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PART ONE

The origins of the Renaissance

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I

The ideal of liberty

THE CITY REPUBLICS AND THE EMPIRE

As early as the middle of the twelfth century the German historian Otto of Freising recognised that a new and remarkable form of social and political organisation had arisen in Northern Italy. One peculiarity he noted was that Italian society had apparently ceased to be feudal in character. He found that ‘practically the entire land is divided among the cities’ and that ‘scarcely any noble or great man can be found in all the surrounding territory who does not acknowledge the authority of his city’ (p. 127). The other development he observed – which struck him as even more subversive – was that the cities had evolved a form of political life entirely at odds with the prevailing assumption that hereditary monarchy constituted the only sound form of government. They had become ‘so desirous of liberty’ that they had turned themselves into independent Republics, each governed ‘by the will of consuls rather than rulers’, whom they ‘changed almost every year’ in order to ensure that their ‘lust for power’ was controlled and the freedom of the people maintained (p. 127).

The earliest known case of an Italian city electing such a consular form of government occurred at Pisa in 1085 (Waley, 1969, p. 57). Thereafter the system began to spread rapidly in Lombardy as well as Tuscany, with similar regimes appearing at Milan in 1097, at Arezzo in the following year, and at Lucca, Bologna and Siena by 1125 (Waley, 1969, p. 60). During the second half of the century a further important development took place. The rule of consuls came to be superseded by a stabler form of elective government centred on an official known as the *podestà*, so called because he was invested with supreme power or *potestas* over the city. The *podestà* was normally a citizen of another city, a convention designed to ensure that no local ties or loyalties should interfere with his impartial administration of justice. He was elected by popular mandate, and generally ruled with the advice of two main councils, the larger of which might be up to six hundred strong, while the inner or secret council would normally be restricted to some forty leading citizens (Waley 1969, p. 62).

The *podestà* enjoyed comprehensive powers, since he was expected to act as the city's supreme judicial as well as administrative officer, and to serve as its leading spokesman on its various embassies. But the crucial feature of the system was that his status was always that of a salaried official, never that of an independent ruler. His term of office was customarily restricted to six months, and throughout that time he remained responsible to the citizen body which had elected him. He had no authority to initiate political decisions, and at the end of his tenure he was required to submit to a formal scrutiny of his accounts and judgments before he could gain permission to depart from the city which had employed him (Waley 1969, pp. 68–9).

By the end of the twelfth century this form of Republican self-government had come to be adopted almost universally by the leading cities of Northern Italy (Hyde, 1973, p. 101). While this brought them a measure of *de facto* independence, however, they continued to count *de iure* as vassals of the Holy Roman Empire. The legal claims of the German Emperors over Italy extended as far back as the age of Charlemagne, whose Empire had straddled Germany and Northern Italy at the start of the ninth century. These claims had been forcefully revived in the course of the tenth century, when Otto I in particular had decisively linked the *Regnum Italicum* with his German possessions.¹ By the time of Frederick Barbarossa's accession to the Imperial throne in the middle of the twelfth century, the Emperors had come to have two special reasons for wishing to insist once again on the true status of the North Italian *Regnum* as a mere province of the Empire. One was the fact that, as Otto of Freising puts it, the cities had begun to flout the authority of the Emperor and to 'receive in hostile fashion him whom they ought to accept as their own gentle prince'. The other reason, as Otto ingenuously adds, was that if the Emperor could manage to subjugate the whole of Northern Italy, this would make him the master of 'a very garden of delights', since the cities of the Lombard plain had by this time come to 'surpass all other states of the world in riches and in power' (pp. 126, 128). The outcome of adding this hope of instant treasure to the venerable claims of Imperial jurisdiction was that a succession of German Emperors, beginning with

¹ The term *Regnum Italicum* thus refers only to that part of Northern Italy which corresponds to the Lombard kingdom of the Dark Ages, which Otto I reincorporated into the German Empire in 962. It is this area alone which the theorists of the Italian City Republics have in mind when they speak, as for example Marsiglio of Padua regularly does in his *Defender of Peace*, of the *Regnum Italicum*. It is thus misleading to translate the term (as for example Alan Gewirth does in his edition of *The Defender of Peace*, p. 4 and *passim*) as 'the Italian State'. Apart from the anachronism involved in using the term 'state', this might be taken to imply that Marsiglio is referring to the whole area of modern Italy, which is never the case.

Frederick Barbarossa's first expedition to Italy in 1154, struggled for almost the next two centuries to impose their rule on the *Regnum Italicum*, while the leading cities of the *Regnum* fought with no less determination to assert their independence.

Frederick Barbarossa's first two expeditions virtually succeeded in winning him control over the whole of Lombardy. He began by attacking the allies of Milan, the greatest and most fiercely independent of the cities, and on his second expedition laid siege to Milan itself, which he captured and razed to the ground in 1162 (Munz, 1969, pp. 74–5). By this time he had already capitalised on his early victories by convening a General Diet at Roncaglia in 1158, where he proclaimed in unequivocal terms his sovereignty over the whole of the *Regnum Italicum* (Balzani, 1926, p. 427). This very success, however, served to unite the normally factious cities against him. Milan took the lead in 1167 in building up a Lombard League to resist his demands, and soon won the adherence of twenty-nine other cities (Waley, 1969, p. 126). When Barbarossa returned in 1174 to reimpose his authority, the combined forces of the League managed to inflict a lucky but absolutely decisive defeat on the Imperial armies at Legnano in 1176 (Munz, 1969, pp. 310–11). After this the Emperor had no option but to compromise with the League, and at the peace of Constance in 1183 he effectively renounced any right to interfere with the internal government of the Lombard cities (Munz, 1969, pp. 361–2).

The next Emperor who attempted to realise the idea of the Holy Roman Empire by trying to resume control of the *Regnum Italicum* was Frederick II, who announced this grand design to the General Diet of Piacenza in 1235, calling in minatory tones on the Italians to 're-enter the unity of the Empire' (Schipa, 1929, p. 152). Again the Emperor was at first successful in imposing his will on the cities. He captured Vicenza in 1236, so bringing about the surrender of Ferrara in the following year, and at the end of 1237 he imposed a crushing defeat on the armies of the revived Lombard League at Cortenuova (Van Cleve, 1972, pp. 398–407). Again, however, the scale of his victories served to reunite his enemies under the leadership of the implacably hostile Milanese (Van Cleve, 1972, pp. 169, 230, 392). They recaptured Ferrara in 1239, seized the Imperial port of Ravenna in the same year, and carried the war all over Tuscany as well as Lombardy throughout the next decade (Schipa, 1929, pp. 155–6). Although they suffered a number of reverses, they eventually succeeded in bringing the dreams of the Imperialists to an ignominious close: in 1248 the Emperor lost his entire treasure at the capture of Vittoria; in 1249 his son was taken prisoner when the forces of the League regained Modena; and at the end

of the following year Frederick himself died (Van Cleve, 1972, pp. 510–12; Schipa, 1929, pp. 162–4).

The early fourteenth century saw two further efforts by the German Emperors to make good their claim to be the legal rulers of the *Regnum Italicum*. The first was led by Dante's hero, Henry of Luxemburg, who arrived in Italy in 1310 (Armstrong, 1932, p. 32). Like his predecessors he began victoriously, quelling rebellions in Cremona and Lodi and laying siege to Brescia in 1311 before proceeding to Rome to be crowned by the Pope in 1312 (Bowsky, 1960, pp. 111–12, 114–18, 159). But once again his triumph drove his enemies to unite, this time under the leadership of Florence, the chief defender of Republican liberties since the Milanese had succumbed to the despotism of the Visconti in the previous generation. The Florentines succeeded in raising revolts at Padua, Genoa and Lodi, as well as repelling the Emperor's forces from their own city at the end of 1312 (Armstrong, 1932, p. 38). The outcome was again disastrous for the Imperial cause: after waiting nearly a year for reinforcements before making a further assault on Florence, the Emperor died at the outset of his campaign and his armies immediately dispersed (Bowsky, 1960, pp. 173–4, 204–5). By this time it had become clear that Italy would never submit to Imperial rule, so that the final attempt by Louis of Bavaria in 1327 to insist on his Imperial rights was an abject failure. Perceiving that his meagre funds could never match his grandiose designs, the cities simply bided their time, avoiding any large-scale engagements until the Emperor's unpaid armies duly melted away (Offler, 1956, pp. 38–9).

During this long struggle the cities of Lombardy and Tuscany not only succeeded in repulsing the Emperor on the field of battle, but also managed to build up an armoury of ideological weapons with which they sought to legitimate this continued resistance to their nominal overlord. The essence of their response to the Emperor's demands consisted of the claim that they had a right to preserve their 'liberty' against any external interference. It is true that some doubts have recently been expressed about the extent to which this ideology was self-consciously developed. Holmes has argued, for example, that the cities never succeeded in articulating their concept of 'liberty' in anything more than a 'vague and ambiguous sense' (Holmes, 1973, p. 129). It is arguable, however, that this is to underestimate the early extent of their civic consciousness. It is apparent from a number of official proclamations that the city propagandists usually had two quite clear and distinct ideas in mind when defending their 'liberty' against the Empire: one was the idea of their right to be free from any outside control of their political life – an assertion of their sovereignty; the other was the idea of their corresponding right to govern themselves

as they thought fit – a defence of their existing Republican constitutions.

The way in which the term ‘liberty’ thus came to connote both political independence and republican self-government has been traced in two important studies of fourteenth-century Florentine political thought. Bueno de Mesquita has established from a study of Florentine diplomatic letters at the time of Henry VII’s invasion in 1310 that when the Florentines took the lead in opposing the Emperor by proclaiming ‘the liberty of Tuscany’, their essential concern was with ‘throwing off the yoke of servitude to German rule’ and reaffirming their right to govern themselves (Bueno de Mesquita, 1965, p. 305). Similarly, Rubinstein has shown that the concepts of *libertas* and *libertà* came to be employed ‘almost as technical terms of Florentine politics and diplomacy’ in the course of the fourteenth century, and that they were almost invariably used in order to express the same ideas of independence and self-government (Rubinstein, 1952, p. 29). Nor was this distinctive analysis of ‘liberty’ merely an invention of the *trecento*. We already find the same ideals being invoked as early as 1177, in the course of the first negotiations which ever took place between the Italian Cities, the Emperor and the Pope. These followed the decisive defeat of Barbarossa’s armies by the forces of the Lombard League in the previous year. According to the account given in Romaldo’s *Annals*, the speech presented in the course of the resulting discussions by the ambassadors from Ferrara included a stirring apostrophe to ‘the honour and liberty of Italy’, together with an assurance that the citizens of the *Regnum* would have ‘preferred to incur a glorious death with liberty rather than live a miserable life of servitude’. The ambassadors made it clear that in appealing to the ideal of liberty they had two main ideas in mind. By liberty they meant first of all their independence from the Emperor, for they insisted that ‘we shall be willing to accept the Emperor’s peace’ only ‘so long as our liberty remains inviolate’. And by liberty they also meant their right to maintain their existing forms of government, for they added that although they had ‘no wish to deny the Emperor any ancient jurisdictions’, they were bound to insist that ‘our liberty, which we have inherited from our forefathers, we can under no circumstances relinquish, except with life itself’ (pp. 444–5).

There was undoubtedly a weakness, however, in these affirmations of *libertas* against the Empire: the cities had no means of investing them with any legal force. The source of this difficulty lay in the fact that, ever since the study of Roman law had been revived at the universities of Ravenna and Bologna at the end of the eleventh century, the Roman civil code had come to be used as the basic framework of legal theory and practice

throughout the Holy Roman Empire. And ever since the jurists had begun to study and gloss the ancient texts, the cardinal principle of legal interpretation – and the defining characteristic of the so-called school of Glossators – had been that of following with absolute fidelity the words of Justinian's Code, applying the results as literally as possible to prevailing circumstances (Vinogradoff, 1929, pp. 54–8). Now there could be no doubt that the ancient law-books stated in so many words that the *princeps*, whom the jurists agreed in equating with the Holy Roman Emperor, had to be regarded as the *dominus mundi*, the sole ruler of the world. This meant that as long as the literal methods of the Glossators continued to be employed in the interpretation of the Roman law, the cities had no possibility of vindicating any *de iure* independence from the Empire, while the Emperors were assured of the strongest possible legal support in their campaigns to subjugate the cities (Vinogradoff, 1929, pp. 60–2).

This problem was sharply underlined at the outset of the quarrel between the cities and the Empire, when all four of the leading Bolognese Doctors of Law not only agreed to sit on the commission which drew up Frederick Barbarossa's Roncaglian Decrees in 1158, but went on to defend in fulsome terms his legal rights as a sovereign over the Italian cities.¹ They described the Emperor as 'the supreme ruler at all times over all his subjects everywhere', and insisted that even within the Italian cities he retained 'the power of constituting all magistrates for the administration of justice' and 'removing them if they neglect their duties' (pp. 245, 246). The effect of these contentions was of course to deny the cities any authority even to appoint or control their own *podestà*, and so to divest their demands for liberty of any semblance of legality.

It was evident that if the cities were to succeed in putting these claims against the Empire on a proper legal footing, a fundamental change would first of all have to take place in the attitude of their own jurists towards the authority of the ancient law books. Such a change of outlook was never possible for the Glossators, who continued to assume that the Emperor must be equated with the *princeps* of Justinian's Code and endowed with an identical set of legal rights. By the beginning of the fourteenth century, however, in the face of renewed threats from the Empire, the necessary alteration of perspective was finally achieved. The great figure in this

¹ See Vinogradoff, 1929, p. 61. The view that the Roncaglian Decrees should themselves be seen as an expression of the Roman Law concept of *merum Imperium* has been discredited, since they were in fact largely concerned with feudal and other local regalian rights. There can be no doubt, however, that the influence of the Bolognese jurists on the commission helped to give the Decrees their strongly absolutist tone. For a discussion of these issues and a bibliography, see Munz, 1969, pp. 167–9. For the decrees themselves, see *sub Diet of Roncaglia: Decrees* in the bibliography of primary sources.

reorientation, the founder of the so-called school of post-Glossators, was Bartolus of Saxoferrato (1314–57), perhaps the most original jurist of the Middle Ages.

Bartolus was a native of the *Regnum Italicum*, a student at Bologna and subsequently a teacher of Roman Law at several different universities in Tuscany as well as Lombardy (Woolf, 1913, pp. 1–2). He clearly set out with the intention of reinterpreting the Roman civil code in such a way as to supply the Lombard and Tuscan communes with a legal and not merely a rhetorical defence of their liberty against the Empire. The result was not only to initiate a revolution in the study of Roman Law (which was later consolidated by his great pupil Baldus) but also to take a large step towards establishing the distinctively modern concept of a plurality of sovereign political authorities, each separate from one another as well as independent of the Empire.

Bartolus's primary contribution was thus a methodological one. He abandoned the cardinal assumption of the Glossators to the effect that, when the law appears to be out of line with the legal facts, the facts must be adjusted to meet a literal interpretation of the law. He instead made it his basic precept that, where the law and the facts collide, it is the law which must be brought into conformity with the facts (Woolf, 1913, p. 5). As he himself puts it in his commentary on the Code, 'it should not be a matter of surprise if I fail to follow the words of the Gloss when they seem to me to be contrary to the truth, or contrary either to reason or to the law' (vol. 8, p. 195).

The effect of this change was to make possible a complete reversal of the Emperor's legal claims against the Italian cities. It is true that Bartolus begins his commentary on the Code by conceding that *de iure* the Emperor is the sole *dominus mundi* (vol. 7, p. 7). He is even prepared to agree with the Glossators that technically the Empire constitutes the sole jurisdictional unit in Europe, with the independent kingdoms or *regna* being no more than Imperial provinces, while the City Republics or *civitates* are equivalent to Roman Imperial cities (vol. 7, p. 7). He then observes, however, that even though the Emperor may claim *de iure* to be the sole ruler of the world, there are 'many peoples who *de facto* do not obey him'. It is clear that Bartolus is thinking in particular of Italy, for he notes that 'the Imperial laws do not, for example, bind the Florentines, or others who refuse *de facto* to obey the Emperor's decrees' (vol. 7, p. 7). He later underlines the same point in the course of discussing the authority to delegate in his commentary on the Digest. He concedes that *de iure* the Emperor alone wields *merum Imperium*, the highest power to make laws. But he immediately adds that 'in our day all the governors of cities

throughout Italy' in fact take it upon themselves to exercise the same law-making powers (vol. 5, p. 69).

Now technically, as Bartolus admits, such behaviour on the part of the Florentines must be irregular and against the law (vol. 9, p. 64). But it seems misleading to infer, as Keen has done, that Bartolus is still essentially concerned to vindicate the universal authority of the Emperor, and is genuinely reluctant to assign any independent powers to the cities (Keen, 1965, p. 115). This is to underestimate the significance of his basic axiom that the law must yield to the facts. As soon as Bartolus combines this contention with the observation that the Italian cities contain 'free peoples who 'are in fact able to make laws and statutes in any way they choose', he proceeds without hesitation to open up an entirely new perspective on the conventional analysis of *merum Imperium*: he insists that the *de facto* situation is one which the law and thus the Emperor must now be prepared to accept (vol. 9, p. 64).

The first point at which Bartolus unequivocally makes this move is in connection with asking whether the Italian cities may be said to have the right to make and execute their own laws. His major discussion of this question occurs in his commentary on the Digest, at the point where he is analysing the status of public judges (vol. 6, p. 411). One of the problems he raises is 'whether a single city is able to make dispensations' in the case of 'infamous conduct' by its legal officers. He first answers in the conventional style of the Glossators that 'it seems it cannot, for a single city cannot make statutes in such matters' (vol. 6, p. 423). He next points out, however, that 'cities which recognise no superior do in fact impose penalties and grant dispensations' in such cases (vol. 6, p. 422). He then argues that the only way to resolve this dilemma is to invoke the basic principle that the law must accommodate itself to the facts. This allows him to conclude that 'in the case of the cities of present-day Italy, and especially those of Tuscany where no superior is recognised, I judge that they constitute in themselves a free people, and hence possess *merum Imperium* in themselves, having as much power over their own populace as the Emperor possesses generally' (vol. 6, p. 423).

The same point is later brought out even more forcefully in Bartolus's commentary on the Code, in the section where he discusses 'whether a long period of time serves to confirm a contract' (vol. 7, p. 159). After offering a general analysis, he moves on as usual to consider the issue in relation to the Italian cities, broadening the question to ask whether the *merum Imperium* which they have in fact been arrogating may be said to have any legal basis to it. The usual answer, he begins by admitting, is that