A. Massironi, Nell'officina dell'interprete, La qualificazione del contratto nel diritto comune (secoli XIV–XVI). [Università degli studi di Milano Bicocca, Facoltà di giurisprudenza, 69]. Giuffrè, [Milano 2012]. XIV + 488 p.

This erudite and well-written book offers a valuable insight into how jurists of the *ius commune* dealt with perennial issues surrounding the interpretation of contracts, such as purposive against objective approaches in construing the true nature of an agreement. The majority of the sources on which the investigation draws, belong to the practice-oriented *consilia*-literature. Recent years have witnessed a remarkable revival of interest in this literary genre, after *consilia* had long been neglected as a source of legal historical scholarship – perhaps due to Andrea Alciati's negative assessment of the genre as the product of lawyers' venality (p. 387, n. 5). Fortunately, the author of the book under review did not adhere to this view and submitted an impressive number of authors who wrote *consilia* to careful scrutiny, ranging from better-known jurists such as Angelo degli Ubaldi (1328–1407), Niccolo Tedeschì (1386–1445) and Pierfilippo della Corgna (d. ca. 1492) to lesser-known consiliarists such as Giovanni Nevizzano d'Asti (d. 1540), Pietro Paolo Parisio (1473–1545), and Guido Panciroli (1523–1599).

The first chapter of the book deals with the rather theoretical question of whether the declaration or the intent of the parties should determine the qualification of a contract. Generally speaking, the jurists showed themselves heavily indebted to Aristotelian logic and Christian theology in dealing with this issue. Starting from Baldo degli Ubaldi's (1327–1400) analogy between intent (*mens*) and soul (*anima*), on the one hand, and words (*verba*) and body (*corpus*), on the other hand, it is convincingly shown that jurists of the *ius commune* agreed that the will of the parties must prevail over the declaration in construing the true meaning of the contract (p. 50). Practical literature, such as Francesco Beccio's (1519 – ca. 1610) *Consilia*, confirmed the validity of this principle in practice (p. 53). By the same token, the literal wording (*litera*) of the contract was thought to be subordinate to its inner meaning (*sensus*) (p. 55). To ascertain the true sense of a contract, a contextual approach to interpretation (*secundum subiectam materiam*) was preferred to a so-called 'Jewish' interpretation, which started from the habitual meaning of words (p. 56).

The fact that practical attempts to ascertain the true nature of a contract must necessarily begin with an analysis of its literal wording, particularly if the contract was drafted in a solemn document (*instrumentum*), is highlighted in the second chapter. For example, Angelo degli Ubaldi was asked to assess the possibility of interpreting a contract which had been formally registered as the sale of the *ususfructus*, *stantia* and *habitatio* of a building as a lease contract on account of an additional, purely consensual pact stipulating that the buyer would pay an annual rent to the seller. If the contract could be re-interpreted as a lease contract by virtue of the annual pension, then the seller could claim that supervening personal necessity entitled him to re-take possession of the building. Angelo argued that the contract must be interpreted according to the wording of the notarial document, that is as a sale contract, since that is the best means to respect the intent of the parties (p. 90). Having said this, the jurists remained skeptical of notaries in general and notarial documents in particular (p. 391, n. 12).

The third chapter explicates the doctrine of the substance (*substantia*), nature (*natura*) and accidental features (*accidentalia*) of specific agreements within the closed system of contracts in the *ius commune* (p. 196). These notions, imbued with Aristotelian philosophy (p. 185), formed the theoretical background against which the problem of contractual interpretation was dealt with by the late medieval and early modern jurists.

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They also explain why mixed, improper, and innominate contracts – the subject of chapter four – were problematic for the interpreter in the first place (p. 357). Importantly, the jurists increasingly recognized that the nature of an agreement can be modified through additional agreements (*pacta*). As Francesco Mantica (1534–1614) explained, elements which belong to the nature of the contract can be removed through pacts without prejudice to the specificity of the contract, since they leave the substance of the contract unchanged (p. 210). This reasoning had a profound impact, for instance on the question of how to distinguish *locatio* from *emphyteusis*. Previously, the payment of a relatively high rent (*canon/pensio*) had been considered to belong to the nature of a *locatio* contract. Consequently, if the canon was high, a presumption of *locatio* arose. Jurists such as Marco Antonio Natta (d. 1568), however, argued that if parties agreed to pay a high rent in recognition of the direct *dominus*, the conclusion of a valid *emphyteusis* was not frustrated (p. 295).

The last chapter surveys other indicators that can help to reveal the nature of a specific contractual obligation, such as pre-contractual negotiations, the status of the parties, custom and utility. The use of information from pre-contractual negotiations was controversial, since, as Baldo noted, 'multa tractantur quae non concluduntur' (p. 377). The status of the parties, on the other hand, mattered considerably. For example, Rolando della Valle (d. 1575) argued that a particular money-loan could not be considered usurious since one of the parties was a cleric with a God-fearing conscience (p. 382). Customs, too, played an important role, not in the least for the interpretation of commercial contracts (p. 373). And then there is utility. According to Paolo de Castro (d. 1441), parties who transfer money should be held to have had the intention to conclude a deposit, since the qualification as deposit is most useful to the debtor in case of an act of God (p. 364). Castro was naturally criticized for this standpoint by André Tiraqueau (1488–1558), who rightly pointed out that utility as a criterion of interpretation should regard the interests not of just one, but of all the parties to the contract.

Tiraqueau's critique seems to confirm traditional skepticism towards the *consilia*-literature as a source of knowledge about law in the age of the *ius commune*. It would almost seem inevitable that lawyers defended that particular point of view which best suited the interests of their clients, regardless of logical consistency (p. 388). Nevertheless, the *consilia* offer a precious insight into legal practice in the late Middle Ages and the Early Modern Period. As is observed on numerous occasions in *Nell'officina dell'interprete*, this practice was largely dominated by questions concerning successions, land tenure and agrarian contracts. Accordingly, a great many *consilia* were dedicated to determining the boundaries between feudal contracts, lease, emphyteusis and gifts. Perhaps because the same jurists who elaborated on the theory of contractual interpretation were also prolific as counsellors in practice, they refrained from proposing a clear and systematic hierarchy of interpretive principles. It adds to the credit of the author to have written an easy-to-read and well-structured introduction to the problem of contractual interpretation in a plethora of *consilia* regardless of the complex nature of the debate.

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