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Bartolus of Sassoferrato , Edited and translated by
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Excerpt
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Texts

On Guelfs and Ghibellines

When I had written a literal exposition concerning those matters, and while my mind was occupied with that third part of the *Tiberiadis*,¹ I found myself within the hundredth milestone from the city of Rome,² close to the city of Todi. And there I realized that what was written literally about the river and its bed may be said allegorically and morally about what frequently happens in the city of Todi. For our whole life is a river or the water of a river, as is written: 'We all die, and as waters will be spilt upon the ground, which do not flow back', 2 *Kings* 14.³ And the bed over which these waters run is those things towards which we have sympathies [*affectiones*†], as is written in *Matthew* 6: 'Where your treasure is, there is your heart also.'⁴

Now in that city of Todi I found two sympathies, for some were called 'Guelfs' and some 'Ghibellines'; and in that place there were necessarily as many from one sympathy as from the other, no matter what the public office.⁵ Furthermore, it sometimes happens that he who belongs to one

¹ See Translators' Note and Introduction, pp. xxxix–xl, xiii–xiv. This is a reference to the final section of Bartolus's preceding treatise, *Tractatus de fluminibus*, pp. 97–117.

² It may not be a coincidence that, according to *Dig.* 1.1.1.4, the jurisdiction of the prefect of the city of Rome began at the hundredth milestone.

³ 2 *Kings* 14, 14.

⁴ Verse 21.

⁵ J.-C. Maire Vigueur, 'Échec au podestat: L'expulsion de Comacio Galluzzi podestat de Todi (17 juillet 1268)', in *Alla Signorina: Mélanges offerts à Noël de la Blanchardière*, Publications de l'École Française de Rome, cciv (Rome 1995), pp. 251–83, at 257–8 and n. 26: this arrangement was introduced in 1267–8, reaffirmed in 1275, and, while Bartolus was still in Todi, in 1337; it was not unique to Todi: F. del Tredici, 'La popolarità dei partiti: Fazioni, popolo e mobilità sociale in Lombardia, XIV–XV secolo', in A. Gamberini, ed., *La mobilità sociale nel medioevo italiano, vol. II: Stato e istituzioni, secoli XIV–XV* (Rome 2017), pp. 305–34, at 317–18.

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sympathy for a certain time changes his course and begins to be of the other; and concerning this many problems arise. So let us examine some.

First, whence these terms derived their origin, and concerning their signification.

Secondly, what they mean today.

Thirdly, whether it is legal to have these sympathies.

Fourthly, how to prove that someone is of these sympathies, whether we are speaking of a private individual or of a commonwealth [*res publica*†].

Fifthly, how to prove that someone has changed sympathy.

I

With regard to the first question, it should be understood that at one time great discord arose between the Roman church and Frederick I – called Frederick Barbarossa – who was then emperor of the Romans. From him we have certain laws – as is evident in the *Libri feudorum*⁶ – made while he was still loyal to the church.⁶ Afterwards the church deprived him of the empire, as in *Sext.* 2.14.2;⁷ 1.6.17.⁸ Now in Germany those related to this Frederick on his father's side were known as the lords of Gebello.⁹ And as the aforementioned discord lasted a long time, a great part of the Italians adhered to the deposed emperor and were called Ghibellines – in other words, adherents of that lord of Gebello. But others were attached to the church and were called Guelfs – in other words, zealots of the faith.

⁶ *Feud.* 2.27; 2.53; 2.54(55).

⁷ *Sext.* 2.14.2 is the decree *Ad apostolicae dignitatis* promulgated by Pope Innocent IV at the First Council of Lyons in 1245, deposing Frederick II as Holy Roman Emperor and king of Sicily. Bartolus cites this not because he is confusing Frederick I with Frederick II, but because there is no text in the canon law showing that Frederick I had actually been deposed. Frederick I was excommunicated by Alexander III in 1160, who also released those bound by fealty to the emperor from their oaths. It was a matter of debate among later theorists whether absolution of subjects from their fealty to a ruler constituted deposition. See, for Alexander's letter relating his excommunication of Frederick, G. Hödl and P. Classen, eds., MGH, *Briefe vi. Die Admonter Briefsammlung nebst ergänzenden Briefen* (Munich 1983), no. 53, pp. 103–6. For debate, see for example John of Paris (late 1302 – early 1303), *On Royal and Papal Power*, ed. and trans. J. A. Watt (Toronto 1971) ch. 11, sec. 11, ch. 15, sec. 11, pp. 131, 174–5.

⁸ *Sext.* 1.6.17 is the decretal *Fundamenta* (Nicholas III, 1278) which refers to the now-dead Frederick II as having been deposed. For further citation of *Fundamenta* in a different context, see below, p. 48.

⁹ Waiblingen in Swabia.

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These points are prefigured in 1 *Kings* 31,¹⁰ and 2 *Kings* 1,¹¹ where Saul, at one time king and later rejected by God, was beset and killed on Mount Gilboa, which is interpreted to mean the place of fortitude.¹² Thus that same Frederick, sometime emperor, later condemned, trusting in the fortitude of his house of Gebello, was beset and confounded by the Guelfs, that is, the zealots of the faith. For this name ‘Zelpha’ is found in *Genesis* 30,¹³ and is interpreted as the speaking mouth or the gaping mouth,¹⁴ which in the present instance corresponds to the church: for that same emperor was confounded by the words of the sentence of excommunication pronounced by the supreme pontiff.¹⁵ Strictly speaking, therefore, just as Gilboa is interpreted to mean the place of fortitude, so ‘Ghibellines’ are interpreted to mean those who trust in temporal fortitude – that is, of soldiers and arms. And just as Zelpha is interpreted as speaking mouth, so ‘Guelfs’ are interpreted as those who trust in prayer and divine worship, as did Emperor Justinian in *Cod.* 1.17.1.¹⁶

II

With regard to the second question – what the said terms mean today – I say that, as is clear from the above, the aforesaid are terms signifying the sympathies of men. For sympathizers with the position [*status*'] of the church against that enemy of the church are called by one name, and their adversaries by the other. But today these names persist on account of other sympathies. For we see that many who are called Guelfs are rebels against the church, and many others who are called Ghibellines are rebels against the empire. But, as happens in provinces and cities in which there are divisions and factions [*partialitates*'], it is necessary that the said parties be called by some name: so the said names are imposed on them, as more commonplace. In other places other particular names

¹⁰ 1 *Kings* 31, 1–9.

¹¹ 2 *Kings* 1, 6.

¹² Below, p. 37.

¹³ That is, Zilpah: verses 9–12.

¹⁴ Bartolus's source for these interpretations is uncertain; they do not match those given by St Jerome in *Liber interpretationis Hebraicorum nominum*, ed. P. de Lagarde, CCSL, lxxii (Turnhout 1959), pp. 104, 73; cf. Quaglion, *Politica e diritto*, p. 40 and n. 2, 133 nn. 7 and 11. Isidore of Seville is closer on *Zelpha* ('gaping mouth'), but silent on *Gelboe*: Isidore of Seville, *Etymologiarum sive originum, libri xx*, ed. W. M. Lindsay, 2 vols. (Oxford 1911), 7.6.38, vol. II, p. 282.

¹⁵ Above, n. 7.

¹⁶ *Cod.* 1.17.1 begins: 'We, governing our Empire by the authority of God ...'.

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come to be used, with which I am not at present concerned; and these are factions, as in *Dig.* 49.15.21.1.¹⁷

I say, therefore, that today he is said to be a Guelf who adheres to and sympathizes with the position of that party which is called Guelf; and he is said to be a Ghibelline who adheres to and sympathizes with the position [*status*[†]] of that party which is called Ghibelline. And in this no account is commonly taken of the church or of the empire, but only of those factions which exist in a city or province, as also in *Dig.* 49.15.21.1. And there the Gloss interprets the words ‘those who go off [to join one or other side]’ when it says: ‘Either citizens against citizens, or one city against another.’¹⁸ Again, these factions sometimes arise amongst the aforesaid citizens, and yet no one is rebelling against his lord, whether it be the church, the empire, a king, or a people which rules, as in *Dig.* 49.15.21.1.¹⁹ The facts themselves show that this is true.

From this I infer three things.

First, that if ‘Guelf’ and ‘Ghibelline’ are understood exactly as when first coined, an individual cannot be a Guelf in one place and a Ghibelline in another: the reason being that those sympathies, namely with the church and the empire of the reprobate, apply to the whole world universally and uniformly. To say, therefore, that someone can be of one sympathy in one place and of the other in another would be a contradiction in terms, just as one tutor[†] cannot authorize two wards litigating against each other over the same matter, as in *Dig.* 26.8.15 and the note there.²⁰ What is written applies: ‘No one can serve two masters’ – that is, two conflicting masters, *Matthew* 6.²¹

Secondly, I infer that as these names are understood today, one man can be a Guelf in one place and a Ghibelline in another; and this is obvious, because these sympathies relate to different things. Suppose that in

¹⁷ *Dig.* 49.15.21.1. Those who join one or other side (‘qui in alterutras partes discedunt’) in ‘civil dissensions’ are not legally enemies of Rome because neither party is intent on destroying the Roman commonwealth, even though such dissensions gravely damage it. For Bartolus’s commentary on this law, see *In secundam Digesti Novi partem commentaria* (Turin 1574), fo. 227vb. There, Bartolus sticks to the vocabulary of the legal text in calling the hostile camps within his own city of Perugia ‘partes’ rather than ‘partialitates’, the term he frequently employs in this tract.

¹⁸ See *Dig.* 49.15.21.1, gloss *discedunt*, which Bartolus quotes *verbatim* here, omitting only Accursius’s references to *Dig.* 49.15.19.2 and *Dig.* 49.15.24.

¹⁹ The only ruler mentioned in *Dig.* 49.15.21.1 at this point is the emperor.

²⁰ *Dig.* 26.8.15 in fact allows one tutor to authorize both parties; Accursius’s gloss *accipientis* makes the caveat Bartolus mentions.

²¹ Verse 24.

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one city there is a tyrant, who together with his following [*secta*] is called Guelf, to which sympathy any good man will be opposed because he is opposed to all tyranny: in that territory he is called a Ghibelline. And suppose, in another city not depending upon the first, that there is a Ghibelline tyrant: certainly the same good man will oppose that tyrant, and will there and then be a Guelf, by analogy with what we said concerning a tutor,²² who may authorize both wards only when they are litigating over different matters, as in *Dig.* 26.8.15.²²

Thirdly, I infer that a person may be of one sympathy in one respect and of the other in another. For example, in the city of Perugia there are many who wish to be reputed Ghibellines in the first sense in which the names of those sympathies were coined, as if it redounded to their honour that so long ago their forebears were so noble that they were reputed to be of that sympathy. But with respect to the government [*status*]²³ which now rules the city, they are Guelfs; and for that reason they call themselves Ghibellines by origin, but Guelfs as regards the government [*status*] of the city. Nor is this a contradiction, inasmuch as these names are used in different respects. Such is the case when we say that someone may not be principal and surety in the same respect for the same sum, as in *Cod.* 8.41.28;²³ but in different respects he may be, as in *Dig.* 45.2.11.²⁴

III

With regard to the third question – whether it be licit to entertain these sympathies – if many are of one sympathy or if someone is attached to one sympathy, not for the public good, but for his own utility or in order to oppress others, that is simply illicit. And if they combine the one with the other, this will be punishable just like those who form an association for the punishment of the innocent, as in *Dig.* 48.7.6²⁵ and 47.13.2.²⁶

But sometimes there is one party in a city inclined principally to the public good, in order that the city should be rightly and peacefully governed; and yet it cannot resist its adversaries, except under the single name of a faction: then I consider such a sympathy and faction to be

²² Above, n. 20.

²³ *Cod.* 8.41.28 establishes what Bartolus relates here.

²⁴ *Dig.* 45.2.11: co-promissors may act as guarantors for each other.

²⁵ *Dig.* 48.7.6 makes liable under the *Lex Iulia de vi privata*¹ those who dishonestly collude with a litigant so as to profit from any property the litigant may win from his adversary.

²⁶ *Dig.* 47.13.2 provides a remedy against those who conspire to accuse the innocent.

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legal. For as it is legal to assemble one's friends for the protection of one's property, then all the more so in protection of the public's, as in *Dig.* 43.16.3.9.²⁷ Whenever one party wishes not only to resist, but to depose the others who are ruling, then if indeed they were to rise up against a just government, that would be simply illicit, as in *Cod.* 9.30.1²⁸ and the note there concerning someone who wished to depose a *podestà*.[†] But if the government which they wished to depose was tyrannical and of the worst kind, then it is licit to be of one faction and one name for that purpose, subject to two conditions: firstly, that by having recourse to a superior, it would not be possible for that tyranny to be deposed without great difficulty; secondly, that they do this for the public utility, in order to restore the condition [*status*†] of the city. It would be otherwise if they did this in order to install a new tyranny themselves, having expelled the others.

The proof of the first point is that it is licit for anyone to pronounce judgment on his own authority when he does not have access to a judge, as in *Cod.* 1.9.14²⁹ and the note there; *Dig.* 42.8.10.16;³⁰ *C.* 23 q. 2 c. 2.³¹ If, therefore, this is licit for individual convenience, how much more so for the liberation of the commonwealth [*res publica*†] which all are allowed to defend, as in *Dig.* 39.1.5.20; 39.1.6.³² Furthermore, if this is permitted to anyone against a ravager of the countryside or a deserter from the

²⁷ *Dig.* 43.16.3.9 does not explicitly mention assembling a group in establishing that 'Anyone who comes with arms we may repel with arms.'

²⁸ *Cod.* 9.30.1, 'On the Seditious and Those Who Dare to Assemble the People against the Commonwealth', decrees the severest penalties for those who 'attempt to stir up the populace [*plebem*]' and 'resist the public authorities'. Bartolus refers here to the gloss *tentaverit*: 'For he wanted to depose the *podestà*.' The preceding gloss *plebem* expands: 'Or a *castrum*.'[†]

²⁹ *Cod.* 1.9.14 forbids violent self-help against Jews and imposes legal process instead. Accursius's gloss *ultionem* allows self-help in some cases when no judge (and therefore court) is available.

³⁰ *Dig.* 42.8.10.16 defines the circumstances in which one of several creditors may unilaterally take what is owed him when he apprehends the debtor.

³¹ *Decretum*, *C.* 23 q. 2 c. 2 is an excerpt from Augustine's *Quaestiones in Heptateuchum* (VI. q. 10). It does not justify violence by reference to the absence of a competent judge but merely notes, among other things, that 'just wars are usually defined as those which revenge injuries'.

³² *Dig.* 39.1.5.20 and the immediately subsequent *Dig.* 39.1.6 are strange authorities in the context. The first compels a procurator[†] to give security for the payment of a fine when he is acting in defence of another person's rights, the second settles a further point about security arising from the first. *Dig.* 39.1.3.3 and 39.1.4 would provide stronger support for his point: any citizen can serve a notice of new work which is being carried out on public property because it is in the interests of the commonwealth to allow as many people as possible to defend it at law.

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army, how much more ought it to be permitted against those who ravage the commonwealth itself and its general condition [*status*³³], and bring it under the yoke of servitude.

The proof of the second point – that it is not licit for one’s own utility – is that those who hold the commonwealth under the sway of tyranny detain it by force against the commonwealth itself or against a superior lord, not against some private individual. Therefore another person³³ who seeks to bring to an end such tyranny for his own utility uses illicit force, as in *Dig.* 43.16.1.30;³⁴ 43.16.12;³⁵ 43.16.18.³⁶ It is licit, then, for the public utility; and if he came to take action, so that uproar or tumult erupt in the city, he would not fall under *Cod.* 9.30.1, because he would be acting licitly, as has been said.³⁷ In support of this position I invoke the blessed Thomas Aquinas, in his *Summa theologiae*, IIa IIae, q. 42, art. 2 ad 3, where he says this: Tyrannical rule is not just, because it is not directed to the common good, but to the private good of the ruler.³⁸ And therefore disruption of this regime does not constitute sedition, unless perhaps when the regime of a tyrant is disrupted in so inordinate a fashion, that the subject multitude suffers more harm from the consequent disruption than from the rule of the tyrant.’

So I say that to assume the said names, although they signify division and faction, is nevertheless licit if it is done for a just and due end. For the apostle Paul ‘knowing that one party was of the Sadducees and the other of the Pharisees, cried out in the council: “Men and brethren, I am a Pharisee and the son of a Pharisee”’, *Acts* 23.³⁹ Yet I have seen many perish when they mounted sedition against tyrants, although they

³³ From the available variants we prefer *alius* to Quaglioni’s *aliter*, because Bartolus’s preceding comment expresses no contrasting or alternative state of affairs to which *aliter* could meaningfully relate.

³⁴ *Dig.* 43.16.1.30 allows someone who gained possession by force to use the usual legal remedy against forceful dispossession if another person then ejects him.

³⁵ *Dig.* 43.16.12 gives another example in which the principle outlined in the previous citation applies.

³⁶ *Dig.* 43.16.18 makes a tenant who prevents a buyer from entering the farm liable to the seller. Of the three passages just cited, this is the hardest to square with Bartolus’s point. All of course relate to the illicit use of force by a sitting tenant, evidently for his own utility, but only the first two also make an incomer who uses force to evict a tenant liable, even when he has legal title.

³⁷ Above, n. 28.

³⁸ Bartolus here omits Aquinas’s reference to Aristotle, *Politics*, 3.5, 1279b6 and *Ethics*, 8.10, 1160b8. Our translation deviates only slightly from that of R. W. Dyson, ed., *Aquinas: Political Writings* (Cambridge 2002), pp. 250–1.

³⁹ Verse 6.

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were moved by a holy and just purpose.⁴⁰ However, because the aforesaid names denote division and schism, I think it is not right for an honest man to assume either of them, except for some weighty reason, by analogy with *Dig.* 36.1.65(63).8.⁴¹

IV

With regard to the fourth question – that is, how to prove that someone is of these sympathies – I say that there are three things to be proved.

First, that there are parties in the city.

Second, that they are called by such names.⁴²

Third, that a certain person adheres to the party which is called by a certain name.

On these grounds it is concluded that he is of that sympathy. Let us examine them.

First, I have said that one must prove that there are parties in the city. On which point it must be noted that when there are two parties in a city, of which each has a share in rule, as in the city of Todi,⁴³ then the proof is easy. When there are two parties, of which one rules the city, and the other stands deposed but formerly ruled, then similarly the proof is easy: namely who was ruling shortly before, and who rules now. Sometimes a single city has been ruled from the distant past under one name, and then it is difficult to prove that someone is of a party other than that under whose name the city is ruled, as I shall immediately explain.

Secondly, I have said that one must prove that a certain party is called by a certain name; and that is easy.

Thirdly, I have said that it must be proved that a certain man adheres to that party. This can be proved in the city of Todi with the greatest ease, for there they are called to public office under that name and are not admitted otherwise.⁴⁴ So it is clear to what sympathy they belong, because they have performed a deed which cannot be performed without

⁴⁰ Quaglioni, *Politica e diritto*, p. 99, suggests that this sentence was originally a marginal gloss, not by Bartolus, which found its way into the text.

⁴¹ *Dig.* 36.1.65(63).8. By the modern paragraph division of the *Digest*[†] Bartolus means §10 (*Si vero nominis*): there is no harm in taking the name of a respectable man if the praetor insists on this so that legacies may be conveyed to their intended recipients.

⁴² Bartolus's formulation here is in the singular – *tali nomine* – but he must mean both Guelfs and Ghibellines.

⁴³ Above, p. 3.

⁴⁴ See Introduction, p. xix.

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recourse to the right and name of that sympathy, as in *Dig.* 29.2.20.4.⁴⁵ Or it is sufficiently proved because he said so explicitly – namely that he belongs to that sympathy; for no one is considered to say what he has not turned over in his mind, as in *Dig.* 33.10.7.2,⁴⁶ or because he favoured that party in counsels and in arms and in other actions. Understand also that this applies to voluntary actions. For what if one party were outside the city, and the other which ruled the city committed troops against them? Certainly those who went would not, on this account, be said to belong to the same sympathy as the insiders, for they went on the orders of those who ruled the city, whom they necessarily had to obey. Hence, when the matter is in doubt, they are assumed to have acted more out of necessity than will, as in *Dig.* 29.2.6.4.⁴⁷ However, if nothing of the kind can be proved, it suffices if it can be proved of their ancestors, for a son is presumed to belong to the same sympathy as his father, as in *Cod.* 9.8.5.1;⁴⁸ *Dig.* 21.1.31.21.⁴⁹

I return to what I have said about a city which has been ruled from ancient times under one name, and which does not have exiles by reason of faction, or if it has them, then not under the name at issue. For example, the city of Pisa⁵⁰ has been ruled from ancient times under the name of the Ghibellines, and although it has exiles, yet both insiders and outsiders go by this name. To explain: suppose that in Pisa there is a statute that no Guelf may be admitted to any office.⁵¹ I say that this statute ought to be understood to apply to any person belonging to that sympathy within the city of Pisa and with respect to that city. For in doubt, statutes must be

⁴⁵ *Dig.* 29.2.20.4: someone is deemed to be acting as heir ‘whenever he accepts what he could not accept if he did not hold the name and legal position of heir’.

⁴⁶ *Dig.* 33.10.7.2 (concerning a legacy of furniture) relates the opinion that nobody says what he does not intend.

⁴⁷ *Dig.* 29.2.6.4 is about a man who, mistakenly believing himself to be subject to the paternal power of another, accepted an inheritance on the instructions of his putative father. The text argues that under these circumstances he has not acquired the inheritance for himself or his ‘father’. Bartolus returns to a later paragraph in *Dig.* 29.2.6 in *On the Tyrant* in order to support a similar point: below, p. 46.

⁴⁸ *Cod.* 9.8.5.1, on the *Lex Iulia maiestatis*,[†] notes that the sons of those convicted of treason are feared to have inherited the criminality of their fathers.

⁴⁹ *Dig.* 21.1.31.21: slaves of certain nationalities are reputed good, those from ‘a notorious people’ are considered bad.

⁵⁰ Bartolus acted as assessor at Pisa, before teaching at the university 1339–43.

⁵¹ Bartolus may be thinking of ch. 160 of *Breve del popolo e delle compagnie del comune di Pisa*, the 1330 vernacular version of the statutes of 1313: *Statuti inediti della Città di Pisa*, ed. F. Bonaini, 3 vols. (Florence 1854–7), vol. II, p. 631.