

§ 3. THE ORIGINES OF THE JURIST UNIVERSITIES

CHAP. IV,
§ 3.
The anti-
quarian
bias.

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

The Theo-
dosian
legend.

By the thirteenth century, and probably early in that century,¹ this familiar logical process had resulted in a legend which attributed the foundation of the University of Bologna to Theodosius II and in the concoction of a Charter of Foundation by that monarch bearing date A.D. 433. Unfortunately for the success of this patriotic effort, the zeal of the forgers somewhat overshot the mark. Two distinct charters were produced, both purporting to be issued by the

¹ The deeds are printed—one by Ughelli, *Italia Sacra* (1717), ii. 9, the other by Muratori, *Ant.* iii, c. 21. In these documents the authority of the archdeacon over the inceptions, first entrusted to that official in 1219 (see below, p. 221), is enforced as though it were still by no means beyond the reach of attack. The growth of this monstrous legend is elaborately traced

by Chiappelli (cap. 1). The *ἀναρχία* of the Theodosian legend seems to be an older tradition as to the foundation of the city by Theodosius I or Theodosius II. In 1306 the papal legate Ancaldo was petitioned to confirm the Theodosian privilege: the legate replied that he must first see the privilege. Ghirardacci, i. 525. The forgeries were then already in existence.

same Emperor in the same year. Possibly in consequence of this contretemps, the Theodosian legend has never attained the same popularity or acceptance as the legends which make Charles the Great the Founder of Paris and Alfred the Founder of Oxford, the last of which still maintains a kind of underground existence in university calendars, in secondary guide-books, and in popular histories of England. The early date of the legend is worth noticing as an illustration of the extremely small value which ought to be attached to scholastic traditions of this type even when they are not capable of the same historical confutation which is possible in this case. A further discussion of this and other inconsistent legends or traditions as to the origin of the university would be neither interesting nor instructive. All that is really known as to the origin of the school has been placed before the reader in a preceding section. So far there has been not the faintest trace of any even rudimentary organization similar to that of the later university. Irnerius and his contemporaries, so far as we know, were private and unauthorized teachers; neither they nor their scholars belonged to any institution or enjoyed any legal privilege whatever.¹ The first legal charter in which the school receives even an implicit recognition is a charter of the Emperor Frederick Barbarossa, known as the Authentic *Habita* and issued in 1158 at the Diet of Roncaglia, in which the doctors of Bologna played a very prominent part.

This privilege has often been treated as a kind of charter, if not as an actual 'foundation', of the University of Bologna. But though there is no reason to doubt that this legislation was primarily intended for the benefit of the increasingly

Privilege of
Frederick
I, 1158.

¹ [This view is strongly opposed by Manacorda, who regards the ecclesiastical *licentia docendi* as the link at Bologna, as elsewhere, between the cathedral school of the past and the later universities. He thinks that the Canon Hugo of Bologna (c. 1125), who could teach how and when and where he wished, would have the licence, and that Irnerius,

a *magister artium*, even if he were a layman, would have it also. See especially i. 198-204. V. Rossi, in his criticism of Manacorda, as strenuously upholds the opposite view, expressed in the text above; *Scritti di critica letteraria*, iii. 77-86. For the general significance of this discussion see above, p. 21.]

CHAP. IV, § 3. numerous body of law-students at Bologna, that city is not expressly mentioned in its provisions, and it is perfectly arbitrary to limit its actual scope to the schools of that place.¹ In any case this document does not recognize the existence of a university whether of masters or of students at Bologna or anywhere else. It is a general privilege conferred on the student-class throughout the Lombard kingdom. This charter does, however, constitute an important indication of the growing importance and the independent position of the doctors of law, and was no doubt procured by the interest of the Bologna doctors. Its provisions were suggested by the older privilege conferred by Justinian upon the scholars of Berytus.² Besides taking the scholars under the especial protection of the Emperor, it provides that in any legal proceedings against a scholar, the defendant is to have the option of being cited before his own master or before the bishop.³

¹ As is done by Savigny (c. xxi, § 63). This limitation is criticized by Denifle (i. 49 sq.), whose view I have adopted. He there examines a story embodied in a Latin poem (partly printed by Giesebrecht ap. *Sitzungsberichte d. Bayer. Akad. d. Wiss. Phil.-Hist. Kl.*, 1879, ii. 285), according to which Frederick granted some such privilege to Bologna, on the petition of the scholars in 1155. He comes to the conclusion that the charter meant is the Authentic *Habita* itself, some copies of which bear no date, and that the story grew out of the fact of Frederick's having been near Bologna in 1155. It is quite possible that the privilege was asked for and perhaps granted in 1155, but formally promulgated at the Diet in 1158 (as is suggested by Kaufmann, *Gesch. d. Deutschen Universitäten*, i. 164). On the part played by these Bologna doctors at Roncaglia see below, p. 259.

² The enforcement of the Emperor's regulations is entrusted at Constantinople to the Prefect, at Berytus to the *Praeses* of the pro-

vince, the Bishop and the 'legum professores'.

³ 'Verumtamen si eis litem super aliquo negotio quispiam movere presumpserit, huius rei optione scolaribus data, eos coram domino aut magistro suo vel ipsius civitatis episcopo, quibus hanc iurisdictionem dedimus, convenient' (*M.G.H., Constitutiones*, i (1893), 249). There has been much needless discussion as to the meaning of 'dominus', but there can be no doubt that it is a synonym for 'magister', though Malagola (*Monografie*, p. 39) still appears to understand it of the Rector. The use of this title (which was affected only by the law-professors) shows that the law-students were primarily in view; though the term *magister* would include the teachers of other faculties. Justinian had entrusted a disciplinary jurisdiction over students and copyists at the law-school of Berytus to the professors in conjunction with the *Praeses* of the province and the Bishop. But it appears doubtful whether this is extended to ordi-

Attempts were made at times to extend the first of these provisions to the scholars in the other parts of Europe, and in the Italian universities this pre-university charter was usually recognized as the basis of all the special privileges conferred on particular universities by the States in which they were situated. Whatever privileges were afterwards granted to the universities, whatever jurisdiction was conferred on their rectors, the jurisdiction of the bishop and the professors was usually, at least in theory, maintained. But after the rise of the universities the scholar was not allowed by their statutes to decline the jurisdiction of his own rector. Hence the choice of tribunal practically passed to the plaintiff, and was lost by the defendant scholar.¹ The jurisdiction of the professors was found difficult to enforce, and that of the bishop remained only in the case of scholars who were also clerks.

While the Authentic in no way recognizes the corporate existence of a college or guild of doctors, it does indirectly make it probable that some such society must have by this time sprung into existence.² In the days of Irnerius the teaching office could (so far as can be gathered) be assumed by any one who could get pupils: he required no licence or permission from any authority whatever, ecclesiastical, civil, or academical.³ We can hardly, however, suppose that the

nary criminal and civil proceedings. See the *Proaemium* to the Digest.

¹ *Stat.*, p. 12. [The Authentic *Habita*, whether the Emperor had the scholars of Bologna in mind or not, was approved by Pope Alexander III and was afterwards generally received, directly or indirectly. It defined a jurisdiction which, so far as the bishop was concerned, could be traced back to the Decretals of Pope Eugenius II. On the jurisdiction of the master, cf. the claim of the scholar of Reims, as given by Alexander III in a letter of 1170-2 (*Patrol. Lat.*, cc. 746). See Manacorda, i. 205-6, also pp. 195, 221.]

² I cannot understand the ground of Kaufmann's statement that at the time of the Authentic 'Es gab also damals wahrscheinlich schon landsmannschaftliche Verbindungen unter den Scholaren' (*Deutsch. Univ.* i. 166; cf. p. 184). These 'Verbindungen' he apparently regards as 'Anfänge von Korporationsbildung' (i. 184). It is quite possible that the beginnings of informal associations may be as early as 1158, but of this there is no evidence—least of all can it be inferred from the *Habita*.

³ [He may have been required to have the ecclesiastical *licentia docendi*; see above, p. 143 note.]

CHAP. IV, § 3. Emperor would have conferred important judicial functions upon an independent body of self-constituted teachers like our modern 'professors' of music or of dancing. It is therefore probable that in Italy as in France at least some recognized course of study was demanded by custom before the pupil could become a master, and that he was required to obtain the approval of the existing body of masters and to enter upon the teaching office by some public, definite ceremonial, such as the later *Conventus* or inception. We may therefore consider it tolerably certain that at least the idea of a co-opting college or corporation of doctors dates in some shadowy form from before the year 1158; although the masters may not yet have proceeded to such definite manifestations of corporate existence as the making of written statutes, and the election of common officers. The guild was already in existence, but was merely, so to speak, a customary society, which existed in fact, though not on paper. Such an inference is strongly supported by the analogy of Paris, where we have positive evidence of the existence of a customary guild of masters, some ten or twenty years later, though it was not till fifty years after that that a single written statute existed, and not till a still later period that the guild was sufficiently organized to elect officers or use a common seal. At Bologna the first express evidence of the existence of such a society of masters comes in the year 1215, when we hear of Buoncompagno's new book being read before the 'University of Professors of the Civil and Canon Law';¹ but the whole

¹ The *Rhetorica Antiqua* of Buoncompagno, who says: 'Recitatus equidem fuit hic liber, approbatus et coronatus lauro Bononiae apud sanctum Johannem in monte in loco qui dicitur paradisus anno domini 1215 septimo Kal. April. coram universitate professorum iuris canonici et civilis et aliorum doctorum et scolarium multitudine numerosa.' Ap. Rockinger, *Sitzungsberichte der bay. Akad. zu München*, 1861, p. 135. The same writer, however, says: 'Tunc amici . . . ad

Maiorem Ecclesiam deverunt (*sic*). Et ita fuit Magistrorum et Scholarium Universitas congregata' (ap. Sarti, ii. 32)—which might be held to indicate that some loose organization of *masters and scholars* preceded the formation of the student-universities. [This is the view of Gaudenzi (*Appunti*, p. 13) so far as the foreign students and professors are concerned. The foreign students, in the second half of the twelfth century, grouped themselves into nations, which

system of degrees which is known to have been fully established before 1219 implies the existence of such a society in a rudimentary form at a much earlier date. Taking the degree of doctor or master in its earliest form meant simply the being admitted or made free of the guild of teachers by receiving¹ the insignia of mastership.

In the account of Buoncompagno's recitation, to which I have already alluded, the professors of the civil and canon law are described as forming a single *universitas*.² What were the exact relations between the two classes at this time, we do not know; eventually there were two wholly distinct colleges—one of canon and one of civil law, each with a prior and other officers, and a code of statutes of its own. It is probable that the college of canon law was a later imitation of the civilian organization. In most other universities, however, the doctors of civil and canon law were united in the same college or faculty, though the degrees were distinct.

early in the thirteenth century joined to form the university of ultramontane students. Cf. below, p. 155. For reference to a *consortium* of masters in 1201 and observations on the subject-matter of this and the following notes see below, p. 232 (Additional Note).]

¹ It is probable that, originally, any master might admit any other person to the mastership, but that this right was controlled by the customs of the profession. It is possible that this state of things lasted longer in the arts schools than in the schools of law. Cf. the way in which Rolandino of Padua speaks of his graduation in 1221: 'apud ipsos Bononienses in scientia litterali nutritus, in anno Domini M CC XXI illic a Boncompagno meo dompno et magistro, natione et eloquencia florentino, licet indignus, recepi officium magistratus.' *Chronica*, book ix, c. 4 in *M.G.H., Scriptores*, xix. 120. [Now also edited by A. Bonardi in the new *Rerum Ital. Scriptores*, viii,

part i (Città di Castello, 1905), p. 135. Manacorda (i. 250) thinks that this refers, not to the licence to teach, but to the transmission of a school by a master to a pupil, his successor. In his *Rhetorica antiqua*, Buoncompagno describes a similar ceremony in his own career (before 1215; cf. above, pp. 110 and 146 n.). The passages are too concise to allow a convincing conclusion to be drawn. If they refer to the licence, they do not definitely preclude the co-operation of the archdeacon. There is a clear account of the transfer of a school at Paris in 1179 in Gerald of Wales, *De rebus a se gestis* (*Opera*, i. 48).]

² It is not implied that the mere use of the term *universitas* proves the existence of a formal guild: the term *universitas* might be used quite untechnically of any collection of persons; but the passage seems to imply that the doctors of law were a recognized class or official body.

CHAP. IV, § 3. Two decades later than the Charter of Frederick I, we meet with another official recognition of the scholars, though it does not distinctly imply the existence of any academical organization. In 1189 a Bull of Clement III confirms an already existing legatine ordinance forbidding masters or scholars to offer to the landlord a higher rent for a house already inhabited by scholars.¹ At a very early date it became customary for the rents to be fixed by arbitrators or taxors, two of them appointed by the scholars, and two by the town. It is difficult to say whether the above-mentioned Bull implies the existence of this system,² but we find a similar system established in the very infancy of other universities and it obtained in some schools which never grew into universities at all.

66 The magisterial guild and the 'conventus'. The University of Bologna has already been described as a university of students. And it is quite true that at Bologna it was the guild or rather guilds of students which eventually succeeded in getting into their own hands the real control of the *studium* in most of those matters which were at Paris settled by the masters alone. But it cannot be too clearly understood that the doctors of Bologna, probably at as early a date as the masters of Paris, formed a guild or guilds of their own, and that it was not till a later period than that with which we are now engaged that the control of strictly academical matters passed to the universities of students. It was a mere accident that the term university was appropriated by the student-guild, while the doctoral guilds were known as colleges. The students did no doubt at last succeed in reducing the masters to an almost incredible servitude. But there remained one function and one only over which the doctors to the last retained an exclusive control, and it is of the greatest importance that this should be clearly under-

¹ Savioli, II. ii. 160. So Decretal. Greg. IX. lib. iii. tit. xviii. c. 1.

² It is ordered that 'a te frater episcopo et tuo quolibet successore hoc singulis annis in communi audientia magistrorum atque scholarium recitetur'. This implies that

congregations of some kind were customary, but it also shows a very different relation existing between the masters and their scholars from that which we find a century later.

stood. Even the domineering student-guilds of Bologna left CHAP. IV, § 3. to the masters the indefeasible right which every professional guild possessed of examining into the qualifications of candidates for admission to the profession. The doctors examined the candidate, gave him licence to 'incept' or give his public probationary discourse, after which, if this further test was satisfactorily passed, he was received into the *collegium* of the doctors of civil or canon law, as the case might be, being presented by an existing member in the presence of the rest with the insignia of his office. Such in its essence was the idea of the 'conventus', 'principium', or 'inceptio'—the simple institution which formed the keystone of the whole university constitution. Unless its nature and meaning are thoroughly understood, the whole organization of medieval education will remain an unintelligible enigma. Postponing to a later date a detailed explanation of this part of the academic polity, we must now proceed to trace the *origines* of the student-universities.

The student-university which originated at Bologna forms a wholly new departure in the history of education; the institution is as distinct from anything which preceded it as it is unlike any of the modern institutions which have nevertheless been developed out of it. It is not, however, difficult to explain the genesis of the new creation, if we bear in mind the character of the environment wherein it grew up. We have already contrasted the state of society in the Lombard towns with that which prevailed in the feudal monarchies of Europe. We have seen that traditions of education, and of legal education, survived among the noble families of Italy at a time when the French or Norman nobles were inclined to look upon reading and writing as rather effeminate luxuries, fit only for plebeian clerks. It is probable, if we may draw an inference from the state of things which we find established at a later date, that the teaching of Irnerius attracted somewhat older men and men of much greater wealth and social position than the boys who attended the arts schools of Paris. Into the Bologna lecture-rooms the idea of discipline never entered at all. The associations of

CHAP. IV, § 3. the school and of the cloister were alike absent. The professor was not originally the officer of any public institution: he was simply a private-adventure lecturer—like the sophist of ancient Greece or the rhetor of ancient Rome—whom a number of independent gentlemen of all ages between seventeen and forty had hired to instruct them. If many of the students were ecclesiastics, they were most of them already beneficed—many of them archdeacons or dignitaries in cathedral churches;¹ and they owed no ecclesiastical obedience to their teachers. But even more important than the age and status of the students was the political condition of the city in which Irnerius and his successors taught. The conception of citizenship prevalent in the Italian republics was much nearer to the old Greek conception than that which prevails in modern states. Citizenship, which is with us little more than an accident of domicile, was in ancient Athens or medieval Bologna an hereditary possession of priceless value. The citizens of one town had, in the absence of express agreement, no civil rights in another. There was one law for the citizen; another, and a much harsher one, for the alien.² Prolonged exile was a serious penalty, to which a body of

Fostered by the political and social environment.

¹ The German students were probably more predominantly ecclesiastical than the Italian. In the earlier period laymen predominate even among the Germans, in the later period they were mainly either beneficed ecclesiastics or else cadets of noble houses. See the *Acta Nationis Germanicæ, passim*.

² The Town Statutes eventually provided 'quod scolares sint cives et tanquam cives ipsi habeantur, et pro civibus reputentur, donec scolares fuerint, et res ipsorum tanquam civium defendantur . . . nec possint ipsi tanquam forenses nec eorum res detineri vel molestari occasione represalie concesse contra commune vel civitatem terre vel castri, vel banni dictis terris castris vel civitatibus dati, vel alicuius debiti pecuniarii'. *Stat.*, p. 162.

It is of course certain that no political rights whatever were conferred upon students: the provision that they should be treated as citizens was necessary to secure them the ordinary protection of the law. Scholars who had resided over ten years at Bologna were sometimes granted actual citizenship; but then they lost their rights in the university. Savigny, c. xxi, § 69, note. That the grievances against which the foreign student wanted protection were not merely sentimental, we are reminded by the frequent occurrence of a privilege exempting scholars from torture except in the presence of and with the sanction of the Rectors. See, e.g., *Stat. Florent.*, ed. Gherardi, p. 109. So at Padua, *Stat. Artist.*, f. xxxiii b.

young men of good position in their own cities, many of them old enough to be entering upon political life, would naturally submit with reluctance. The student-universities represent an attempt on the part of such men to create for themselves an artificial citizenship in place of the natural citizenship which they had temporarily renounced in the pursuit of knowledge or advancement; and the great importance of a *studium* to the commercial welfare of the city in which it was situated may explain the ultimate willingness of the municipalities—though the concession was not made without a struggle—to recognize these student-communities.

Two other circumstances serve to explain the patience with which Bologna and other towns after her submitted to the erection of an 'imperium in imperio' within their own walls, and to confer an extensive civil, and sometimes even criminal, jurisdiction upon the elected officers of a student-club. The first is the prevalence of the conception of 'Personal Law'. For centuries Lombards and Romans had lived together under different codes of law and different magistrates. At an earlier date it had been quite common for even three or four men to live in the same town and yet to be in matters of private law members of as many distinct states; and respect for these personal rights had not entirely died out in the thirteenth century.¹ It remained in all its fullness as regards the clergy. This conception made it seem the less unnatural that alien-students should live under the jurisdiction of their own rectors, just as in eastern countries when there is a mixture of races foreigners are freely permitted to live under the jurisdiction of their own consuls or their own bishops. And then there is a fact which is, indeed, the most important clue to the origin of universities here and elsewhere. The university, whether of masters or of students, was only a particular kind of *guild*:² the rise of the universities is merely a wave of that great movement towards

Recognition of student-rights facilitated by the conception of personal law.

And by the contemporary guild movement.

¹ Savigny, c. iii, § 30 sq.

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

of the *universitas scholarium* subjected to the approval of the 'Approbatores Statutorum Artium (trades or crafts) communis Florentie'. *Stat. Florent.*, p. 135.

CHAP. IV, § 3. association which began to sweep over the cities of Europe in the course of the eleventh century.

And the ruling ideas of the age made the guild a closer and more powerful association in an Italian city than it could be in a modern state. In the first place, the Roman law conferred a legal existence upon 'collegia' or corporations of three persons or more, without any special authorization of the State. In some of the Italian cities the Guef and Ghibelin party-clubs (at Bologna known as Lambertazzi and Geremei), overtly aiming at violent changes in the government of the city, were as much recognized legal corporations as the guilds of merchants or craftsmen.¹ Moreover, while the legal authority of modern clubs and other societies over their members is based for a most part upon a mere contract, in the Middle Ages it was based upon oath. And in the Middle Ages an oath meant a great deal more than it does in modern communities. Perjury was a mortal sin; and the oaths of obedience consequently enabled the guilds to subject disobedient members not only to public 'infamy' and to spiritual penalties at the hands of their confessors but even to proceedings *in salutem animae* in the ecclesiastical courts.²

¹ Ghirardacci, i. 248.

² In the Italian universities every offence prohibited by the Statutes is forbidden 'sub poena perii'. Thus at Bologna, even absence from Congregation involved perjury unless the offender paid a price of five *solidi* within eight days (*Stat.*, p. 129). So at Paris the Rector, 'si dicti Scholares ipsas bursas solvere noluerint, et rebelles extiterint, contra ipsos procedere tenebitur tanquam periuros et infames' (Bulaeus, iv. 232). Whether this implied the promotion of an ecclesiastical suit or (as seems probable) simply a public notification of the fact, but such proceedings would have been quite in accordance with canon law. The German nation at Bologna provides that the 'cohercio' of the Bishop of Bologna or his vicar shall

be brought to bear upon 'contractores', but with the explanation 'quorum iurisdictioni circa executionem conservacionis predictorum ordinamentorum ipsa nacio specialiter se subiecit'. *Acta Nat. Germ.*, p. 350. Here the right to promote a suit rests upon consent; but in Gloria, *Mon. della univ. di Padova* (1318-1405), ii. 223-7, are documents which seem to relate to suits before the Bishop concerning disputes in the college of arts where the jurisdiction is founded entirely upon the oaths taken by its members. So in London we find that the Bishop's Court 'entertained suits exactly analogous to those of the trades unions at the present day, turning on the question how far it is a breach of oath for the sworn member of a guild to impart the arts and mysteries of

The combined force of the social and the spiritual penalties thus wielded by the guilds was so enormous that in the Italian cities they often became more powerful than the State. At Bologna the revolution of 1228 gave them an important constitutional position; their magistrates were almost equal in authority to the magistrates of the republic and almost independent of their control.¹ In such a state of society, membership of a guild was essential to personal security. If the students had not formed themselves into guilds, if they had not insisted upon legal recognition and privilege for their officers, the position of scholars residing in a foreign city would have been wellnigh intolerable.²

To the professors and students who were citizens of Bologna these considerations of course did not apply. The State was not disposed to abandon any part of its jurisdiction over its own citizens, nor the universities to receive as citizens of the academic commonwealth students who were unable to give it an undivided allegiance. Bolognese students retained their natural citizenship: Bolognese professors were accorded a high position in the constitution of the republic.³ Both alike were excluded from the scholastic guilds.

Thus, by merely attending to the conditions or environment in which the law-universities grew up, the peculiar relations which subsisted in them between the students and the professors, and again between the Bolognese students and

his guild to outsiders' (Stubbs, *Lectures on Medieval and Modern History*, ed. 3, Oxford, 1900, p. 364). It may be observed that the dependence of university authority upon an oath secured for the Papacy an especial jurisdiction over them, even where (as in Italy) they were not wholly composed of ecclesiastics. As to the ecclesiastical jurisdiction in matters of oath or contract, cf. Fournier, *Les Officialités au moyen âge*, Paris, 1880, p. 86; and, for its importance in the development of English equity, Fry, *Specific Performance of Contracts*, London, 1892, p. 8 sq.

¹ The most convenient account of the Bologna constitution is given by Savigny, c. xx.

² M. Thurot well remarks that the University of Paris 'se constitua sous l'empire de cet esprit d'association qui produisait en même temps les villes Lombardes, les communes de France, et les corporations de métiers'. *De l'organisation de l'enseignement dans l'Un. de Paris*, p. 3.

³ The Constitution of 1245 made them *ex officio* members of the *Credenza* or Council of 600. Savigny, *loc. cit.*

CHAP. IV, § 3. those from a distance, receive adequate explanation. Even had we no knowledge of the actual history of the evolutionary process, it would be unnecessary to look upon this constitutional phenomenon, as it has too often been looked upon, with mere stupid astonishment, as a kind of historical *lusus naturae*. Whatever surprise may be still felt at the appearance upon the page of History of an institution so startling to modern ideas as a student-university will be removed by an examination of the actual facts, scanty as they are, which have come down to us with respect to the early history of the earliest student-guilds of Bologna.

The two law universities.

From about the middle of the thirteenth century¹ the organization of law-students at Bologna consisted of two closely allied but distinct *universitates*—a *universitas citramontanorum* and a *universitas ultramontanorum*, each under a rector of its own. We have no direct documentary evidence of the state of the academic organization in the first half of the century. But we have evidence that in the universities which were established elsewhere by schisms or migrations from Bologna there existed at the beginning of the century not two universities but four. This was the case at Vicenza, where a colony from Bologna established itself in A.D. 1204, and in Vercelli which was colonized in 1228 from Padua, itself an earlier colony of Bologna. To any one aware of the servile fidelity with which the institutions of a mother-university were reproduced in its daughters, the mere fact that there were four universities at Vicenza and Vercelli would be a sufficient proof that at one time there had been four universities at Bologna also.² But we are not left entirely to inference upon this fundamental point of our inquiry into the origin of student-universities.

¹ The earliest evidence of the change is in a city statute of 1244. Frati, i. 367.

² Savigny conjectured that originally there were four universities at Bologna, c. xxi, § 616. When Kaufmann (i. 189) objects to Denifle's inferences from the Bull of 1217, because by 1250 we hear of

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

In 1217 we hear of the 'Scholars from the City' (i.e. Rome), Campania, and Tuscany as forming either a separate society or more than one separate society; but in any case it is clear that they are not embraced in the same organization as the other Italian students. What was the exact distribution of the students at Bologna at this time, it is impossible to determine with absolute certainty. But it seems highly probable that originally the four universities were (1) Lombards, (2) Ultramontanes, (3) Tuscans, and (4) Romans, in which last university the Campanians may have been included.¹ This view is supported by two facts. First, in the later united Cismontane University there were, as is evident from the Statutes, three original *nationes*—the Lombards, Tuscans, and Romans, which were subdivided into smaller *consiliariae*² (bodies electing one or more councillors), while the Ultramontane University contained a much larger number

CHAP. IV, § 3. So originally at Bologna.

¹ Sarti, II (1772), p. 58. If this view be accepted, of course the 'scholares de urbe, Campania et de Tuscia' (notice the omission of the preposition before Campania) will represent two separate guilds, acting on this occasion in conjunction. The fact that a Bull is addressed to the three together does not, as Denifle assumes (i. 140), prove that they were embraced in one organization, any more than the existence of papal Bulls addressed to the masters and scholars of Bologna proves that the masters belonged to the universities or the students to the doctoral colleges, or the fact that Bulls were often addressed to the doctors of civil and canon law at Bologna proves that there was a single college for both faculties. Moreover, the earliest Statutes of the united universities prove the original distinctness of the Lombardi: 'De Citramontanis vero iuxta morem antiquum nacio Romanorum habeat sex (consiliarios), Tuschorum alios sex, reliquos

habeat nacio Lombardorum, quos per consiliarios sic dividimus, sicut nacionis statutis est descriptum. (Stat., p. 16.) Denifle further assumes from the language of the Bull that this guild of the Romans, Campanians, and Tuscans had only just been formed (i. 140), and hence infers that the *universitas* originated with the Ultramontani. The fact is not improbable, but the language of the Bull seems to me to establish nothing as to the length of time (when the question is between one year and twenty-five) during which the guild or guilds had been formed. Honorius III speaks of the original motive of their formation, but so does the University of Paris fifty years after its first institution. See below, p. 302, n. 1. The amalgamation-theory is supported by the employment of the term *rector*, which was especially used to denote the head of a federation of guilds. See below, p. 162.

² Stat., pp. 16, 68.

CHAP. IV, § 3. of nations—in 1265 fourteen¹—each of which corresponded with a *consiliaria* of the Cismontane University. Whether or not the united Ultramontane University arose by amalgamation from these smaller nations, its later constitution bears no trace of having at any earlier period consisted of two or three separate universities or nations, whereas this is distinctly the case with the Cismontane University.² The second reason for supposing that the four universities were originally constituted as above, is that the University of medicine and arts was to the last subdivided into four nations only—Ultramontane, Lombard, Tuscan, and Roman.³

The various universities probably arose at distinct periods. The fact that there were originally four distinct universities and that we find one or more of them acting in independence of the rest, makes it probable that they originated at distinct periods; and it is highly probable that the final emergence of two closely united universities is but the last stage of a process of amalgamation by which the three societies of Cismontanes and the numerous small Ultramontane nations had reduced themselves to four large societies. The very distinct organization and exceptional privileges of the German nation⁴ find

¹ [French (i.e. from the Ile de France), Picards, Burgundians, Poitevins, natives of Touraine and Maine, Normans, Catalans, Hungarians, Poles; and, *ex altera parte*, Germans, Spaniards, Provençals, English, Gascons. In this year (1265) disputes about the method of electing the Rector were settled, and the Gascons, who had acted with the Germans, Spanish, Provençals, and English against the others, were joined with the Poitevins in a single nation; Sarti, II (1896), 18.]

² See above, p. 155, n. 1.

³ *Stat.*, p. 215. Denifle (i. 139) argues that since at Vicenza, Vercelli, and Padua, we find one university embracing all the Italians, while at Bologna there was certainly more than one Italian university, there must once have been more than four universities at

Bologna. I fail to follow the argument. The different distribution of nationalities in these offshoots of Bologna may have been due to the composition of the seceding bodies of students. In the migrations, both from Bologna and from other universities, the number of nations (four) was always preserved, but their composition varied. His suggestion (*loc. cit.*) that the larger universities may have arisen by amalgamation from smaller nations which after their union remained as subdivisions of the larger body, seems to me probable as regards the Ultramontane nations only. Throughout Denifle fails to recognize the marked distinction between the Ultramontane *nationes* and the Cismontane *consiliariae*.

⁴ In 1273 it is already claimed as an ancient privilege 'quod nobiles

their most natural explanation in the supposition that it was the earliest of these national clubs and formed the nucleus round which other and younger bodies grouped themselves. Even in the fully developed academic constitution, the nations of the *Ultramontani* retained a much larger measure of individual corporate existence than either the three original nations of the *Citramontani* or the smaller *consiliariae* into which they were subdivided.¹

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

de Alamania non teneantur iurare rectori' (*Acta Nat. Germ.*, p. 349). The accounts of 1305 allude to written privileges (*ibid.*, p. 58), while a 'privilegium quod nobiles Almanni non tenentur iurare rectori' is included in an inventory taken in 1442 (*ibid.*, p. 189). The Statutes speak generally of privileges granted by the Emperor (*ibid.*, p. 13); but no actual charter appears to be preserved of earlier date than 1530, when Charles V wholly exempted the German nation from the rectorial jurisdiction, and subjected them to that of their own masters. At the same time the latter were created *ex officio* Counts of the Lateran, and

granted the power of making notaries and legitimating bastards (*ibid.*, p. 191q.). The nation retained its existence as a student-organization till the Revolution terminated its existence just, it would appear, as it was about to die by the less noble method of bankruptcy. (Malagola, *Monografie*, p. 286.)

¹ *Stat.*, p. 139.

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

CHAP. IV, § 3.
The universities were guilds of foreign scholars.

CHAP. IV, wholly exempt from their authority.¹ The reason of the exclusion is obvious. The Bolognese student no more wanted to be protected by a university than a young Englishman reading for the bar in London requires to be protected by a consul. The very existence of the university was due to the want of political status on the part of its members. In exactly the same way we find foreign merchants² and other strangers in an Italian town forming themselves into guilds for the prevention of quarrels among themselves and the promotion of their common interests.

Exclusion of professors. In the same fact is found the explanation of the other characteristic peculiarity in the organization of the universities of the Italian type—the exclusion of the professors from membership.³ The earliest Bolognese professors were citizens of Bologna. Unlike Paris, whose political and commercial importance attracted student and teacher alike from distant lands, Bologna owed her scholastic fame to the accident (if it was an accident) that Irnerius and his first successors

¹ The earliest Bologna Statutes assert the jurisdiction of the Rector over the *Bonomiensis* (*Stat.*, p. 12); cf. the Statute of Lérida formed on the model of Bologna in 1300: 'cum te dicas civem Herdae, iurare non cogeris universitatis statuta, licet dum in hoc studio fueris ad eorum observantiam tenearis.' Villanueva, *Viage Literario*, xvi. 229. So at Pisa and Florence the Rector must be 'forensis'. Citizens were forbidden to take the oath to the Rector on pain of confiscation and the ban by a town statute of 1245 (*Frati*, ii. 29). Afterwards, a special oath merely binding them not to injure the University, &c., was imposed on the Bolognese student (*Bonomiensis vel diocesanus*) and his name inserted in a 'matricula specialis'. *Stat.*, p. 128 (cf. p. 132: 'Com-paternitatem cum bononiensi cive vel diocesano nullus scholaris contrahat, nisi prius petita licentia et obtenta a Rectore suo'). So they

paid modified dues to the university officials on taking their degree, *ibid.*, p. 145.

² Especially German merchants. Denifle, i. 136; Simonsfeld, *Der Fondaco dei Tedeschi in Venedig*, Stuttgart, 1887. So there were *universitates iudaeorum*, e.g. at Catania in Sicily before 1283 (*Documenti per servire alla storia di Sicilia*, Palermo, vi. 28); so at Messina (*ibid.*, p. 63), Syracuse (*ibid.*, p. 78), Trapani (*ibid.*, p. 89), &c.

³ [In the eyes of the law this was not the case. For example, Miss Helen Briggs has pointed to the description of a master in the faculty of medicine and arts, Giovanni della Luna, a victim of an assault in 1308: 'qui quidem Johannes est de universitate scholarium studentium bononie' (*Atti e processi del podestà*, vol. 578, f. 28 v).]

CHAP. IV, § 3. happened to live, and therefore to teach, at Bologna.¹ Had the earliest teachers been foreigners, they might have occupied important positions in the university: as it was, the students had to choose their office-bearers from their own number. At first the professors were excluded not so much because they were professors as because they were citizens. But at a very early period in the development of the universities, we shall find the Bolognese doctors allying themselves with the city against the students in the selfish effort to exclude from the substantial privileges of the doctorate all but their own fellow citizens. The antagonism of interest thus created between the doctors and their pupils has much to do with the growth of the student domination. The doctors, as citizens and as laymen, were connected with the city in a way wholly foreign to the traditions of northern schools. It was through identifying themselves in the pursuit of a common pecuniary interest with the city rather than with the scholars that the doctors of Bologna sank into their strange and undignified servitude to their own pupils.

How entirely parallel to those of the non-scholastic guilds were the original purpose and organization of the student-universities is best illustrated by the statutes of the German nation² which have fortunately come down to us. The original idea of the universities became more or less obscured by the academical power which they eventually acquired. The smaller national associations naturally retained the more homely character of clubs for mutual protection, assistance, and recreation, and for the performance of those religious functions which in the Middle Ages supplied the sanction for every social bond and the excuse for every convivial gathering. In these statutes the object of the guild is declared to be the cultivation of 'fraternal charity, mutual association and amity, the consolation of the sick and support of the

The original purpose of the university illustrated by statutes of German nation.

¹ Thus the Bull of Honorius III in 1220 reminds the town 'quod ipsi gratuito ad studendum vestram preelegerint civitatem, que cum prius esset humilis, per eos ibidem congregatis divitiis fere super-

gressa est civitates Provincie universas'. Sarti, II (1772), p. 57.

² For the position of these subdivisions of the university see below, p. 182 sq.

CHAP. IV. § 3. needy, the conduct of funerals and the extirpation of rancour and quarrels, the attendance and escort of our *doctorandi* to and from the place of examination, and the spiritual advantage of members'.¹ The statutes of any ordinary religious guild or confraternity would define its objects in precisely similar language. The statutes before us go on to provide that the two proctors of the society shall visit sick members and (if necessary) make a special collection for their benefit, or apply the general funds of the guild to that purpose, or, if they are not in need of assistance, at least alleviate their sufferings by their 'cheerful presence'.² The same officials are also required to adjust quarrels and to take measures, in the interest of other members, for compelling students who had left Bologna to satisfy their creditors.³ But the liveliest picture of the ordinary purposes of the guild is supplied by its accounts from the year 1292—one of the earliest and completest series of university documents of the kind which have come down to us.⁴ The receipts are derived from entrance-payments varying, according to means, from five to sixty *solidi* or more, from fines, and from the occasional presents of a newly mitred alumnus. The payments are chiefly devoted to convivial and religious purposes, wine and spices upon the great feasts either for the consumption of members⁵ or the payment of the officiating clergy⁶ and singers, candles for processions, charities to the poor, and other pious uses, such as an occasional vestment or ornament for the Conventual Church of S. Firmian habitually used by the guild. Sometimes, however, a larger drain is made upon the resources of the society by the expenses attending the rescue of a com-

¹ 'Hec nostra congregatio, utilitatis tamen et publice et private nequaquam expers credenda, praesertim ex qua fraterna caritas, societatis amicitieque communicatio, infirmorum consolatio et egenorum subsidium, funerum deductio et rancoris simulatatumque extirpatio, tum doctorandorum nostrorum in locum et ex loco examinis comitiva atque constipacio, bona spiritualia

resultarent.' *Acta Nat. Germ.*, p. 4.

² *Ibid.*, p. 6. ³ *Ibid.*, p. 7.

⁴ *Ibid.*, p. 36 sq.

⁵ The juxtaposition of the following is significant: 'Item, pro malvasia (Malmsey) libras III. Item, pro vitris fractis,' &c. *Ibid.*, p. 133.

⁶ 'Item pro vino propinando presbitero, qui nobis die illo missam cantavit ibidem, II solidos.' *Ibid.*, p. 36.

rade lying fettered in the bishop's prison.¹ These interesting records enable us to realize the original purposes of the larger universities of which the smaller national unions were either the prototypes or the imitations,² though the former may have been too large for the frequent convivialities and fraternal intercourse of the smaller societies. CHAP. IV. § 3.

To appreciate the fact that the university was in its origin nothing more than a guild of foreign students is the key to the real origin and nature of the institution. It is also the starting-point for an inquiry into the date at which these societies began to be formed. It was not till towards the end of the twelfth century that guilds of any kind, colleges of arms and of arts (as they were called), came into existence in the Italian cities.³ The probabilities of the case would suggest that some little interval would elapse between the formation of the guilds of arms and arts and the imitation of them by the scholars. The only direct evidence available is derived from the silence of documents and other authorities—particularly of the civilians who in their commentaries on the title *De Collegiis* might be expected to allude to the existence of a kind of association the legitimacy or illegitimacy of

Date of the first student-universities.

¹ *Ibid.*, p. 83. It was no doubt on some similar occasions that it was necessary to spend sixteen *denarii* in gratifications to the bishop's chaplains or other domestics to get an audience ('pro copia episcopi'). *Ibid.*, p. 76.

² Denifle (i. 153) makes the scholastic guilds originate with the Germans. This would to a large extent explain the exceptional privileges of the German nation; but the question turns in part upon the larger and very difficult question whether the guild was originally of Teutonic origin or a direct descendant of the Roman *collegia*. On this question I do not feel competent to enter.

³ [The argument depends upon the interpretation of the evidence upon which earlier writers, e.g.

Savioli, followed by Denifle (i. 159), have relied for the assertion that a Lombard 'societas armorum' in 1174 was a guild in Bologna, and the first of the Italian local 'societates armorum et artium'. Gaudenzi, who at first shared this view, afterwards argued that the evidence for 1174 had nothing to do with the later societies, which were formed in Bologna in the first half of the thirteenth century. They did not act as models for the scholastic organizations which took definite shape c. 1215, on the foundations laid in the twelfth century. See A. Gaudenzi, 'Gli statuti delle società delle armi del popolo di Bologna', in the *Bullettino dell'Istituto storico italiano*, No. 8, 1889, pp. 7 sqq., especially p. 27.]

CHAP. IV, § 3. which was a matter of considerable personal importance to themselves. Now the first of the long series of jurists who comment upon the anomalous character of the *universitas scholarium* is Bassianus, who, towards the close of the twelfth century,¹ disputes the right of the scholars to elect a rector. Thus the evidence all points to the conclusion that the earliest *universitas* of students originated with the foreign students of Bologna in the course of the last quarter of the twelfth century. Farther than this it is hardly possible to push the inquiry; though there is probability in Denifle's opinion that the last decade of the century saw the birth of the first university of students.²

Their evolution spontaneous and gradual.

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

Origin of the rectorship.

The title of rector was one which only began to be applied to various civic magistrates and officers of guilds after the revival of Roman law-studies in the twelfth century. It was a term commonly used as the Latin equivalent of the Italian

¹ As to the date of his life or writings nothing appears to be known except that he was a pupil of Bulgarus. Sarti, i. i. 89. [Cf. Genzmer, *op. cit.* above, p. 103 n.]

² Denifle, i. 160. Cf. Savigny, c. xxi, § 65. [But see above, p. 161, n. 3.]

podestà, to denote the elected chief magistrate or dictator of a Lombard town.¹ It was also used of the head of a whole federation of cities, or of the head of a single guild.² In the guilds the term rector is especially employed where the society was placed under the government of a single head, instead of (as was frequently the case) under a plurality of *consules* or other officers.³ All the associations of the word suggest a concentration of corporate power in the hands of a single individual. From the guilds the expression was borrowed by the universities, as it had been borrowed by the guilds from the constitutions of the towns. The same was the case with the university *consiliarii*, who are first heard of in 1224.⁴ In fact, the whole organization of the university was exactly parallel to that of the guilds, of which it formed merely a particular variety; while the organization of the guilds themselves was in Italy largely a reproduction of the municipal organization of the cities. The guild, whether of scholars or of the members of a political party or a particular trade, was a civic state in miniature, a *civitas in civitate*.

The jurisdiction of the rector was in the main derived from the statutes voluntarily enacted by the members, and from that formidable oath of obedience to them and to himself, on the significance of which we have already commented. At the same time the rectorship was from the first looked upon as something more than the mere presidency of a private

Nature of rectorial jurisdiction.

¹ Denifle, i. 147. Under the Empire *rector* had been one of the regular terms for the civil governor or *iudex ordinarius* of a province after Diocletian. Savigny, c. ii, § 25.

² Thus we hear of a *rector Societatum* in 1194 [referring to a leader of the Lombard and associated leagues; Gaudenzi, in *Bullettino*, No. 8 (1889), p. 12]; at Perugia in 1223 of 'Bailivi, Rectores vel Priores fraternitatum, societatum, familiarum seu quarumlibet artium' (Theiner, *Cod. Dipl. dom. temp. s. sedis*, i. 77); at Verona 'Prohibebo, quod nul-

lum misterium (ministerium) de civitate seu districtu Veronae habeat vel habere possit gastaldionem vel rectorem, nisi qui sit de suo misterio,' &c. (*Liber iuris civilis urbis Veronae script. 1228*, ed. Campagnola, 1728, p. 147). The last-mentioned statute probably originated in the twelfth century (see Denifle's note, i. 146).

³ So Denifle, i. 146. But Accursius has a gloss on the passage of the Code quoted below: 'Pone in Campsoribus Bon. qui suos habent consules sive rectores' (ed. Continus, Paris, 1576, c. 559).

⁴ Savioli, III. ii. 56.

CHAP. IV, § 3. society. According to the idea of the Roman law (at least as understood in the Middle Ages), every trade or profession had a kind of intrinsic right to form a *collegium* and elect magistrates of its own;¹ and the jurisdiction of these magistrates over its members in matters relating to the profession or trade was recognized by the town-governments even without any charter or express enactment as a legal, and not a merely consensual, jurisdiction. And the scholars, in setting up a *universitas* and electing a rector, undoubtedly claimed for themselves what were considered the natural or intrinsic privileges attaching to all recognized trades or professions. In general there seems to have been no unwillingness on the part of the Lombard towns to recognize to the full the jurisdiction of these student-guilds and their rectors, except on the part of one particular class. These were naturally the professors of law themselves. A *universitas* of students at once offended their legal susceptibilities and infringed upon what they considered their professional prerogatives. They did not dispute the right of a profession or trade to be under the jurisdiction of a rector; but the students, they urged, did not form an independent trade or class by themselves. They were merely the pupils of the doctors of law. The right to elect a rector and to frame statutes binding at once upon the full members and the students of the profession belonged *de iure* to themselves, as it did *de facto* to their more fortunate brethren at Paris and elsewhere. The pupils of the doctors had no more right to form a *collegium* and elect magistrates than the apprentices of the smiths or the skimmers.² The

Opposition
of the
professors.

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¹ See the passage in the Code (iii, tit. xiii): 'Periniquum et temerarium esse perspicimus, eos qui professiones aliquas seu negotiationes exercere noscuntur, iudicium ad quos earum professionum seu negotiationum cura pertinet, iurisdictionem et praeceptionem declinare conari.'

² See for instance the words of Azo, Lecture in Cod. ad L. fin. C. de iurisdic. (iii, 13): ap. Denifle, i. 170: 'Ergo scolares, quia non exercent

professionem sed sub exercentibus sunt discipuli, non possunt eligere consules, sicut nec discipuli pelli-pariorum. Magistri ergo possunt eligere consules, quia ipsi exercent professiones.' Savigny (c. xxi, § 65) continues the quotation: 'Sic et faciunt fabri, in terra ista, et alia corpora quia eligunt ministeriales suos sub quibus possunt conveniri.' This opinion is embodied in the Accursian gloss. Other instances are given by Denifle, i. 170 sq.

CHAP. IV, § 3. protests of the jurists, however, failed to check the growth of the institution. The university of students once formed was stronger than the handful of professors. Townsmen and professors alike stood in awe of a body which by the simple expedient of migration could destroy the trade of the former and the incomes of the latter. The jurists from the first recognize the *de facto* existence of the rectorial jurisdiction; and, after the fourteenth century, men who had grown up as students under the rectorial régime even attempted a theoretical justification of the anomaly.¹

It must not be supposed that opposition to the professors formed any part of the original *raison d'être* of the universities. At first the universities no more claimed authority over the doctors or the control of strictly academical matters than the Union Societies of Oxford and Cambridge, or the militant and beer-drinking corps of a German university. The universities were formed for purposes of mutual protection and self-government, and had nothing to do with the *studium*, which was managed by the *collegia doctorum* as much as at Paris. The jealousy of the professors arose simply (so far as appears) from the fact that the students were attempting to do for themselves what the professors (on the analogy of the relations ordinarily subsisting between masters and their apprentices) claimed to do for them. But in process of time the universities did gradually acquire a complete control over the professors; and to a large extent usurped the powers elsewhere exercised by the professorial body. By means of the terrible power of 'boycotting', which they could bring into play against an offending professor or a student who adhered to a 'boycotted' professor, the student-clubs were masters of the situation.² And when the professors began

The uni-
versities
originally
claimed no
academic
authority.

¹ Cinius (ad *loc. cit.*) after giving his own opinion against the scholars, says: 'Quidam moderni dicunt contrarium, quia scolares exercent professionem, ut in Auth. *Habita*, et quia eorum universitas est licita, et sic possunt dare iurisdictionem, ut ff. [i.e. *Digest*] *quod cuiusque universitatis*' (Venice,

1493). So the earlier Odofredus († 1265) admits 'tamen per legem municipalem huius civitatis scolares creant rectores'. In Cod. ad *loc. cit.* (iii, f. 148 a).

² The statutes of the student-universities sometimes prescribe the measures to be taken against a contumacious professor. Thus at

CHAP. IV, § 3. The universities reduce the professors to subjection.

to accept *salaria* from the universities themselves or from the towns which stood in awe of the universities in lieu of collecting fees from their scholars, they passed still more completely under the authority of the universities and their rectors. By these means the universities were able to compel the professors to take the oath of obedience to the rectors, which gave a certain legal sanction to their subjection. This subjection was well established by the end of the thirteenth century, as is evident from the statutes of Lérida; though the doctors still continued to assert their theoretical superiority to the universities.¹

This subjection not undisputed.

It must be remembered, indeed, that in the student-statutes we have merely the students' estimate of their own relations to the doctors. And we can no more assume that this was identical with the view taken by the doctors themselves than quotations from the writings of an ancient bishop can be taken to represent the views as to the limits of episcopal authority entertained by his presbyters or by the Church at large. Thus, while it is expressly provided by the student-statutes that they shall overrule all contradictory provisions in the statutes of the doctoral colleges,² the town

Parma penalties are provided against a scholar who attempts to graduate under a deprived doctor. (*Mem. e doc. per la storia della Università di Parma*, Parma, 1888, vol. i, p. xxxix.) It should be remembered that 'privatio' meant *social excommunication* as well as mere refusal of official recognition. Thus the above-quoted statute of Parma provides that 'scholares teneantur eum vitare tanquam privatum omni commodo et honore Universitatis, et nullus scholaris ipsum admittat in societate nisi obtentum in Universitate fuerit, ut predicatur' (*loc. cit.*).

¹ 'In universitate ista Bononiensi doctores subsunt rectori. . . . Modo quaero, num quid doctores subsint universitati? Breviter dicendum est quod non: nisi ex praerogativa consuetudinis vel iuramento, quia iura-

verunt obedire rectori.' Bartolus († 1357), ad Auth. *Habita* (quoted by Savigny, c. xxi, § 70).

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

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

In so far as the claims of the student-corporations rested on anything more than usurpation and their undoubted right to pursue their studies elsewhere in the event of disagreement with the town-authorities,² their legal and constitutional basis would be found in the papal Bulls which from time to time confirmed the statutes of the universities, and subjected the impugners of them to ecclesiastical censures.³ But little use seems practically to have been made of this papal privilege except as a weapon against the city in the earliest days of the university. The students seldom or never appealed, like the masters of Paris, to ecclesiastical authority for assistance in enforcing their own internal discipline.

There was, as we have seen, nothing in the university as an institution to arouse the jealousy or hostility of the magistrates or city of Bologna. That the students should have a *collegium* and be governed by a rector was completely in accordance with the political ideas of the time. The *universi-*

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

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

³ The first general confirmation

dates from 1253. The Bull was addressed to the Archdeacon of Bologna and a Dominican friar. Sarti, II (1772), p. 124. Other ecclesiastics were from time to time appointed conservators of the privileges of the university, but their jurisdiction does not seem to have become so extensive as at Paris (Ghirardacci, i. 529; ii. 27, 66). Cf. below, ch. v, § 3.

CHAP. IV, § 3. *tates* met with no systematic opposition from the municipalities of the kind which we shall find the Parisian university of masters experiencing at the hands of the Bishop, Chancellor, and Church of Paris. The Bolognese government was quite content to concede to the universities of students what it conceded to other guilds. But in certain respects the universities demanded more than the city conceded to other guilds. The guilds were composed of citizens, who never thought of disputing the authority of the city-government, and who could not put themselves beyond its jurisdiction without losing both property and status. The universities were composed of aliens, who refused to recognize the authority of the State in which they lived when it conflicted with the allegiance which they had sworn to their own artificial commonwealth.¹ One matter was pre-eminently a subject of contention between the city and university. The power of secession was cherished by the university as its great instrument of warfare against all manner of enemies. The city naturally wished to deprive it of this unfair advantage in its controversies with itself and to render its own prosperity independent of the goodwill of an alien corporation.

76 The first migrations originate with professors. In the first collisions between town and gown at Bologna it was, however, the professors who were directly involved. Long before the close of the twelfth century we find a tendency in the Bolognese professors to wander abroad, whether in consequence of disputes with the town-authorities or allured by prospects of more liberal remuneration elsewhere. Thus Placentinus had left Bologna to establish schools first at Mantua, afterwards at Montpellier, in the third or fourth quarter of the twelfth century. And most of the numerous law-schools which we find established in the Italian towns

¹ It was not merely in its relations with the city, as a whole, but in quarrels with individual citizens that the university could bring its powerful organization into play. Thus the Paduan *Statuta Artistarum* (f. xxxiii b) denounce the punishment of 'interdictio' (i.e. from intercourse with scholars) against any one who cites a scholar before the city magistrates—the sentence to extend to the third generation of the offender's posterity. The same statutes (f. xxxii b) enact that if a householder refuses to execute repairs after fifteen days' notice, the tenant is to repair, and deduct the expense from the rent.

by the beginning of the thirteenth century had apparently been founded by similar secessions of doctors or students or both. The city was at last forced to bring to bear against the vagrant doctors the usual medieval method of prevention—making the suspected party swear that he would not commit the apprehended crime.¹ The first time that this measure was adopted was in the case of Pillius. Getting wind of a negotiation with the neighbouring town of Modena for the purchase of the doctor's services, the magistrates assembled all the professors of the school and compelled them to swear not to teach out of Bologna for the next two years. In spite of his oath, however, Pillius could not resist the renewed offers of Modena gold.² After this time such oaths appear to have been habitually exacted of the doctors;³ and from 1227 to 1312 the oath was regularly enforced by the town statutes upon all doctors who intended to teach at Bologna.⁴ At the beginning of the thirteenth century, however, the city found itself threatened with a much more formidable danger. Not merely individual professors, but whole bodies of students, dissatisfied with their treatment at Bologna, entered into negotiations with other towns for the transference of the *studium* to them. In 1204, after a secession of this kind to Vicenza, the city passed a statute prohibiting citizens from following the seceding scholars or from aiding and abetting similar secessions in future.⁵ After the secession to Arezzo in

¹ Sarti, i. i. 77, 78. Savigny (c. xxi, § 81) gives a list of the doctors who took the oath. Cf. Savioli, ii. ii. 465. [Many texts of such oaths, re-edited from the *Registrum grossum* of Bologna, can be studied in the *Chartularium studii Bononiensis*, vol. i (1909). The earliest given is the oath of Lothair of Cremona, 1 Dec. 1189.]

² See extracts from Pillius in Sarti, i. i. 84. Savioli gives 1188 as the date of Pillius's flight, but he appears to be established in Modena before 1182. Savigny, c. xxii.

³ Sarti, i. i. 84, 85.

⁴ Frati, ii. 23. In 1312 the oath

was abolished, but penalties for Doctors absconding during the time of their contract reappear in 1334. Savigny, c. xxi, § 81; Ghirardacci, i. 560, 561; ii. 11, 117.

⁵ Frati, ii. 23. In 1211 we find a statute passed, which, without directly naming the scholastic universities, may possibly be directed against them, since in it citizens as well as strangers are forbidden to give a promise or oath 'de adiuvando unus alium'; the Societies of arms and arts being alone exempted from its provisions. Savioli, ii. ii. 464. [Gaudenzi considers that the reference to the 'society of

CHAP. IV, § 3. The student-migration to Vicenza, 1204.

CHAP. IV, § 3. Seccession to Arezzo in 1215 provokes fresh quarrels.

1215, in consequence of a great quarrel between the Lombards and the Tuscans,¹ or possibly in consequence of the measures which the city had adopted for the suppression of the tumults, the penalties of banishment and confiscation of goods were denounced against any scholar who should administer an oath to another binding him to leave the city if commanded to do so by him.² The *podestà* required the universities to incorporate the town statute with their own, by which means every student would be compelled to swear obedience to it. The 'scholars' especially aimed at were of course the rectors,³ who must have been empowered either by a permanent statute or by some extraordinary resolution to demand such an oath as a means of securing a prompt and universal seccession in the event of a request being refused or an injury going unpunished. One at least of the universities, if not all, appealed to the Pope, who, in accordance with what became the universal policy of the Holy See, warmly espoused the cause of the scholars; and in 1217 a Bull was issued by the new Pontiff, Honorius III—formerly Archdeacon of Bologna—urging or commanding the revocation of the obnoxious law, while the scholars were exhorted to leave the city rather than violate their oaths.⁴ It would appear from subsequent documents that the papal intervention was unsuccessful, that the suppression of the rectorship took effect, and that the scholars, for non-compliance with the demands of the citizens, were placed under the ban of the city, by which they

arms' is a later interpolation: *Bullettino*, No. 8, p. 13.] At this time a clause was inserted into the doctors' oath pledging them not to aid and abet seccessions of scholars. Sarti, i. ii. 70, 71.

¹ 'Ideo ego Rofredus Beneventanus iuris civilis professor ad preces et instantias sociorum meorum, nobilium de partibus Tusciae, cum essem in civitate scilicet arretina,' &c.—ap. Sarti, i. i. 139. Cf. *ibid.*, pp. 133, 134.

² 'Si quis scholaris vel alium quem scolarem aliquo modo vel ingenio astrinxerit ut ei possit

precipere de ducendo de civitate ista causa studii banniatu,' &c. Frati, ii. 25. Cf. Denifle, i. 161-2; Savigny, c. xxi, § 65. [A letter from the scholars to the Pope, given by Buoncompagno in his *Rhetorica antiqua*, suggests that the seccession took place at the command of the papal legate during this time of dispute between the Pope and the Emperor Otto IV. See Gaudenzi in *Bullettino*, No. 14 (1898), pp. 108, 109.]

³ Explicitly mentioned in the Bull of 1220. See below, p. 171.

⁴ Sarti, II (1772), pp. 57, 58.

CHAP. IV, § 3.

became 'infamous', lost their civil rights and were liable to the confiscation of all their goods. In fact it is probable that from 1217 to 1220, or at least for some time before the last-mentioned year,¹ there was a more or less complete dispersion of the *studium*. In 1220 a fresh papal remonstrance² induced the town to yield so far as to repeal the penal enactments against the scholars and their rectors, but it required that upon their accession to office the rectors should swear not to entertain any project for the removal of the *studium* from Bologna. The truce, if such it was, was of short duration, and in 1222 a great migration to Padua took place.³ But in 1224 another papal Bull,⁴ combined with the efforts of the Emperor Frederick II to destroy the *studium*,⁵ seems practically to have resulted in the abandonment of the attempt to exact the suicidal oath from the rectors, though the statute requiring it remained on the city statute-book till 1288.⁶ In the city statutes, printed as a supplement to the university statute of 1432, we still find the penalty of death denounced against any person whatever, whether citizen or stranger, who shall enter into a conspiracy for transferring the *studium*, as also against any citizen-doctor over the age of fifty who shall without permission of the city magistrates leave Bologna for the purpose of lecturing elsewhere. If the offender were a younger and therefore a less valuable professor, the milder penalty of 200 ducats is substituted.⁷

A full account of the relations between the university and the city of Bologna in the thirteenth century would form one of the most interesting chapters in the history of universities. Unfortunately, the fragmentary and scattered details which

¹ Savioli records these events under 1220, but the documents do not indicate that any fresh measures were taken in this year.

² Savioli, II. ii. 466. Cf. II. i. 395.

³ See below, ch. vi, § 4.

⁴ Savioli, III. ii. 56.

⁵ See the Bull of Honorius III in 1227, requiring the Emperor to revoke his edicts against the Lombard league, 'et specialiter constitu-

tionem factam de Studio et Studentibus Bononie'. Sarti, i. ii (1772), pp. 72-4.

⁶ Denifle, i. 176.

⁷ *Stat.*, p. 157. [A thirteenth-century statute to the same effect, but less drastic in its penalties, has been printed by Gaudenzi in 'Gli antichi statuti del comune di Bologna intorno allo studio', *Bullettino*, No. 6 (1888), pp. 122, 123.]

Migration to Padua, 1222.

Recognition of rectorship.

CHAP. IV, § 3. have been given are all which can be collected. It seems that a fairly satisfactory *modus vivendi* was effected between the two bodies at about the middle of the thirteenth century, after a great collision provoked by the execution of a scholar, and also by the efforts of the Bolognese doctors to convert their office into a lucrative monopoly.¹ Again the rectorate was threatened; again the counter-threat of secession eventually prevailed. The Statutes of 1245, while taking precautions against the transference of the *studium* and still continuing to prohibit oaths pledging the scholars to obey a rectorial order for secession, fully recognize the right of the scholars to elect rectors, though forbidding citizens to swear obedience to them. Students are accorded the private or *civil* (though of course not the *political*) rights of citizens; they are to be allowed to make a will or receive property under a will, to give evidence, and to do other 'legitimate acts'.² The Statutes of 1289 confer still further privileges upon scholars: exceptional steps are taken for the protection of their person and property, and the *podestà* is even directed to enforce the rectorial sentences in civil disputes between scholars.³ At some time before 1432 the university appears to have succeeded in imposing upon the *podestà* a special oath to respect and enforce the Statutes of the University: at all events the rectors are required by the Statutes of the University to demand such an oath.⁴

78 Migration of 1321: Peace between town and gown. The last important collision between town and gown at Bologna took place in 1321, when, in consequence of the execution of a scholar who had tried, with the aid of some companions, to abduct a notary's daughter from her father's house, the majority of the students, together with many professors, seceded to Siena.⁵ In the following year a recon-

¹ Savioli, III. i. 332.

² Frati, II. 25-9.

³ *Stat.*, p. 163.

⁴ *Stat.*, p. 64. The statute was introduced later than 1347. The Town Statutes of 1244 required the *podestà* to swear obedience to all the town's provisions in favour of the *studium*. Frati, I. 369.

⁵ Ghirardacci, II. 5, 6. [Ghirardacci's highly coloured and inaccurate narrative is corrected by F. Filippini, who shows the effect of the incident on party feeling in Bologna, and indirectly on academic developments in Florence as well as at Bologna: *Studi e memorie*, VI (1921), 107-85.]

CHAP. IV, § 3. ciliation was effected; the city compelled its *podestà* to receive discipline in the Dominican Church, and a chapel or church was built for the university by the grateful townsmen in memory of the event. The building was styled 'The Church of S. Mary of the Scholars in the Borgo of S. Mamolo', though spoken of in the statutes as the University Chapel.¹ The fact testifies to the vital importance of the university to the city,² and the consequent power wielded by the former.

Even for tracing the internal development of the university the materials are singularly scanty compared with those which we possess for the history of Paris. We know that a body of statutes received the papal approval in 1253. But the earliest complete collection of statutes dates only from 1432. Enough might even then have been gathered by inference from the statutes of daughter-universities to demolish the rash assumption of Savigny³ that the bulk of these statutes had come down unaltered from the earliest days of the university. Denifle's discovery, in the Chapter Library of Pressburg in Hungary, of an earlier redaction of about half of this statute-book puts the matter beyond doubt. From the information supplied by these statutes themselves, it appears that they were originally drafted by the celebrated canonist Johannes Andreae, and published by the university in the

Scantiness of data: the statutes.

¹ Melloni, *Elenco delle chiese della città e diocesi di Bologna compilato nel MCCCLXVI* (Bologna, 1779, p. 18), and *Stat.*, pp. 16, 61 n. After 1529 the church was styled S. Maria delle Grazie: it is now suppressed. [This church, built in the Via San Mamolo, in the jurists' quarter of the Porta Procula, was popularly known as Santa Maria della Pace. See Cavazza, *Le scuole dell'antico studio bolognese*, 1896, pp. 223-5, and appendix of documents, No. 64.]

² The *Acta Nationis Germanicæ* bear curious testimony to the frequency of secessions or migrations in the period immediately preceding this approximately permanent settlement. Under the year 1309

occur the words 'Nota, quod hic vacaverat natio tribus annis, quibus non fuit studium' (p. 59), and among the accounts of 1308 (*loc. cit.*) is an entry 'pro sacco, in quo portabantur rea nacionis in discordia, II solidos'. Under 1312 (p. 65) is a payment 'pro instrumento cautionis, quam fecimus nacioni dum timore novitatum cederemus de Bononia'. There is a similar entry in 1316 (p. 72); while under 1321 and 1322 there are payments connected with the secession to Imola (pp. 79-80). On this last see Banchi, *Giornale storico degli archivi Toscani*, Anno V, 1861, p. 237.

³ C. xxi, § 61.

CHAP. IV, § 3. year 1317. Additions were made to them in the years 1326, 1336, and 1346, and in the last-mentioned year they were subjected to a complete revision. The Pressburg MS. contains the form which was given to them in the academical year 1346-7.

Statutes of 1317. But a comparison of these statutes with those of various universities formed on the Bologna model in the period between 1317 and 1347 makes it clear that the changes introduced in 1347 were but slight. The re-editing consisted chiefly of additions, deciding moot points that had arisen in the interval, and which can generally be recognized by their interrupting the alphabetical arrangement of the original statutes. When, however, we turn to the only extant collection of university statutes believed to be copied from those of Bologna at an earlier date than 1317, we find little verbal coincidence with the collection of 1317. The university constitution in its main outlines—the rectoral jurisdiction, the nations and *consilarii*, the student-supremacy over the professors¹ and other institutions to be more fully described in our next chapter—are all found faithfully anticipated in the statutes made for the University of Lérida in the year 1300.² But the actual statutes are expressed in a different style and language, and are very much less bulky and detailed than the Bologna code of 1317. It is from this epoch then that we must date the code of laws which continued with few modifications to govern the University of Bologna throughout our period.

In the following section I shall content myself with giving a sketch of the university-system as it is presented to us by the first collection of statutes which we possess in their integrity—the code of 1432. But the discovery of Denifle enables us to add that the account will in the main be applicable to the whole period between 1317 and 1432.³

¹ This supremacy was virtually recognized by Honorius III as early as 1224, where he speaks of the doctors 'qui . . . stare ut tenebantur sententiae rectorum con-

tempserunt'. Savioli, III. ii. 56.

² Published by Villanueva in *Viage literario a las iglesias de España*, xvi. 207.

³ See below, § 6.

It may be convenient here to explain that there was at CHAP. IV, § 3. Bologna a wholly distinct university of students in medicine and arts, and a wholly distinct college of doctors in those faculties, which will be dealt with in detail hereafter. In the next two sections I am concerned only with the jurist organization.