Baldus de Ubaldis of Perugia on Dominium over Dotal Property*

by

Jacques Anthony Pluss (Wayne, N.J.**)

In his fearsomely complex commentaries, or lectures, on the Corpus juris civilis of Justinian, the celebrated Perugian Roman and canon lawyer, Baldus de Ubaldis (d. 1400), discoursed on nearly every aspect of Roman private law. One topic which he treated with scrupulous attention was the regulations that the law posited for the constitution, handling, and disposal of dowries by fathers who endowed daughters, husbands who managed dotal property, and wives who, the law stated, received them as their patrimony.

Baldus' concern to describe dowry law was motivated by two primary considerations. One consideration was the importance attached to dowries in late medieval Italian culture. Dowries facilitated marriage. Without them, marriage was considered impossible. They provided pathways for the transfer of patri-

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** The William Paterson College of New Jersey.


3. The concept that marriage without a dowry was impossible found expression in law. For example, Baldus wrote that 'nullum matrimonium sine dote fiat' (Consilia [ed. Venice, 1575-76], cons. 186, vol. 5, fol. 51va). Moreover, Baldus reiterated the prevailing cultural
monial property between individuals, families, and successive generations. As a practitioner of law, Baldus encountered many cases involving dowries. Another consideration was Baldus' professional objective as a teacher of law. His commentaries, lectures he delivered to law students, aimed at explaining law's meaning and illustrating its function in daily life. When Baldus lectured on the Corpus juris, compiled in the sixth century, he nevertheless lectured on contemporary issues. Roman law was considered by his contemporaries to be operable, authoritative and truthful, even though individual laws or legal principles required some interpretation if they were to be applied to medieval life. One way that Baldus applied his learning to actual problems was when he composed case opinions, or consilia.

When Baldus lectured, he was responsible for revealing how his interpretations of a preconstituted body of law and remedies flowing from his interpretations could be employed to supply juristic wisdom that would function within a range of acceptable social behavior. Consequently, Baldus' description of dowry law view that dowries existed from time immemorial when he stated that ' . . . ab eternitate mundi fuerunt dotes et repetitiones dotium, idest cum primum ratio naturalis fuit in hominibus matrimonium fuit cognitum' (ad C. 7, 14, 1, 1. Scire debes). In this paper, I have employed the Lyons 1498 edition of Baldus' lectures on the Codex and Digesta of the Corpus juris (no pagination or foliation).

4. The Venice 1575-76 edition of Baldus' consilia contains numerous examples of case opinions concerning dowries. For more detail, see Pluss, Baldus on Dowry Law, pp. 335-421. On individual cases involving dowries, see J. Kirshner and J. Pluss, Two fourteenth-century opinions on dowries, paraphernalia and non-dotal goods, Bulletin of Medieval Canon Law 9 (1979) 65-77.

5. Baldus was both a practising and a teaching jurist. He was an emissary for Pope Urban VI and a magistrate in his home town of Perugia. Between 1344 and 1400, he held lectureships at the law faculties of the most renowned universities of his time: Bologna, Perugia, Pisa, Florence, Padua and Pavia. On Baldus' biography, see O. Scalvani, ed., L'Ope- 


6. On the authority of Roman law in medieval Italian city states, and on the regard in which it was held, see J. Kirshner, Some problems in the interpretation of legal texts re the Italian city-states, Archiv für Begriffsgeschichte 19 (1976) 16-26.

7. On the consilia as a jurisprudential source, see in particular G. Rossi, Consilium sa-

piensits iudicale, Studi e ricerche per la storia del processo romano-canonica (Milan 1958); M. Ascheri, 'Consilium sapientis', perizia medica e 'res iudicata': Diritto dei 'dottori' e istitu-

ner and J. Pluss, Two fourteenth-century opinions; Pluss, Baldus on Dowry Law, pp. 335-420, esp. 335-339.

8. The orientation to jurists and their work which I espouse derives from the work of Kirshner (above, n. 6) and T. Kuehn. For Kuehn's view, see his Emancipation in Late Medieval Florence (New Brunswick, N.J. 1982), pp. 12-34 and 159-160. On law and social behavior, see also P. Bourdieu, Esquisse d'une théorie de la pratique (Geneva 1972), pp. 172 ff.; J. Stone, Legal Systems and Lawyers Reasonings (Stanford 1964), pp. 29 ff.; L.A. Fellers, Law without Precedent: Legal Ideas in Action in the Courts of Colonial Busoga (Chi-