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.[1]

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*† to the *Corpus iuris civilis*,† 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

[1] 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. Miletti, eds., *Dizionario biografico dei giuristi italiani (XII–XX secolo)* (Bologna 2013), vol. I, pp. 177–80.

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*,† 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

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.[2] Its title might be translated as 'Tiber river-basin' or 'region'; the whole treatise is, therefore, ostensibly concerned with the river Tiber, and

[2] 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 tripertitus; 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.

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'.[3] Towards the end of *On the Tyrant*, however, there is a reference back to the opening 'book', on alluvial deposit, of *Tiberiadis*,[4] 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*,[5] 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.'[6]

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.

[3] Below, pp. 18, 33.

[4] Below, pp. 62–3.

[5] Below, p. 13.

[6] Cavallar, ed., 'River of Law', p. 48; Cambridge, MA, Harvard Law School Library, MS. 75, fo. 80r. For this copy, see above, n. 2.

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*.[7] 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

[7] Below, pp. 52–3.

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*.[8] 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*

[8] Cavallar, ed., 'River of Law', p. 92; *Tiberiadis*, p. 13.

the Tyrant.[9] 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*,† 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

[9] Below, p. 63.

(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.[†]

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

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.[10] 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*† 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*.[11] Bartolus's preoccupation with tyrannical government underlies the distinction between legitimate

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

[11] Above, p. xv; below, p. 61.

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*† 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

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*† 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.[12] 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

[12] Below, p. 19.

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*,† 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.[13] 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

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

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† of cities and decurions;† 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† 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

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

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.† 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

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*†): 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† 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

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† 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*,† 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*† to the Roman law contains some discussion of the matter, which Bartolus dutifully quotes. The Julian law on treason (*Lex Iulia maiestatis*†) 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

leads him to state that 'There is virtually no government which will not on occasion appear tyrannical to some people.' In the same spirit, he runs through the famous Aristotelian characteristics of tyrannical behaviour mentioned above, and notes that such tactics are often necessary if a good, non-tyrannical, government is to survive. As he explains, many of the practices listed by Aristotle as marks of tyranny were legitimate tools of government in fourteenth-century Italy. By comparison, Giles of Rome's pieties on all this appear rather insubstantial, and these are indeed some of the most refreshing pages of Bartolus's generally fresh and alert tract. They nevertheless underline the fact that the most important of the answers Bartolus the lawyer brings to this hitherto almost exclusively Aristotelian philosophical debate beg further fundamental questions.

Bartolus's engagement with medieval Aristotelian political science foregrounds a vocabulary which inevitably presents false familiarities to the unprepared modern reader, for whom it almost naturally implies a self-contained political society. Particularly in *On the Government of a City*, the basic categories of analysis such as monarchy, aristocracy, and *politia* – even when the last is replaced by *regimen ad populum* – might seem to invoke Aristotle's *polis*, the highest of all human associations with no political authority above it. Bartolus had no such organization in mind, so it is to this, the broader normative framework accepted by a particular kind of *ius commune* political thinker, that we must now turn.

We have seen that, according to *On Guelfs and Ghibellines*, tyrants who rule by force detain the commonwealth 'against the commonwealth itself or against a superior lord'.[14] Further on, it is only permissible to join a party in order to topple a tyrannical government if this same end cannot be achieved by recourse to a superior. In *On the Government of a City* Bartolus observes that in contemporary Italian cities regalian rights do not belong to the *podestà*† or other officers, such as the papally appointed rectors, 'but to the cities they rule, or to another superior, or to the fisc'.[15] As these examples show, the existence of a superior to the city is regularly assumed, just as, later in the same tract, it is the business of a city's superior to reform its government, although the implication here that the city can be its own superior hints at a more complex scenario. Most obviously in *On the Tyrant*, it pertains to the superior to rescue the people from servitude, so it is the superior's duty to depose a tyrant.

[14] Above, pp. xx–xxi; below, p. 9.
[15] Below, p. 23.

The superior alluded to in these passages can be either of the two universal powers recognized by Bartolus as legally supreme over all Christians: the Roman emperor and the pope. The former undoubtedly has the higher profile in these tracts, as across Bartolus's jurisprudence generally, and was embodied for him, as for Italians ever since the mid tenth century, by the rulers of Germany. According to patristic theologians, Rome, as the last in the sequence of great empires prophesied in the Old Testament book of Daniel, would be the final empire to rule mankind before the Apocalypse. The Roman law itself emphasized the eschatological and universal character of the empire, and although there were fourteenth-century Roman lawyers who dismissed both as humbug, Bartolus was not one of them. For him, the divinely instituted universal authority of the Roman empire was the servant of the universal Roman church; to deny the universality of the empire was therefore to flirt with heresy. Accordingly, the Roman empire was the normative framework for everything he wrote, despite its near paralysis in northern Italy, where cities had been vying with each other for pre-eminence ever since the late eleventh century, when the decay of imperial power in the region became precipitous.

Bartolus's most detailed statement of the universal authority of the Roman empire, including its relation with the authority of the papacy, occurs in his commentary on the law *Ad reprimendum*, promulgated by Emperor Henry VII at Pisa in April 1313, in which the emperor declared that all rebels against the emperor were guilty of high treason. Bartolus's comments on this constitution (excerpted below in Appendix II) anchor the Roman empire securely in a biblical, prophetic scheme.[16] Although as a matter of fact – *de facto* – there are those who do not obey, by law – *de iure* – they should. The objection that the emperor's summons has no authority in the lands ruled directly by the church is of no force because, since Christ's advent, the empire has devolved to the church. It has since been granted by the church in the person of the pope to the emperor, and the church must of course last until Christ's return. The legal superstructure thus becomes an eschatological one.

For a lawyer of such fastidiousness, it was natural to appeal to the authority of the emperor for the resolution of difficulties in Italy, as we have seen Bartolus occasionally doing in his tracts. But the ineluctable fact, which conditioned all his jurisprudence, was that many cities and towns across northern Italy nowadays failed to acknowledge imperial authority.

[16] Below, pp. 82–4.

Our sins, he laments in the preface to an earlier treatise, *On reprisals*, have merited that the Roman empire has lain prostrate for a long time, and that kings, princes, 'and even cities, especially in Italy, recognize no superior in temporal matters, at least *de facto*'.[17] Now that there is no superior able to rectify injustices, Italian cities resort to self-help by exacting reprisals from each other's citizens.

Bartolus returned to this issue repeatedly in the course of his academic commentaries on Roman law, to which we must now turn. 'You know', he told his students in his lecture on *Code* 2.3.28,[18] 'that the cities of Italy generally do not possess *merum imperium*,† but have usurped it.' In explaining in another lecture (on *Digest* 39.2.1) 'how what I see comes about, that nowadays all the rulers of cities and *castra*† throughout Italy exercise the rights pertaining to *merum* and *mixtum imperium*†', he mentions the obvious mechanisms of imperial grant and legitimate custom, but adds 'or perhaps they use it *de facto*'.[19] Bartolus is famous for the next step in his argument: the *de facto* exercise of imperial powers by a city not acknowledging the emperor's authority is a reason for accepting its right to use such powers. In his own words, 'If [the city] proved that it has been exercising *merum imperium*, then [the claim] is valid' (*Code* 2.3.28).[20] The strictly legal or *de iure* objection that this was still usurpation could therefore be ignored. Whenever the authority of the emperor was required for a particular procedure to be valid, the city itself could now claim to act as its own superior, as *civitas sibi princeps*, 'a city which is emperor unto itself', always provided that it could prove that it had been using these powers already under certain circumstances, and for a certain period of time. That done, 'those cities which *de facto* do not recognize a superior … have *imperium* over themselves'. The most common manifestations in Bartolus's experience of both the *regimen ad populum* recommended in *On the Government of a City* as appropriate in merely 'large' cities – that is, the smallest of the three categories he defines – which Emperor Charles IV himself apparently extolled to Bartolus when they met – and of the aristocratic regime appropriate to cities of the second level of magnitude were in cities which did not normally acknowledge the authority of the emperor.

[17] Bartolus, *Tractatus de repraesaliis*, in *Bartoli a Sassoferrato Consilia, quaestiones et tractatus* (Basle 1588), fo. 327va.
[18] Below, p. 111.
[19] Below, pp. 88–9.
[20] Below, p. 111.

Much of Bartolus's jurisprudence, driven as it was by emerging problems of civic existence in Italy, inevitably focuses on the powers of a city's magistrates in a variety of situations. The materials in Appendix III demonstrate how frequently the neuralgic point was reached when the authority of the generally 'non-recognized' emperor was nevertheless required to validate an act of government. They reveal the frequency with which the fundamental question of legitimate authority irrupted into the quotidian business of governance in a city which usually failed to recognize the authority of the emperor, a question to which 'the city emperor unto itself' provided the answer.

However, a set of broader questions about legislative capacity frames everything Bartolus wrote about civic life, for which it is necessary to turn to his lengthy commentary on a passage excerpted from the *Institutes* of the classical jurist Gaius and included in the very first title of book 1 of the *Digest*† under the rubric 'On Justice and Right', the famous law *Omnes populi*, or 'All peoples …' (*Digest* 1.1.9).[21] Here, Gaius explained that all peoples ruled by laws and customs live under a compound of norms, of which some are common to all mankind and are natural, and others are specific to a particular people or *civitas*. This text was the *locus classicus* for the discussion of statute-making powers in the Italian cities; Bartolus's commentary, excerpted in Appendix II, is so important because in it he locates every echelon of government known to him from his own society within the various categories of office-holders and their jurisdictions as defined by Roman law.

The law *Omnes populi* appears to permit cities to make their own statutes: is this true, and if so, to what extent? Bartolus's answer, developed over several distinctions and sub-distinctions, is that a city possessing all jurisdiction may legislate for itself without explicit authorization by a superior, meaning the emperor (or the pope, in regions where his temporal overlordship was recognized). The emperor might have granted such jurisdiction, or the city might have acquired it by prescription.† The point is that only the city itself has it, not subordinate communities in the region belonging to that city, nor subdivisions of the city, such as particular quarters or neighbourhoods, for jurisdiction resides in the whole people or the council which represents it.

[21] Below, pp. 69–81.

Almost the same point is made in *On the Tyrant*.[22] Bartolus can insist on it partly because the vocabulary employed by Gaius in *Omnes populi* identifies peoples as legislating agents, but then slides from peoples to cities. Guilds and other subordinate collegiate bodies are permitted to pass statutes regulating their internal business, but only the city may pass statutes on the administration of justice. Bartolus then asks about judges. Those in office for life, possessing what he calls 'perpetual jurisdiction', may legislate in this, the fullest, sense. Modern kings fall into this category, as do certain nobles such as counts; but a civic official such as a *podestà*† is in a lower category because he is only appointed for a fixed term. Bartolus is differentiating carefully between a circumscribed, temporary, executive authority, and full legislative power. On his own authority a *podestà* may impose curfews, curtail the export of grain from the city, or prohibit the bearing of arms within its walls, but only for the duration of his term of office. 'Major judges' – in another formulation – such as kings and counts ought to take counsel from experts before legislating, but they are under no legal obligation to do so. The case is otherwise in a city, where the whole people – or the council which represents it – must be involved. If any council members have been exiled without just cause, then a statute passed without their participation cannot bind them to their prejudice – another point he develops in *On the Tyrant*.[23] When the consent of all is required, moreover, all must congregate and give evident signs of consent or dissent in full public assembly; door-to-door procedures are illegitimate.[24]

Bartolus's city or *civitas* can easily be mistaken for an elemental quantity in his legal theory, as being tautologically related to the people or *populus*.† In fact, the people itself is conceptually prior to the *civitas*. For example, in his lecture on *Digest* 49.1.1.3, Bartolus explains that the judge of appeal will be 'The people itself, or the *ordo* [that is, the echelon of government] which appoints that officer, because this is the only superior to the people itself, and is emperor unto it.'[25] When discussing the relaxation of sentences of infamy, which was an imperial prerogative, Bartolus argues that 'Since every city in Italy nowadays – and particularly in Tuscany – recognizes no lord, it has within itself a free people and has in itself *merum imperium*,† and has as much power over its people as the

[22] Below, pp. 39–40.
[23] Below, p. 44.
[24] Below, p. 79–80.
[25] Below, p. 102.

emperor has over everything.'[26] Ever since the mid thirteenth century at the latest, lawyers had become used to the idea that a king might recognize no superior in temporal affairs and thus become 'emperor in his own kingdom'. Bartolus was the first to apply that principle of non-recognition to a city, and express it so effectively in the instantly memorable formula of *civitas sibi princeps*. But the city itself is best taken as shorthand for the true actor or agent in such situations, which is the people.

This people was a corporate body or corporation, a concept rendered by the term *universitas*.† The corporate people of a city such as Perugia elected a council and acted through it, a relationship which Bartolus felicitously captured with the apophthegm 'The council represents the mind of the people.'[27] Numerous lawyers before Bartolus had explored the multifarious questions arising from corporate legal status, including liability for corporate debt, culpability for collective misdemeanour, the birth and death of corporations, the means by which corporate bodies could bind themselves, the relationship between a corporation and its members, and many more; but his contributions contain peculiarly arresting formulations which betray a highly developed political sensibility. *Civitas sibi princeps* was one; the contention that the commonwealth could be detained illegitimately against the commonwealth itself another, for it opens a conceptual space between one abstraction and its even more abstract self. The most intriguing example relates to the personhood of corporations, including of course the corporate people. As he epitomizes the point in *On the Government of a City*, the 'whole city is one person and one artificial, imaginary man'.[28]

Lawyers had attributed personhood to a variety of corporations since the mid thirteenth century at the latest; Pope Innocent IV, whose commentary on the *Liber extra* Bartolus cites so frequently, had famously emphasized that such a corporate person was fictitious, not real. Bartolus elaborates on this fictiveness by explaining that corporate persons are represented persons: 'What belongs to a corporation does not belong to its individual members, because a corporation is a represented person in itself.'[29] In the case of the *populus*† of an Italian city, the organ which performs this act of representation is the ruling council: 'Thus elected,

[26] Bartolus on *Dig*. 48.1.7; below, p. 96.
[27] *Bartoli a Sassoferrato in primam Digesti Veteris partem commentaria* (Turin 1574), fo. 17vb; *Dig*. 1.3.32.
[28] Below, pp. 20–1.
[29] *Dig*. 47.22.1.2; below, pp. 92–3.

this council then represents the whole people.'[30] Bartolus's source here is Accursius's *Glossa ordinaria*† to *Cod*. 8.52(53), according to which the council represents not precisely the people but 'its place' (*vicem eius*). In his commentary on *Cod*. 4.32.5, Bartolus again appears to echo Accursius: a council 'represents the place [*vicem*] of the whole people'.[31] At *Digest* 46.1.22 the Roman law itself stated that an inheritance, like a *municipium*,† a subdivision of various corporations known as a *decuria*,† or a business partnership (*societas*), could function 'in place of a person'. Bartolus seems oblivious to the distinction between representing the person of the people and representing its place, so it is probably not significant: he is just quoting Accursius *verbatim*. In another passage Bartolus inverts the relationship in observing that 'The corporation represents one person',[32] thus betraying a certain insouciance towards the relationship between representer and represented.

Representation was not a new concept in jurisprudence, then, but the notion that the corporation is a represented *person* was, apparently, original. In the case of corporate as distinct from individual ownership, the claim that the corporation is a 'represented person' does little work of its own; but in another passage of Bartolus's jurisprudence it does. Bartolus was strikingly hostile to the notion that jurisdiction could inhere in a territory exclusively: for him, jurisdiction always belonged to persons. In his commentary on *Digest* 2.1.1, which is about the jurisdiction of judges, he asserts with brio that the jurisdiction apparently belonging to cities and *castra*† 'coheres with their people and their communities [*communitatibus*] … because they are represented persons which have jurisdiction, and they themselves appoint the *podestà*† and suchlike, hence jurisdiction inheres in persons and pertains to persons'.[33] That is a lot of persons in a short sentence. It is no coincidence that this is the concluding sentence of his commentary on this passage. Bartolus's represented persons, by 'personalizing' the bearer of jurisdiction, served to keep it in the hands of the people, rather than allowing it to leach into the impersonal abstraction of the territory.

It would be out of place as well as impossible here to attempt an assessment of the influence of Bartolus's general jurisprudence over political debate in the centuries which followed. The precise phrase *civitas sibi*

[30] Bartolus on *Cod*. 10.32(31).2; below, pp. 111–12.
[31] *Bartoli a Sassoferrato in primam Codicis partem commentaria* (Turin 1574), fo. 158ra.
[32] Bartolus on *Dig*. 48.19.16.10; below, pp. 99–102.
[33] Below, p. 87.

princeps seems not to have been widely adopted by lawyers after Bartolus. His interpretation of the law *Omnes populi*, moreover, was not universally accepted by his fellow jurists. The distinction between the *de facto* and the *de iure* states of affairs, which plays a far more important role in Bartolus's jurisprudence than in that of his predecessors, famously caught on. His most celebrated pupil, Baldus de Ubaldis (d. 1400), in whose hands the autograph manuscript of *Tiberiadis* ended up,[34] used the distinction routinely in many of the same contexts as Bartolus did. And Baldus was far from alone. Without attribution, *On the Tyrant* was filleted by the French jurist Évrart de Trémaugon in his *Somnium viridarii*, the compendium of political debates commissioned by Charles V of France in 1374 to re-establish concord between ecclesiastical and secular jurisdictions.[35] Because the *Somnium* was quickly translated into French, in anonymous and condensed form some of Bartolus's ideas reached a vernacular readership beyond Italy barely twenty years after the composition of *On the Tyrant*.[36] Later Italian lawyers who wrote mainly for signorial regimes were predictably less forthright in their comments. Baldus, who from 1390 taught in Visconti-ruled Pavia, clearly integrates several of Bartolus's ideas into his own treatment of tyranny, including the important contention that a *signore* who is only accepted by the emperor because the emperor lacks the power to expel him is also a tyrant; but he is understandably more circumspect about signorial rule in general. In the generation after Baldus, Martinus Garatus explicitly condemned Bartolus's contention that there were circumstances justifying the assumption of Guelf or Ghibelline party-labels, for in what was by that time the Visconti Duchy of Milan, those terms had been outlawed as politically divisive. As Diego Quaglioni showed, Garatus referred not to Bartolus on the tyrant, but to Bartolus's contemporary Albericus de Rosate, in asserting that 'the true *princeps*† puts the good of the commonwealth above the private good; and the *princeps* is the image of the divine majesty, who ought not to rage against his subjects and neighbours'. That made it easy to accommodate the dedicatee of Garatus's treatise *On Princes* (*De principibus*), Filippo-Maria Visconti, within the category of princes.

[34] V. Colli, 'Collezioni d'autore di Baldo degli Ubaldi nel MS Biblioteca Apostolica Vaticana, Barb. lat. 1398', *Ius commune*, 25 (1998): 323–46.

[35] *Somnium viridarii*, ed. M. Schnerb-Lièvre, 2 vols. (Paris 1993–5), vol. I, ch. 133, 163–70.

[36] *Le Songe du vergier*, *Edité d'après le manuscrit Royal 19 C IV de la British Library*, ed. M. Schnerb-Lièvre, 2 vols. (Paris 1982), I. CXXXI, i. 217–21.

An episode in the sixteenth century conveys a sense of the busy afterlife both of Bartolus's tracts and some of the more eye-catching claims in his legal commentaries. Unsurprisingly, the tracts resurfaced prominently in the Huguenot advocacy of armed insurrection after the Saint Bartholomew massacres of 1572 in France. The anonymous author of *Vindiciae, contra tyrannos* routinely deploys the distinction made famous by Bartolus between a tyrant for want of just title and a tyrant who is defined as such by his abusive exercise of power; but Bartolus's influence over this, the most sophisticated of the Calvinist polemics of the time, is endemic rather than merely episodic. First, Bartolus's name remained a rallying-cry: 'Although he was born in an age abounding in tyrants, Bartolus himself was not afraid to conclude from this that subjects were not the slaves of a king but were to be considered his brothers.'[37] The phrase 'Bartolus himself' shows that his name still resonated in northern European Protestant circles in the late sixteenth century. The same inference may be drawn from the occasional explicit appeal to Bartolus which is not warranted by what Bartolus wrote. For example, Bartolus nowhere asserts that the tyrant of tyrants is the fear in the mind of the tyrant himself, and the *Vindiciae* also blurs Bartolus's distinction between the Julian laws on treason and on public force. As many of Bartolus's own arguments from Roman law in his three tracts show, it is the fate of textual authorities to be taken in vain, by which index Bartolus on the tyrant was certainly an authority.

But there is more to be said. The claim at this point in *Vindiciae* is that subjects are the brothers of their kings – a spirited application of Bartolus's harmless comment on *Deuteronomy* 17 which occurs not in *On the Tyrant*, but in *On the Government of a City*. Elsewhere, *On Guelfs and Ghibellines* is cited, on one occasion to buttress the vital contention that although sedition is not always unjust, it is so when directed at the wrong goal.[38] Bartolus is also mentioned alongside Giles of Rome during a discussion of the latter's list of the differences between kings and tyrants.[39] Clearly, in the mind of this later author, to think of Giles was to think of Bartolus too. Equally clearly, all three of Bartolus's tracts served as a reservoir for authoritative arguments about tyranny. Although, then, his citations of the tracts are sometimes of questionable relevance, the author

[37] *Vindiciae, contra tyrannos: Or, Concerning the Legitimate Power of a Prince over the People, and of the People over a Prince*, ed. and trans. G. Garnett (Cambridge 1994), p. 107.
[38] *Vindiciae*, p. 49.
[39] *Vindiciae*, pp. 145–6.

of *Vindiciae* appreciated their essential unity as parts of a composite, extended, analysis of tyranny. Most significantly, it was natural for him to link arguments from Bartolus's tracts with passages in Bartolus's commentaries on Roman law. For example, we have seen that in *quaestio* IX of *On the Tyrant*, Bartolus says it is the duty of the superior to depose a tyrant.[40] In *Vindiciae*, this is combined with a further point extracted from Bartolus's commentary on *Digest* 4.3.1: 'For the superior is the whole people, or those who represent it.'[41] Bartolus's general jurisprudence is therefore as much a part of the fabric of argument as his specific three tracts on tyranny.

Closer to Bartolus's own time and place, *On the Tyrant* might well have changed political vocabulary. Andrea Gamberini recently observed that in 1354 it was still a rational tactic for the Milanese propaganda machine to portray Archbishop Giovanni Visconti, uncle and predecessor as lord of Milan of the brother-rulers Matteo, Galeazzo, and Bernabò Visconti, as a tyrant.[42] He is so described in the inscription on the sarcophagus housing his remains together with those of the thirteenth-century archbishop Ottone Visconti in the *Duomo* of Milan. The word had some entirely respectable antecedents, and formed part of the active vocabulary of signorial regimes. But, as Gamberini plausibly claims, the appearance and speedy diffusion of Bartolus's tract rendered the epithet politically toxic, with the result that the next generation of the most influential and best informed pro-signorial pamphleteers – precisely such as those serving the Visconti in the pen-war against republican Florence – avoided it. It may therefore justly be claimed on behalf of Bartolus's three tracts – revealingly termed by him on one occasion a (single) treatise, consisting of several books[43] – that they achieved what Thomas Aquinas's *De regno* and its continuation in the shape of Ptolemy of Lucca's *De regimine principum* had not.

[40] Below, p. 56.
[41] *Vindiciae*, p. 156.
[42] A. Gamberini, 'Orgogliosamente tiranni: I Visconti, la polemica contro i regimi dispotici e la risignificazione del termine *tyrannus* alla metà del Trecento', in A. Zorzi, ed., *Tiranni e tirannide nel Trecento italiano* (Rome 2013), pp. 77–93.
[43] Below, pp. 52–3, discussed above, pp. xv–xvi.