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### **Alciato's defense of Justinian: an exemplary use of historical sources<sup>1</sup>**

**ABSTRACT:** According to a traditional narrative recounted by Pietro Crinito in 'De honesta disciplina' and echoed by other Humanists (Jovianus Pontanus, Volaterranus) Belisarius fell into disgrace with the emperor Justinian, who then had him blinded and reduced to begging. On the contrary, in a chapter of 'Parerga' (IV, 24), by researching and examining various historical sources, particularly Procopius, Alciato is able to demonstrate the true nature of that story: a groundless 'fabula' created to substantiate the negative image of Justinian found in biased ancient sources, given naive, uncritical credit by several Humanists. The paper intends to show that Alciato's historical analysis aimed to shed light on the facts, thus rehabilitating the name of the Byzantine emperor.

**KEYWORDS:** Andrea Alciato – *Parerga* – Justinian – Belisarius – Pietro Crinito.

**INDEX:** 1. Andrea Alciato and the renewal of legal knowledge – 2. The importance of historical studies in Alciato's works – 3. The medieval legend of Belisarius the blind beggar – 4. Pietro Crinito's tale in *De honesta disciplina* – 5. Andrea Alciato's critical analysis.

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<sup>1</sup> Expanded text integrated with the notes of the paper given in the panel *Andrea Alciato's legal humanism: between law and history*, in the "virtual Meeting 2021" of "Renaissance Society of America" (RSA) (13-22 aprile 2021).

### 1. *Andrea Alciato and the renewal of legal knowledge*

Alciato (1492-1550) is without doubt one of those who exerted the most significant influence at the start of the modern era in showing the route to be followed in order to generate reinvigorated legal knowledge, detached from the weighty baggage of the mediaeval tradition<sup>2</sup>. As a first-rate jurist within the panorama of European jurisprudence during the first half of the sixteenth century, as well as a humanist with a both broad and deep cultural rooting, upon which he constantly drew with conviction in giving new substance to interpretative legal science, Alciato cut his teeth in the specific application of the historical and philological knowledge developed during the fourteenth and fifteenth centuries by Italian humanists with the aim of profoundly reforming the method used by jurists. He experimented with a different approach to Roman sources, decisively expanding awareness of ancient institutions: this was an arduous approach due to the difficulty in mastering multiple notions within areas that had traditionally been foreign to the professional expertise of jurists, and which was not immune to risk, in that it called into question the methodological and substantive certainties upon which commercial and legal practice had been based. However, it also proved to be an extraordinarily rich approach. In fact, it forced the *doctores iuris* to rise above the repetitive adherence to the Bartolist model and to equip themselves with a revamped and updated technical toolbox based on new cultural coordinates.

As one of the triumvirate of great Renaissance legal reformers, alongside Guillaume Budé and Ulrich Zasius, Andrea Alciato was one of the early voices calling for the refoundation of legal knowledge on a humanist basis. By uniting philological expertise with historical knowledge, coupled with a first-

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<sup>2</sup> Still fundamental for this author is R. Abbondanza, *Alciato, Andrea*, nel *Dizionario Biografico degli Italiani*, II, Roma 1960, pp. 69-77. Still useful despite the passage of time is Viard's monograph: P.É. Viard, *André Alciat (1492-1550)*, Paris 1926. An updated overview of Alciato's complex scientific personality is found in the collected essays in A. Rolet et S. Rolet (textes réunis et édités par), *André Alciat (1492-1550): un humaniste au confluent des savoirs dans l'Europe de la Renaissance*. Actes du Colloque international du Centre d'études supérieures de la Renaissance (Tours, 30 novembre-2 décembre 2010), Turnhout 2013 (beginning with A. et S. Rolet, *André Alciat (1492-1550): quelques repères bio-bibliographiques*, *ibid.*, pp. 33-52); now also important is A. Belloni, *L'Alciato e il diritto pubblico romano. I Vat. Lat. 6216, 6271, 7071*, II. *L'insegnamento, gli studi, le opere*, Città del Vaticano 2016; for a synthetic overview focused on law see G. Rossi, *Andrea Alciato*, in *Enciclopedia Italiana. Ottava appendice. Il contributo italiano alla storia del pensiero. Diritto*, ed. P. Cappellini, P. Costa, M. Fioravanti, B. Sordi, Roma 2012, pp. 106-109.

rate technical training, Alciato embodied a new model of jurist who, whilst not being animated by rash iconoclastic ambitions directed against the great Bartolist tradition<sup>3</sup>, experimented with a method of investigating Roman sources that operated as an alternative to the mediaeval approach and paved the way for the move beyond the *mos italicus*. In this way he provided a key contribution to enabling jurists to acquire a new cultural awareness, whilst decisively influencing developments in European legal science at the dawn of modernity<sup>4</sup>.

The scientific aspect of the works of Alciato may thus be considered to lie in the conscious pursuit of a fruitful interaction between different cultural traditions which, having ignored or sparred with one another at a distance throughout the fifteenth century, were not in the new century ready to experiment with novel works of integration, resulting in undoubted mutual enrichment. The spark required in order for the alchemy to take effect was the initiative by an author with a background of major and absolute value in both fields, and who was sufficiently far-sighted to understand that the reading of ancient legal texts from the perspective of the philologist and the historian does not imply a distortion of legal knowledge, but rather its enhancement, by providing a more solid and credible basis for knowledge and drawing it out of the ghetto of artificial and unnatural isolation. Alciato must therefore be recognised the merit of having raised a problem of cultural openness for jurists – which was made understandable to them by the fact that it was expressed in the same language – and of having demonstrated that it was possible to provide a correct account of the meaning of Roman rules. In doing so he took full advantage of the humanist's cultural tool kit, starting from an excellent knowledge of Greek and his passion for the study of Roman history, which was indispensable in order to comprehend the framework of imperial institutions and the overall organisation of the Roman state, of which Justinian's Digest and above all the Codex provide only fragmentary indications, which are often of no use and incomprehensible

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<sup>3</sup> R. Abbondanza, *Alciato, Andrea*, cit., p. 74 rightfully notes that Alciato pursues and achieves an «equilibrio tra ragione giuridica e ragione storico-filologica»; similarly we ourselves have pointed out that in Alciato the reform of the traditional method appears «[...] ispirata ad una idea di rinnovamento nella continuità, nel tentativo di conciliare le ragioni della filologia con quelle della giurisprudenza» (G. Rossi, «*Duplex est ususfructus*». *Ricerche sulla natura dell'usufrutto nel diritto comune*, II, *Da Baldo agli inizi dell'Umanesimo giuridico*, Padova 1996, p. 228).

<sup>4</sup> It is an opinion widely shared by the best historiography; in this regard examples can be found in E. Cortese, *Il diritto nella storia medievale. II. Il basso Medioevo*, Roma 1995, pp. 470-471 and in A. Padoa Schioppa, *Storia del diritto in Europa. Dal medioevo all'età contemporanea*, Bologna 2007, p. 253.

unless they are viewed within their broader context.

Alciato's view reincorporated the Greek elements which Mediaeval scholars had expunged, and was based on a close study also of the hitherto overlooked parts of ancient texts that were dedicated to public law, involving a meticulous examination of the *Corpus Iuris Civilis* with a view to correcting the numerous mistaken interpretations proffered by the Glossators and Commentators as a result of their ignorance of ancient history, and in particular the specific institutional organisation of the Roman Empire. Building on that work of recovering that knowledge, which was started by Italian humanists in the fifteenth century (such as the historiographical work of Biondo Flavio and the innovative approach of *Roma Triumphans*)<sup>5</sup>, Alciato dedicated his efforts to a review of the interpretative baggage accumulated by mediaeval legal science: the proposed interpretations of the texts offered by the Glossators and the Commentators proved not infrequently to be devoid of any foundation and were indeed often laughable, being essentially built on sand and based on an inadequate historical awareness – in a broad sense – of Roman society<sup>6</sup>.

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<sup>5</sup> A detailed and updated overview of the personalities and protagonists of Italian humanistic historiography is found in P. Gilli, *La méthodologie historiographique des humanistes italiens du XV<sup>e</sup> siècle. À la recherche du paradigme perdu*, in «Cahiers de recherches médiévales et humanistes», XXXI (2016), pp. 355-405. On Biondo and this particular work, besides R. Fubini, *Biondo, Flavio*, in *Dizionario Biografico degli Italiani*, X, Roma 1968, pp. 536-559, see especially the essays collected in two recent miscellanies: A. Mazzocco and M. Laureys (ed.), *A new sense of the past. The scholarship of Biondo Flavio (1392-1463)*, Leuven 2016; F. Muecke and M. Campanelli (ed.), *The invention of Rome. Biondo Flavio's Roma Triumphans and its World*, Genève 2017. The Biondian project centers the new humanistic historiography of ancient Rome on the description of its institutions (in a broad sense), formulated so as to be particularly interesting and useful for jurists.

<sup>6</sup> On the importance of the history-law connection in the development of cultism see first of all D.R. Kelley, *Foundations of Modern Historical Scholarship. Language, Law, and History in the French Renaissance*, New York-London 1970, especially chapter V on Alciato: *The Historical School of Roman Law: Andrea Alciato and His Disciples Discover Legal History*, particularly pp. 87-103; Id., *The Rise of Legal History in the Renaissance* (1970), now in Id., *History, Law and the Human Sciences. Medieval and Renaissance Perspectives*, London 1984, V, pp. 174-194. In this regard see the pages dedicated to this topic by Riccardo Orestano, who finds «la "storia" come problema centrale dell'Umanesimo giuridico» and gives importance to Alciato's role as forerunner: R. Orestano, *Introduzione allo studio del diritto romano*, Bologna 1987, pp. 193-202 e 606-635; see also Id., *Diritto e storia nel pensiero giuridico del secolo XVI*, in *La storia del diritto nel quadro delle scienze storiche*. Atti del primo Congresso Internazionale della Società Italiana di Storia del Diritto (Roma, dicembre 1963), Firenze 1966, pp. 389-415, now in Id., *'Diritto'. Incontri e scontri*, Bologna 1981, pp. 349-377.

## 2. *The importance of historical studies in Alciato's works*

Historical knowledge is regarded by Alciato as an essential element in providing correct context for passages from the Digest and the Codex and for best understanding them<sup>7</sup>. The fruitfulness of that approach may be observed specifically in the analysis of the *Tres libri* of the Codex, which would be almost entirely incomprehensible (and thus useless) without a detailed understanding of Roman history and in particular of the organisation of the magistrates and the administration towards the end of the Empire. In this sense the interest in history displayed from the outset by the young Alciato was made clear in a commentary written on Tacitus (*In Cornelium Tacitum annotationes*)<sup>8</sup> published in Milan in 1517 and subsequently in 1519 which, whilst being brief, is perhaps the first expression of interest by the historian in the imperial era, which was still substantially neglected, and would only come into fashion several decades later. It is striking to observe the precocious innovative cultural approach proposed by Alciato from his very first works, such as *Annotationes in tres posteriores libros Codicis Iustiniani*, dating back to 1514. On the other hand, the recourse for the first time to the *Notitia dignitatum*, a fundamental instrument for understanding late-imperial organisation, makes clear the methodological awareness and depth of knowledge held by this author right from the outset of his scholarly activity. Finally, let us not forget the attention dedicated by Alciato to Roman public law in Milan during the imperial era and the compiling of the unfinished *Rerum Patriae libri*<sup>9</sup>.

The works of Alciato operated as a decisive springboard for the launch of “modern” legal science, which is clearly autonomous from the typically

<sup>7</sup> On the importance Alciato gives to the study of history now see G. Rossi, *L'Encomium historiae (1517) di Andrea Alciato: lo studio della storia antica e la nascita dell'umanesimo giuridico*, in L. Secchi Tarugi (ed.), *Antico e moderno: sincretismi, incontri e scontri culturali nel Rinascimento*, Atti del XXX Convegno internazionale (Chianciano Terme-Montepulciano, 19-21 luglio 2018), Firenze 2020, pp. 265-284.

<sup>8</sup> In this regard see L. Claire, *Commenter les Annales de Tacite dans la première moitié du XVI<sup>e</sup> siècle: André Alciato, Beatus Rhenanus, Emilio Ferretti*, in «Anabases. Traditions et Réceptions de l'Antiquité», XV (2012), pp. 115-128; Ead., *Les “In Cornelium Tacitum annotationes” d'André Alciato et leur fortune au XVI<sup>e</sup> siècle*, in *André Alciato (1492-1550), un humaniste au confluent des savoirs dans l'Europe de la Renaissance*, cit., pp. 85-96; K. Bovier, *Tacite et Alciato: l'histoire, simple instrument du droit?*, in A. Merle et A. Oiffer-Bomsel (textes réunis et présentés par), *Tacite et le tacitisme en Europe à l'époque moderne*, Paris 2017, pp. 71-86.

<sup>9</sup> A. Belloni, *L'Alciato e il diritto pubblico romano*, cit., I. *I Rerum patriae libri*, Città del Vaticano 2016; the author places the writing of this work in the final years of the career of the Milanese (especially the decade 1539-1549), contrary to the general opinion which considered it an early work.

mediaeval Bartolist tradition. This is even more significant as the novelty within Alciato's method of studying Justinian's compilations established itself on a European scale, exerting a direct and decisive influence on the development of a "legal humanism" amongst French jurists throughout the sixteenth century, subsequently followed by an expansion of that movement into Germany and above all the Netherlands, where the school of "elegant jurisprudence" established itself in the late seventeenth century.

It is thus necessary to take full account of the cultural baggage and the historical and philological knowledge apparent within his writings, without however overlooking the relevance of technical legal aspects: Alciato in fact remains in essence a jurist and the aim of his works is to update – and in fact entirely refound – legal science on a more solid basis than its mediaeval foundations. He conceived of the cultural enrichment resulting from the assimilation of the model offered by humanists as an unmissable opportunity for legal science, which should not shrink back from renewing its own conceptual armoury and recognising the fragility of its mediaeval foundations.

Every question which Alciato put to himself, every doubt which he resolved through consultation of the ancient texts, comparing both legal and literary sources, was indicative of a constant and intentional effort to arrive at a deeper and more certain knowledge of the ancient world, rejecting the distortions, simplifications and misunderstandings that littered the pages of mediaeval interpreters, undermining the validity of those interpretations. At the same time however, those questions and doubts originated from a detailed identification of strictly legal problems, which explains why Alciato's method aroused so much interest and attracted such a great consensus amongst jurists throughout Europe (although some in Italy were highly resistant to change) and gave rise to the line of doctrinal thinking of the "scuola culta" that forms an integral part of the history of European legal thinking and early modernity.

Particular attention will be paid first and foremost to the *Parerga*<sup>10</sup>, a miscellaneous collection of hundreds of various notes, marginal comments and *obiter dicta* obtained from the study of Roman texts and their comparison with classical extra-judicial sources, without any common denominator other than the profound knowledge of the sources and the curiosity for all aspects

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<sup>10</sup> It is a series of brief sketches illustrating specific points in a wide variety of themes collected over the years (the first three books came out in 1538 while the last two posthumously in 1554). A synthetic but precise list of the various editions is found in H.E. Troje, *Graeca leguntur. Die Aneignung des byzantinischen Rechts und die Entstehung eines humanistischen Corpus iuris civilis in der Jurisprudenz des 16. Jahrhunderts*, Köln-Wien 1971, pp. 32-33; see also D.L. Drysdall, *Alciato and the Grammarians: The Law and the Humanities in the «Parergon iuris libri duodecim»*, in «Renaissance Quarterly», LVI (2003), pp. 695-722: 697-698.

of antiquity. The work may be considered to be emblematic of the wealth and variety of Alciato's interests and is also important because it does not date from his youth, as by contrast the other humanistic works, but brings together material produced throughout most of his life through to his final years, bearing witness to the perseverance of that approach to the sources, an eloquent testament both to Alciato's intellectual curiosity and to his vast culture<sup>11</sup>. The work is also an excellent example of this author's original working method, which differed significantly from that traditionally employed in the juridical science of *mos italicus*<sup>12</sup>. The hundreds of annotations in the *Parerga*'s twelve books indeed showcase Alciato's richly encyclopedic knowledge, going beyond the juridical field to include ancient history and Greek and Roman literature<sup>13</sup>. This often served to clarify specific questions of jurisprudence, correct errors of interpretation of Roman law, explain obscure or misunderstood aspects of ancient juridical life but also elucidate otherwise incomprehensible passages of poets or historians. In this way the superiority of the humanistic approach is clearly demonstrated with its variety of sources providing a breadth of knowledge instead of an excessive specialization; thus jurisprudence enters into a dialogue with history, literature and philology, allowing the jurist to emerge from a centuries-old cultural isolation that was harmfully short-sighted.

### 3. *The medieval legend of Belisarius the blind beggar*

A brief but quite significant chapter of the *Parerga* (IV, 24)<sup>14</sup> offers an example of Alciato's skill in the correct use of the historical method<sup>15</sup> for a

<sup>11</sup> Some accurate observations on the variety of interests and the importance of an encyclopedic culture typical of the Renaissance that characterize Alciato's works are found in G. Rossi, *Declinazioni dell'umanesimo giuridico: diritto e letteratura nel Philargyrus di Andrea Alciato*, in A. Alciato, *Filargiro, commedia*, Introduzione di G. Rossi, testo latino e versione italiana a cura di R. Ruggiero, Torino 2017, pp. VII-XCII: pp. VII-XIV.

<sup>12</sup> On this aspect see G. Rossi, *La lezione metodologica di Andrea Alciato: filologia, storia e diritto nei «Parerga»*, in *André Alciat (1492-1550): un humaniste au confluent des savoirs dans l'Europe de la Renaissance*, cit., pp. 145-164.

<sup>13</sup> Besides the text cited in the previous note, see also Drysdall's observations in D.L. Drysdall, *Alciato and the Grammarians*, cit., *passim*.

<sup>14</sup> Here we use the *Parerga* text found in *Opera Omnia alciatei: Andreae Alciati... Parergon iuris, sive obiter dictorum, liber quartus*, in Eiusd. ... *Operum Tomus III, quo Tractatus et Orationes continentur*, Basileae, apud Thomam Guarinum, 1582, cap. 24, coll. 403 C-F-404 A-B.

<sup>15</sup> This chapter is also examined by D.L. Drysdall, *Alciato and the Grammarians*, cit., pp. 710-711. The pages in the *Parerga* dedicated to a reconsideration of historical subjects are not rare; among others we mention the one on the historical authenticity of Constantine's

true reconstruction of events, unmasking false narratives of a seductive appearance accepted as authentic by many. It examines the veracity of the traditional tale lamenting the sad and unwarranted fate befalling Flavius Belisarius<sup>16</sup>, the Byzantine general whose many victories over Persians, Vandals and Goths for his emperor Justinian had earned him glory.

A legend that began circulating in the Middle Ages (perhaps in the 10th century)<sup>17</sup> highlights his unlucky and undeserved end: fallen into disgrace with the emperor envious of his success and military glory, he was recalled to Constantinople, imprisoned and blinded by Justinian's order, ending his days as a sightless beggar because of others' evil, not any fault of his own.

People were struck by the story's forceful moral lesson (the ingratitude of men, the precariousness of fate, the need to accept adversity with Christian patience) and its emotional impact deriving from the complete reversal of the blameless Belisarius' fortunes, allowing this version – lacking any confirmation in VI century sources – of the Byzantine general's end to spread as authentic even in the Occident, fostering the myth of the general whose faithfulness to his sovereign was answered with an evil of undeserved cruelty. The story

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Donation: G. Rossi, *Andrea Alciato sulla Donazione di Costantino (Parerga, VII, 19): la polemica con Valla, al crocevia tra diritto, storia e politica*, in D. Novarese, E. Pelleriti, V. Calabrò, P. de Salvo, C. Trimarchi (ed.), *Oltre l'università. Storia, diritto, istituzioni e società. Studi in onore di Andrea Romano*, Bologna 2020, pp. 1023-1037.

<sup>16</sup> Belisarius had a primary role in carrying out Justinian's political objectives in the military reconquest of the lost Western provinces and consolidation of the Eastern borders. For a bibliography on this famous general, more than adequate is that in I. Hughes, *Belisarius: The Last Roman General*, Yardley 2009; A. Magnani, *Flavio Belisario. Il generale di Giustiniano*, Perugia 2017, besides books with a general view of the Justinian period. On the Byzantine army, its organization and tactics of combat, with frequent references to Belisarius, cf. G. Ravegnani, *Soldati e guerre a Bisanzio. Il secolo di Giustiniano*, Bologna 2009, *passim*.

<sup>17</sup> On the composition and success also in the West of Byzantine poetical works dedicated to Belisarius containing arbitrarily romanticized versions of his end with no base in historical sources, making him into a famous and blameless victim of envy, cf. H.G. Beck, *Belisar-Philanthropenos. Das Belisar-lied der Palaiologenzeit*, in H.J. Kissling, A. Schmaus (hrsg. von), *Serta Monacensia Franz Babinger zum 15. Januar 1951 als Festgruss dargebracht*, Leiden 1952, pp. 46-52 and especially, also for the previous bibliography, E. Follieri, *Il poema bizantino di Belisario*, in *La poesia epica e la sua formazione. Atti del Convegno Internazionale* (Roma, 28 marzo-3 aprile 1969), Accademia Nazionale dei lincei. Problemi attuali di scienza e di cultura. Quaderno n. 139, Roma 1970, pp. 583-651 (the text of a few Byzantine sources can be read on pp. 614-651). On how the myth of Belisarius was received in the West in the early modern period, useful is also C. Carpinato, *Eroi d'altri tempi: Alessandro e Belisario nelle rime in greco volgare stampate a Venezia nella prima metà del Cinquecento*, in G. Lalomia, A. Pioletti, A. Punzi, F. Rizzo Nervo (ed.), *Forme del tempo e del cronotopo nelle letterature romanze e orientali*, Soveria Mannelli 2014, pp. 415-427.



made its way to Italy through the work of John Tzetzes<sup>18</sup>, and from the end of the 15th to the 16th century various humanists accredited Belisarius' "romanticized" and affecting end, giving it substance in their erudite works as true fact. In particular, three authors in just a few years narrate the melodramatic scene of an aged Belisarius, poor and blind, who begs a few pennies from good-hearted passers-by, repeating the erudite Byzantine Tzetzes' phrase which – translated into Latin – then became a well-known, almost proverbial saying, useful as a warning against the fickleness of Chance and the vanity of striving against an adverse fate: «Wayfarer, give alms to Belisarius, whom others' envy blinded, though blameless».

These words, full of pathos eliciting human compassion for one in disgrace through no fault of his own are repeated more or less verbatim by Giovanni Pontano, Pietro Crinito and Raffaele Volterrano, three of the most important exponents of Italian humanism. Pontano (1429-1503), a man of political and literary talents present at the Aragonese court during the entire second half of the 15th century, rising to become king Ferrante's secretary and counsellor, may be considered the major among Neapolitan humanists<sup>19</sup>: he was a poet, historian, writer on astrology, author of treatises and dialogues on moral philosophy in the style of Cicero and Seneca on the virtues necessary to the prince, primarily fortitude of the soul, fundamentals for withstanding the hardships both of public life and in the private sphere. Among his many works he finds occasion to cite the case of Belisarius in the two-book treatise *De fortitudine* (published in the 1490), as a great man stoic in the face of blindness, recalling the sad story of the general reduced to begging for his sustenance, imploring alms with words of mortified dignity:

De caecitate oculorum, de manuum pedumque contractionibus, de surditate, de

<sup>18</sup> Ioannis Tzetzae *Historiarum variarum Chiliades*, III, hist. 88, vv. 339-345, nonché IV, vv. 750-758, ed. Th. Kiessling, Lipsiae 1826, p. 94 e 147; Ioannis Tzetzae *Historiae*, III, hist. 88, vv. 342-348; IV, vv. 749-757, iterum edidit P.A.M. Leone, Galatina 2007, pp. 96-97 e 151. But the erudite Byzantine immediately explains that the version of the blinding is without unequivocal confirmation in the sources: III, hist. 88, vv. 346-348 o 349-351 in the various modern editions.

<sup>19</sup> Biographical information and a general overview first in C. Vasoli, *Giovanni Pontano*, in *Letteratura italiana. I minori*, III, Milano 1961, pp. 597-625; then in L. Holtz, *Pontano (Giovanni Gioviano)*, in C. Nativel (ed.), *Centuria latina. Cent une figures humanistes de la Renaissance aux Lumières*. II, *À la mémoire de Marie-Madeleine de La Garanderie*, Genève 2006, pp. 701-712; B. Figliuolo, *Pontano, Giovanni*, in *Dizionario Biografico degli Italiani*, LXXXIV, Roma 2015, pp. 729-740. For a political view of Pontano see G. Cappelli, *Introduzione. Il 'De principe' di Giovanni Pontano e l'umanesimo politico del Quattrocento*, in *Giovanni Pontano, De principe*, ed. G.M. Cappelli, Roma 2003, pp. XI-CX, and Id., *Maiestas. Politica e pensiero politico nella Napoli aragonese (1443-1503)*, Roma 2016, spec. pp. 89-161.

totius interdum corporis debilitate, de omni denique casu ferendo ubi calamitas, eadem ratio est. Vincenda est sensuum mollities adhibendusque in consilium animus et ita in acie standum adversum corporis mala, ut cum imperare animus debeat, ignaviter effracteque a corpore vinci et tanquam in fugam verti nullo modo patiamur. ... Nec desunt hac in parte magnorum virorum exempla, Belisarius ille totiens dux ac victor, tandem iussu imperatoris caecatus et quidem ob invidiam, quae res eo duriores efficere caecitatem poterat, frequenti in via tuguriolum sibi statuit, ubi vitam egit, victum mendicans a praetereuntibus. Cuius ea patientia fuit, ut non aliter quaestus fuerit, quam ut diceret «Viator da obolum Belisario, quem virtus extulit, caecavit invidia»<sup>20</sup>.

Raffaele Maffei da Volterra (1451-1522)<sup>21</sup> was long active in Rome at the papal Curia before retiring to his hometown to dedicate himself to translating from Greek various authors, from Homer to Saint Basil to the historian Procopius of Caesarea. But his major work was his *Commentarii urbani*<sup>22</sup>, an encyclopedic work of humanistic style in 38 volumes, a very important monument of erudition which achieved success all over Europe (published first in 1506 and reprinted numerous times). In the section denominated *Anthropologia*, dedicated to a medley of illustrious persons both ancient and modern, Volaterranus recalls Belisarius' victorious deeds in the service of Justinian followed by his dramatic end at the precise order of his sovereign, who destroys him out of hatred, or suspecting a betrayal:

Belisarii eius<sup>23</sup> ducis Graeci hominis gesta sub eo percurram. Hic Persas in oriente vicit, Vandalos vero in Africa, ducto in triumphum Gilismere. Gothorum in Italia gentem capto Victige rege superavit. Post haec Africam repetens, Vandalorum redintegratis viribus, bella renovantes, reipublicae subdidit, interfecto eorum rege Guntarit sub pacis dolo. Victor inde Romam reversus, crucem auream, ubi res eius gestae celatae fuerant, Petri basilicae obtulit. Postremo cum Totila rege

<sup>20</sup> Ioannis Ioviani Pontani *De fortitudine libri duo*, lib. II: *De fortitudine domestica*, cap. *De caecitate et malis aliis corporis*, in Eiusd. *Opera*, Venetiis, per Bernardinum Vercellensem, 1501, s.n., or even in Ioannis Ioviani Pontani *Opera omnia*, Florentiae, per haeredes Philippi Iuntae, 1520, ff. 49r-v, 50v.

<sup>21</sup> For information on this author cf. S. Benedetti, *Maffei, Raffaele*, in *Dizionario Biografico degli Italiani*, LXVII, Roma 2006, pp. 252-256.

<sup>22</sup> R. Alhaique Pettinelli, *Raffaele Maffei e i «Commentarii Urbani»*, in *Metafore di un pontificato. Giulio II (1503-1513)*, Roma 2010, pp. 61-73.

<sup>23</sup> Maffei describes first of all Justinian's achievements: «Justinianus Iustini sororis filius ab eo adoptatus, imperavit annos XXXIX. Cuius domi forisque gloria ingens vulgata est, legibus in epitomen redactis, Persis qui Romanos limites praetergressi fuerant pacatis; Africa a Vandalis, Italia a Gothis liberata, et in Dalmatia Salona urbe per mundum ducem recepta. Pro quibus gestis nobile Sophiae templum Constantinopoli extruxit»: Raphaelis Volaterrani *Commentariorum urbanorum octo et triginta libri*, Basileae, Froben, 1544, lib. XXIII, f. 273r.

multis magnisque praeliis congressus est, et Romam eiusdem hostis ingressu desolatam, moenibus portisque reffectis instauravit, clavibus Constantinopolim ad Iustinianum missis. Totilam quoque iterum revertentem, magna vi repulit. Denique quum impar viribus esset, nec fortuna quae fuit ab initio perseveraret, per Antoninam uxorem quam praemiserat, a Iustiniano missionem impetravit. In cuius locum Narses est missus. Ad extremum, exitum habuit, magnis plerumque viris de Rep. meritis communem. Iustiniani iussu, sive odio, sive veteris belli suspitione, effossis oculis mendicabat<sup>24</sup>.

#### 4. *Pietro Crinito's tale in De honesta disciplina*

Pietro Crinito (1474-1507)<sup>25</sup>, from Florence, was a respected member of the humanist circles active in that Tuscan city at the end of the 1400s., a disciple and friend of Angelo Poliziano who adopted Poliziano's concept of philology as the central discipline of the humanistic system of knowledge, the indispensable key to the various sciences and the study of antiquity. In Crinito's short life his most important work was the 25 book treatise *De honesta disciplina*, published in Florence in 1504<sup>26</sup>, which was very successful and widely read all over Europe with several editions in the course of the 16th century. It consists of a miscellaneous collection of varying erudition of an encyclopedic nature, written in the mode of Aulo Gellio's *Noctes Atticae* and Macrobius' *Saturnalia*, with the evident direct influence of two *Centuriae* from Poliziano's *Miscellanea*<sup>27</sup>. In volume IX of Crinito's masterwork there is also a chapter on Belisarius, chosen as paradigmatic embodiment of the danger overhanging everyman of a sudden reversal of fortune, whose caprice rules over the lives of all men. The lesson for the wise man is therefore to place no trust in human things and expect nothing good.

Sermo nuper habitus est a viris prudentioribus de fortunae potestate et viribus, quae pro libidine omnia humana agit ac versat. Sed inter alia multa exemplum de

<sup>24</sup> *Ibid.*

<sup>25</sup> R. Ricciardi, *Del Riccio Baldi, Pietro*, in *Dizionario Biografico degli Italiani*, XXXVIII, Roma 1990, pp. 265-268; M. Marchiaro, *Pietro Crinito: nota biografica*, in Ead., *La biblioteca di Pietro Crinito. Manoscritti e libri a stampa della raccolta libraria di un umanista fiorentino*, Porto 2013, pp. 15-23.

<sup>26</sup> A careful analysis of the features («uno zibaldone di notizie sull'antichità») and importance of the work is found in the pages of C. Angeleri, *Introduzione*, in Pietro Crinito, *De honesta disciplina*, ed. C. Angeleri, Roma 1955, pp. 1-55 (citation on p. 1).

<sup>27</sup> Even if the student ranks far below his great master: see his totally negative opinion on Crinito and his works in V. Branca, *Introduzione a Angelo Poliziano, Miscellaneorum Centuria Secunda*, ed. V. Branca - M. Pastore Stocchi, *Editio minor*, Firenze 1978, pp. 1-68: 65 and footnotes 21 e 23.

Bellisario duce maximo prolatum est, quod equidem non putavi praetermittendum, cum aetate quoque nostra, in qua totius Italiae principes variis passim cladibus agitantur, paria quaedam prope aspiciamus. Bellisarius igitur, ut a Procopio et aliis relatum est, vir quidem gestis et animo maximus, saepius victor ac triumphator fuit: qui Iustiniani Augusti imperium suis auspiciis firmavit, Vandalos populos delevit, de Persis triumphavit, Italiamque et urbem Romam a barbaris et crudelissima caede non semel liberavit. Tandem vero post multas victorias ac peractos triumphos, caecatus ab imperatore fuit, eidemque oculi crudeliter exempti. Neque ob aliam causam, quam propter livoris improbitatem, qui velut ignis alta semper et ardua petit. Cui ut ad plenum satisfaceret, in tam gravi, tamque iniqua fortuna oppressus, tuguriolum sibi propter viam constitui fecit, un quo nummulos ad victum quaeritans, vitae reliquum transigeret, dictitans hoc subinde praetereuntibus: «Viator, concede obolum Bellisario, quem livor, non error caecavit»<sup>28</sup>.

In Belisarius' case, after having obtained great glory and celebrated the last triumphs of the Roman army, his destiny abruptly changed and he «caecatus ab imperatore fuit», the salient factor being that this was solely due to the evil of hatred, which like fire attacks what is elevated: «eidemque oculi crudeliter exempti. Neque ob aliam causam, quam propter livoris improbitatem, qui velut ignis alta semper et ardua petit». Reduced to begging for food, with a wayside hovel for home, also in this case the words addressed to passers-by by the general underscore the harshness of an undeserved punishment: «Viator, concede obolum Bellisario, quem livor, non error caecavit». Crinito utilizes the highly authoritative and emotionally charged exemplum furnished by the Byzantine general to draw a moral precept of general application: Fortune capriciously rules over the lives of men regardless of each one's merits or virtue. Belisarius' military achievements and lofty soul could not save him from his sovereign's evil and envy; the sad fate of such a great man therefore confirms the miserable human condition, condemned to suffering and injustice with no hope of anything good: «Adeo nihil in humanis melius quam nihil boni sperare, quod illa etiam per quam nobilis Sidonii acclamatio commonet, de misera mortalium conditione. O necessitas abiecta nascendi, vivendi misera, durissima moriendi. Sed hoc alibi de Bellisario commodius diximus»<sup>29</sup>.

##### 5. *Andrea Alciato's critical analysis*

<sup>28</sup> Petri Criniti *De honesta disciplina libri XXV*, Lugduni, apud Seb. Gryphium, 1543, lib. IX, cap. VI, *Non esse viri prudentis, in humanis confidere: et exemplum nobile de iniquissima fortuna Bellisarii ducis*, pp. 149-150 (totally consistent with the 1504 Florentine *editio princeps*; as is well known, there is no manuscript tradition of the work).

<sup>29</sup> *Ibid.*, p. 150.

Thus Crinito is the author who gives the most space and importance to the episode, transforming it into an occasion for philosophical reflection and moral teaching. For this, he becomes the chosen polemical target for Alciato's lesson on the historical method. The Milanese jurist's declared aim is to defend Justinian (defined as most pious prince)<sup>30</sup> from a baseless and therefore unjust accusation, his thesis being that Crinito had been culpably gullible in falling for someone's patent fabrication:

Scriptis Petr. Crinitus lib. XV. De honesta disciplina, de quibus quid in universum sentiam, non habeo nunc necesse pronuntiare: in partes vero recte Martialis carmen poterit praedicari: sunt mala, sunt quaedam mediocria, sunt bona plura<sup>31</sup>. Is lib. IX. cap. VIII. Iustinianum nostrum pudenda nota accusat, qui summum duces Belisarium, rerum gestarum fama, virtuteque nulli veterum cedentem, prae livore obcaecavit, eoque redegerit, ut mendicus numulos ad victum quaereret, viatoresque iis verbis compellaret: «obolum viator Belisario concede, quem livor, non error adflixit». Defendam ego hac in re Iustinianum, piissimique et maximi principis partes aliquanto probabiliore, favorabilioreque causa, quam ipse accusavit, sustinebo. Crinitumque ipsum in primis interpellabo, unde hanc fabulam commentus sit<sup>32</sup>.

For Alciato the decisive factor is that the episode of the emperor's cruel ingratitude and the blinding is not to be found in contemporary sources, including one Crinito quotes, Procopius, who dwells at length on Belisarius' life events<sup>33</sup>. The same can be said for other Byzantine sources: Agathias

<sup>30</sup> On the figure of Justinian and his reign see G.G. Archi (ed.), *L'imperatore Giustiniano: storia e mito*. Giornate di studio a Ravenna, 14-16 ottobre 1976, Milano 1978; J.A.S. Evans, *The age of Justinian: the circumstances of imperial power*, London-New York 1996; O. Mazal, *Justinian I. und seine Zeit. Geschichte und Kultur des byzantinischen Reiches im 6. Jahrhundert*, Köln-Weimar-Wien 2001; G. Tate, *Giustiniano: il tentativo di rifondazione dell'impero* (ed. orig. Paris 2004), Roma 2006; with particular regard to his role in re-ordering Roman law, still useful is G.G. Archi, *Giustiniano legislatore*, Bologna 1970.

<sup>31</sup> Mart. I, 16. Actually, Alciato here inverts the terms of Martial's maxim, thus giving an overall positive judgement on Crinito. We don't know if his mistake in quoting the Latin poet is due to a faulty memory, or if he intentionally modified the text.

<sup>32</sup> Andreae Alciati... *Parergon iuris, sive obiter dictorum*, cit., col. 403 C-D.

<sup>33</sup> On the Byzantine historian, besides B. Rubin, *Prokopios von Kaisareia*, in *Paulys Realencyclopädie der classischen Altertumswissenschaft*, XXIII.1, Stuttgart 1957, coll. 273-599; and also now, with a rich updated bibliography, M. Cristini, *Procopius of Caesarea*, in *Biographisch-Bibliographisches Kirchenlexikon*, on-line, May 2021 <<https://www.bbkl.de/index.php/frontend/lexicon/P/Pr/procopius-of-caesarea-85574>>, cf. A. Cameron, *Procopius and the sixth century*, Berkeley, Calif.-Los Angeles 1985; Ch. Lillington-Martin and E. Turquois (ed.), *Procopius of Caesarea: Literary and Historical Interpretations*, London-New York 2018; in particular on the narrations of Justinian epoch wars, of which he was eyewitness, with

Scholasticus, continuer of Procopius' *Histories*, the *Suida*, the *Annals of Constantinople*, Paul the Deacon. None mention this story, though they do report the accusation of betrayal and conspiracy made against the general, who was however absolved without further consequences, his freedom and property restored:

Adducit ille testem Procopium: atqui is rerum praeclare a Belisario gestarum testis locupletissimus est: huius adeo pudendae mortis nullam prorsus mentionem facit. Agathius, qui illi in historia successit, effoetum aetate Belisarium adversus Hunnos conflixisse ait, quamprimumque Constantinopolim rediisse, adversa procerum voluntate, qui cum eius gloriae inviderent, curarunt ne exantlatis laboribus paria praemia consequeretur: nullum praeterea aliud verbum. Suidas cum eius vitam celebrasset, et abstinentiam, probitatemque laudasset, nihil de tali morte scribit, ut satis appareat, communi sorte eum decessisse. Qui Annales Constantinopolitanos graece scripserunt, ante Iustiniani obitum detecta quadam conspiratione insimulatum a Sergio Belisarium memoriae mandarunt, et hoc nomine domi suae custoditum fuisse, deinde post paucos dies absolutum, pristinos honores recepisse omnes, quod et in quibusdam Pauli Diaconi codicibus latinis etiamnum legitur<sup>34</sup>.

Moreover, in *De bello gothico* (III, 32), Procopius cites Justinian's clemency, eager to pardon the Armenian general Arthabane, who had conspired against him: «Sed et quis tam male habitum a Iustiniano tantum virum credat, cum autore Procopio libro III constet, Arthabanem quosdamque alios, qui cum eo in caput ipsius principis coniuraverant, depraensos non ultra punitos fuisse, quam ut in custodia essent, praeterea nihil mali passos?»<sup>35</sup>.

Thus the import of Alciato's annotations is twofold: on the one hand he provides a model for historical investigation exclusively adhering to the best, most reliable sources and avoiding fanciful reconstructions with no base in ancient sources. The heavy irony toward Crinito eloquently expresses condemnation for the method he used and calls out that scholar's ingenuous and incompetent evaluation of the reliability of historical sources; Poliziano's student, the promising heir of XVth century Florentine cultural tradition easily taken in by an obviously baseless tale, repeating it as true fact, thus becoming the unaware victim of a tasteless hoax: «Opinor facetum aliquem ... cum graecum qualemcunque auctorem in manibus haberet, a Crinito interrogatum, ut ex eo depromeret, unde libros suos augere posset, hanc effinxisse naeniam,

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ample treatment of Belisarius, see C. Whately, *Battles and generals. Combat, culture, and didacticism in Procopius' Wars*, Leiden-Boston 2016.

<sup>34</sup> Andreae Alciati... *Parergon iuris, sive obiter dictorum*, cit., coll. 403 F-404 A.

<sup>35</sup> *Ibid.*, col. 404 A.

credulitatieque hominis illusisse»<sup>36</sup>.

On the other hand he takes to task the humanist tendency to paint Justinian in the blackest tones, attributing to him flaws and vices, out of keeping with the dignity of his imperial office. The humanists' stance on Justinian couldn't help but cast a shadow on the overall evaluation of the Byzantine emperor's figure and works, thus also his activity as legislator and the author of the *Corpus iuris civilis*. Consequently Alciato as a jurist and not only as an evidence-based historian, wanted to rehabilitate Justinian while demonstrating the biased nature of many humanists' works, hostile to jurisprudence and unwilling to credit the emperor for having at least partly preserved Roman law in his Digest.

Although Alciato's overall evaluation of Pietro Crinito's works was not entirely negative, his particular criticism probably derives from the fact that Crinito's *De honesta disciplina* contains various notations echoing those of Poliziano aimed at a correct reconstruction of the meaning of juridical terms and a negative view of jurists' resistance to integrate the progress made by the *bonae litterae* into their own works, thus erecting a corporative defense of false and wrongful interpretations that medieval jurists might be forgiven due to the general ignorance of the times, but not 15th century *doctores legum*:

Utrobique autem ridiculus est Accursius, nisi veniam dare homini malis, quoniam rudi seculo, ac prorsus illiterato natus est; sed retineri tamen eius nugae et hac aetate a nostris iureconsultis defendi, qua literae omnes, ac honestiores disciplinae, permultum incrementi acceperunt, id ego vix ferendum existimo, ab his praesertim, qui bonarum literarum sacris initiati et exulti sunt. Sed hoc ipsum (diis iuvantibus) commodius asseremus: multa enim in iure civili accepta perperam, et inepte exposita, sententias persaepe afferunt violentas et falsas, quas defendere nemo ipsorum possit, cum sint adeo nostri legulei a Romanis studiis et melioribus disciplinis abhorrentes<sup>37</sup>.

This position expressed by Crinito, would likely have displeased Alciato, always on guard to defend jurists from humanists' criticism like that of Lorenzo Valla, even though Alciato himself was the most consistent promoter of a radical renewal in the methodology of the *scientia iuris*. Crinito evidently inherited the interest in Roman law and the attack against medieval juriconsults' ignorance of classical Latin and ancient Roman history from the teachings of Angelo Poliziano, who dedicated his last years to studying the

<sup>36</sup> *Ibid.*, col. 403 E.

<sup>37</sup> Petri Criniti *De honesta disciplina*, cit., lib. XVII, cap. 8: *Qui sint apud iureconsultos directarii et dirigere, ac restituta in Pandectis verior lectio, tum quid apud Graecos Tichobates intelligatur*, p. 264 (still consistent with the *editio princeps*). Another who reflected on the passage and in general on Crinito's philological work on the *Digesto* is C. Angeleri, *Introduzione*, cit., pp. 41-46.

ancient manuscript of the Pandette, preserved in Florence like a relic<sup>38</sup>. However, Alciato – citing texts – rejects this position, artfully reversing the charge of ignorance regarding historical sources and a faulty working method against the humanists themselves:

Haudquaquam igitur persuaderi mihi facile poterit, talem fuisse praestantissimi ducis exitum: non si iuratus mihi hoc Pontanus diceret, non si Volaterranus quos credible est Crinito ipsi fidem adhibuisse, nec hac in re multum curae collocasse, ex certis auctoribus hoc accepisset Crinitus, an commentitiis, ineptisque ex scribiginibus<sup>39</sup>, qualia pleraque vulgo feruntur, quae lege pontificia ἀπόκρυφα vocantur, quod non digna sint ut palam explicentur, sed in occulto potius sint tenenda<sup>40</sup>.

Alciato's answer expresses confidence in his own superior preparation, fearless of comparison with an entire authoritative tradition (Pontano, Crinito, Maffei) which actually feeds upon itself, thus spreading the initial error (the probable hypothesis being in fact that Maffei's account echoes that of Crinito); therefore distinctions need to be made lest authors full of errors and imprecision with no guarantee of authenticity be further spread, confusing fantasy with reality.

In conclusion, if knowledge of history is fundamental in the work of a jurist, it must necessarily be reconstructed correctly and a distortion of the sources to exploit them (even for a positive objective like a moral lesson for the reader) cannot be allowed if that entails betraying the reality of facts, offering in its place a manipulated tale of an imaginary past.

<sup>38</sup> However, Poliziano does not seem interested in exasperating the polemic against the jurists. On the work done by Ambrogini on the *littera florentina* in the summer of 1490 and his interest in Roman law see G. Rossi, *Lecture umanistiche del Digesto lungo il XV secolo. Da Valla a Poliziano*, in D. Mantovani, A. Padoa Schioppa (ed.), *Interpretare il Digesto. Storia e metodi*, Pavia 2014, pp. 311-369: 346-365.

<sup>39</sup> A variant on the more common *scribiginibus*, that is, solecisms. The same inaccurate spelling is found for example in a letter written from Avignon to Boniface Amerbach at the end of 1527: A. Hartmann (hrsg. von), *Die Amerbachkorrespondenz*, III. Band, Basel 1947, nr. 1222, p. 286, r. 42.

<sup>40</sup> Andreae Alciati... *Parergon iuris, sive obiter dictorum*, cit., col. 404 A-B.