

Cambridge University Press & Assessment  
978-1-316-51989-9 — Bartolus of Sassoferrato  
Bartolus of Sassoferrato, Edited and translated by  
George Garnett, Magnus Ryan  
Frontmatter  
[More Information](#)

---

## *Bartolus of Sassoferrato*

The medieval jurist Bartolus of Sassoferrato (d. 1357) has long been accorded seminal importance by historians of political thought. This volume provides the first complete English translation of his three most celebrated tracts: *On Guelfs and Ghibellines*, *On the Government of a City*, and *On the Tyrant*, which constituted the first consolidated response by a medieval lawyer to the problem of tyranny in the city republics of central and northern Italy. Crucial sections of Bartolus's academic commentaries on Roman law are also translated in appendices. George Garnett and Magnus Ryan make the writings of Bartolus accessible to an expanded audience, situating his political theory in its original context and explaining his arguments. Footnotes to the translation explain all Bartolus's references to normative sources, legal and otherwise, and a detailed glossary of legal terms and institutions is provided. This translation allows readers to understand how Bartolus mobilized the Roman and canon laws to address immediate political developments, and why he was the most famous and enduringly influential medieval lawyer.

GEORGE GARNETT is Professor of Medieval History in the University of Oxford, Fellow and Tutor of St Hugh's College, and Lecturer at Lady Margaret Hall. He has published widely on the history of law and political thinking from the eleventh century to the seventeenth. Previous publications include *The Norman Conquest in English History, Volume I: A Broken Chain?* (2021), *Marsilius of Padua and 'the Truth of History'* (2006), and an annotated translation of *Vindiciae, contra tyrannos* (1994).

MAGNUS RYAN is an associate professor in the History Faculty at the University of Cambridge and Fellow of Peterhouse. His previous publications include, as co-editor, *Maitland: State, Trust and Corporation* (Cambridge, 2003), and numerous contributions on medieval political thought and legal history.

CAMBRIDGE TEXTS IN THE  
HISTORY OF POLITICAL THOUGHT

*General editor*

QUENTIN SKINNER

*Queen Mary University of London*

*Editorial board*

MICHAEL COOK

*Princeton University*

HANNAH DAWSON

*King's College London*

ADOM GETACHEW

*University of Chicago*

EMMA HUNTER

*University of Edinburgh*

GABRIEL PAQUETTE

*University of Maine*

ANDREW SARTORI

*New York University*

HILDE DE WEERDT

*Leiden University*

Cambridge Texts in the History of Political Thought is firmly established as the major student series of texts in political theory. It aims to make available all the most important texts in the history of political thought, from ancient Greece to the twentieth century, from throughout the world and from every political tradition. All the familiar classic texts are included, but the series seeks at the same time to enlarge the conventional canon through a global scope and by incorporating an extensive range of less well-known works, many of them never before available in a modern English edition, and to present the history of political thought in a comparative, international context. Where possible, the texts are published in complete and unabridged form, and translations are specially commissioned for the series. However, where appropriate, especially for non-western texts, abridged or tightly focused and thematic collections are offered instead. Each volume contains a critical introduction together with chronologies, biographical sketches, a guide to further reading and any necessary glossaries and textual apparatus. Overall, the series aims to provide the reader with an outline of the entire evolution of international political thought.

*For a list of titles published in the series, please see end of book*

Cambridge University Press & Assessment  
978-1-316-51989-9 — Bartolus of Sassoferrato  
Bartolus of Sassoferrato , Edited and translated by  
George Garnett , Magnus Ryan  
Frontmatter  
[More Information](#)

BARTOLUS OF  
SASSOFERRATO

---

*Three Tracts on City Government  
and Related Writings*

TRANSLATED AND EDITED BY

GEORGE GARNETT

*University of Oxford*

MAGNUS RYAN

*University of Cambridge*



CAMBRIDGE  
UNIVERSITY PRESS

Cambridge University Press & Assessment  
978-1-316-51989-9 — Bartolus of Sassoferrato  
Bartolus of Sassoferrato, Edited and translated by  
George Garnett, Magnus Ryan  
Frontmatter  
[More Information](#)



CAMBRIDGE  
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre,  
New Delhi – 110025, India  
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,  
a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of  
education, learning and research at the highest international levels of excellence.

[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781316519899](http://www.cambridge.org/9781316519899)

DOI: 10.1017/9781009019583

© George Garnett and Magnus Ryan 2024

This publication is in copyright. Subject to statutory exception and to the provisions of  
relevant collective licensing agreements, no reproduction of any part may take place  
without the written permission of Cambridge University Press & Assessment.

When citing this work, please include a reference to the DOI 10.1017/9781009019583

First published 2024

*A catalogue record for this publication is available from the British Library.*

*A Cataloging-in-Publication data record for this book is available from the Library of Congress*

ISBN 978-1-316-51989-9 Hardback

ISBN 978-1-009-01145-7 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence  
or accuracy of URLs for external or third-party internet websites referred to in this  
publication and does not guarantee that any content on such websites is, or will  
remain, accurate or appropriate.

Cambridge University Press & Assessment  
978-1-316-51989-9 — Bartolus of Sassoferrato  
Bartolus of Sassoferrato , Edited and translated by  
George Garnett , Magnus Ryan  
Frontmatter  
[More Information](#)

---

*For  
Peter Linehan  
and  
Quentin Skinner*

Contents

|   |                |
|---|----------------|
| <i>Preface</i>  | <i>page</i> ix |
| <i>Introduction</i>   | xi             |
| <i>Translators’ Note</i>  | xxxviii        |
| <i>List of Abbreviations</i>  | xlii           |
| <i>Glossary</i>   | xliii          |
| <i>Biographies</i>  | lvii           |
| <i>Further Reading</i>  | lxi            |
| <i>Note on Scriptural References</i>  | lxxi           |
| <i>Map of Northern Italy c. 1350</i>  | lxxii          |
| On Guelfs and Ghibellines   | 3              |
| On the Government of a City   | 16             |
| On the Tyrant   | 34             |
| Appendix I: The Preface to Bartolus’s <i>Tiberiadis</i>                       | 65             |
| Appendix II: Legislative Autonomy and<br>the Universality of the Roman Empire | 68             |
| Appendix III: The ‘City, Emperor unto Itself’                                 | 85             |
| <i>Index of Legal Citations</i>   | 113            |
| <i>General Index</i>  | 125            |

## Preface

F. W. Maitland pronounced that those brought up in the English common law tradition were peculiarly ill-equipped to tackle the medieval civilians and canonists, ‘and they are not to be tackled by the untaught’.

This attempt to induct English-speaking readers into the mysteries of Bartolus’s political thinking began when GG was given some teaching remission by the Oxford History Faculty in order to translate Bartolus’s three political tracts. The aim was to produce a new set text for the Faculty’s Further Subject in Scholastic & Humanist Political Thought.

Over many long evening symposia, the editors went through the draft translation line by line with Hugo Tucker in order to correct and clarify. They both wish to acknowledge Hugo’s relentless and meticulous rigour, without which these translations would be much fuller of error than they now are. We are also grateful to him for his good grace on the numerous occasions when he remained alone in his conviction that Bartolus was attempting to mimic in Latin the Greek middle.

Years later, Quentin Skinner suggested to us that the existing typescript translation might be elaborated into a volume for the Texts in the History of Political Thought series. We are indebted to him for that proposal, for his advice on supplementary texts to be included in the Appendices, and for his forbearance in waiting further years for a finished typescript.

We are grateful to Joseph Canning, Dante Fedele, Serena Ferente, Yves Mausen, and Alessandra Panzanelli Fratoni for their contributions. Tim Rood and Elinor Garnett tendered advice on scene-setting in classical dialogues, and Georgy Kantor guidance on late antique Roman local government. John Hudson commented on all and Caroline Humfress on large portions of the text. Helen Pike did likewise; she also provided

Cambridge University Press & Assessment  
 978-1-316-51989-9 — Bartolus of Sassoferrato  
 Bartolus of Sassoferrato, Edited and translated by  
 George Garnett, Magnus Ryan  
 Frontmatter  
[More Information](#)

## *Preface*

plentiful sustenance during periods of intense collaboration in Oxford. We also wish to thank Liz Friend-Smith and Chris Jackson for steering this book through Cambridge University Press, and our cartographer Michael Athanson. Papers based on the work have been presented at the Oxford Political Thought Seminar, at the Universidade Nova de Lisboa, and at the Institute of Historical Research. We also thank generations of undergraduates in Oxford and Cambridge who have agonized over the tracts, and pinpointed problems.

GG is one of that dwindling band who were taught about Bartolus by Walter Ullmann. It is fitting that Walter's role in promoting Bartolus to Anglophone audiences should be highlighted here. MR was one of the last pupils of Peter Stein, whose deep knowledge of Roman law extended over its entire history, and who had therefore immersed himself in Bartolus. We hope that both supervisors would have approved of our efforts.

It had long been the editors' intention to dedicate the book to our friend and sometime colleague Peter Linehan, another pupil of Walter's. As Research Fellows of St John's College, Cambridge, we both benefitted in myriad ways from his paternal care. It is a matter of regret and grief that we are no longer able to offer this filial tribute to him in person.

For just as long it has been our desire to make Quentin Skinner co-dedictee. He has had a great influence on both of us – in GG's case, since he took Quentin's celebrated Special Subject on the monarchomachs, in whose thought the medieval learned law was so central. The emphasis Quentin has laid on that law as a substrate in the political thinking of the early modern period has played a very important part in drawing the attention of a wider audience to Bartolus and his ilk.

We both acknowledge with gratitude the periods of leave allowed to us by our respective colleges and faculties.

GG thinks it right to add that in terms of expertise in civilian and canonist jurisprudence, he has played Pollock to MR's Maitland.



## Introduction

Bartolus was born between November 1313 and November 1314 in Sassoferrato, a town in the March of Ancona, and died a citizen of Perugia in July 1357. He received his early education from the Franciscans Guido da Perugia and Pietro di Assisi before beginning legal studies at the university of Perugia in 1327, at the precocious age of fourteen. He moved to Bologna probably in 1330, where he took his doctorate in civil law in 1334. After serving as assessor in the courts of Todi, Cagli, and Pisa, he taught at the university of Pisa from 1339 to 1343 before returning to Perugia, where he remained until his death. In 1355 he took part in an embassy sent by his city to Charles IV, Holy Roman Emperor, while the latter was at Pisa, and was honoured by the emperor with the grant of various privileges, such as the right to legitimize bastards among the students at Perugia, and to bestow full legal capacity on minors. Charles also made him an imperial counsellor and member of his household.<sup>1</sup>

Within a decade of his death Bartolus's commentaries on Roman law, which were the precipitate of his teaching at Pisa and Perugia, together with his legal opinions written for courts and litigants, were already famous among academic and practising lawyers. With the possible exception of Accursius, the thirteenth-century compiler of the standard gloss or *Glossa ordinaria*<sup>2</sup> to the *Corpus iuris civilis*,<sup>3</sup> no other teacher of Roman law in the middle ages commanded such respect, let alone affection, in later generations. Few would contest the view that he remains the most

<sup>1</sup> F. Calasso, 'Bartolo da Sassoferrato', *Dizionario biografico degli Italiani*, vi (Rome 1964), pp. 640–9; S. Lepsius, 'Bartolo da Sassoferrato', in I. Birocchi, E. Cortese, A. Mattone, and M. N. Miletta, eds., *Dizionario biografico dei giuristi italiani (XII–XX secolo)* (Bologna 2013), vol. I, pp. 177–80.

## Introduction

influential post-antique Roman lawyer. He was the first medieval Roman lawyer to merit a book-length analysis by an historian of political thought, the 1913 study by C. N. S. Woolf, *Bartolus of Sassoferrato: His Position in the History of Medieval Political Thought*. In the index to the final volume of the Carlyles' encyclopaedic six-volume *A History of Mediaeval Political Theory in the West* (1936), Bartolus occupies more space than any other single thinker except Jean Bodin. In modern continental historiography, he looms even larger.

Bartolus's three tracts *On Guelfs and Ghibellines*, *On the Government of a City*, and *On the Tyrant* were the first free-standing works by a medieval lawyer on the political problems of his immediate time and place; they represent a mobilization of the Roman and canon laws to address political developments which Bartolus regarded as deeply pernicious. To appreciate the quality of Bartolus's response, it is necessary to acquaint oneself with both the intellectual and the political traditions within which he was formed.

Bartolus is the most celebrated representative of a type of medieval intellectual which had evolved in the course of the twelfth century, the professional lawyer. In the most general description available to him he thought of himself and his colleagues as *juristae*, or 'jurists'. Jurists were adepts of Roman law, canon law, or both. Roman law was the great collection of imperial laws and classical legal commentaries, the 'Corpus of Civil Law' or *Corpus iuris civilis*,<sup>†</sup> compiled at the orders of Emperor Justinian I (527–65) between 529 and 534. By the time Bartolus was born, Roman law had long been a fact of life in the city-states of central and northern Italy, in the kingdoms of Naples and Sicily, in France, and in the kingdoms of the Iberian peninsula.

The phrase 'civil law' or *ius civile* meant the civil law of Justinian's books; canon law meant Gratian's *Decretum*, in circulation in its final form by the mid twelfth century, the collection of papal decretal letters known as the *Liber extra* promulgated as law by Pope Gregory IX in 1234, another decretal compilation promulgated by Pope Boniface VIII in 1298 known as the *Liber sextus* or simply *Sext*, and the *Constitutiones Clementinae* initiated by Pope Clement V but published by his successor John XXII in 1317. Roman law was alive wherever an ecclesiastical court did business, for to study and practise canon law was impossible without a familiarity with Roman law. Conversely, although most of the jurists whom Bartolus addressed in his lectures on Roman law called themselves 'civilians', as students primarily of the Roman *ius civile*, they had to familiarize

## Introduction

themselves with canon law too. Together, Roman and canon law formed an amalgam known as the common law or *ius commune*, the law common throughout Western Christendom; it was a whole despite educational specialization on the part of civilians and canonists. Accordingly, and like the rest of his more conventional jurisprudence, Bartolus's tracts are replete with references to canon as well as Roman law, and to the medieval commentaries on both which had become standard by his time.

In these political tracts, written during the last couple of years of his life, Bartolus devoted himself to three main tasks. The first was to analyse legally the factionalism characteristic of the North Italian cities, to decide if and why it was permissible to join a party, and to establish the relationship between such parties and legitimate government. This was the subject of *On Guelfs and Ghibellines*. The second was to find a place for the Italian city-state as he knew it in the typology of constitutions deployed by Aristotle in *Politics*, a schema which had been adopted by the numerous medieval commentators on Aristotle, and to demonstrate that one form of government in particular was best suited to such organizations. In Bartolus's view, this was the *regimen ad populum*, or government by the people, rather than monarchy or aristocracy. Bartolus describes and commends this in the second tract, *On the Government of a City*. The third, which Bartolus accomplished in *On the Tyrant*, was to anatomize tyranny in its most common manifestations and lineaments in the Italian cities of his time.

As Osvaldo Cavallar has argued, the tracts are artfully constructed to flow sequentially, and *On Guelfs and Ghibellines* is not the source of the sequence. Rather, *Tiberiadis*, Bartolus's tripartite treatise on the law of alluvial deposits, the formation of islands, and the shifting of river beds, is.<sup>2</sup> Its title might be translated as 'Tiber river-basin' or 'region'; the whole treatise is, therefore, ostensibly concerned with the river Tiber, and

<sup>2</sup> O. Cavallar, ed., 'River of Law: Bartolus's *Tiberiadis* (*De alluvione*)', in J. A. Marino and T. Kuehn, eds., *A Renaissance of Conflicts: Visions and Revisions of Law and Society in Italy and Spain* (Toronto 2004), pp. 30–129, at 31, 54–8. Cavallar's edition is only of the first section – *De alluvione* – of the tripartite *Tiberiadis*, which goes on to deal with the formation of an island in the midst of the river (*De insula*), and with a dry riverbed (*De alveo*): pp. 34–5, 40, 47–9. For the complete work, see Bartolus de Saxoferrato, *Tyberiadis, ... Tractatus de fluminibus tripartitus; ab Hercule Buttrigario ... nunc demum restitutus in lucem prodit* (Bologna 1576; repr. Turin 1964). Only four codices examined by Quaglioni, *Politica e diritto*, p. 89, contain all three political tracts; nine contain some or all of *Tiberiadis*. He does not collate Cambridge, MA, Harvard Law School Library, MS. 75, dated to 1475, an opulent codex which contains the full version of *Tiberiadis* and all three political tracts in their logical order, copied out by the same hand: Cavallar, ed., 'River of Law', pp. 47–8.

## Introduction

thus shares the Italian specificity of the three political tracts. Indeed, in a piece of introductory autobiographical scene-setting, Bartolus presents *Tiberiadis* as prompted by his reflections as he looked out over the valley of the Tiber while making his way to a country villa outside Perugia during the summer vacation of 1355. At the very start of the treatise, he signals that the Tiber eventually flows through the city of Rome, within the territory of which it becomes tidal. In legal terms, at that point it ceased to be a river and became sea.

In the opening sentence of *On Guelfs and Ghibellines*, Bartolus is still musing on the third and final part of the preceding *Tiberiadis*, that concerned with the gradual shifting of the river bed. This further episode of personal reminiscence places him 50 km downstream from the Perugian villa, close to Todi, where he had once acted as assessor. He specifies that the spot was ‘within the hundredth milestone of the city of Rome’ – in Roman law terms, just within the jurisdiction of the prefect of Rome. As foreshadowed by *Tiberiadis*’s early comment about the ultimate course of the river, *On the Government of a City* has a riparian setting within Rome itself. *On the Tyrant*, unlike its upstream antecedents, does not begin in a particular locality close to the Tiber; but, like *On the Government of a City*, it focuses on Rome, which in that immediately preceding tract is twice said to be stuffed with tyrants ‘now’.<sup>3</sup> Towards the end of *On the Tyrant*, however, there is a reference back to the opening ‘book’, on alluvial deposit, of *Tiberiadis*,<sup>4</sup> the notional source of the jurisprudential stream which flows both through that treatise and all three tracts of the subsequent political one. Whereas the opening of *On Guelfs and Ghibellines* had referred back to the final ‘part’ of *Tiberiadis*,<sup>5</sup> the final *quaestio* of *On the Tyrant* alluded to its first one. That *Tiberiadis* and the three political tracts together were conceived sequentially is implied by the scribe of the late fifteenth-century presentation copy of them all in sequential order in Harvard Law School Library, MS. 75, which adds this colophon to *On the Tyrant*: ‘The treatise on the tyrant, and thus the whole matter of the *Tiberiadis* ends.’<sup>6</sup>

It is to be noted that although Bartolus appears to regard all three political tracts as integral parts of a single work, that is not how they came to be treated by posterity.

<sup>3</sup> Below, pp. 18, 33.

<sup>4</sup> Below, pp. 62–3.

<sup>5</sup> Below, p. 13.

<sup>6</sup> Cavallar, ed., ‘River of Law’, p. 48; Cambridge, MA, Harvard Law School Library, MS. 75, fo. 80r. For this copy, see above, n. 2.

## Introduction

It is thought that Bartolus died before he could complete *On the Tyrant*, and perhaps *On Guelfs and Ghibellines* too. They both just stop. If *On Guelfs and Ghibellines*, the first of the political tracts, is incomplete for this reason, then Bartolus must have continued to revise it after drafting its sequels. A reference close to the end of *On the Tyrant* to Gil Albornoz's appointment as cardinal-bishop of Santa Sabina, which took place in December 1356, appears to confirm that Bartolus was working on it very shortly before his death.

If mortality had indeed prevented him from putting the finishing touches to these tracts, that may have created a problem in terms of subsequent interpretation. Usage over the centuries has dubbed each of the three political tracts a *tractatus*, a treatise. However, a passage in *On the tyrant* suggests strongly that Bartolus conceived of the three tracts as a sequence in an integrated whole, forming a composite response to the problem of tyranny in contemporary Italy, that the three components of this response were not in his view *tractatus* but 'books' (*libri*), and that it was the ensemble of three books that constituted a *tractatus*.<sup>7</sup> At the beginning of *quaestio* VIII, he refers to the more specific actions of a tyrant 'which have been for the most part presented above, in the first book of this treatise'. He cannot mean the first *quaestio* of *On the Tyrant*, for it contains no such matter; and *On the Tyrant* is in any case divided not into books but *quaestiones*. The only matching passage in any of the texts is *quaestio* III of *On Guelfs and Ghibellines*. The strong implication of this passage, therefore, is that Bartolus conceived of all three 'books' as a single 'treatise'. An earlier passage in *On the Tyrant* points in the same direction. At the very beginning, Bartolus says that, 'before proceeding further with the present treatise on the tyrant', he will list the questions he is about to consider. Since he has not yet begun that discussion, the phrase 'the present treatise' and the sense of ground already covered conveyed by the phrase 'before proceeding further' would most plausibly refer to our hypothesized composite whole, rather than to the specific component *On the Tyrant* which is to follow.

The picture is complicated, however, by an implication in the same introductory passage that Bartolus is *only now* turning to the topic of tyranny: 'I have not dared to broach bitter, distressing, and troublesome subjects, especially when I see tyrannical perfidy extending its sway.' Thereby, it appears, he pursues the theme signalled by the concluding

<sup>7</sup> Below, pp. 52–3.

## Introduction

sentence of the immediately preceding tract, *On the Government of a City*. Diego Quaglioni revealed that the opening paragraph of *On the Tyrant* is only to be found in one manuscript; but we, like him, are unwilling to discount it as inauthentic, even if, like him, we register some unease about it. It is in any case the only conceivable objection to the hypothesis that, had Bartolus lived to complete and polish the work, the result would probably have looked much more like the antecedent *Tiberiadis*: an integrated treatise, repeatedly so titled, consisting of three separately subtitled ‘parts’ or ‘books’.

However that may be, the discussion immediately preceding the final sentence of *On the Government of a City* also points to tyranny as a logical terminus; many of the roads travelled by Bartolus in *On Guelfs and Ghibellines* and *On the Government of a City* lead to the tyrant, the proclaimed subject of the final tract.

The conceit serving both to connect the three political tracts together and to frame much of their specific content is the Tiber. The city through which the Tiber eventually flows is the source of all laws, which makes it unique; but in another respect what can be said of the ‘Roman river Tiber’ might be said of any river. A river is always moving, its water, its content, is constantly renewed, always different. The movement of water means that the river is also forever and almost imperceptibly changing its course. Yet it remains always the same river, perennial and perpetual. These key characteristics are set out in the definition of terms preliminary to the opening part of *Tiberiadis*.<sup>8</sup> In these respects rivers are analogous to artificial entities, such as cities, or lesser groupings within cities, such as factions, as Bartolus observes at the outset of the first political tract, *On Guelfs and Ghibellines*. Indeed, its very opening sentence refers back to the ‘third part’ – that is, the final part – of *Tiberiadis*, concerned with the shifting course of a river, and specifically of the Roman river. Changes over time are not easy to prove, but can be inferred from their manifest, measurable, but nevertheless intrinsically impermanent, results. In the case of rivers these become visibly obvious as land is eroded and created. In the case of city politics, the constantly shifting changes are much more difficult to determine or measure – they are not susceptible to geometric calculation – and their manifold causes still more so. The problem of proving the existence of a tyranny is also explicitly linked to the difficulties of proof with regard to the deposit of alluvium in *quaestio* XII of *On*

<sup>8</sup> Cavallar, ed., ‘River of Law’, p. 92; *Tiberiadis*, p. 13.

## Introduction

*the Tyrant*.<sup>9</sup> If Bartolus's main general concern in these tracts is to apply Roman law to the analysis of political change in contemporary North Italian cities, the specific problems of perception, proof, and calibration bulk very large.

During the twelfth century, most cities in Northern and central Italy had developed communal forms of government which by modern standards were oligarchies, but which alert contemporary observers immediately recognized as revolutionary. In his biography of his own nephew, Emperor Frederick Barbarossa, Bishop Otto of Freising noted in 1157 or 1158 with mixed wonder and horror how the inhabitants of Italy, out of love of liberty and concern for the commonwealth or *res publica*,<sup>†</sup> imitated ancient Roman practice by electing consuls instead of having lordly rulers to govern them. There was, in his view, hardly a noble left of sufficient standing to resist the power of these cities, which had extended their rule over the whole of their respective dioceses and thus over the entire land. Without using the precise word, Otto was describing the commune, the institutional manifestation of which was a bundle of offices in a collective organ of government staffed by officials elected for short terms, and accountable to the full assembly of the adult male citizens of the city. In the course of the thirteenth century the original communal institutions were joined in many cities by the *popolo* or 'people', a pressure-group representing those who had been excluded from the original charmed circle of families eligible for communal office in the twelfth century. The commune rapidly became the foundation of civic existence, and proved ineradicable from the political consciousness of North Italians. In *On the Government of a City*, Bartolus adapts the typology of true and perverted constitutions from Aristotle's *Politics*. He brings one particular form of communal government under this schema when he substitutes the phrase *regimen ad populum* for the word *politia*, which rendered the Greek *politeia* in the Latin version of Aristotle's *Politics* in use across Western Europe at the time, and meant the mixed constitution. Bartolus also recasts its antitype, the perverted regime called democracy by Aristotle, into 'a perverted people'.

Party conflict had unsettled the communal and the later communal-popular regimes from the beginning; there never was a Golden Age of civic harmony in Lombardy, Tuscany, the Romagna, the March of Ancona, and elsewhere. The long-standing antagonism between the

<sup>9</sup> Below, p. 63.

Cambridge University Press & Assessment  
 978-1-316-51989-9 — Bartolus of Sassoferrato  
 Bartolus of Sassoferrato, Edited and translated by  
 George Garnett, Magnus Ryan  
 Frontmatter  
[More Information](#)

## Introduction

(German) Roman emperors and the papacy in the region had exacerbated this endemic tendency towards political fission in the cities, and provided the terminological couplet of Guelf and Ghibelline, labels which had originally described the papal and imperial camps respectively, but which had, as Bartolus explains in *On Guelfs and Ghibellines*, lost all but coincidental identity with these causes by the early fourteenth century, possessing merely local relevance. Party violence undermined the effectiveness of committee-based, elective, and – in that limited sense – consensual government, but the rise of a single ruler as ‘lord’ or *signore* could extinguish it. The two phenomena were related, since rule by a *signore* was often the outcome of destabilizing factional violence. A straight *coup* had on occasion established the rule of a *signore*; but by Bartolus’s time it was more common for strong-men to rise through, and in specious ways to work within, the institutions of legitimate communal and popular government. Elections were subverted and malcontents intimidated, office was bestowed not for a short, fixed term, but for life; powers which had previously been divided between different elected bodies were amalgamated in the hands of one lord, while taxes and other resources of the city were distributed among his clientele. By the time Bartolus reached maturity, such corruptions of the institutions which had framed North Italian civic experience since the mid twelfth century had taken on alarming institutional fixity and could look, on a purely formalistic level, like legitimate government: elections had taken place, extended terms of office had been agreed in public meetings, and the more notable *signori* had traditionally taken pains to buy confirmation of their offices from either emperor or pope in the form of vicariates.<sup>†</sup>

*On the Tyrant* is the first attempt by a medieval thinker to analyse the genesis of such regimes, and to measure the developing contrast between the maintenance of the communal veil and the underlying realities which it to varying extents concealed; but the earliest, shortest, and first of the tracts, *On Guelfs and Ghibellines*, already contains the kernel of the later, more elaborate, treatment. Factional nomenclature is mentioned here and there in the jurisprudence of earlier lawyers on banishment and expropriation, two standard tools of thirteenth-century communal government; and the existence of parties usually lurked not far below the surface of such discussions. But Bartolus’s *On Guelfs and Ghibellines* provided the first consolidated treatment of the matter. It identified the underlying questions and brought them into focus through one lens, the question of all questions: was a particular set of arrangements, a particular pattern



## Introduction

of behaviour, for the common good or not? Before he even reaches this point, Bartolus argues that if there is a Guelf tyrant in a city, a *good* man will become a Ghibelline, regardless of the original, historical, but now superseded associations of these labels respectively with the papal and imperial parties of long ago, just as a *good* man in a city under a Ghibelline tyrant will become a Guelf.

In cities such as Todi, where Bartolus had worked, parity of influence between the two parties was the foundation of the civic peace, and established by statute. As Marco Gentile noted, Bartolus's discussion of how to prove party affiliation therefore answered an urgent and quotidian political need.<sup>10</sup> But that discussion is also embedded in a broader one of political morality; Bartolus is concerned with much more than the question of whether factional affiliation is nowadays determined primarily or wholly by local political context, rather than, as had allegedly once been the case, simply by allegiances to popes and emperors who were at loggerheads. His formal and general position is stated a few lines further on: it is lawful to join a party if this makes it easier to defend the public good, a principle which also justifies resistance to a tyrannical government. It is similarly lawful for a just government to avail itself of a party label if this helps sustain it against attack. An appraisal of the legal authorities which Bartolus invokes in support of his claims here reveals the importance of this political language of the common good, derived ultimately from Aristotle's *Politics*, for the law does not sustain the argument very strongly. A passage from the *Digest*<sup>†</sup> punishes collusion with one litigant against another with the purpose of benefitting from the latter's property; a second provides help against those who conspire to accuse the innocent. The higher-order Aristotelian distinction between action for selfish gain and action for the public good is clearly the organizing principle and definitive criterion here, whereas the legal references provide but distant and imperfect analogues.

This, the third section of *On Guelfs and Ghibellines*, has axial importance, for it reveals the tyrant as Bartolus's ultimate target in a tract ostensibly dedicated to another problem. That is why he refers back to this discussion in the midst of *On the Tyrant*.<sup>11</sup> Bartolus's preoccupation with tyrannical government underlies the distinction between legitimate

<sup>10</sup> M. Gentile, 'Bartolo in pratica: Appunti su identità politica e procedura giudiziaria nel ducato di Milano alla fine Quattrocento', *Rivista internazionale di diritto comune*, 18 (2007): 231–51.

<sup>11</sup> Above, p. xv; below, p. 61.

## Introduction

action for the public good, and selfish, illegal action against the public good. A government which acts in the latter way will necessarily be tyrannical, just as a clique seeking to overturn a legitimate government for selfish reasons will *ipso facto* harbour tyrannical ambitions.

The citations from Roman and canon law at this point furnish a parade-ground example of how scholastic legal argument worked. If, Bartolus reasons, it is lawful to assemble one's friends for the protection of one's own property, it must *a fortiori* be lawful to form a group in order to defend the public's property. The *Digest*<sup>†</sup> passage he then quotes merely allows armed defence of one's property against armed aggression; it does not sanction collective action. Yet it is precisely action by a party which Bartolus is trying to justify here. *Digest* 43.16.3.9 permits collaborative resistance to force, but this is in private law (the rubric is *De vi privata*, 'Concerning private force'), and regulates relations between citizens, not between citizens and their government. To extract from Roman law the authority to topple a government is predictably difficult. To do so, Bartolus has to quote a passage which appears to forbid any such undertaking, then alter it by way of an addendum. *Code* 9.30.1 condemns sedition as a stirring up of the common people against the commonwealth, but Bartolus adds the caveat that this is legal if the objective is to depose a tyrant and restore government for the public good. This is one of several passages in these tracts where the law is only made relevant once the question under discussion has been virtually answered by extra-legal means, with the result that the law is sometimes a veneer applied to an argument, the substance of which is derived from other sources.

Again, and to follow Bartolus a little further through this section of the tract, it is lawful to be 'of one faction and one name' in order not merely to oppose but even to depose a tyrannical government, provided that it would be prohibitively difficult to achieve this by recourse to a superior authority, and also provided that one's purpose is to re-establish government for the common good, not to replace one tyranny with another. Two of the three legal authorities Bartolus cites at this point merit examination. The first, *Code* 1.9.14, forbids violent self-help and imposes legal process instead; it is only Accursius's gloss to this passage that allows self-help when no judge is available. The second, *Digest* 42.8.10.16, defines the circumstances in which one of several creditors may unilaterally take what is owed to him when he apprehends the debtor. In formal terms, then, Bartolus's method here is to embed legal passages relating to private law in governmental, public contexts. To exercise a tyranny is to detain

## Introduction

the commonwealth by force against the commonwealth itself or against a superior lord, so to proceed against such tyranny for the motive of private gain is illegal. Three passages from the *Digest*<sup>†</sup> are then cited as examples of when the use of force for private gain is not allowed against another private person. These legal texts only support Bartolus's claim up to a point, because they do not allow or even imply the converse, namely, that it is permissible to resort to such means if one's purpose is to protect the public good. It is no coincidence that here, too, Bartolus appeals to the Aristotelian tradition in quoting Thomas Aquinas's lapidary statement that 'Tyrannical rule is not just, because it is not directed to the common good, but to the private good of the ruler.'

In *On the Government of a City*, Bartolus extends the category of tyranny. Aristotle and his medieval commentators had defined it as the perversion of monarchy, whereas Bartolus notes that all government for the sake of the governors is tyranny, whether by one, by few, or by many. Bartolus's wider ambition in this tract is to subject the tradition of Aristotelian political science to legal scrutiny. In book III of his *Politics*, Aristotle had famously asked what the best manner of ruling was; but Bartolus explains that he will approach the question via the hugely successful book *De regimine principum* by the prior-general of the Augustinian Order of Hermits, Giles of Rome (1243–1316), 'who was a great philosopher and a master of theology' and had, in Bartolus's opinion, treated the matter more clearly than Aristotle.<sup>12</sup> This was sensible insofar as Giles's book was the most widely known work of medieval political science, having been already translated into both French and Italian. Bartolus goes on to say that he will present Giles's 'opinion and follow his reasoning', but without adopting Giles's vocabulary, which was alien to jurists. The intention at this point seems to be to reformulate by reference to the law what Giles and indirectly Aristotle had said: 'I shall use their reasoning and I shall prove it by the laws; afterwards I shall describe my own views.' Bartolus does not mean that he will necessarily confirm by reference to the law what is said by Aristotle and Giles, merely that he will try to find legal analogues for the main points made by his august forerunners before offering his own opinion. The outcome demonstrates that in truth he disagrees with Giles.

Bartolus begins by providing legal parallels for Giles's main propositions. Any good ruler should possess rational discernment, right

<sup>12</sup> Below, p. 19.

## Introduction

intention, and perfect steadfastness: so far, Giles. Bartolus cites *Digest* 1.1.1.1, where jurists (but not rulers) must distinguish the licit from the illicit. Thanks to the opening words of the *Institutes*,<sup>†</sup> every lawyer also knew that steadfastness was integral to the very definition of justice, the constant and perpetual will to give to each his right. He continues to provide a legal version of the case Giles sets out against monarchy before relaying Giles's conclusion: an emphatic endorsement of monarchy as the best constitution. Speaking as a lawyer, he does not think Giles's statements are to be understood straightforwardly. There follows a covert tussle with Giles as Bartolus explores the implications of an Old Testament topos in discussions of kingship: Samuel's ominous prophecy of what looks like tyranny for the people of Israel who have demanded a king after the manner of other nations, and thereby, implicitly, rejected God as their ruler (1 *Kings* 8). Bartolus cites only one legal source of no particular consequence here, relying instead on the interpretations of the theological authorities quoted in the Ordinary Gloss to the Bible, in particular their hedging about of Samuel's unsettling predictions by means of the reassuring *Deuteronomy* 17, which portrays a more benevolent ruler. Bartolus uses this biblical exegesis to establish what the 'right of a king' is; that done, he returns to the question 'whether it is advantageous to a city or people to be ruled by a king'.

Here Bartolus makes his most forceful and original intervention. There are three categories of city or people: large ones, larger ones, and the largest. Rome had proceeded through each of these stages, changing its constitution as it did so, a process summarized in the Roman law in a long excerpt from the classical jurist Pomponius which formed *Digest* 1.2.2.<sup>13</sup> This told a story of constitutional change as the Roman people grew and expanded its sway. Bartolus argues that the merely 'large' city or people cannot sustain the expenses and magnificence of a kingly court, citing *Digest* 1.2.2, according to which the ancient Romans expelled their kings when Rome was still in its initial stage of growth. Rule by the few is also inappropriate for a small city where the riches of the rulers will be resented by the rest, and where there is also a danger of division between the rulers.

Bartolus sees the first observation confirmed by recent events in Siena, where Charles IV had disbanded the rule of the Nine, while the repeated

<sup>13</sup> The threefold categorization of cities in terms of size in *Tiberiadis*, p. 91, is not tied to Roman historical development in this way.

## Introduction

tensions within Pisa's ruling elite confirmed the second. Bartolus concludes that 'It is most advantageous to a people of the first magnitude to be ruled by the multitude, which is called a government by the people [*regimen ad populum*]', and he refers to the section of *Digest* 1.2.2 covering the period when Rome was ruled neither by its ancient kings nor the senate, but by the people. In this, its first period of conspicuous success, Rome therefore most resembled an average-sized Italian city of Bartolus's time, proving to his satisfaction that such cities 'of the first magnitude' should be ruled by the people, for 'It is evident that this form of government is good, because in that period the city of Rome expanded greatly.' Rule by the people – 'multitude' as he calls it here – excludes, however, the vile and commoner sort, whom Bartolus associates with the mobs hired by would-be tyrants. The best he can extract from the law to justify this limitation is a slew of references to the urban governments of the later Roman empire, which were staffed by dignitaries such as defenders<sup>†</sup> of cities and decurions;<sup>†</sup> since such persons were civic officials, rather than the entire citizen body, the contrast here with commoners is far from clinching.

Guided still by the *Digest's*<sup>†</sup> account of the growth of Rome, Bartolus thinks that rule by a few good men is appropriate to a people of the second order of magnitude, such as Venice and Florence – which in Bartolus's opinion were therefore not popular but aristocratic regimes – for as Roman power expanded the senate took over government. In this second and 'larger' category of city or people, the danger of division between those who rule is diminished by the fact that they are actually many in number; the majority in the middle can provide a firm foundation for government even when there are some dissenters. The populace will not resent the power of the few, because in such larger cities these few are only few relative to the total population, and are in absolute terms rather numerous. Bartolus indicates the texture of good aristocratic rule by again citing laws regulating late Roman municipal government, particularly injunctions to provincial governors not to allow the rich to oppress the poor, and to distribute honours and burdens according to merit and capacity in the cities subject to them. Again, these legal texts might be accepted as illustrative, but they do not seem to constitute a satisfactory explanation for the stability of aristocratic city government.

Once a city has gained sway over many other cities, however, monarchy is the appropriate form of government, and the reasons advanced by 'Brother Giles' in favour of monarchy in general then apply. There will

## Introduction

be an abundance of good men to provide counsel to the ruler. Moreover, *Deuteronomy* 17 clearly describes a king, and implies that he will rule over ‘a large people of great standing’ capable of holding dominion over other nations. Again the Roman model is authoritative, for once the Romans had entered the category of a ‘largest’ people, and won their wide empire over other nations, they finally re-adopted monarchy.

Bartolus extracts the further lesson from *Deuteronomy* 17 that kings over the very largest peoples should not accede by succession but election; the emperor (‘who is universal king’, as we shall see shortly) is elected by the princes and prelates of Germany; canon law states this unequivocally and also denounces hereditary succession to ecclesiastical offices. Rule over smaller kingdoms can pass by succession, which Bartolus terms a ‘human constitution’, whereas election is a more divine and noble mechanism. He could thus acknowledge the positive aspects of monarchy propounded by Giles whilst vindicating the *regimen ad populum* of – in Bartolus’s terminology – ‘large’ Italian cities like Perugia, which are the smallest category he considers here, as well as the elective monarchy of the universal Roman empire.

*On the Government of a City* ends with a brief discussion of the worst form of government. Since Bartolus has already argued that all government for the private utility of the rulers is tyranny, the question for him now is which of its three manifestations is worst, tyranny by the one, the few, or the many? His conclusion is that where many are involved in rule some vestige and memory of the common good survives, whereas the fewer the rulers, the worse their tyranny.

The final sentence of *On the Government of a City* – ‘And because today all Italy is full of tyrants, let us investigate those matters concerning the tyrant which are relevant to jurists’ – effects the transition to its sequel, *On the Tyrant*. According to Pope Gregory the Great, the tyrant is someone who rules unlawfully in the commonwealth. Canon lawyers had adopted this definition in the generation before Bartolus, whereas thinkers in the Aristotelian tradition had focused instead on the criterion of the common good. Rule by one person against the common good was tyranny, and a variety of further characteristics such as the deployment of foreign bodyguards, the fomenting of discord between citizens, the waging of unnecessary wars, could be extracted from Aristotle’s *Politics*. For Bartolus, tyranny consists primarily but not solely in the usurpation of jurisdiction, which he defines as ‘the power introduced by public law with the necessity of stating law and establishing equity in the capacity of

## Introduction

a public person'. There can therefore be tyranny in a household because the father exercises a type of royal right or jurisdiction, as a string of Roman law citations demonstrates at this point in his tract. By the same token, there can be no tyranny over a neighbourhood because the neighbourhood itself is not a subject or carrier of jurisdiction, only the city to which it belongs.

The engine-room of *On the Tyrant* is its second half, starting in *quaestio* VI. Here Bartolus subjects the quotidian political realities of contemporary Northern Italy to legal analysis, and concludes that most of the means of gaining rule over cities and their dependent settlements are examples of 'tyranny without title': fear, duress, force of arms, the use of the vile and commoner sort to propel oneself into power, the prevention of exiles from participating in one's election, the occupation prior to an election of the city's fortifications or those of its dependent settlements. The list is long, and familiar to anyone versed in medieval Italian politics.

The surprise is that Bartolus also condemns as tyrants those with an apparently unimpeachable title, in the form of an imperial or papal vicariate.<sup>†</sup> By his time the more sophisticated Italian *signori* had not merely been elected by the peoples of their respective cities, but had paid for appointment as imperial or papal vicars too. Appointment by one or other of the universal powers of empire and papacy was the second of what Italian scholars call the 'twin roots of the *signoria*', the first being election by the people of a city. Although, therefore, Bartolus de-couples modern Guelf and Ghibelline affiliations from loyalty to the church or empire respectively, his assumption in the three tracts that the superior should deliver a city from tyranny demonstrates that, for him, the two universal authorities were not simply an irrelevance. Where emperor or pope, whom Bartolus characterizes as 'universal lords', are compelled to accept the worse for fear of the very worst, the recipients of such grants are no less tyrants than if they had dispensed entirely with the cosmetics of just title. They still rule by denying the legal holders of jurisdiction their rightful exercise of that jurisdiction, and against the common good – the context implies that Bartolus means the common good only of the relevant city at this point, not that of the universal bodies of empire or church – by fear and duress. Such tyrants may be imperial or papal vicars, but they remain tyrants.

The lawyer needed to know what followed from this. In *quaestio* VII Bartolus explores the legal validity of acts undertaken in the city's name during the rule of a tyrant lacking title. The chief strength of Bartolus's

## Introduction

discussion, unparalleled in medieval jurisprudence or Aristotelian commentary, is his treatment of fear. Roman law was helpful on this, furnishing the interdict *Quod metus causa* ('What on account of fear') for restitution of what had been lost or renounced as a result of intimidation, and the classical jurists had left behind rich discussion about when the claim or presumption of fear was valid. The combination of administrative and private law is the most striking and, for the newcomer, often the most alienating characteristic of the political theory of the medieval lawyers; Bartolus's politicization of fear in private law is no exception. *Digest* 4.2.21 nullifies the grant of a dowry made under duress; *Digest* 5.1.2 nullifies the judgment of a praetor if he has forced himself as judge upon the litigant. In the context of a people cowed by superior force into accepting a tyrant as its ruler, we might have less difficulty in accepting the second passage as proof that 'jurisdiction should be transferred voluntarily', for the first is hardly a comfortable fit, whereas the praetor was at least a public official. To raise a mob is also a contravention of the Julian law on public force (*Lex Iulia de vi publica*<sup>1</sup>): applied to the ruler of the city, who has just been elected thanks to such a mob, this furnishes a criterion by which to decide whether acts conducted under his rule do or do not bind.

As in *On Guelfs and Ghibellines*, but now with greater urgency, Bartolus confronts the problem of proof, for, as he suggests in *quaestio* VI, such a ruler might be deemed to have been elected by the greater part of the citizenry, and therefore appear legitimate. Bartolus emphatically denies this, because the mechanics of the election have definitive importance for him. If a crowd of retainers, hired muscle, was deployed to intimidate the citizens at the time of the election, *Code* 12.1.6 applies, debarring the low-born and those of mean condition from municipal office. The legal backing is once again furnished by passages from Justinian's *Code* on the decurions<sup>2</sup> of late Roman municipal government, and, once again, the fit is far from snug, because Bartolus is talking about intimidation of the electorate by such people, whereas the law prohibits them from actually governing.

Bartolus's response is to scour the Roman and canon laws for instances in which formally faultless transactions are rescinded once intimidation or duress can be demonstrated or reasonably assumed. His innovation here is not the application of private law concerning matters like dowries to the relations between rulers and ruled – medieval and most early modern law-based political theory would have collapsed without that habit of mind – but to subject daily reality to the searching question of legitimacy



## Introduction

without fetishizing the formalities. An election is a constitutive process but becomes an empty formality if conducted under the shadow of an armed, sectarian mob. Appointment as a papal vicar<sup>†</sup> is a constitutive act, but becomes an empty formality if extorted by Taddeo Pepoli, tyrant of Bologna, from a powerless Pope Clement VI.

Some passages in Roman law were surprisingly amenable to Bartolus's agenda. The Julian legislation on the use of force both in private and in public contexts, discussed in book 48 of the *Digest*,<sup>†</sup> helpfully condemns all who alone or as a group seek to prevent judges and magistrates from operating normally. It similarly punishes those who impose illegal taxation. *Code* 1.2.16, which is about church appointments made during a preceding period of schism, provides Bartolus with a standard by which to assess the legal effects of transactions conducted under a tyrant, for canon law associates the schismatic office-holder with the tyrant, and even the *Glossa ordinaria*<sup>†</sup> to the Roman law contains some discussion of the matter, which Bartolus dutifully quotes. The Julian law on treason (*Lex Iulia maiestatis*<sup>†</sup>) is obviously useful in condemning anyone who, without a command from the emperor, wages war, raises a levy, or prepares an army, although it is Bartolus who adds 'if he raised an army against a city without an order from the superior'. Even within the standard normative framework Bartolus assumes in these tracts, in which the emperor or pope are present as notional superiors, the tract on the tyrant in particular shows repeatedly how difficult it was to identify a tyrant in a legally conclusive fashion, and to decide the legal consequences of such an identification.

This brings us to the final question. How far has Bartolus advanced what can usefully be done with the Roman and canon law to give clear lineaments to tyranny, and to analyse its consequences? It would be a grotesque injustice not to acknowledge the immense progress Bartolus made in these respects, for where consequences are concerned, the tract provides a lot: above all, the section on rescission of contracts made under a tyrant's rule is replete with usable distinctions. But how does one legally anchor the distinction, all-important as we have seen, between action prompted by the desire to protect the common good on the one hand, and selfish action on the other? What does the common good look like in the concrete situations which Bartolus describes in such profusion? Bartolus as a lawyer enjoyed and still enjoys the reputation of commendable practical-mindedness, and it is this, perhaps his greatest strength, which rules out any facile answers for him here. His pragmatic sobriety