1892, pp. 1074-1121); Fusinato, G., “Albinaggio (diritto di)”, *Digesto Italiano*, II, Torino, 1893, pp. 235-243; Id., “Albinaggio”, *Nuovo Digesto Italiano*, I, Torino, 1937, p. 300; Tamassia, N., “Stranieri ed ebrei nell’Italia meridionale dall’età romana alla Svevia”, *Atti del Reale Istituto Veneto di Scienze, Lettere ed Arti* 63.2 (1903/04), pp. 757-796; Schupfer, C., *Lo stato di guerra e le convenzioni internazionali con particolare riguardo ai trattati per l’abolizione dell’albinaggio*, Città di Castello, 1896; Guerra, P., *Il diritto d’albinaggio e la filosofia del secolo XVIII. Saggio di uno studio di diritto internazionale privato e di legislazione comparata*, Firenze, 1900, pp. 1-62; Leicht, S., “Albinaggio”, *Enciclopedia italiana*, II (1929) (http://www.treccani.it/enciclopedia/albinaggio_%28Enciclopedia-Italiana%29/); Gilissen, J., “Le statut des étrangers, à la lumière de l’histoire comparative”, *L’Étranger. Foreigners*, Bruxelles, 1958 (repr. anast. Paris, 1984), I, pp. 5-57, especially pp. 51-54; more recently Ascheri, M., “Lo straniero nella legislazione e nella letteratura giuridica del Tre-Quattrocento: un primo approccio”, *Rivista di storia del diritto italiano* 60 (1987), pp. 179-194; Id., “Lo straniero nella legislazione statutaria e nella letteratura giuridica del Tre-Quattrocento: un primo approccio”, *Forestieri e stranieri nelle città basso-medievali, Atti del seminario internazionale di studio, Bagno a Ripoli (Firenze), 4-8 giugno 1984*, Firenze, 1988, pp. 7-18; Id., “Lo straniero: aspetti della problematica giuridica”, *Dentro la città. Stranieri e realtà urbane nell’Europa dei secoli XII-XIV* (G. Rossetti, ed.), Napoli, 1999, pp. 37-50; Romano, A., “Stranieri e mercanti in Sicilia nei secoli XIV-XV”, *Cultura e istituzioni nella Sicilia Medievale e Moderna* (A. Romano, ed.), Soveria Mannelli, 1992, pp. 83-109; Id., “La condizione giuridica di stranieri e mercanti in Sicilia nei secoli XIV-XV”, *Sistema di rapporti ed élites economiche in Europa (secoli XII-XVII)* (M. Del Treppo, ed.), Pisa-Napoli, 1994, pp. 113-132; Id., “Albinaggio”, *Federico II. Enciclopedia Federiciana*, Roma, 2005 (http://www.treccani.it/enciclopedia/albinaggio_%28Federiciana%29/).

⁵ According to the definition passed on by Du Cange, the *albanagium* was the *jus Regis vel domini alicujus loci in peregrinorum decedentium bonis* (Du Cange, “Albanagium”, p. 165).

abolition of any kind of right recognized to the foreigner appeared natural: the law would protect only the people who belonged to the community. By the advent of Christianity, the development of trade as well as the increase of travels, which developed towards Rome for religious reasons in particular, this condition was tempered thanks to the protection offered to the foreigner by the sovereign, despite numerous restrictions⁶.

Leaving aside the origin of the ‘albinaggio’, a subject as much discussed by scholars as the etymology of the word itself⁷, for sure this state found ‘its most fruitful age’ in the feudal system, when the barons held the foreign people’s protection too. This was an age where the legal status of the *extraneus* was destined to worsen, compared to the Carolingian age, when towards the foreigner person had been recognized a kind of legal personality, although limited. Nor did the Municipalities show any kind of liberal attitude towards foreign people. In addition, it must be considered that during the intermediate age in particular not only the people coming from a foreign country, but also those coming from a different municipality were considered as foreigners, although subject to the same Sovereignty. In the latter age, considering the numerous political and juridical realities present within the different territories, having a precise definition of such categories like *cives* and *forenses* is not easy at all. One faces in fact various levels of citizenship as well as several kinds of *forenses*: the merchant, the pilgrim and the student; to these latter, according to circumstances or conveniences, the authorities (municipal and sovereign too) would grant several concessions, recognizing different legal status⁸.

Throughout ages and territories, the ‘albinaggio’ would not have the same extension. In France it would be adopted in its whole strictness and, though it would be later moderated, it is not until the French Revolution that for the first time there is the equivalence, in terms of civil rights, between citizen and foreigner, by the elimination of any discrepancy of treatment,

⁶ See also the entries “Straniero”, *Digesto italiano*, XXI, Torino, 1895, pp. 872-879; “Stranieri”, *Nuovo Digesto Italiano*, XII, Torino, 1940, pp. 917-922.

⁷ On the historical origin, more or less remote, of the right of ‘albinaggio’ and on the historiography opinions, see Volpicella, *Del diritto di albinaggio*, pp. 9-21; Capuano, “Albinaggio”, pp. 1075-1096; Fusinato, “Albinaggio (diritto di)”, pp. 235-236; Guerra, *Il diritto d’albinaggio*, pp. 3-14. In regards to the etymology of the word ‘albinaggio’ several hypothesis have been formulated, among which, the one that seems the most credited sees it as derived from the Latin compound *alibi-natus* (born elsewhere), Pertile, *Storia del diritto italiano*, III, p. 194; Guerra, *Il diritto d’albinaggio*, pp. 1-3, with a collection of the various thesis elaborated on purpose.

⁸ Romano, “Stranieri e mercanti in Sicilia...”, pp. 98-101, with bibliography at pp. 108-109; Id., “La condizione giuridica di stranieri e mercanti...”, pp. 125-128; Ascheri, “Lo straniero nella legislazione e nella letteratura giuridica...”, pp. 185-188; Id., “Lo straniero nella legislazione statutaria...”, pp. 11-13; Storti Storchi, “Motivi e forme di accoglienza...”, pp. 63-66; Ead., “The Legal Status of Foreigners in Italy...”, pp. 97-100. On citizenship see by way of indicative Cortese, E., “Cittadinanza (diritto intermedio)”, *Enciclopedia del diritto*, VII, Milano, 1960, pp. 132-140; Quaglioni, D., “Le radici teoriche della dottrina bartoliana della cittadinanza”, «*Civilis Sapientia*». *Dottrine giuridiche e dottrine politiche fra Medio Evo ed Età Moderna. Saggi per la storia del pensiero giuridico moderno* (D. Quaglioni, ed.), Rimini, 1989, pp. 127-144; Id., “The Legal Definition of Citizenship in the Late Middle Ages”, *City-States in Classical Antiquity and Medieval Italy* (A. Molho, K. Raaflaub et al., eds.), Ann Arbor (Mich.), 1991, pp. 155-167; Id., “*Omnes sunt cives civiliter*. Cittadinanza e sovranità fra storia e diritto”, *Dallo status di cittadino ai diritti di cittadinanza* (F. Cortese, G. Santucci, A. Simonati, eds.), Napoli, 2014, pp. 5-14; Costa, P., *Civitas. Storia della cittadinanza in Europa*, I, *Dalla civiltà comunale al Settecento*, Roma-Bari, 1999; Id., *Cittadinanza*, Roma-Bari, 2005; Menzinger, S., “Fisco, giurisdizione e cittadinanza nel pensiero dei giuristi comunali italiani tra la fine del XII e l’inizio del XIII secolo”, *Quellen und Forschungen* 85 (2005), pp. 36-73. On the acquisition of citizenship in Italian statutes and legal thought at the end of the Middle Ages see also Gilli, P., “Comment cesser d’être étranger: citoyens et non-citoyens dans le pensée juridique italienne de la fin du Moyen Âge”, *L’Étranger au Moyen Âge*, Paris, 2000, pp. 59-77.

consequently as far as the ‘albinaggio’ too⁹. In Italy, where our attention is most focused, it seems that the ‘albinaggio’ right had been known since the age of the Longobard domination. We find traces of it are found later as well, in the feudal and municipal age in particular. Historiography has quoted several examples, from which can be gathered the existence of this institution that was disciplined and ruled by deliberations and agreements¹⁰. In 1188, for instance, Pietro, King and judge from Arborea, renounces his ‘albinaggio’ right in favor of the people of Genoa, further renewing his pledge in 1192¹¹. In the *consuetudines* of Alessandria in 1179, the possessions of foreigner who died intestate, that is without having made a will, became half owned by the host and half by the Municipality¹², whereas in those of the southern town of Troy, proved by Pope Honorius II in 1127, they all become bishop’s properties¹³.

2. The Church position and the *constitutio Omnes peregrini*

Against the ‘albinaggio’, key would be the position of the Church and the favorable policy towards foreigners supported by Frederick II in the Southern Italian territories¹⁴. As a matter of fact, the Church had always been benevolent and protective of foreigners in general and of pilgrims too, who would travel to Rome or would journey for religious purposes. Thus, the Church would intervene to oppose any injustices towards these categories. Among these in particular the principle according to which the foreigner could not enjoy any right of preparing a will and also the principle according to which the intestate deceased foreigner’s possessions would pass in the hands of the State, or, as an alternative, partly to it and partly to the host where he lived.

⁹ On the ‘albinaggio’ in the modern and current age see Del Bagno, I., “Unificazione nazionale e diritto di albinaggio”, *Teoria e Storia del Diritto Privato* 5 (2012), pp. 1-30; Maifreda, G., “Un ‘diritto non meno strano che barbaro’. Aspetti e temi del dibattito sull’albinaggio nell’Italia dell’Ottocento”, *Storia economica* 1-2 (2009), pp. 215-230. With a particular regard to the legal status that invested the foreigner’s properties see Cerutti, S., “À qui appartiennent les biens qui n’appartiennent à personne? Citoyenneté et droit d’aubaine à l’époque moderne”, *Annales. Histoire, Sciences sociales* 2 (2007), pp. 355-383; Maifreda, G., “I beni dello straniero. Albinaggio, cittadinanza e diritti di proprietà nel Ducato di Milano (1535-1796)”, *Società e Storia* 129 (2010), pp. 489-530.

¹⁰ According to Volpicella, *Del diritto di albinaggio*, pp. 43 ss., in Italy the right of ‘albinaggio’ remained unknown until 1700; against this statement Morpurgo, “Sulla condizione giuridica dei forestieri...”, pp. 255-258; Fusinato, “Albinaggio (diritto di)”, pp. 240-241; Guerra, *Il diritto d’albinaggio*, pp. 43-52.

¹¹ *Codex Diplomaticus Sardiniae*, I, *Historiae Patriae Monumenta*, X, Augustae Taurinorum, 1861, doc. CXXV, pp. 261-262, and doc. CXXXIX, pp. 276-277.

¹² *Consuetudines Communis Civitatis Alexandriae, Codex statutorum magnificae Communitatis atque Dioecaesis Alexandrinae* (F. Moscheni, ed.), Alexandriae, 1547 (repr. anast. Torino, 1969), p. 3, cap. 21: “Item de pelegrinis et transeuntibus vel viatoribus sic ordinatur ut si moriatur ab intestate in Civitate vel in casalibus vel in octo locis commune habeat medietatem et hospes aliam medietatem rerum quas secus habuerit”. In regard to this mention see Pertile, *Storia del diritto italiano*, III, p. 194 n. 38b. On the *Consuetudines* of Alessandria in 1179 see Pene Vidari, G.S., “Note sulle consuetudini di Alessandria”, *Rivista di Storia, Arte, Archeologia per le province di Alessandria e Asti* 94-95 (1985-86), pp. 5-20.

¹³ Tamassia, “Stranieri ed ebrei nell’Italia meridionale...”, pp. 767-768.

¹⁴ On the policy carried out by Frederick and his successors towards the foreigners Volpicella, *Del diritto di albinaggio*, pp. 79-90; Romano, “Stranieri e mercanti in Sicilia...”, pp. 89 ss.; Id., “La condizione giuridica di stranieri e mercanti...”, pp. 117 ss. On the emperor Frederick II, his life, his policy we limit ourselves to send the reader to Kamp, N., “Federico II di Svevia, Imperatore, Re di Sicilia e di Gerusalemme” (http://www.treccani.it/enciclopedia/federico-ii-di-svevia-imperatore-re-di-sicilia-e-di-gerusalemme-re-dei-romani_%28Federiciana%29/) and by Galasso, G., “Sicilia, Regno di” (http://www.treccani.it/enciclopedia/regno-di-sicilia_%28Federiciana%29/), both in *Federico II. Enciclopedia Federiciana*.

In 1169 Pope Alexander III, regarding what was happening in the town of Benevento, would disapprove what he defined a “*consuetudo inimica divinis et humanis legibus*”: he had in fact been informed that any wayfarers, merchants and pilgrims staying in town, were not allowed to go out, to make any will or to have any sort of burial, and, once dead, their properties would pass in the hands of the Curia of Benevento, the Church and those people who gave hospitality to the deceased. The Pope intervened to avoid *in perpetuum* this *consuetudo* by the decretal ‘Sicut in vanum’, through which foreigners had the full freedom to choose their own burial and to express their own will. In case they died without making a will, their properties should have been kept in storage in a Church for a year, at their heirs disposal; once the year had passed without the appearance of any of the heirs claiming the succession, the properties had to be shared according to the old local customs between the Papal Curia of Benevento, the town Church and the person who had hosted the *de cuius*. The historical chronicles tell us that before Pope Alexander III, the Pope Eugene III harshly censured this custom, evidently though without any result¹⁵.

Similar to the measure taken by Alexander III is the law included in the *Constitutio in basilica beati Petri* emitted by Frederick II in 1220: the *constitutio Omnes peregrini*. This latter can be considered as the most decisive rule intervention against the ‘albinaggio’¹⁶. Because of his imminent crowning by the Pope Honorius III, a constitution drafted by the papal chancellery’s offices was presented to the Emperor: the *Constitutio in basilica beati Petri*¹⁷. The document

¹⁵ Borgia, S., *Memorie storiche della pontifizia città di Benevento. Parte seconda*, Roma, 1764, pp. 147-148; *Parte terza*, vol. I, Roma, 1769, pp. 156-159. Alexander III’s provision is included also in *Alexandri III pontificis opera omnia idest epistolae et privilegia ordine cronologico digesta*, J.-P. Migne (ed.), *Patrologiae latinae cursus completus*, vol. 200, Parisiis, 1855, doc. DCXXIV, coll. 595-597. On the dating Jaffé, P., *Regesta Pontificum Romanorum ab condita ecclesia ad annum post Christum natum MCXCVIII*, Berolini, 1851, n. 7769 p. 725. See also Balladore Pallieri, G., Vismara, G., *Acta pontificia iuris gentium usque ad annum MCCCIV*, Milano, 1946, p. 194. On this issue and the Papal provision De Vergottini, G., *Studi sulla legislazione imperiale di Federico II in Italia. Le leggi del 1220*, Milano, 1952, pp. 127-129. On Pope Alexander III (1159-1181), Rolando Bandinelli from Siena, see Brezzi, P., Piazza, A., “Alessandro III”, *Enciclopedia dei papi*, Roma, 2000, pp. 291-298.

¹⁶ On the *constitutio Omnes peregrini* see Romano, A., “La *constitutio Omnes peregrini* e il *Liber Constitutionum*. Stranieri e mercanti nella legislazione fridericiana”, *Federico II e la civiltà comunale nell’Italia del nord* (C.D. Fonseca, R. Crotti, eds.), Roma, 1999, pp. 175-191. In *Regnum Siciliae* we meant to locate a Frederick II proceeding of the *constitutio* against the ‘albinaggio’ in the ‘assisa’ *De intestatis*, divulged around 1170 by King William II. This law included in fact that one should respect the will made by *quis burgensium vel aliorum, qui in ipsa civitate devenerit*, whereas as far as the successions intestate, the two third of the estate had to be passed on to *de cuius* sons, or, lacking them, to the legitimate heirs, and the rest *pro eius anima erogetur*; heirs being lacking also the two third of the heritage should pass on to *ad opus curiae* (the text of the law in Zecchino, O., *Le Assise di Ruggiero II. I testi*, Napoli, 1984, p. 128). But historiography specified that the provision did not strictly regard the ‘albinaggio’ phenomenon, because it was referred only to the subjects dying intestate in a town of the reign, to which they did not belong to (De Vergottini, *Studi sulla legislazione imperiale*, p. 129 n. 1; Guerra, *Il diritto d’albinaggio*, p. 50; Romano, “Albinaggio”; Id., “La *constitutio Omnes peregrini*...”, p. 188). About the ‘albinaggio’ in the Reign of Naples see Volpicella, *Del diritto d’albinaggio*, pp. 57 ss.

¹⁷ In this sense De Vergottini, *Studi sulla legislazione imperiale, passim*; Kuttner, S., “A New Eye Witness Account of the Fourth Lateran Council”, *Traditio* 29 (1964), pp. 115-178, especially pp. 169-170 (now in Kuttner, S., *Medieval Councils, Decretals and Collections of Canon Law. Selected Essays*, London, 1980, *sub IX*, with *Retractiones* at pp. 7-8). It takes back and integrates the observations of the authors Liotta, F., “Vicende bolognesi della *Constitutio in basilica beati Petri* di Federico II”, *Vitam impendere magisterio. Profilo intellettuale e scritti in onore dei professori R.M. Pizzorni, O.P. e G. Di Mattia, O.F.M. Conv.* (D.J. Andrés Gutiérrez, ed.), Città del Vaticano, 1993, pp. 79-92. On the *Constitutio in basilica beati Petri* see the studies by Di Renzo Villata, M.G., “La *Constitutio in Basilica Beati Petri* nella dottrina di diritto comune”, *Studi di storia del diritto*, II, Milano, 1999, pp. 151-301; Liotta, F., “*Constitutio in basilica beati Petri*”, in *Federico II. Enciclopedia Federiciana* (http://www.treccani.it/enciclopedia/constitutio-in-basilica-beati-petri_%28Federiciana%29/); Id., “Federico II, la *Constitutio in basilica beati Petri* e il *Liber Augustalis*”, *Gli inizi del diritto pubblico*, 2. Da

was accepted by Frederick II, and he promulgated it on November 22nd 1220 alongside his solemn crowning, underlining his good relationship with the Pope and his adjustment to canonical law¹⁸. In this law, besides the recognition of the *libertas ecclesiae* principle, some rules were issued to repress heresy, the right of shipwreck was condemned (whereby anybody who had been shipwrecked was with impunity deprived of what they possessed), some provisions were taken in tutelage of the peasants, and finally the right of ‘albinaggio’ was excluded. This last group of rules was formulated inside the Roman Curia, on the base of a shared conception; that is, in order to obtain the imperial protection - confirmed by very serious temporal sanctions - in support of some kinds of people, who had already been under the protection of the Church for centuries, either through the Peace and Truce of God or in the various Church Councils, too¹⁹.

Against the ‘albinaggio’ right was issued the *constitutio Omnes peregrini*, which recognized to the foreigners such rights as the faculty of staying wherever they liked most and to express their will; if they died without leaving any disposition as far as their will, their properties should not have passed to their host, but rather to the local bishop. The latter should have taken the care of giving the possessions to the lawful heirs or using them for pious purposes. Strict punishment was expected for all offenders: the host had to give back to the bishop threefold of what he had kept for himself and those who hindered the foreigner in preparing his will were punished by the loss of the *testamenti factio*. Finally, it was underlined that the disposition would derogate any differing statute, *consuetudo* and privilege. Below we present the text:

“Omnes peregrini et advene libere hospitentur ubi voluerint; et hospitati, si testari voluerint, de rebus suis ordinandi liberam habeant facultatem; quorum ordinatio inconcussa servetur. Si vero intestati decesserint, ad hospitem nichil perveniat, set bona ipsorum per manus episcopi loci tradantur si fieri potest heredibus, vel in pias causas erogentur. Hospes vero si aliquid de bonis talium contra hanc nostram constitutionem habuerit, triplum episcopo restituat, quibus visum fuerit assignandum. Non obstante statuto aliquo aut consuetudine seu etiam privilegio que hactenus contrarium inducebant. Si qui autem contra presumpserint, eis de rebus suis testandi interdicimus facultatem, ut in eo puniantur in quo delinquerunt, alias, prout culpe qualitas exegerit puniendi”²⁰.

The religious and ecclesiastical inspiration of the law is clear, and it shares essential affinities with the dispositions delivered by Alexander III in the town of Benevento. Concretely the law decrees the foreigner’s free faculty of preparing a willing, granting him the legitimate succession principle; only in case the legitimate heirs cannot present themselves show up or be

Federico I a Federico II (G. Dilcher, D. Quaglioni, eds.), Bologna, 2008, pp. 113-130. Some remarks also in Quaglioni, D., “Politica e diritto al tempo di Federico II. L’«Oculus pastoralis» (1222) e la sapientia civile”, *Federico II e le nuove culture. Atti del XXXI Convegno storico internazionale, Todi, 9-12 ottobre 1994*, Spoleto, 1995, pp. 1-26. About the relationship between Frederick II and the Pope Honorius III and the negotiations that led to the promulgation of the *Constitutio in basilica beati Petri* see also Manselli, R., “Onorio III e Federico II (Revisione di un giudizio?)”, *Studi Romani* 11 (1963), pp. 142-159, especially pp. 148-152.

¹⁸ The text of the *Constitutio in basilica beati Petri* that we consider for these pages is the one of *Monumenta Germaniae Historica* (from now on MGH), *Leges, Legum sectio IV: Constitutiones et acta publica Imperatorum et Regum*, II (L. Weiland, ed.), Hannoverae, 1896 (repr. anast. 1963), § 85 (*Constitutio in basilica beati Petri*), pp. 107-109, where the *Constitutio* is divided in ten chapters. The document is read also in MGH, *Legum*, II (G.H. Pertz, ed.), Hannoverae 1837, pp. 243-245, and in Huillard-Bréholles, J.-L.-A., *Historia diplomatia Friderici secundi*, II.1, Parisiis, 1852, pp. 2-6, where a distribution of the constitution in nine laws or chapters is accepted; also in Theiner, A. (ed.), *Codex diplomaticus domini temporalis Sanctae Sedis*, I: 756-1334, Roma 1861 (repr. anast 1964), doc. XCIII, pp. 59-61.

¹⁹ De Vergottini, *Studi sulla legislazione imperiale*, pp. 124-126.

²⁰ MGH, *Leges, Legum sectio IV: Constitutiones et acta publica Imperatorum et Regum*, § 85, p. 109.

found, the foreigner's inheritance is transferred for pious purposes, according to the bishop's discretion. This eliminated both the call of the succession of the imperial treasury or of the towns, or the single host, where the *de cuius* had died: in none of these cases in fact, not even in part, was allowed their intervention in the succession. In addition, it must be considered that in the classical Roman meaning the word *peregrini* meant foreigners, that is, all those who would travel for different reasons, like the word *advenae*. During the Medieval age instead the word pilgrim (*peregrinus*) started to be used in the current meaning of the word, that is, mainly to talk about those who travelled for religious purposes²¹.

The *Constitutio in basilica beati Petri*, according to the use developed by Pope Innocent III in his *Compilatio III* in 1209, was immediately sent to the masters and scholars of the *Studium* of Bologna, in order to introduce it into the *Corpus iuris civilis* 'sub congruentibus titulis', making universal the use of the application ("quatinus eas faciatis in vestris scribi codicibus et de cetero legatis solenpniter tamquam perpetuis temporibus valituras")²². Thus the law was transposed by the Bolognese school of law through double aspects: it was disjointed into eleven *Authenticae*, included according to the subject inside the *Codex*, only at a later time it would gain again its documentary wholeness, being brought back entirely in the so-called *Decima collation* at the end of *Libri feudorum*²³.

The attention of the Popes towards the topics of the *Constitutio* was utmost, and the Pope took care of its promulgation through a confirmation formula which said: "has leges a Friderico Romanorum imperatori filio nostro carissimo pro utilitate omnium christianorum editas laudamus et approbamus tamquam in eternum valituras"²⁴. But the Curia did not want to stop here and wanted to introduce the rule framework kept by the imperial provision also in the canonical legislation. For this purpose, the text of the *constitutio* was almost entirely accepted in the *Compilatio V*, the official canonical collection issued by Honorius III on 2nd May 1226, in this case too with the single chapters adjusted according to 'sub competentibus titulis'²⁵. Specifically, the *constitutio Omnes peregrini* was used to draft the chapter XIII *De testamentis* of the Book III (*Comp. V*, 3.13un.)²⁶. The formal receipt of the Imperial law of 1220 as a general law of the Church had short life though, because none of the chapters of the *Compilatio V* that held Frederick II's disposals converged in the *Liber Extra* enacted by Pope Gregory IX in 1234,

²¹ De Vergottini, *Studi sulla legislazione imperiale*, pp. 124-125 nn. 2 e 3, which underlines the difficulty to identify the precise moment where occurred the passage in the Medieval sources of the word from the first to the second meaning. About this aspect, and more generally as far as the condition of the pilgrim (*peregrinus causa religionis*) and the protection offered by Medieval laws see Garrison, F., "A propos des pèlerins et de leur condition juridique", *Études d'histoire du droit canonique dédiées à Gabriel Le Bras*, II, Paris, 1965, pp. 1165-1189; Gilles, H., "Lex peregrinorum", *Le pèlerinage*, Toulouse, 1980, pp. 161-189; Schmugge, L., "Die Pilger", *Unterwegssein im Spätmittelalter* (P. Moraw, ed.), Berlin, 1985, pp. 17-47.

²² MGH, *Leges, Legum sectio IV: Constitutiones et acta publica Imperatorum et Regum*, § 86, p. 110.

²³ On the formation of the *Authenticae Codicis* taken from the constitution by Frederick II see Liotta, "Vicende bolognesi della *Constitutio*...", pp. 83-87.

²⁴ Potthast, A., *Regesta Pontificum Romanorum inde ab a. post Christum natum MCXCVIII ad a. MCCCIV*, I, Berolini, 1874, p. 559 sub 6408; Presutti, P., *Regesta Honorii papae III*, I, Romae, 1888, p. 463 sub 2786; MGH, *Leges, Legum sectio IV: Constitutiones et acta publica Imperatorum et Regum*, p. 110 n. 1.

²⁵ On the reception of the *Constitutio in basilica beati Petri* in the *Compilatio V* see De Vergottini, *Studi sulla legislazione imperiale*, pp. 166-168; Liotta, "Vicende bolognesi della *Constitutio*...", pp. 87-90.

²⁶ Friedberg, E., *Quinque Compilationes Antiquae nec non Collectio canonum Lipsiensis*, Lipsia, 1882 (repr. Graz, 1956), p. 173. On Honorius III see Carocci, S., Vendittelli, M., "Onorio III", *Enciclopedia dei papi*, pp. 350-362; *Nuovi studi su Onorio III* (C. Grasso, ed.), Roma, 2017.

as an exclusive source of the right of the Church²⁷. The relationship between the Pope and the Emperor had totally decayed, and the contents of the *Constitutio in basilica beati Petri* were assigned only to the *Libri legales*.

3. Medieval legal doctrines

In executing the imperial disposals, the Bolognese masters included the *Omnes peregrini* in the *Codex* in the book VI, Title 59 (*Communia de successioneibus*), after the Law 10 (*Auth. post Cod. 6.59.10*), where is a constitution by *Diocletianus* and *Maximianus* and this rules out the *nutritores* from the succession²⁸. These are considered alike to the hosts, who cannot acquire any right over the succession of the deceased foreigner, for the only reason that they hosted him for a short period. Already the glossator Azo in his *Summa Codicis*, that traces back to 1208-1210, commenting the *Cod. 6.59.10* and expressing his disapproval to the custom, according to which the properties of the deceased guest went to the host, had established a relationship between the succession rights claimed by the *nutritores* and those of the *hospites* of his period²⁹. It appears then coherent, considering this latter approach, the incorporation of the *Omnes peregrini* after the fragment of the *Cod. 6.59.10*. The aversion towards the custom, whose existence is reiterated also by Hugolinus de Presbiteris³⁰, expressed some positive judgment by the jurists of the school for the humanitarian inspiration of the law³¹.

The same support is found in the *Magna Glossa* by Accursius, the first relevant work which takes into consideration the insertion of the Frederician law inside the *Corpus iuris civilis*³².

²⁷ De Vergottini, *Studi sulla legislazione imperiale*, pp. 172-174.

²⁸ *Cod. 6.59.10*: “Nutritoribus hoc nomine nec civili nec honorario iure defertur hereditas”.

²⁹ Azo, *Summa super Codicem*, ed. Papie, 1506 (repr. anast. in *Corpus Glossatorum Juris Civilis*, II, Augustae Taurinorum, 1966), ad rubr. *Communia de successioneibus* (*Cod. 6.59*), p. 262: “...si ergo bononiensis pauperes recepit velut hospes non ideo si apud eum decedat potest ei succedere, licet quidam inducant contrariam consuetudinem ut vidi de facto cum socii morientis peterent res mortui quia ad parentes eius deferre volebant”. See also what it is reported in the *Lectura Codicis*, ed. Parisiis, 1577 (repr. anast. in *Corpus glossatorum Juris Civilis*, III, Augustae Taurinorum, 1966), ad *Cod. 6.59.10*, v. *Nutritoribus*, p. 545: “...ergo multo minus defertur illis qui hospites recipiunt, sed tamen contrarium est per consuetudinem in multis locis”. On Azo (...1190-ante 1233) and his works, news and bibliographical references at Conte, E., Loschiavo, L., “Azzone”, *Dizionario Biografico dei Giuristi Italiani (XII-XX secolo)* (I. Birocchi, E. Cortese, A. Mattone, M.N. Miletto, eds.), Bologna, 2013 (from now on DBGI), I, pp. 137-139.

³⁰ Hugolinus de Presbiteris, *Lectura Codicis*, ad *Cod. 6.59.10*, v. *Nutritoribus*: “...hospitalitatis tamen iure quidam de consuetudine sibi vendicant successionem. h.” (ms. Praha, Knihovna Národního Muzea, XVII.A.10, f. 171ra). See also a gloss of the *Apparatus* to the *Codex*, ad *Cod. 6.59.10*, v. *defertur*: “hospitalitatis tamen iure quidam de consuetudine sibi vendicant successionem. h.” (mss. Wien, Österreichische Nationalbibliothek, 2268, f. 181va, and Berlin, Staatsbibliothek Preußischer Kulturbesitz, lat. fol. 408, f. 121rb). For the presence in these manuscripts of the *apparatus* of Hugolinus and the initials “h” as an identification of the glossator see Dolezalek, G., Mayali, L., *Repertorium manuscriptorum veterum Codicis Iustiniani*, I, Frankfurt am Main, 1985, pp. 76-77, 64-65, 167-168, 450-451; Speciale, G., *La memoria del diritto comune. Sulle tracce d'uso del Codex di Giustiniano [secoli XII-XV]*, Roma, 1994, pp. 248 e 339). On Hugolinus de Presbiteris (Presbyteri) see Betancourt, F., “Hugolino”, *Juristas universales, I: Juristas antiguos* (R. Domingo, ed.), Madrid 2004, pp. 389-391; Chiodi, G., “Ugolino Presbiteri”, DBGI, II, pp. 1194-1197.

³¹ Di Renzo Villata, “La *Constitutio in Basilica Beati Petri*...”, pp. 197-199.

³² Accursius, *Glossa in Codicem*, ed. Venetiis, 1488 (repr. anast. in *Corpus Glossatorum Juris Civilis*, X, Augustae Taurinorum, 1968), ad *Cod. 6.59* (*Communia de successioneibus*).10, ad v. *Nutritoribus*, p. 407b: “...sed iure hospitandi vel hospitalitatis ex consuetudine quidam vendicant sibi successionem quod hodie corrigitur per auctoritatem nouam Federici quam hic lege Omnes peregrini et cetera auctoritate”. On Accursius (Accorso) (1180 ca.-ante September 1262) and the *Magna Glossa* see Weimar, P., “Accursius”, *Juristen. Ein biographisches*

The glossator does not pause for long on the contents of the *Omnes peregrini* and, starting with the law that prescribed that “*omnes peregrini et advene libere hospitentur ubi voluerint*”, interprets the adverb *libere* referred to the one who hosts and he underlines that *peregrini et advenae* could stay wherever they like most, especially at the place of people who wanted to host them, not persisting any general hosting obligation³³. They are instead removed from the protection of the rule *deportati vel relegati*, obliged to stay in the place awarded to them as a penalty³⁴. Thanks to the action of the Emperor, *peregrini* and foreigners could finally also prepare a will, but the jurist clarifies that they should respect the rules of the *ius commune*, in accordance to the rules of the *ius romanorum*³⁵.

It should be noted that from the Accursius exegesis the tendency to compress the field effectiveness of the law starts to occur, showing the restrictive aspect of the requirements, supporting the interests of the single municipal realities. Odofredus, who reports about the spread in the *Regnum Apuliae* of the abrogated custom of Frederician measures³⁶, and he exactly reports too about the contents of the law, underling though that it was to be implemented to those who would undertake a ‘*bona peregrinatio*’. That is how the application of the law started to be confined to some kind of journeys only, and to some kind of *peregrini* only as well. Moreover, the author also underlines that this kind of subjects should have been hosted and stay in the places where they would stop *secure*³⁷. The point of view was shared by Cynus from Pistoia, who, retracing the essential items of Accursius’ thought, means precisely the

Lexikon. Von der Antike bis zum 20. Jahrhundert (M. Stolleis, ed.), München, 2001, pp. 18-19; Morelli, G., “Accursio (Accorso)”, *DBGI*, I, pp. 6-9; Ead., “Accursio”, *Autographa*. I.1: *Giuristi, giudici e notai (sec. XII-XVI med.)* (G. Murano, ed.), Bologna, 2012, pp. 15-19; Sarti, N., “Accursio”, *Enciclopedia italiana di scienze, lettere ed arti. Il contributo italiano alla storia del pensiero. Ottava Appendice. Diritto* (P. Cappellini et al., eds.), Roma, 2012, pp. 47-50.

³³ *Ibid.*, ad v. *Libere*, p. 408a: “apud eos qui volunt recipere, nam nemo cogitur recipere, ut ff. nau<tae> cau<pones> l. i § i (*Dig.* 4.9.1.1)”.

³⁴ *Ibid.*, ad vv. *Omnes peregrini*, p. 408a: “Omnes peregrini in bona parte accipe ut Insti. de her<edibus> insti<tuendis> § fi. (*Inst.* 2.14.12), non in deportatis vel relegatis sicut accipiuntur supra de her<edibus> insti<tuendis> l. i (*Cod.* 6.24.1), qui non hospitantur ubi volunt, sed tenere debent insulam sibi assignatam, alias puniuntur, ut eis augeatur pena, ut ff. de penis l. relegati (*Dig.* 48.19.4)”.

³⁵ *Ibid.*, ad v. *Liberam*, p. 408a: “dummodo secundum ius commune testentur, ut supra de inof<ficioso> tes<tamento> l. si quando (*Cod.* 3.28.35), nec obstat quod nil videatur facere hec concessio, cum et hoc ante habebant, ut ff. de leg<atis> i si quando (*Dig.* 30.109.1), quia immo de consuetudine non habebant, ut hic subiciit”.

³⁶ Odofredus, *Lectura super Codice*, II, Lugduni, 1552 (repr. anast. Bologna, 1969), ad *Cod.* 6.59.10, v. *Nutritoribus*, f. 89ra: “Or signori vos habentis hic unam auth. signatam, sive quandam constitutionem Frederici Imperatoris secundi, que incipit Omnes peregrini et cetera, quam signavi super legem istam, eo quod in quibusdam prouinciis, hospites ex consuetudine vendicabant sibi successionem eius qui decedebat ibi ab intestato et maxime in regno Apulie erat talis consuetudo, quod hec auth. prohibet”. *Di Renzo Villata, “La Constitutio in Basilica Beati Petri...”*, p. 213. On Odofredus (XIII sec. *ineunte*-1265) see Spagnesi, E., “Odofredo Denari”, *DBGI*, II, pp. 1450-1452.

³⁷ *Ibid.*, ad *Auth. Omnes peregrini post Cod.* 6.59.10, f. 89ra: “In constitutione ista dicitur quod omnes peregrini et advene secure hospitentur ubi voluerint; et hospitati si voluerint, testentur de rebus suis quomodo voluerint; sed si non voluerint testari et decedant intestati, hospitor suus non succedet ei in aliquo; sed episcopus illius loci debet accipere bona ipsius; et querere si habet agnatos vel cognatos; et eis illa bona assignare si potest alias idest si non inuenit agnatos vel cognatos, debet dare pauperibus per anima sua; et si dominus hospes vult usurpare et tenere aliquid de bonis ipsius contra istam constitutionem, ipse tenetur restituere in triplum episcopo; non obstante aliquo statuto loci, vel etiam aliqua consuetudine, et non obstante aliquo privilegio quod sit contrarium huic constitutioni. Et qui contra hanc constitutionem fecerint, banno imperiali supponuntur et etiam testandi de bonis suis eis interdiciamus facultatem, textus Omnes peregrini subaudi bona peregrinatione, textus facultatem scilcet testandi ut ipsi in eo puniantur in quo delinquerint”.

adverb *libere* in the sense of *secure* used inside the law (*Omnes peregrini et advene libere hospitentur*): “*libere idest secure*”³⁸.

In the canonistic law the rule did not have a wide prominence, and this was supposedly due to the poor spreading of the *Compilatio V*, and this was testified by the few manuscripts kept of this text, and the few masters who glossed it³⁹. The contents of the *Omnes peregrini* in terms of the ‘albinaggio’, and also the other rules of the *Constitutio in basilica beati Petri* against the *ius naufragii* and in support of farmers, are reported in the chapter *De peregrinantibus* of the *Summa Aurea* by Henry from Susa, that traces back to the mid XIII century. Cardinal Hostiensis, as a matter of fact, after contemplating who should be considered as *peregrinans*, acknowledges the existence of several kind of *peregrini*, with reference to the different reasons for which one decides to travel, and the different advantages and benefits related to them⁴⁰.

In the first half of 1300, the famous commentator Bartolus from Sassoferrato⁴¹, leaving aside the problems related to the succession, limits himself to the reading of the Frederician

³⁸ Cynus Pistoriensis, *In Codicem et aliquot titulos ... Doctissima Commentaria*, II, Francoforti ad Moenum, 1578 (repr. anast. Torino, 1964), ad *Auth. Omnes peregrini* post *Cod.* 6.59.10, f. 432ra: “In ista authent. sic proceditur. Primo enim statuit. Secundo ponit. Nota quod peregrini ubicunque volunt, libere possunt hospitari, dum tamen sponte recipiantur, ut dicit glos. et ideo debet exponi libere, id est secure. Secundo nota quod liberam habent testandi facultatem, dummodo legitime testantur, ut l. si quando supra de inof<ficioso> test<amento> (*Cod.* 3.28.35) et nota supra de sacrosan<ctis> eccl<esiis> l. i (*Cod.* 1.2.1). Tertio nota quod si moriantur intestati, bona traduntur Episcopo. Quarto nota quod si hospes de bonis suis aliquid subtrahit, tenetur in triplum, quod applicatur Episcopo, ut expendat quibus visum fuerit. Quinto nota quo lex reprobatur statute et consuetudines iniquas, sic in *Auth. Cassa et irrita* (*Auth. Cassa et irrita* post *Cod.* 1.2.12)”. On Cynus (vel Cinus) de Sighibuldis (vel Sinibuldis) from Pistoia (1270 ca.-1336) and his *Lectura Codicis*, completed in 1314, see Murano, G., “Cino da Pistoia”, in *Autographa*. I.1, pp. 35-43; Maffei, P., “Cino Sinibuldi da Pistoia”, *DBGI*, I, pp. 543-546.

³⁹ Kuttner, S., *Repertorium der Kanonistik (1140-1234). Prodromus corporis glossarum*, I, Città del Vaticano, 1937, pp. 382-385; Boyle, L.E., “The *Compilatio quinta* and the registers of Honorius III”, *Bulletin of Medieval Canon Law* 8 (1978), pp. 9-19; most recently Pennington, K., “Decretal Collections 1190-1234”, *The History of Medieval Canon Law in the Classical Period, 1140-1234. From Gratian to the Decretals of Pope Gregory IX* (W. Hartmann, K. Pennington, eds.), Washington D.C., 2008, pp. 316-317.

⁴⁰ Henricus de Segusio, *Summa Aurea*, ed. Venetiis, 1574 (repr. anast. Torino, 1963), lib. II, ad rubr. *de peregrinantibus*, coll. 842-843: “Quis intelligitur peregrinans? Quantum ad hoc, de quo hic queritur, hoc ideo dico: quia largo modo intelligitur peregrinans, quicumque aliquo exiens proficiscitur, talis enim quousque ad locum suum redierit, peregrinari intelligitur... Et sequitur hic tamen adde, quod peregrini et advene possunt, ubi voluerint, hospitari libere et de rebus suis testari, quod si intestati decedant, ad hospitem nihil perveniet, sed per manu episcopi heredibus, si fieri potest, alias in pias causas bona sunt eroganda. Si vero hospes aliquid retinuerit, in triplum episcopo reddat, ubi iustum fuerit assignandum, non obstante contraria consuetudine, privilegio vel statuto; si quis contravenerit, inconstituta tabilis sit, ut puniatur in quo deliquit, alias est, prout culpae qualitas exegerit, puniendus, ut in constitutione Federici ad decus et decorem § Omnes peregrini, quam aliqui habent signatam loco *auth. C. communia de successionibus auth. omnes peregrini* (*Auth. Omnes peregrini* post *Cod.* 6.59.10)”. See also Piergiovanni, V., “La ‘peregrinatio bona’ dei mercanti medievali: a proposito di un commento di Baldo degli Ubaldi a X 1.34”, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Kan. Abt.* 74 (1988), pp. 348-356, in particular pp. 351-353. On the legal status of foreigners in medieval canonistic science see Onclin, W., “Le statut des étrangers dans la doctrine canonique médiévale”, *L’Étranger. Foreigners*, II, pp. 37-64. On cardinal Henry from Susa (*Henricus de Segusio*), said Hostiensis (1200 ca.-1271) see Ferrer Ortiz, J., “Enrique de Susa (el Ostiense)”, *Juristas universales*, pp. 444-448; Bambi, F., “Enrico da Susa, detto l’Ostiense”, *Il contributo italiano alla storia del pensiero*, pp. 86-89; Pennington, K., “Enrico da Susa, cardinale Ostiense”, *DBGI*, I, pp. 795-798.

⁴¹ On Bartolus from Sassoferrato (1313/14-1357), considered as one of the most important and celebrated jurist of his age, and on his wide scientific production see García Garrido, M.J., “Bartolo de Sassoferrato”, *Juristas universales*, pp. 524-530; Mausen, Y., “Bartole de Saxoferrato”, *Dictionnaire des grandes oeuvres juridiques* (O. Cayla, J.-L. Halpérin, eds.), Paris, 2008, pp. 29-35; Rossi, G., “Bartolo da Sassoferrato”, *Il contributo italiano alla storia del pensiero*, pp. 51-54; Murano, G., “Bartolo da Sassoferrato”, *Autographa*. I.1, pp. 66-71; Lepsius, S., “Bartolo da Sassoferrato”, *DBGI*, I, pp. 176-180; *Bartolo da Sassoferrato nella cultura europea tra Medioevo e*

constitution, considering it suitable for those subjects who would travel for religious matters and who, as it seems, would face horrible inconveniences by the Romans in particular during the celebrations related to the Jubilee in the Holy City⁴². These *peregrini*, according to the jurist, should have been free from reprisals; in addition, starting an interpretative course which would have much of support, he spots in the parcel and in the stick (*scarsella et burdone*) the distinguishing features of this kind of travelers:

“Per hoc quod dicit peregrini, et advenae, libere hospitentur ubi voluerint: dicitur quod peregrini, qui vadunt in peregrinatione, non possunt capi pro repraesaliis: quia vult Imperator, quod libere hospitentur, ubi velint quasi dicat nullus potest eis inferre molestias et ideo in signum peregrinationis portant scarsellam et burdonem”⁴³.

The same thought is worded by Bartolus in other circumstances too, in particular in the *Tractatus de repraesaliis*, where he considers the reprisal institution⁴⁴. In this case too, the *constitutio Omnes peregrini* is referred only to those who travel for religious matters, and these are recognized by the possession of the typical objects of the *habitus peregrinorum*: *baculus* and *perula* (stick and parcel), just to use the vocabulary employed by the author in his *Tractatus represaliarum*. In fact, these distinguishing features during the Medieval age were considered as such for those who used to travel for faith reasons, also taking into consideration the procedure according to which the pilgrims, before leaving, should go to the priest of the parish to obtain the blessing: according to a specific ritual (*assumptio baculi et perae*) the priest would bless the pilgrim, but first of all the priest would bless his stick and parcel, from which the pilgrim would have never been separated⁴⁵. It should be noted that also prior to Bartolus some municipalities would protect those foreigners, in the town for *peregrinationis causa*, from reprisals⁴⁶.

Rinascimento (V. Crescenzi, G. Rossi, eds.), Sassoferato, 2015; *Bartolo da Sassoferato nel VII centenario della nascita: diritto, politica, società. Atti del L Convegno storico internazionale (Todi-Perugia, 13-16 ottobre 2013)*, Spoleto, 2014; *Bartolo da Sassoferato a Siena nel VII centenario della nascita: manoscritti, incunaboli, cinquecentine* (E. Mecacci, M.A. Panzanelli Frantoni, eds.), Siena, 2014; *Conversazioni bartoliane: in ricordo di Severino Caprioli* (F. Treggiari, ed.), Sassoferato, 2018.

⁴² Di Renzo Villata, “La Constitutio in Basilica Beati Petri...”, pp. 237-238.

⁴³ Bartolus a Saxoferrato, *Commentaria in secundam Codicis partem*, Lugduni, 1547, ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 62va. In regard to the condition of the foreigner considering the system of the reprisals see also Morpurgo, “Sulla condizione giuridica dei forestieri...”, pp. 277-281. On reprisal see Pene Vidari, G.S., “Rappresaglia (storia)”, *Enciclopedia del Diritto*, 38, Milano, 1987, pp. 403-410.

⁴⁴ Bartolus a Saxoferrato, *Tractatus represaliarum*, in *Consilia, Quaestiones et Tractatus*, Basilea, 1588, p. 338a-b § 14: “Ad nonum quaeritur, an contra euntes ad indulgentiam possint represaliae exerceri? Respon. non, ut C. communia de success. Authent. Omnes peregrini (*Auth. Omnes peregrini* post *Cod. 6.59.10*), ibi, libere hospitentur ... et in signum huius propter eorum securitatem, ut cognoscantur qui sunt peregrini euntes ad indulgentiam, portent baculum, et perulam, sicut legati olivam portabant, ut l. sanctum ff. de rer(um) div(isione) (*Dig. 1.8.8*) et idem puto de famulis, et de servitoribus eorum”. In another *sedes* Bartolus says: “nota quod isti peregrini, qui vadunt ad indulgentiam Romam, vel Assisium, non possunt per civitates, per quas transeunt, conveniri, vel causa represaliarum capi ... facit C. communia de succes(sionibus) auth. omnes peregrini (*Auth. Omnes peregrini* post *Cod. 6.59.10*) in eo quod dicitur” (Bartolus a Saxoferrato, *Commentaria in primam Digesti veteris partem*, Lugduni, 1547, ad *Dig. 5.1.2.3*, v. *Legatis*, f. 169va). As far as Bartolus thought on this purpose see also Gilles, “Lex peregrinorum”, pp. 180-181.

⁴⁵ Naz, R., “Pèlerinage”, *Dictionnaire de Droit Canonique*, VI, Paris, 1957, coll. 1313-1317; Garrison, “A propos des pèlerins et de leur condition juridique”, pp. 1168-1177. Indicatively see also Cardini, F., *In Terrasanta. Pellegrini italiani tra Medioevo e prima età moderna*, Bologna, 2002, p. 345; Cherubini, G., *Pellegrini, pellegrinaggi, Giubileo nel medioevo*, Napoli, 2005, pp. 31-32.

⁴⁶ *Statuti del Comune di Padova dal secolo XII all'anno 1285* (A. Gloria, ed.), Padova, 1873, Lib. II, rubr. XXXII (*De repraesaliis*), p. 236, § 709: “Potestate eodem et millesimo. Peregrini omnes sive romei euntes in

The inclination to formulate theories in support of the municipalities is found under a different profile by Baldus de Ubaldis. Even better Baldus, reasoning *a contrario* basing on the specialty of the imperial cassation wording of the law, acknowledges towards the *peregrini et advenae* the validity of a *bona consuetudo*, like, for example, the one that provided that the municipal authorities distribute the properties of the subjects protected by the rule in order to nourish prisoners⁴⁷. Even before Baldus, also Albericus de Rosciate meant the *Omnes peregrini* as a measure that tackled bad customs, safeguarding, instead, each *bona consuetudo* pursued by the municipalities⁴⁸. The confiscation of properties by reprisals remained absolutely illegal⁴⁹.

It is so claimed the principle according to which the subjects protected by the *Omnes peregrini*, besides enjoying the benefits given to them as far as succession matters, have to stay where they are in complete safety. These are the *peregrini causa religionis*, those who can simply be identified by their equipment characterized by specific *insignia* such as stick and parcel, as both Angelus de Ubaldis, Baldus' brother, or Bartholomeus from Saliceto underline⁵⁰. Thus these

servicio dei habentes habitum peregrinum sint affidati in padua et paduano districtu in personis et rebus stando, eundo et redeundo, non obstante aliquo statuto represaliarum vel aliquo alio statuto. Et si pro aliquibus questionaretur vel dubitaretur illos peregrinos non esse, sit in cognitione venerabilis patris domini episcopi padue". See also *Statuti di Bologna dell'anno 1288* (G. Fasoli, P. Sella, eds.), vol. II, Città del Vaticano 1939, Lib. VI, rubr. XXXV (*De forensibus peregrinantibus non impediendis. Rubrica*), p. 31: "Ordinamus quod aliquis forensis, eundo vel redeundo per civitatem vel comitatum Bononiae peregrinationis causa, non possit vel debeat impediri in avere vel persona occasione alicuius represalie vel debiti quod deberetur alicui habitanti in civitate Bononie vel districtu. Et sit precisum". Other examples of statutes that exclude reprisals for pilgrims in Pertile, A., *Storia del diritto italiano dalla caduta dell'Impero romano alla codificazione*, I, *Storia del diritto pubblico e delle fonti*, Torino 1896², p. 293.

⁴⁷ Baldus de Ubaldis, *In Sextum Codicis Librum Commentaria*, ed. Venetiis, 1599, ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 196ra: "Nunquid ergo consuetudo potest ligare peregrinos et advenas. Hic est arg. quod sic nam cum hoc sit speciale, ergo in contrarium est ius commune, dic quod non potest imponere necessitate consensui. Sed circa res, quas secum ferunt, bene valet bona consuetudo, puta quod debent per syndicum civitatis dispensari pro alimentis carceratorum, nam cum ibi moriantur, perpetuo etiam ibi domicilio funguntur, sicut in simili etiam dicimus in c. beneficium de regularibus lib. 6 (VI, 3.14.4)". See also Di Renzo Villata, "La Constitutio in Basilica Beati Petri...", p. 250. On Baldus de Ubaldis (1327-1400), jurist of great authority and fame, see García Garrido, M.J., "Baldo de los Ubaldos (Baldus de Ubaldis)", *Juristas universales*, pp. 530-534; Bambi, F., "Baldo degli Ubaldi", *Il contributo italiano alla storia del pensiero*, pp. 55-58; Murano, G., "Baldo degli Ubaldi", *Autographa*. I.1, pp. 103-109; Cortese, E., "Baldo degli Ubaldi", *DBGI*, I, pp. 149-152.

⁴⁸ Albericus de Rosate, *In Secundam Codicis Partem Commentaria*, ed. Venetiis, 1585 (repr. anast. Bologna, 1979), ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 94ra: "Allegatur saepe quod statutum, vel consuetudo, cui derogatur per l. non valet pro hoc supra de furtis Auth. Navigia (*Auth. Navigia* post *Cod. 6.2.18*)...mala enim consuetudo non est consuetudo sed potius corruptela ...bona autem consuetudo non est civitatibus per principem auferenda...". On Albericus de Rosciate (also Rosate, 1290 ca.-1360) see Giazzi, E., "Alberico da Rosciate", *Autographa*. I.2: *Giuristi, giudici e notai (sec. XII-XV)* (G. Murano, ed.), Imola, 2016, pp. 86-92; Storti, C., "Alberico da Rosciate", *DBGI*, I, pp. 20-23.

⁴⁹ Baldus de Ubaldis, *In Sextum Codicis Librum Commentaria*, ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 196ra: "Item est arg. in ista authen. quod advenae et peregrini, vel eorum bona, non possunt capi pro repraesaliis civitatis, quod verum est propter adverbium, libere, quid est in textum".

⁵⁰ Angelus de Ubaldis, *In Codicem Commentaria*, Venetiis, 1579, ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 183va: "In textu ibi liberi hospitentur, dic non ergo poterunt capi pro repraesaliis, et hoc tenet Bar. in libello represaliarum (Bartolus a Saxoferrato, *Tractatus represaliarum*, p. 338a-b § 14). Cause ergo agunt peregrinantes, qui peregrinorum portant insignia, ut sic notorie peregrinantes appareant". Bartholomaeus de Saliceto, *Ad V. VI. VII. VIII et IX libri Codicis Commentarii*, Lugduni, 1560, ad *Auth. Omnes peregrini* post *Cod. 6.59.10*, f. 177vb: "In textu ibi, ubi voluerint, quasi dicat quod nullus eis inferat iniuriam, ideo in signum peregrinationis portant bordonem et scarsellam". On Angelus de Ubaldis (1327/28-1407) and Bartholomaeus da Saliceto (1330 ca.-1411) see Woelki, T., "Angelo di Francesco degli Ubaldi", *Autographa*. I.2, pp. 119-128; Frova,

peregrini have full faculty of willing, despite having to follow the rules of the *ius commune*. The expression ‘*liberam habeant facultatem*’ used in the law (*Omnes peregrini et advene ... si testari voluerint, de rebus suis ordinandi liberam habeant facultatem*), in fact, is considered by the jurists, already since Accursius, not in the sense that they can will outside of any legal prescripts, but rather that they are awarded the chance to express freely a faculty previously precluded to them⁵¹. But according to Angelus, this prescript in this precise context has to be tempered (*relaxata*), so, recalling the Roman rules referred to the *testamentum militis*, the author thinks that these subjects, whom he considers as ‘*pugnanti in servitium Dei et animarum*’, can will in front of two witnesses as well as soldiers, in turn ‘*pugnanti in servitium Imperatoris*’, the ancient *ius romanorum* had recognized to them some kind of benefits⁵². Coherent with this approach is also the purpose of the use of the pilgrims’ properties when their heirs are not found, used by the bishop who, in this sense, has to act *diligenter* for pious purposes⁵³. Being true that such *peregrini*, as once Accursius had taught, had to be welcomed by whomever wanted to host freely, not existing any obligation of hospitality, it is also true that, as Bartholomeus points out, a bigger obligation exists with reference to those who run the *ospitia*; yet, the jurist calls everyone up to the duty of hospitality *ex zelo charitatis* towards them: a kind of hospitality defined as *charitativa*, which is to be distinguished from that of *necessitativa* (*sed ex charitativa et ex zelo charitatis quilibet tenetur peregrinos recipere*)⁵⁴.

With great clarity of mind, the authoritative jurist Raphael Fulgosius, a student of Bartholomeus from Saliceto in Bologna, deviates from the previous trends. First of all he refutes the accursiana theory, according to which the confined had to be excluded from the rule, since *peregrini in malam partem*, because these subjects, in keeping with the *Institutiones Justiniani*, would not lose their citizenship, and so they should have been considered as *peregrini*, in the sense of foreigners, because *extranei a civitate romana*⁵⁵. According to Fulgosius, in fact, unlike the

C., “Angelo degli Ubaldi sr.”, DBGI, I, pp. 68-71; Padovani, A., “Bartolomeo da Saliceto”, *Autographa*. I.2, pp. 106-114; Speciale, G., “Bartolomeo da Saliceto”, DBGI, I, pp. 185-187.

⁵¹ Bartholomaeus de Saliceto, *Ad V. VI. VII. VIII et IX libri Codicis Commentarii*, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 178ra*: “Querit glo. an sine solennitate iuris possunt testari et videtur quod sic propter verbum liberam hic positum ... Et ad verbum liberam rendet quod prius de consuetudine hanc libertatem non habebat. Alia contraria potest addere que ponuntur in d. l. si quando (*Dig. 30.1.109*) supra de inoffi<cioso> testa<mento> (*Cod. 3.28.35*)”.

⁵² Angelus de Ubaldis, *In Codicem Commentaria*, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 183va*: “In text. ibi, liberam habeant facultatem, dic ... quod peregrinus coram duobus testibus potest condere testamentum, quia omnis solennitas iuris civilis propter istud verbum, liberam, intelligitur relaxata ... nec video cur magis militi pugnanti in servitium Imperatoris, in testamenti factione quo ad relaxationem sollemnitans faveatur, quam pugnanti in servitium Dei et animarum, quae sunt corporibus praefereandae...”.

⁵³ *Ibid.*: “In textu ibi in pias causas erogentur, not. diligenter, quo dubi nescitur ad quem bona alicuius debeant pertinere, in dubio per episcopum debent in piam causam erogari et hoc ideo quia bona peregrinantium erant, quia cultui Dei vacabant”.

⁵⁴ Bartholomaeus de Saliceto, *Ad V. VI. VII. VIII et IX libri Codicis Commentarii*, ad *Auth. Omnes peregrini post Cod. 6.59.10, ff. 177vb-178ra*: “quod libere non possunt hospitari, ut ff. de fur<ti> adver<sus> nau<tas> cau<pones> sta<bularios> l. i § i (*Dig. 47.5.1.1*). Sol. ut in gl. ii scilicet quod hec autem intelligitur apud volentes eos recipere, non quod aliquis cogatur eos recipere et ut in contrario // vel hic dicit hospitalitate charitativa non de necessitativa ut ibi ... Sed solutio: quod si queratur in eo qui tenebat hospitium et ille regulariter non cogitur, ut in hac gl. fallit in militibus principis quos quilibet cogitur recipere nisi in hoc sit privilegiatus, ut l. i supra de epi<scopis> et cle<ricis> (*Cod. 1.3.1*) et ibi nota aut queritur in eo qui tenet hospitium et tunc cogitur ut d. l. i § fi. (*Dig. 47.5.1.6*) et hoc in hospitalitate necessitativa, sed ex charitativa et ex zelo charitatis quilibet tenetur peregrinos recipere, ut extra de emp<tione> et vend<itione> c. i (*X, 3.17.1*) adeo quod etiam clerici tenentur ut ibi et nota supra de epi<scopis> et cle<ricis> l. i (*Cod. 1.3.1*)”.

⁵⁵ Raphael Fulgosius, *In D. Iustiniani Codicem Commentariorum tomus secundus*, Lugduni, 1547, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 128ra*: “innuit hec glos. quod relegati appellantur peregrini in malam partem,

ruling approach in the doctrine, the cogency of the Frederician law did not have to be limited to the *peregrini causa religionis* only, since this was not the Emperor's aim, who, instead, using also the word *advenae*, meant to refer to all foreigners in general. Not only, the jurist also underlines that his predecessors had interpreted the adverb *libere* used in Frederician's ruling up to the point of theorizing the immunity from the reprisals of these subjects. Subjects who, in addition, according to Fulgosius, despite what can be argued through the reading of a text of the *Digestum*, the owners of the *ospitia*, as it seems, are not required to host⁵⁶.

The author also gives the example of '*stipendiarius vel scholaris*' coming from far countries, deceased in Italy leaving books and weapons, without any messenger sent from relatives to get their properties back. Thanks to the imperial law, the bishop now has the chance to use the deceased's properties to satisfy the creditors, sharing out the remains with the poor, and this would happen because *et ipsi advene sunt*. It should also be noted that, exceptionally, this law removes the properties of the foreigner deceased without making a will, which might be defined as '*bona vacantia*', to the revenue authorities. These properties then belong to said authorities through determination of the bishop, who, in this case, embodies the function of testamentary executor⁵⁷. As far as this matter is concerned, in contrast to what Baldus states, the jurist considers acceptable that the foreigner could name into his will the municipal authorities as testamentary executor, without violating the imperial law, which called for the bishop to gain this role only in the presence of successions *ab intestato*. Baldus, in fact, corrected in part what Guillaume Durand (known as the *Speculator*) said in *Speculum iudiciale*, where it was stated that the *Consules* and the *Consilium civitatis* could charge some subjects with the role of testamentary executor; but not in such a case, according to Baldus, because the provision of the imperial law that prevailed over statutes and customs could not be disproved not even by the measures taken by the municipal authorities⁵⁸. Finally, in support of his own thesis, Fulgosius

et non recte puto, quia illi sunt peregrini, qui sunt extranei a civitate Romana. Sed relegati non amittunt civitatem, ut § relegati Instit. quibus modis ius (*Inst.* 1.12.2) putrie (*sic!*) potest, sol. et l. sed si hac lege § sed si per peregrinationem ff. de in ius voca<ndo> (*Dig.* 2.4.10.6)". On Raphael Fulgosius (1367-1427) see Murano, G., "Raffaele Fulgosio", *Autographa*. I.1, pp. 145-147; Valsecchi, C., "Fulgosio, Raffaele", *DBGI*, I, pp. 913-915.

⁵⁶ *Ibid.*: "Sic ergo nota quod is qui tenet hospitium publice, non cogitur invitus advenam recipere, argumentum est tamen contra istam glossam, est textus in l. i versus fin. l. ff. fur<ti> adver<sus> naut<as> caupon<nes> stabul<arios> (*Dig.* 47.5.1.6). Et dicatis ut ibi colligatis a glossa, que se defendit. Ex hoc tamen responso dixerunt infra doctores singulariter per authen. concessam immunitatem a represaliis peregrinis, propter verbum, libere hospitentur. Et ideo in signum sue peregrinationis portant burdonium et scarselam, et propter hoc signum se defendant quod non videtur mihi de mente Federici, propter verbum, advene, quod generale est etiam ad non peregrinos, causa religionis tamen communiter ita accipitur per omnes". In this regard also Di Renzo Villata, "La Constitutio in Basilica Beati Petri...", pp. 266-267.

⁵⁷ *Ibid.*, f. 128ra-b: "In textu ibi erogentur. Nota hic duo singularia. Primum nota episcopum loci ubi moritur quis, esse executorem legitimum ab intestato successionis. Nota secundo casum singularem, ubi bona vacantia non deferuntur fisco. Et consyderaui quod hic casus per hanc authen. inductus produci possit in consequentiam tali exemplo. Aliquis stipendiarius vel scholaris, ex partibus remotissimis mortuus est hic intestato, non habens parentes agnatos vel cognatos, relictis hic libris suis vel armis suis, fieri potest agnatos suos consyderantes libros suos vel arma sua esse modice estimationis, non curant mittere nuncium propter magnas expensas in egritudine vel funere facta. Verisimiliter nunquid potest episcopus bona ista dispensare inter pauperes et creditoribus satisfacere et profecto esset sententia humana potius deferri quam fisco. Nam et ipsi advene sunt ut in l. si longius § fin. supra de iudiciis (*Dig.* 5.1.18) et si certum petatur l. cum filius (*Cod.* 4.2.?)".

⁵⁸ Baldus de Ubaldis, *In Sextum Codicis Librum Commentaria*, ad *Auth. Omnes peregrini* post *Cod.* 6.59.10, f. 196rb: "Et nota quod *Speculator* de instrumentum< edic<tionem> § nunc vero aliqua circa prin. ver. quid si testator (Guilelmus Durantis, *Speculum iudiciale*, Lugduni, 1556, Pars II, particula II, § *Nunc vero aliqua*, versiculo *Quid si testator*, f. 132va, n. 7) videtur dicere quod Consules et consilium civitatis possunt deputare executorem super executione testamenti, quod in casu istius aut falsum est, nam si non valet statutum, nec consuetudo loci, ergo multo minus decretum Consulium vel Potestati. Sed in aliis casibus dictum *Spe.* est verum et notabile, non tamen

recalls what was occurring in Venice, where the local *deputant procuratores sancti Marci ad executiones ultimarum voluntatum*⁵⁹.

During the first half of the 1400s, dwelling on the contents of the *Omnes peregrini* is Paulus de Castro, Baldus' student. Making comments about the *Cod.* 6.59.10, he retraces the reasons according to which Frederick II had issued the *Constitutio*, linked to the persecutions suffered by the *peregrini et advenae* dying in hospitals and hotels in Rome during the Jubilee year⁶⁰. Whilst recognizing that in the *authentica* both typologies of *personae* are mentioned (*peregrini et advenae*), the author thinks that the *peregrini* has anyway to be considered like *advenae* (that is foreigners), and this is why reference is to a single category of subjects alone: the *advenae peregrini*⁶¹. Evidently forcing the provision of Frederick's text and removing the conjunction between the two words, the jurist substitutes with a *unicum* what before was distinct. The modification can be now considered accomplished, the *constitutio* is referred to the 'pilgrims' only, that is, to those people who would travel for religious matters⁶². As Bartolus would teach, these subjects have to be protected from the reprisals first of all. Regarding their possibility of willing, Paulus weds Angelus de Ubaldi's theory, according to which these subjects could will in front of two witnesses, although he wants to specify that, in case they survive, the act loses its effectiveness⁶³.

officio episcopi potest derogari in his, que sunt in pias causas". On Guillaume Durand (Guilelmus Durantis), knows as the *Speculator* (1230 ca.-1296), see Viejo-Ximénez, J.M., "Guillermo Durando", *Juristas universales*, pp. 472-474; Roumy, F., "Durand (Durant, Durandi) Guillaume, l'Ancien, dit le *Speculator*", *Dictionnaire historique des juristes français (XII^e-XX^e siècle)* (P. Arabeyre, J.-L. Halpérin, J. Krynen, eds.), Paris, 2007, pp. 290-292.

⁵⁹ Raphael Fulgosius, *In D. Iustiniani Codicem Commentariorum*, ad Auth. *Omnes peregrini* post *Cod.* 6.59.10, f. 128rb: "Primo dicit *Speculator* in titulo de instrumentum edictione § nunc vero aliqua, in versiculo Quid si testator (Guilelmus Durantis, *Speculum iudiciale*, Pars II, particula II, § Nunc vero aliqua, versiculo *Quid si testator*, f. 132va, n. 7) dicit quod consulens vel consilium civitatis potest deputare executores ad exequendum ultimas voluntates. Nam dicit Bald. hoc non vendicat sibi locum in casu huius authentice, in aliis casibus tenebit dictum *Speculato*. dum tamen non deroget episcopi executioni. Nota propter Venetos, qui deputant procuratores sancti Marci ad executiones ultimarum voluntatum. Posset tamen dicit iudicio meo, quod si statutum vel consilium civitatis hoc disponderet, non derogaret authen. sue dispositioni statuti, quia statuit eo casu quo intestato decedat quis, quo casu nihil esset statutum".

⁶⁰ Pauls de Castro, *In secundam Codicis partem patavinae prelectiones*, Lugduni, 1547, ad *Cod.* 6.59.10, l. *nutritoribus*, f. 101va: "Tertio modo exemplificaretur in hospitalariis et etiam hospicibus recipientibus peregrinos et advenas, ut si ibi decedant bona mobi. que habent non applicentur eis sed eorum successoribus si habent alias applicantur fisco. Et quia in multis locis contrarium servabatur maxime Rome, ut dicit Bartolus et maxime in anno iubilei Imperator Federicus fecit auth. hic positam, scilicet omnes peregrini, tamen ibi male servatur". On Paulus de Castro (1360/62-1441) see Murano, G., "Paolo da Castro", *Autographa*. I.1, pp. 129-135; Cortese, E., "Paolo di (da) Castro", *DBGI*, II, pp. 1505-1507.

⁶¹ *Ibid.*, f. 101va-b: "Et nota secunum Angel. quod bene faciunt peregrinantes si portant signum peregrinorum et sic ipse et alii videntur restringere istam auth. solum ad illos qui peregrinantur devotionis causa ut euntes ad sanctum Iacobum vel Romam vel ad sepulchrum et quod non habeant locum in aliis viatoribus sed in contrarium facit tex. dum dicit et advene quod est verbum magis latum et sic videntur comprehendere omnes viatores sed posset restringi ad peregrinationes, quia omnes peregrini sunt advene et sit sensus quod advene peregrini et cetera".

⁶² See also Ascheri, "Lo straniero: aspetti della problematica giuridica", pp. 36-39; Romano, "La *constitutio Omnes peregrini*...", pp. 185-186.

⁶³ Paulus de Castro, *In secundam Codicis partem*, ad *Cod.* 6.59.10, l. *nutritoribus*, f. 101va: "Ex qua auth. nota pulchra primo quod tales peregrini non possunt capi pro represaliis, ut patet in prin. dum dicit libere hospitentur in isto ver. libere et ita tenet Barto. in tractatu represalium (Bartolus de Saxoferrato, *Tractatus represalium*, p. 338a-b § 14). Item nota dum dicit liberam habeant facultatem, nam per hoc dicit Ange. se tenere at alios tenuisse quod possunt testari coram duobus testibus sicut milites propter liberam facultatem eis datam, ff. de testamen(tor) mili(tis) l. i in princ. (*Cod.* 6.21.1). Item quod non habent servare statutum nec solennitatem loci ubi hospitantur et testantur, hoc verum si ibi moriantur, sed si supervivant, puto quod illud testamentum si alibi moriantur non habeat vires, quia cessat causa privilegii".

So, even though only through a doctrinaire way, foreigners remain totally excluded from the imperial law, and the feudist Jacobus Alvarottus shares the same point of view in the 15th century. Previously, Andreas de Isernia also touched on the *constitutio Omnes peregrini*, recording only some short considerations and legal references⁶⁴. Jacobus considers as safeguarded by the law only the “*peregrini in bona parte, sicut sunt isti, qui vadunt ad visitandum limina Apostolorum Petri et Pauli, vel sancti Iacobi, prout dicitur in simili*”. So, just like Accursius would teach, deported and confined people have to be ruled out, since they are instead *peregrini in mala parte*⁶⁵. Therefore, such *peregrini in bona parte* have to be protected from the reprisals and welcomed in the *hospitia* (*in quocunque hospitio solito recipere hospites*), because, according to Jacobus, who recalls in this regard opinions from Cynus and Bartolus, nobody should refuse to host them⁶⁶. Moreover the author weds the strictest interpretation made by the previous jurists, and, without acknowledging any kind of facilitating for them, he points out that they can will but only *dummodo testentur secundum formam iuris*⁶⁷. Finally, it seems acceptable and coherent with the purpose of the pilgrims journey that, by way of exception, their properties, when not claimed by their heirs, can be employed through the bishop for Christian charity purposes, instead of ending up in the hands of the local tax authorities, as the current *bona vacantia* rule would like⁶⁸.

4. Princely and statutory law and the ‘albinaggio’ overcoming

⁶⁴ Andreas de Isernia, *In usus feudorum commentaria*, Francofurti, 1598, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 820ra*: “Et ista est C. communia de successione Auth. Omnes peregrini removet ab usum et punit contra facientes, punit scilicet in eo in quo delinquitur, sic ff. de his quib. ut indignis Rescriptum (Dig. 34.9.6) de damno infecto Qui bona § si quis (Dig. 39.2.13.11), C. de exactionibus tributorum l. 2 (Cod. 10.19.2)...”. On the author (XIII sec.-ante ottobre 1316): Bellomo, M., “Andrés de Isernia (Andreas de Isernia)”, *Juristas universales*, pp. 485-487; Vallone, G., “Andrea da Isernia”, *DBGI*, I, pp. 61-63; Novarese, D., “Andrea d’Isernia”, in *Federico II. Enciclopedia Federiciana* (http://www.treccani.it/enciclopedia/andrea-d-iserניה_%28Federiciana%29/).

⁶⁵ Jacobus Alvarottus, *Lectura in usus feudorum*, Francofurti ad Moenum, 1587, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 289va*: “In text. ibi, peregrini. Accipias in bona parte, sicut sunt isti, qui vadunt ad visitandum limina Apostolorum Petri et Pauli, vel sancti Iacobi, prout dicitur in simili, Insti. de haereditibus instituentibus § fin. (Inst. 2.14.12). Non autem intelligas de relegatis vel deportatis, qui similiter appellantur peregrini, et sic in mala parte, ut C. de haereditibus instituentibus in l. i et in l. nec apud (Cod. 6.24.1 e 7). Quoniam isti tales non possunt libere hospitari ubi volunt, sed necessitantur ad habitandum in loco suae relegationis, vel deportationis, l. relegati ff. de poenis (Dig. 48.19.4)”. On Jacobus (Iacobus) Alvarottus (ante 1385-1453) see Zendri, C., “Alvarotti, Iacopo sr.”, *DBGI*, I, pp. 47-48.

⁶⁶ *Ibid.*: “Ibi, libere, id est secure. Ibi, voluerint, scilicet, in quocunque hospitio solito recipere hospites. Nam alias nemo compellatur recipere ut nota per glos. et doct. in l. i § i ff. naucaes cauponas stabularios (Dig. 4.9.1.1) ... Nota quod peregrini et advenae, non debent ab hospitalitate repelli, ut hic et in d. l. i § i ff. naucaes cauponas stabularios (Dig. 4.9.1.1) et per Cyn. in l. i C. de episcopali audientia (Cynus Pistoriensis, *In Codicem et aliquot titulos Commentaria*, ad *Cod. 1.4.1, f. 21rb*) et per Bar. in l. i § servi ff. furcti adversus naucaes cauponas stabularios (Bartolus a Saxoferrato, *Commentaria in secundam Digesti Novi partem*, Lugduni, 1547, ad *Dig. 47.5.1.5, ff. 133va-134rb*). Quod praestat arg. quod peregrini, qui sunt in peregrinatione, non possunt capi pro repraesaliis, secundum Bart. et Bald.”.

⁶⁷ Jacobus Alvarottus, *Lectura in usus feudorum*, ad *Auth. Omnes peregrini post Cod. 6.59.10, f. 289va*: “Ibi, facultatem, subaudi dummodo testentur secundum formam iuris, l. si quando C. de inofficioso testamento (Cod. 3.28.35)”.

⁶⁸ *Ibid.*: “Nota hic casum specialem, in quo bona vacantia non perveniunt in fiscum, sed in Christum, hoc est, in Episcopum loci, qui dispensat in pias causas, ut hic”.

It does not seem that the *constitutio Omnes peregrini* generated the desired effect, and the ‘albinaggio’ kept on being implemented. Furthermore, the contents of this law, besides not being included in the general law of the Church promulgated by the *Liber Extra*, they neither were replicated in the code wanted by Frederick II in 1231: the *Liber Constitutionum Regni Siciliae (Liber Augustalis)*⁶⁹, unlike the other humanitarian rules included inside the *Constitutio in basilica beati Petri* in order to protect the castaways and the farmers, transposed in different forms in the law of the Kingdom⁷⁰.

No traces of the welcoming of this *constitutio* have been found, not even in the various municipal statutes in northern and central Italy in this regard considered and tracing back to the XIIIth and XIVth centuries⁷¹. Among these the statutes of Lombardic towns of Brescia, Como, Bergamo and Milano⁷²; those of Treviso, Verona, Vicenza and Padova⁷³; as well as Alessandria, Vercelli and Torino⁷⁴; but also Parma, Piacenza, Ferrara, Reggio Emilia and Bologna⁷⁵. In Tuscany, those from Pisa, Pistoia, Arezzo and Firenze⁷⁶; in Umbria: Spoleto, Todi and

⁶⁹ On the *Liber Constitutionum Regni Siciliae* see the entry of Zecchino, O., “Liber Constitutionum”, *Federico II. Enciclopedia Federiciana* ([http://www.treccani.it/enciclopedia/liber-constitutionum_\(Federiciana\)/](http://www.treccani.it/enciclopedia/liber-constitutionum_(Federiciana)/)), con indicazioni bibliografiche; as well as Vallone, G., “Interpretare il *Liber Augustalis*”, in *Historia et ius* [www.historiaetius.eu] 13 (2018), paper 16, pp. 1-74.

⁷⁰ Romano, “La *constitutio Omnes peregrini*...”, pp. 186-191. The text of the *constitutio Navigia* regarding the shipwrecks finds confirmation in the *const. Rapinas (Constitutiones Regum Regni utriusque Siciliae* [G. Carcani, ed.], Neapoli, 1786, repr. anast. with introduction by A. Romano, Messina, 1992), lib. I, tit. XXIX, pp. 28-29. On how much of the *Constitutio in basilica beati Petri* is transposed in the *Liber Augustalis* also Liotta, “Federico II, la *Constitutio in basilica beati Petri*...”, pp. 120 ss.

⁷¹ On the statutes and the statutory Italian matter, the bibliography is very wide, we limit here to refer to the volumes of the *Bibliografia statutaria italiana 1985-1995* (G. Albini et al., eds.), Roma, 1998; *Bibliografia statutaria italiana 1996-2005* (E. Angiolini et al., eds.), Roma, 2009; *Bibliografia statutaria italiana 2006-2015* (B. Borghi et al., eds.), Roma, 2017.

⁷² *Statuti bresciani del secolo XIII, Statuta Civitatis Brixiae MCCCXIII, Antiquae collationes Statuti veteris Civitatis Pergami*, in *Historiae Patriae Monumenta*, XVI: *Leges Municipales, tomus II, pars altera*, Augustae Taurinorum, 1876; *Statuti di Como. Volumen Magnum* (G. Manganelli, ed.), 2 voll., Como, 1936-1945; *Lo statuto di Bergamo del 1331* (C. Storti Storchi, ed.), Milano, 1986; *Lo statuto di Bergamo del 1353* (G. Forgiarini, ed.), Spoleto, 1996. On the Statute of Milan tracing back to the half of the XIVth century see *Statuta Jurisdictionum Mediolani*, in *Historiae Patriae Monumenta*, XVI: *Leges Municipales, tomus II, pars prior*, Augustae Taurinorum, 1876; in the same volume it was consulted also the *Liber Consuetudinum Mediolani anno MCCXVI collectarum*.

⁷³ *Gli statuti del comune di Treviso sec. XIII/XIV* (B. Betto, ed.), 2 voll., Roma, 1984-1986; *Gli statuti veronesi del 1276, colle correzioni e le aggiunte fino al 1323 (Cod. Compostrini, Bibl. civica di Verona)* (G. Sandri, ed.), I, Venezia 1940; *Statuti di Verona del 1327* (S.A. Bianchi, R. Granuzzo, eds.), 2 voll., Roma, 1992; *Statuti del comune di Vicenza, MCCLXIV* (F. Lampertico, ed.), Venezia, 1886; *Statuti del Comune di Padova dal secolo XII all'anno 1285 (supra n. 46)*.

⁷⁴ *Codex statutorum magnifice Communitatis atque Dioecesis Alexandrinae (supra n. 12); Gli statuti del Comune di Torino del 1360* (D. Bizzarri, ed.), Torino, 1933. On the statutes of Vercelli see *infra* n. 92.

⁷⁵ *Statuta Communis Parmae anno MCCLV (Monumenta Historica ad provincias Parmensem et Placentinam pertinentia)*, Parmae, 1856; *Statuta Communis Parmae ab anno MCCLXVI ad annum circiter MCCCIV* (A. Ronchini, ed.), Parma, 1857; *Statuta Communis Parmae ab anno 1316 ad 1325*, Parma, 1858; *Statuta Communis Parmae anni 1347*, Parma, 1870; *Statuta Antiqua Communis Placentiae*, in *Statuta varia civitatis Placentiae*, Parma, 1860; *Statuta civitatis Ferrariae anno MCCLXXVII* (W. Montorsi, ed.), Ferrara, 1955; *Consuetudini e statuti reggiani del secolo XIII* (A. Cerlini, ed.), I, Milano, 1933; *Statuti di Bologna dall'anno 1245 all'anno 1267* (L. Frati, ed.), 3 voll., Bologna, 1869-1877; *Statuti di Bologna dell'anno 1288* (G. Fasoli, P. Sella, eds.), vol. I, Città del Vaticano, 1937, vol. II (*supra* n. 46); Trombetti Budriesi, A.L., *Lo statuto del Comune di Bologna del 1335*, Roma, 2008; *Gli statuti del Comune di Bologna degli anni 1352, 1357, 1376, 1379*, libri I-III (V. Braidì, ed.), Bologna, 2002.

⁷⁶ *Statuti inediti della città di Pisa del XII al XIV secolo* (F. Bonaini, ed.), 3 voll., Firenze, 1854-70; *I brevi del comune e del popolo di Pisa dell'anno 1287* (A., Ghignoli, ed.), Roma, 1998; *I costituiti della legge e dell'uso di Pisa (sec. XII)* (P. Vignoli, ed.), Roma, 2003; *Statuti di Pistoia del secolo XII* (F. Berlan, ed.), Bologna, 1882;

Perugia⁷⁷; then Ascoli Piceno, Macerata and other towns too⁷⁸. This would occur inside a general juridical framework which would see the foreigners as recipients of numerous limitations of their capacity, among which, in particular, the chance to purchase real estate⁷⁹. But it is also true that some towns which depended on trade started to introduce inside their statutes general rules to ensure parity of treatment for foreigners and citizens, just like what had occurred in Pisa since 1160⁸⁰.

We can read, instead, some dispositions in the towns of Siena and Viterbo. In the statute of Siena of 1262 and the one that goes back to the first years of 1300, it is established that the *peregrini* have the right to stay wherever they want to, and the very same is provided also in the coeval statute of the town of Ravenna⁸¹. After that, it is established that the properties of the *peregrinus* or the deceased intestate foreigner, must not go to the person who has hosted him, but rather to his travel companions, who have to promise to give the properties back to his heirs, or else they will go to the Town. It is as well established that these subjects can will, but in the presence of three witnesses only: three men of good reputation, and in this case the host will have to promise not to influence the dying man⁸².

Statuto di Arezzo (1327) (G. Camerani Marri, ed.), Firenze, 1946; *Statuti della repubblica fiorentina* (R. Caggese, ed.), 2 voll., Firenze, 1921.

⁷⁷ *Statuti di Spoleto del 1296* (G. Antonelli, ed.), Firenze, 1962; *Statuto di Todi del 1275* (G. Ceci, G. Pensi, eds.), Todi, 1897; *Statuti di Perugia dell'anno 1342* (G. Degli Azzi, ed.), 2 voll., Roma, 1913-1916; *Statuto del Comune di Perugia del 1279* (S. Caprioli, A. Bartoli Langeli, eds.), 2 voll., Perugia, 1996.

⁷⁸ *Statuti di Ascoli Piceno dell'anno MCCCLXXVII (Statuti del Comune e Statuti del popolo)* (L. Zdekauer, P. Sella, eds.), Roma, 1910; *Statuto del Comune di Macerata del secolo XIII* (R. Foglietti, ed.), Macerata, 1885. The following editions of statutes have been analysed: *Statuti di Chianciano dell'anno 1287* (L. Fumi, ed.), Orvieto, 1874; *Statuti di Volterra, I (1210-1224)* (E. Fumi, ed.), Firenze, 1951; *Statuti della Valdelsa dei secoli XIII-XIV* (A. Latini, ed.), I, Roma, 1914; Fumi, L., *Codice diplomatico della città d'Orvieto. Documenti e regesti dal secolo XI al XV*, Firenze, 1884; Calisse, C., *Statuti di Civitavecchia*, Roma, 1885; *Statuti della provincia romana. Vicovaro, Cave, Roccantica ...* (V. Federici et al., eds.), Roma, 1910; Andreani, L., *Gli statuti di Acqupendente (XIV-XIX)*, Acqupendente, 2004; Carbonetti Vendittelli, *Lo statuto del castello di Campagnano del secolo XIII*, Roma, 2006; Caprioli, M., *Lo statuto della città di Rieti dal secolo XIV al secolo XVI*, Roma, 2008.

⁷⁹ See Morpurgo, "Sulla condizione giuridica dei forestieri...", pp. 268-277; Pertile, *Storia del diritto italiano*, III, pp. 189-193; see also all the other studies regarding the legal status of the foreigners mentioned in the article.

⁸⁰ *I costituiti della legge e dell'uso di Pisa (sec. XII) (supra n. 82)*, par. *Nobis Pisanorum*, pp. 129-130. In this regard Storti Storchi, "Alcune considerazioni sul trattamento dello straniero", p. 130.

⁸¹ Zdekauer, L., *Il Constituto del Comune di Siena dell'anno 1262*, Milano, 1897, Distinctio II, rubr. XLVIII (*Ut liceat peregrinis hospitari, ubi voluerint*), p. 219: "Et liceat cuilibet peregrino hospitari ubicumque voluerit et de hospitio exire et alibi hospitari, ubicumque voluerit"; and *Il Constituto del Comune di Siena volgarizzato nel MCCCIX-MCCCX*, vol. I, Siena, 1903, Distinzione seconda, rubr. LXII (*Di quello medesimo*), p. 409: "Et sia licito a ciascuno peregrino albergare in qualunque luogo vorrà et de l'albergo escire". The provisions taken by Ravenna town can be read in *Statuto del secolo XIII del Comune di Ravenna* (A. Zoli, S. Bernicoli, eds.), Ravenna, 1904, § 324ter (*De hospitacione et navigio peregrinorum*), p. 149: "Item liceat peregrinis et romeis qui venerint ravennam, sive per terram sive per aquam venerint, hospitari ubicunque voluerint...".

⁸² Zdekauer, *Il Constituto del Comune di Siena dell'anno 1262*, Distinctio II, rubr. LXII (*De bonis peregrinorum defunctorum ab hospitibus restituendis*), pp. 218-219: "Et si in domo alicuius civis Senensis vel hospitatoris fuerit hospitatus aliquis peregrinus vel romerius vel alius transiens per stratam, et infirmabitur vel infirmatus esset et moreretur ab intestato, hospes nihil de bonis suis habere possit, qui cu meo esset vel essent, si voluerint iurare quod restituent ea omnia filiis vel heredibus defuncti. Et hoc intelligatur tantum de peregrinis et romeis. Si vero iurare noluerint vel noluerint, ipsa omnia pro communi et ad commune reducam. ... Si vero aliqua predictarum personarum fecerit dispositionem rerum suarum coram tribus testibus masculis bone fame, eius dispositio observetur; et si hospes suo dixerit iuramento quod non suasit ei ipse vel aliquis de familia sua, quod bona sua debeant sibi auferri a communi vel a potestate vella liqua persona, que esset in signoria, habeat, quod legatum sibi fuerit. Et ex quo viderit eum infirmum esse, confortabit eum, ut accipiat penitentiam et quod tunc ortabitur ipsum, ut iudicet bona sua filiis vel heredibus suis vel cui voluerit; et quod nihil dabit vel dari faciet ei vel eis quod predictos vel eum studiose offendat, et quod ipsum iuvabit, bona fide sine fraude. Et hoc faciam iurare

In the statute of Viterbo of 1237-38, it is established instead that the possessions of any pilgrim or traveler, deceased in the town without willing, have to go to his blood relatives, if present; otherwise the possessions have to go to the host, who will have to use them also to support the horses⁸³. This is repeated in the statute of the years 1251-52, where it is added that the host is charged with the duty of complaint under penalty of sanction⁸⁴. Through a record of the year 1262, we learn that in another town of the Tuscia area, in the north of Rome, Acquapendente, it was custom that the deceased intestate foreigner's possessions, would be divided equally between the host and the town⁸⁵.

With the signing of treaties and agreements based on the reciprocity principle⁸⁶, attempts were made to try to limit and reduce the negative effects of the 'albinaggio' with regards to the circulation of properties and people, as well as trade. In this regard, several examples can be cited, such as the treaties drawn up by the Republic of Genoa in 1224 with Mariano II of Torres, in 1229 and in 1251 with Marseille and in 1232 with the town of Sant'Egidio⁸⁷. Sovereigns and

hospitorem, quando mihi iurabit vel balitori contrate pro facto signorie. Et si aliquem invenero vel mihi denunciabitur contra facere, totiens auferam sibi x libr., quotiens contrafecerit, nisi se suo defenderet sacramento; alioquin exbanniam eum de civitate et iurisdictione"; and *Il Constituto del Comune di Siena volgarizzato nel MCCCIX-MCCCX*, Distinzione seconda, rubr. LXI (*De' mercatanti, peregrini et romei, e' quali muoiono, quando albergano; et de' beni loro*), p. 409: "Anco, statuimo et ordiniamo che se alcuno mercatante, romeo, peregrino o vero alcuno viandante, morrà in casa d'alcuno albergatore o vero d'altra persona, ne la città o vero contado di Siena, et quello cotale farà dispositione de' beni et cose sue, le quali seco avarà, de la quale dispositione appaia publica carta, o vero che si pruovi la detta dispositione per tre testimoni maschi, buoni et ydonei, di buona fama, cotale dispositione si debia osservare. Et se morrà senza fare testamento, el detto oste, o vero colui ne la cui casa morisse, sia tenuto et debia li beni et le cose, le quali rimarranno apo lui, denunciare et rassegnare al signore et al rettore de la casa de la Misericordia da Siena et lo camarlengo de' consoli de la Mercantia da Siena, acciò che si restituiscano a persona legittima et sufficiente per loro. Et se farà testamento, secondo che detto è, el detto testamento in quello medesimo modo debia assegnare et dare al signore de la detta casa de la Misericordia et lo camarlengo de' consoli de la Mercantia, acciò che debia ad esecutione mandare. Et fatto è questo capitolo in anno Domini Mccclxxxii. Indictione v, del mese di magio".

⁸³ Egidi, P., "Gli statuti viterbesi del 1237-38, del 1251-52 e del 1356", *Statuti della Provincia Romana* (V. Federici, ed.), Roma, 1930, *Statuto del MCCXXXVII-XXVIII*, § CCIII (*De peregrinis morientibus in Viterbio*), p. 47: "Item ordinamus quod, si quis peregrinus vel oспes seu viator decesserit in Viterbio sine testamento, medietas bonorum eius sit deputata in emendatione equorum, et altera sit hospitis, exceptis indumentis, que habeat dominus domus; nisi habeat consanguineos presentes, ad quos bona defuncti ab intestato debeant de iure volvi".

⁸⁴ *Ibid.*, *Statuto del MCCLI-LII*, § XXVIII (*De peregrinis mortuis*), pp. 155-156: "Si quis peregrinus vel hospes seu mercator forensis in civitate Viterbii decesserit, due partes bonorum eius in emendatione equorum Viterbii deputentur, et alia sit hospitis, exceptis indumentis, que sint domini domus, nisi habeat consanguineos presentes ad quos bona defuncti ab intestato devolvantur. Ita tamen quod hospes teneatur denunciare camerario militum cum inceperit infirmari; quod si non fecerit, puniatur in X libris, et partem predictam amittat, que a potestate tollatur nullo ordine iudici servato, et preconizetur ut nullus ignoret".

⁸⁵ Theiner, *Codex diplomaticus*, doc. CCLXXIII, p. 148: "...Item dixit, quod vidit totum mortuorum habere hospitibus, et postea venerunt dominations, qui acceperunt hospitibus medium pro divisione, que erat in hac terra. Et postea vidit habere totum hospitibus. Et postea vidit, quod constitutarii posuerunt in statuto, quod Communitas haberet et perciperet medietatem, et alia hospitibus remaneret ... Dominus Iacobus Philippi suo iuramento dixit de mortuorio, quod vidit totum quantum remanere hospiti, in cuius domo moriebatur aliquis peregrinus: et postea dixit, quod audivit dici, quod quando discretium fuit in hac terra, aliquot Burgenses de Ruga S. Mariæ iverunt ad dominum papam et ordinaverunt cum eo, ita quod vidit per aliquot annos nuntiis domini pape habere medietatem mortuorum, et alia remanebat hospitibus etc.".

⁸⁶ In regards to the institute of reciprocity in Bartolus and Paulus de Castro thought, as well as in the doctrine of the late *ius commune*, especially on the legal regime applicable to the foreign people in terms of successions see Storti Storchi, *Ricerche sulla condizione giuridica dello straniero*, pp. 93-105.

⁸⁷ *Codex Diplomaticus Sardiniae* (*supra* n. 11), doc. XLIV, pp. 337-338; *Liber iurium Reipublicae Genuensis*, Tomus I, *Historiae Patriae Monumenta*, VII, Augustae Taurinorum, 1854: for the agreement of 1229 doc.

institutions engaged, in a system of reciprocity, to relinquish the practice of the ‘albinaggio’ right, or not to take action about the provisions over the properties of citizens coming from abroad, being committed in giving possessions back to the deceased’s legal heirs or to their affiliation authorities. In a range of agreements drawn up in 1287 with the Republic of Genoa itself, the D’Oria family, among their many duties, undertake also to allow the people from Genoa to inherit freely in their lands⁸⁸. The very same Frederick II in 1232 granted to the citizens from Venice who would be *in Regno Siciliae*, the faculty of willing, specifying that, showing the changes in the relationship with the papacy, the burden of providing for the preservation of the departed’s properties would not be up to the local bishop, as stipulated in the *Omnes peregrini*, but to *quicumque Venetus aderit*, and, failing, to the *bajulus loci* or to a man of good faith who had to advise the Venetian doge and to give the *de cuius* properties back, without keeping anything in support of charity⁸⁹.

There were also princes and towns who took direct dispositions to acknowledge the rights of the foreigners’ heirs⁹⁰. The Statute of Sassari, for example, acknowledged the juridical validity of the last will made by the foreigner who died in the town, and, in case the deceased was intestate, the local authorities should have given his properties back to his heirs; moreover the host in whose house the foreigner had died, was obliged to inform the town authorities in order to give them all his properties back, otherwise the host would face some penalties⁹¹. Even before, in 1226 in Vercelli, in order not to turn away foreign people from the town and not to affect trade, a law tracing back to 1190 was replaced, according to which the right of the succession of the foreigners’ properties was up to the town, and, equalizing the possessions of the foreign people and the citizens, it was established that the town should not succeed the foreigner unless this latter would die *sine erede vel parentibus, qui succedere debeant de iure*⁹².

DCLXXV, coll. 852-853 d, coll. 856-857 d; for the one of 1251 doc. DCCCXXVI, col. 1123 b, col. 1128 c-d; for the agreement with S. Egidio doc. DCXCIV, coll. 905-906 d. See also Fusinato, “Albinaggio (diritto di)”, p. 241.

⁸⁸ *Liber iurium Reipublicae Genuensis*, Tomus II, *Historiae Patriae Monumenta*, IX, Augustae Taurinorum, 1857, docs LI-LIII, coll. 85-103 (in particular col. 88 c, 94 d, 101 a), and LIV-LV. The same documents are included also in *Codex Diplomaticus Sardiniae* (CXX-CXXVI, pp. 399-413).

⁸⁹ Fantuzzi, M., *Monumenti ravennati de’ secoli di mezzo per la maggior parte inediti*, Tomo VI, Venezia, 1804, doc. CIII, pp. 282-284 (dated 1222); Huillard-Bréholles, J.-L.-A., *Historia diplomatica Friderici secundi*, IV.1, Parisiis, 1854, pp. 309-312 (that updates the date to 1232), in particular p. 311 where we read: “Preterea concedimus ut si que vel si quis Venetorum in regno nostro Siciliae mori contigerit, libere possint absque contrarietate aliqua condere testamentum et licite disponere de rebus suis, et juxta quod testator disposuit observetur. Si quis vero Venetorum ab intestato in eodem regno nostro decederet, quicumque Venetus aderit, bona defuncti conservanda recipere permittatur. Quod si nemo presens fuit Venetorum, bajulus loci ea recipere ac conservare debeat sub testimonio bonorum virorum, vel in defectu bajuli alicui de ipso loco bone fidei et opinionis viro bona eadem committantur, singulis in publicum scriptum redactis, et penes quem quecumque bona ipsa deposita fuerint vel recepta, sicut per litteras et nuntium duci Venetorum super [hoc] transmissum fuerit, cui mandaverit assignentur”. On this concession see Pertile, *Storia del diritto italiano*, III, p. 197 n. 45; Romano, “La *constitutio Omnes peregrini...*”, pp. 184-185.

⁹⁰ See Pertile, *Storia del diritto italiano*, III, p. 195; Fusinato, “Albinaggio (diritto di)”, pp. 240-241.

⁹¹ *Codex Diplomaticus Sardiniae*, doc. CXI (*Quando alcun foristeri aet morrer in Sassari, cusse, in domo de chen aet morrer, lu notifiche tassa potestate*), p. 555: “Deppiat zascatuna persone, in domo de chen aet morrer alunu furisteri, facherlu ad isquire ad sa potestate ... Et si aen accattare su mortu aver factu testamentu, observet si su testamentu suo. Et si testamentu non aet aver factu, sa potestate, et issu priore predictu cum duos antianos sos benes de cusse deppian ad cumendare ... qui sas heredes dessu mortu aen benner ad recuperare cussos benes...”.

⁹² Mandelli, V., *Il Comune di Vercelli nel Medio Evo. Studi storici*, II, Vercelli, 1857, § 35 p. 30, where it is reported that on September the 5th it was announced the law: “Quod Comune de Vercellis de coetero omni tempore habere et percipere debeat sine aliqua contradictione universas successiones omnium extraneorum hominum, qui in civitate Vercellarum ... sine heredibus descententis decesserint”; whereas in 1226 it was promulgated a statute that did not distinguish the heritage of citizens and foreigners “si quis homo vel aliqua mulier decesserit in civitate

Later the main tracts of the *constitutio Omnes peregrini* would be found inside the *Statuta Sabaudiae* spread in 1430 by Amadeus VIII: the local Episcopalian authorities or, lacking them, three or four men of good faith were in charge of preserving the foreigners' properties in order to give them back to the heirs who had claimed them within the year, and only after this deadline had passed, could the properties be used for charity⁹³.

However, generally speaking, the 'albinaggio', although softened and moderated, continued to subsist in the following centuries as well. The system adopted in the single Italian States continued to be that of reciprocity, until reaching the Italian civil Code after the unification of Italy of 1865, which in the article 3 definitely acknowledges that: "lo straniero è ammesso a godere dei diritti civili attribuiti ai cittadini"⁹⁴. The overcoming of the discrimination between citizens and foreigners, the remains of an established and remarkable tradition that developed from the Medieval age well beyond the French Revolution, represented one of the most important features of modernity of this code, encouraging the integration of non-subjects, also through a more extensive definition of the concept of citizenship⁹⁵.

Vercellarum ... sine herede vel parentibus, qui succedant debent de jure, res suas non ordinaverit, tunc Comune Vercell. debeat eis succedere et successionem eorum habere...". In the later statutes (*Statuta Communis Vercellarum ab anno MCCXXI*, in *Historiae Patriae Monumenta*, XVI: *Leges Municipales, tomus II, pars altera*, Augustae Taurinorum, 1876; and the following wider version *Statuti del Comune di Vercelli* [G. Adriani, ed.], Torino, 1877) further dispositions have not been revived on the item.

⁹³ *Decreta seu Statuta vetera Serenissimorum ac praepotentium Sabaudiae Ducum et Pedemontii Principum*, Augustae Taurinorum, 1586, lib. II, cap. XCVI (*Quod bailivi castellani vela liti officiarum bona peregrinorum defunctorum non rapiant, sed ea fida sub custodia conservent*): "Quia bona peregrinorum defunctorum iuxta constitutiones Imperiales sunt heredibus eo conservanda, et ubi non apparuerint heredes, per locorum episcopos disponenda et distribuenda: ... Deinde ipsa bona inventariata penes aliquem probum virum loco tuto et sub fida custodia reponenda ad opus ipsorum heredum ipsorum peregrinorum defunctorum. Quibus accedentibus ad ipse loca ipsaque bona petentibus et personas suas ad huiusmodi petitiones iustificandis infra annum a diebus obitus ipsorum peregrinorum computandum, eadem bona ipsis haeredibus expediri volumus et mandamus debita cognitione praecedente. Si vero infra dictum annum nulli haeredes compareant vel pro se mittant, tunc huiusmodi res et bona peregrinorum defunctorum in defectu haeredum episcopis locorum seu per eos deputatis tradantur in integrum Christi pauperibus secundum formam iuris distribuendas cessante omni difficultate seu impedimento per dictos officarios nostros vel eorum alterum apponendis. Sub poena privationis sui officii et vigintiquinque librarum". On the reception of the *constitutio Omnes peregrini* in the Code promulgated by Amadeus VIII and on the history of the right of 'albinaggio' in Savoia see Mansord, C.A., *Du droit d'aubaine et des étrangers en Savoie*, Chambéry, 1824, especially, *tome seconde*, p. 209 § 919; Volpicella, *Del diritto di albinaggio*, pp. 47-48; Fusinato, "Albinaggio (diritto di)", p. 241. See also Cerutti, "À qui appartiennent les biens qui n'appartiennent à personne?", p. 361 e *passim*.

⁹⁴ On the 'albinaggio' in the ancient Italian states see, in summary, Pertile, *Storia del diritto italiano*, III, pp. 197-199; Volpicella, *Del diritto di albinaggio*, pp. 47 ss.; Fusinato, "Albinaggio (diritto di)", pp. 241-242. An overview of the treaties put in place in Europe since the Modern age in Buccianti, G., *Le convenzioni per l'abolizione del diritto d'albinaggio (1529-1850)*, Milano, 1964, *appendix I*, pp. 1-26; Maifreda, "Un 'diritto non meno strano che barbaro'...", pp. 217-218 and n. 8 with bibliography.

⁹⁵ On the events that brought to the overcoming of the 'albinaggio' in the XIXth century see Del Bagno, "Unificazione nazionale e diritto di albinaggio", pp. 11 ss.; Storti Storchi, *Ricerche sulla condizione giuridica dello straniero*, pp. 263-275, pp. 284 ss. and *passim*.

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