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Bartolus of Sassoferrato

Cecil Nathan Sidney Woolf (1887–1917), Fellow of Trinity College, Cambridge, was killed in the First World War. In this prize-winning book, published in 1913, Woolf examines the way in which the medieval jurist Bartolus of Sassoferrato (1314–57) interprets the Roman Law to make it relevant to fourteenth-century Italian political reality. Considering Bartolus's treatment of the relationships between the Roman Empire and the papacy, kingdoms and city-republics, Woolf places Bartolus's thought in its wider historical context by surveying the complex problem of the empire from the mid-thirteenth century onwards. In particular, he assesses Bartolus's most famous argument that the city is its own emperor. Arguing that Bartolus's influence lasted into the early modern period, both in the practice of law and in the use made of his works by writers like Bodin and Albericus Gentilis, this book also includes a useful table explaining Bartolus's distinctions between *imperium* and jurisdiction.

Bartolus of Sassoferrato

His Position in the History of Medieval Political Thought

Cecil N. Sidney Woolf

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BARTOLUS
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BY

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THE THIRLWALL PRIZE ESSAY, 1913

"We doubted of Ulpian, and are now more perplexed with Bartolus and Baldus."

MONTAIGNE, *Essays*, III. 13 (Cotton's Translation).

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MATRI PRIMITIAS

PREFACE

I HAVE to thank the Adjudicators of the Thirlwall Prize for kindly allowing me to make all such additions and alterations, as I thought necessary to my essay before publication. I have accordingly added a few pages to the introductory Chapter I; the pages in Chapter III dealing with Dante, Petrarch and other Italian thinkers; and the short concluding Chapter. The material for these additions had been almost entirely collected before the essay was submitted to the Adjudicators, though lack of time had then prevented me from working it up. On the other hand, as a result of some further research, I have recast the end of Chapter III and made one or two small additions to Appendix A.

Next year will be the six-hundredth anniversary of the birth of Bartolus, and the history of his posthumous fame, which is written in the catalogues of most large libraries, is instructive. For two centuries after his death he was recognised as "the prince of jurists"; from the invention of printing to the close of the sixteenth century, one edition of his works followed another. But Humanism, slowly, it is true, and not without protest, shattered his reputation. His works ceased to be printed, and the old editions were consigned

to the dust and cobwebs, which were for long thought the proper hiding-place of such "Gothic" authors. It was only the last century which restored Bartolus to "polite" learning.

Bartolus has returned, not merely as a great lawyer, but as a political thinker—an important, if not a great, one. Of course, there must always be a large tract of debatable border-land between Law and Politics, however rigidly we separate one science from another. But this does not alter the fact that, to call Bartolus a political thinker, is to give him a title to which he himself made no claim, and which would, I think, have rather surprised him. This has seemed to me a distinction of great importance. I have referred to it more than once in the essay itself, the form and scope of which it has necessarily affected.

I may refer here to a topic, which I have considered outside the range of this essay. The authenticity of many of the works of Bartolus was already doubted at the Renaissance, and even earlier. Clearly, this is a question of some importance; and Savigny[1], who is, so far as I know, the only modern authority who has handled it, does not pretend to have done so exhaustively. But the material for deciding the question finally was not to be found in England, even supposing I had been competent to decide it. The obvious course was, therefore, to follow Savigny—and this I have done with one or two exceptions. I have followed him in accepting the authenticity of the Commentaries on the *Digestum Vetus* (with the exception of two "Repetitiones") and on the *Infortiatum*; I have also followed him in

[1] *Geschichte des röm. Rechts im Mittelalter*, vol. VI. c. LIII.

rejecting the Commentary on the *Institutes*. But I have accepted the Commentary on the *Authenticum* as genuine, as to which Savigny does not seem decided; and I have similarly accepted the whole of the Commentary on the *Tres Libri*. The evidence against this latter is merely the very decided statement of Jason and Diplovatacius, two famous fifteenth century lawyers of the Bartolist tradition, that the share of Bartolus in the work ends at the "Lectura" on C. XI. tit. 34, the rest having for author one Contes de Perusio. Now as this division corresponds with no ostensible difference; as the "Lectura" on C. XII. 1. 1 is admittedly genuine; as many of the "Lecturae" after, as before, the "Lectura" on C. XI. tit. 34 are signed, as being by Bartolus, in the one MS.[1] of the Commentary on the *Tres Libri*, which I have seen; and, finally, as the author of the "Lectura" on C. XI. 71. 1 expressly refers to a certain opinion of his, as held by him in the *Tractatus Minoritarum*[2], which is admittedly by Bartolus, I can see no reason to reject the latter part of this work. The Commentary on the *Digestum Novum* has never been suspected (though it will be found in Appendix A of this essay that the "Repetitio" on D. XXXIX. 4. 15 has been shown not to be by Bartolus). The *Consilia*, *Quaestiones* and *Tractatus*, referred to in this essay, present no difficulty.

A word of explanation is also necessary, I think, with regard to Chapter III. It will be remarked that

[1] Venice, Bibl. Naz. Cl. v. Cod. III.

[2] P. 113, § 5 of the Bâle ed. (1588–9): "Per hoc patet quod si legatum relinquitur ecclesiae S. Francisci, quod illud legatum est nullum...licet tenuerim contrarium in libello Minoritarum."

the political thinkers and publicists examined in that chapter are, with a few exceptions, all of a date anterior to that of Bartolus himself, and that the four political thinkers of prime importance, who were his contemporaries—Marsiglio of Padua, William of Occam, Lupold of Bebenburg, and the author of the *Somnium Viridarii*—receive only incidental notice. My apology must be that this is a work which has had to be finished within a given time, and that though, had the time and space at my disposal been unlimited, I should have attempted to continue my survey of political thought down to the close of the period with which this essay is concerned—and the proper close seems to me to be the return of the Popes from Avignon—to do so was not essential to my thesis. My aim in Chapter III was to demonstrate the existence of what I have called the Problem of the Empire, in the period which followed the fall of the Hohenstaufen, and to show that, while the problem faced the political thinker and publicist no less than the lawyer, the answers given to the problem by the former were very deeply affected by two causes, which operated hardly at all, or at least very little, on the answers given by the latter. Thus, to take an example, if I have succeeded in demonstrating the German answer to this problem by my analysis of the *De Praerogativa Romani Imperii* of Jordan of Osnaburg and the *Notitia Saeculi*, it was not necessary, however interesting it would have been, to compare these earlier treatises with the treatise written some sixty years later by Lupold of Bebenburg, *De Jure Regni et Imperii*. The earlier treatises can, of course, bear no comparison with the brilliant and acute treatise of

Lupold; but, as regards this problem, the answers of all three are, in essentials, the same—German. Similarly, to demonstrate the French answer, it was not necessary, after my analysis of the *De Potestate Regia et Papali* of John of Paris and other contemporary treatises, to analyse the *Somnium Viridarii*. Where the later treatise in one very important regard has advanced beyond the earlier treatises, I have noted it; but, this point apart, the answer of the *Somnium* may be fuller than the earlier answers, but it is not a new answer. Neither in the German nor in the French answers to this problem was there the sort of development, which, I have attempted to show, took place in the Italian answer.

Whether any apology is necessary for the amount of Latin which I have quoted in the text of this essay, I do not know. The practice is clearly disadvantageous from the point of view of literary form; but I think that there is a more than balancing compensation in having before one, as often as possible, the actual words of the thinker, with whom one is concerned. What men say is not the only important thing: often it is equally important to know how they have said it. Besides, the works of Bartolus, despite innumerable editions, are not always accessible; and, in all cases to have put his own words into footnotes, and to have translated, or given the sense of the passages quoted, in the text, would have been to expand the essay to an unwieldy size.

In addition to my thanks to the Adjudicators of the Thirlwall Prize for their permission to alter or add to my essay, I owe a great debt of gratitude to Dr Figgis.

It was he who set me on the subject of Bartolus, and—to leave out of account what this essay owes to his published books, to which my footnotes bear testimony—my thanks here can be no adequate acknowledgment of all I owe to the advice, which he has always been ready to give me. By reading the proofs, as the essay went through the press, he has honoured it in a way which only makes me wish the more that it were somewhat worthy of his notice. I have also to thank Mr Morant, of the India Office, for his kindness in reading the proofs, and my brother, Philip Sidney Woolf, who has helped me with the Index—but that is the least of the obligations which this essay owes him, but which neither he nor I would number or repay with public thanks.

C. N. S. W.

LONDON,
October 1913.

NOTE ON AUTHORITIES

Throughout this essay, unless the contrary is specially stated, I quote from, and refer to, the works of Bartolus in the edition published at Bâle[1] in 1588–9, in eleven volumes folio (including a volume of index). In making my references or quotations, I have referred to the title of the volume in the Bâle edition. Thus

Commentary on Digestum Vetus	
Part I. (i.e. *Dig.* I.—XI.)	= Bâle ed. vol. I.
Part II. (i.e. *Dig.* XII.—XXIV. tit. 2)	= „ „ „ II.
Commentary on Infortiatum	
Part I. (i.e. *Dig.* XXIV. tit. 3—XXIX.)	= „ „ „ III.
Part II. (i.e. *Dig.* XXX.—XXXVIII.)	= „ „ „ IV.
Commentary on Digestum Novum	
Part I. (i.e. *Dig.* XXXIX.—XLIV.)	= „ „ „ V.
Part II. (i.e. *Dig.* XLV.—L.)	= „ „ „ VI.
Commentary on Codex	
Part I. (i.e. *Cod.* I.—V.)	= „ „ „ VII.
Part II. (i.e. *Cod.* VI.—IX.) Tres libri (i.e. *Cod.* X.—XII.)	= „ „ „ VIII[2].
Commentary on Authenticum (i.e. *Novels*)	= „ „ „ IX.
Consilia, Quaestiones, Tractatus	= „ „ „ X.

[1] The references are to this Bâle ed., but as I was not always able to obtain it, when writing this essay, the actual wording of some of the quotations has been taken from other editions, chiefly a Turin ed. (1577) and a Venice ed. (1596). The texts differ occasionally in the different editions, but the differences are purely verbal and do not affect the sense of the passages in any way.

[2] The *Comment. on the Tres Libri* has separate pagination.

Of the other authorities referred to, or quoted, in this essay I have used the following editions (works which are referred to in this essay as existing in periodical publications, the proceedings of societies, collections of treatises or monographs, being included in the general heading of the work containing them):

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[1] The paper in vol. XIX. "Bartolus and European Political Ideas," by Dr Figgis is reprinted in the new ed. of his *Divine Right of Kings*; his paper in vol. V., "Respublica Christiana," will be reprinted, he tells me, in a new book on the *Churches in the Modern State*.

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