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Cecil N. Sidney Woolf

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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.

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BARTOLUS
OF
SASSOFERRATO
HIS POSITION IN THE HISTORY OF
MEDIEVAL POLITICAL THOUGHT

BY
CECIL N. SIDNEY WOOLF, M.A.
FELLOW OF TRINITY COLLEGE, CAMBRIDGE, LECTURER AT THE
LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

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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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

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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 Savigny¹, 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.

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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.”

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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

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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 Viridarü*. 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.

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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 Bâle¹ 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.) } = “ ” ” VIII².
- Tres libri (i.e. *Cod.* X.—XII.) }

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.

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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):

Abhandlungen der königl. Gesellschaft der Wissenschaften zu Göttingen, vol. xiv. Göttingen, 1869.

Acton (Lord), *Letters...to Mary, daughter of Rt Hon. W. E. Gladstone*. London, 1904.

Albericus (de Rosate), *Commentarium in Codicem*. Lyons, 1545.

Andreas (de Iserina), *Super usibus Feudorum*. Venice, 1514.

Aquinas (S. Thomas), *Summa Theologica*. Paris, 1638.

— *Aristotelis politicorum libri octo cum D. Thomae Aquinatis explanatione....His accessere D. Thomae de regimine principum libri quatuor....* Venice, 1568.

— *De Adventu et Statu et Vita Antichristi* (ed. F. H. de Ferrari). Rome, 1840.

Archivio Giuridico, vol. xxviii. Bologna, 1881.

Aristotle, *Politics* (ed. Newman). Oxford, 1887–92.

Augustinus (Triumphus), *Summa de Ecclesiastica Potestate*. Lyons, 1489 (?), without pagination.

Baumann (J. J.), *Die Staatslehre des h. Thomas von Aquino*. Leipzig, 1873.

Bernabei (C.), *Bartolo da Sassoferrato e la Scienza delle Leggi*. Rome, 1881.

Bethmann-Hollweg (M. A. von), *Der Civilprozess des Gemeinen Rechts....* Bonn, 1864–74.

Bini (V.), *Memorie Istoriche della Perugina Università*. Perugia, 1816.

Blondel (G.), *Étude sur la Politique de l'Empereur Frédéric II en Allemagne....* Paris, 1892.

Bodin (J.), *De la République*. Paris, 1578.

Boehmer (J.), *Fontes Rerum Germanicarum*, vol. i. Stuttgart, 1843.
Bollettino della R. Deputazione di Storia Patria per l'Umbria, vol. ii. Perugia, 1896.

Brandi (B.), *Notizie intorno a Guillelmus de Cuno....* Rome, 1892.

Bryce (J.), *The Holy Roman Empire*. London, 1907.

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NOTE ON AUTHORITIES

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- Bury (J. B.), *The Constitution of the Later Roman Empire*. Cambridge, 1910.
- Butler (A. J.), *Forerunners of Dante....* Oxford, 1910.
- Buttrigarius (J.), *Commentarium in Codicem*. Paris, 1516.
- Carducci (G.), *Rime di M. Cino da Pistoia e d' altri del secolo XIV*. Florence, 1862.
- Carlyle (R. W. and A. J.), *History of Medieval Political Thought in the West*. Edinburgh and London, 1903-9.
- Chiapelli (L.), *Vita e Opere Giuridiche di Cino da Pistoia*. Pistoia, 1881.
- Cino (da Pistoia), *Commentarium in Codicem*. Frankfort, 1578.
- *Rime di Messer Cino da Pistoia* (ed. Bindi and Fanfani). Pistoia, 1878.
- Constitutiones et Acta Publica Imperatorum et Regum*, vol. I. (in "Monumenta Germaniae Historica"). Hanover, 1893.
- Corpus Juris Canonici* (ed. Friedberg). Leipzig, 1879-81.
- Corpus Juris Civilis* (ed. Krueger, Mommsen, etc.). Berlin, 1889-95.
- D'Ancona (A.), *Il Concetto della Unità Politica nei Poeti Italiani* (Discorso). Pisa, 1876.
- Dante, *Tutte le Opere* (ed. Moore). Oxford, 1904.
- Denkschriften der kaiserl. Akademie der Wissenschaften, phil.-hist. Classe*, vol. II. Vienna, 1851.
- Döllinger (I. von), *Historical and Literary Addresses* (transl. Warre). London, 1894.
- Fables respecting the Popes of the Middle Ages* (transl. Plummer). London, etc. 1871.
- Dupuy (P.), *Histoire du différend d'entre le Pape Boniface VIII et Philippe le Bel, Roy de France*. Paris, 1655.
- Durandus (G.), *Speculum Juris*. Frankfort, 1668.
- Egidius (Romanus), *De Regimine Principum*. Rome, 1607.
- English Historical Review*, vols. IX. and X. London, 1894 and 1895.
- Epistolae Saeculi XIII*, vol. I. (in "Monumenta Germaniae Historica"). Berlin, 1883.
- Faber (J.), *Breviarium super Codice*. Louvain, 1475 (?).
- Feret (P.), *La Faculté de Théologie de Paris et ses Docteurs les plus célèbres*. Paris, 1894-7.

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- Ficker (J.), *Forschungen zur Reichs- und Rechtsgeschichte Italiens*. Innsbruck, 1868–74.
- Figgis (J. N.), *Studies of Political Thought from Gerson to Grotius*. Cambridge, 1907.
- Finke (H.), *Aus den Tagen Bonifaz VIII* (no. 2 of “Vorreformationsgeschichtliche Forschungen”). Münster in W., 1902.
- Fisher (H. A. L.), *The Medieval Empire*. London, 1898.
- Gentilis (Albericus), *De Juris Interpretibus Dialogi Sex*. London, 1582.
- Gierke (O. von), *Das Deutsche Genossenschaftsrecht*. Berlin, 1868–81.
- *Political Theories of the Middle Age* (transl. Maitland). Cambridge, 1900.
- *Johannes Althusius*... (no. 7 of Gierke’s “Untersuchungen”). Breslau, 1880.
- Giornale di Erudizione Artistica*, vols. v. and vi. Perugia, 1876 and 1877.
- Glossa Magna* (to the Digest). Venice, 1584.
- Goldast (M.), *Monarchia S. Romani Imperii*.... Frankfort, 1611–14.
- *Politica Imperialia*.... Frankfort, 1614.
- Graf (A.), *Roma nella Memoria e nelle Immaginazioni del Medio Evo*. Turin, 1882–3.
- Gregorovius (F.), *History of the City of Rome in the Middle Ages* (transl. Hamilton). London, 1900–9.
- Grotius (J.), *De Jure Belli ac Pacis*. Amsterdam, 1631.
- Hardegen (F.), *Die Imperialpolitik König Heinrichs II von England* (no. 12 of “Heidelberger Abhandlungen”). Heidelberg, 1905.
- Heller (J.), *Deutschland und Frankreich in ihren politischen Beziehungen vom Ende des Interregnums bis zum Tode Rudolfs von Habsburg*.... Göttingen, 1874.
- Historisches Jahrbuch im Auftrage des Görres-Gesellschaft*, vol. XIII. Munich, 1892.
- Hugelmann (C.), *Die deutsche Königswahl im Corpus Juris Canonici* (no. 98 of Gierke’s “Untersuchungen”). Breslau, 1909.

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- Huillard-Bréholles (J. L.), *Vie et Correspondance de Pierre de la Vigne*. Paris, 1865.
- Igneus (J.), *Commentarii in Aliquot Constitutiones Principum itemque in aliquot Responsa Juris consultorum*. Lyons, 1541.
- Innocent IV (Pope), *Commentaria super Libros quinque Decretalium*. Frankfort, 1570.
- Jaffé (P.), *Monumenta Gregoriana*. Berlin, 1865.
- Journal of the Society of Comparative Legislation*, vol. v., new series. London, 1905.
- Kampers (F.), *Kaiserprophetien und Kaisersagen im Mittelalter* (no. 8 of Heigel and Grauert's "Historische Abhandlungen"). Munich, 1895.
- Knecht (A.), *Die Religionspolitik Kaiser Justinians I.* Würzburg, 1896.
- Krammer (M.), *Die Reichsgedünke des staufischen Kaiserhaus* (no. 95 of Gierke's "Untersuchungen"). Breslau, 1908.
- Kraus (F. X.), *Dante. Sein Leben und sein Werk*. Berlin, 1897.
- Lancellotti (J. P.), *Vita Bartoli...* Perugia, 1576.
- Lattes (A.), *Un Punto Controverso nella Biografia di Bartolo*. Turin, 1898.
- Libelli de Lite* (in "Monumenta Germaniae Historica"). Hanover, 1891–7.
- Lucas (de Penna), *Commentarium in Tres Libros Codicis*. Lyons, 1591.
- Maitland (F. W.), *English Law and the Renaissance*. Cambridge, 1901.
- Marquardsen (P.), *Handbuch des öffentlichen Rechts der Gegenwart*. Freiburg im B., 1887.
- Mazzuchelli (Conte), *Gli Scrittori d' Italia...* Brescia, 1753–63.
- Meili (F.), *Bartolus als Haupt der ersten Schule des internationalen Strafrechts*. Zürich, 1908.
- Mélanges Fitting*. Montpellier, 1907–8.
- Mélanges Paul Fabre*. Paris, 1902.
- Migne (J.), *Patrologia Latina*, vol. xli. Paris, 1841.
- Mirbt (C.), *Die Stellung Augustines in der Publizistik der Gregorianischen Kirchenstreits*. Leipzig, 1888.
- Mittheilungen des Instituts für oesterreichische Geschichtsforschung*, vols. VII., XVI., and XIX. Innsbruck, 1886, 1895 and 1898.

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- Muratori (J.), *Rerum Italicarum Scriptores*, vol. xi. Milan, 1727.
- Negroni (C.), *Dante Alighieri e Bartolo da Sassoferrato*. Lonigo, 1890.
- Niemeier (A.), *Untersuchungen über die Beziehungen Albrechts I zu Bonifaz VIII* (no. 19 of Ebering's "Historische Studien"). Berlin, 1900.
- Notices et Extraits des Manuscrits de la Bibliothèque Impériale*, vol. xx. part 2. Paris, 1862.
- Nouvelle Revue Historique de Droit Français et Étranger*, vol. xiv. Paris, 1890.
- Nuova Antologia*, vols. iv. and vi. Florence, 1867.
- Ohr (W.), *Der karolingische Gottesstaat in Theorie und Praxis* (Dissertation). Leipzig, 1902.
- Oldradus (de Ponte), *Consilia et Quaestiones*. Rome 1472, without pagination.
- Padaletti (G.), *Contributo alla Storia dello Studio di Perugia nei secoli XIV e XV*. Bologna, 1872.
- Pertile (A.), *Storia del Diritto Italiano...* Turin, 1891—1903.
- Petrarch, *Epistolae de Rebus Familiaribus et Variarum...* (ed. Fracassetti). Florence, 1859—63.
- *Opera quae extant omnia*. Bâle, 1554.
- Petrus (de Bella Pertica), *Repetitiones in aliquot...Codicis Leges*. Frankfurt, 1571.
- Pollock (Sir F.), *History of the Science of Politics*. London, 1910.
- Pomtow (M.), *Ueber der Einfluss der altrömischen Vorstellungen vom Staat auf die Politik Kaiser Friedrichs I und die Anschauungen seiner Zeit* (Dissertation). Halle, 1885.
- Poole (R. L.), *Illustrations of the History of Medieval Thought*. London, 1884.
- Rabelais (F.), *The whole Works of F. Rabelais, M.D.* (transl. Urquhart, Motteux and others). London, 1708.
- Ragewin, *Gestis Friderici I Imperatoris* (ed. Waitz). Hanover, 1884.
- Ramsay (Sir W.), *The Church in the Roman Empire*. London, 1893.
- Renan (E.), *Averroès et l'Averroïsme*. Paris, 1852.

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NOTE ON AUTHORITIES

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- Revue Historique*, vol. XLIX. Paris, 1892.
- Riezler (S.), *Die literarische Widersache der Päpste zur Zeit Ludwig des Baiers*. Leipzig, 1874.
- Robertson, (A. bishop of Exeter), *Regnum Dei* (Bampton Lectures). London, 1901.
- Salvemini (G.), *La Teoria del Bartolo da Sassoferrato sulle Costituzioni Politiche* (in "Studi Storici"). Florence, 1901.
- Sandys (Sir E.), *Europae Speculum*.... London, 1687.
- Savigny (F. C. von), *Geschichte des römischen Rechts im Mittelalter*. Heidelberg, 1834–51.
- Scholz (R.), *Die Publizistik zur Zeit Philipps des schönen und Bonifaz' VIII* (nos. 6—8 of Stutz's "Kirchenrechtliche Abhandlungen"). Stuttgart, 1903.
- Schraub (W.), *Jordan von Osnabrück und Alexander von Roes* (no. 26 of "Heidelberger Abhandlungen"). Heidelberg, 1910.
- Selden (J.), *Table-Talk*. London, 1716.
- Sitzungsberichte der phil.-hist. Classe der kaiserl. Akademie der Wissenschaften*, vol. LXXXVIII. Vienna, 1878.
- Stintzing (R. von), *Geschichte der populären Literatur des römisch-kanonischen Rechts in Deutschland*.... Leipzig, 1867.
- Textes pour servir à l'étude de l'histoire*. Paris, 1891.
- Theiner (A.), *Codex Diplomaticus Domini Temporalis S. Sedis*. Rome, 1861–2.
- Tourtoulon (P.), *Les Œuvres de Jacques de Révigny (Jacobus de Ravanis)*.... Paris, 1899.
- Transactions of the Royal Historical Society*¹, vols. XIX. (2nd series) and V. (3rd series). London, 1905 and 1911.
- Witte (J. H. F. C.), *De Bartolo a Saxoferrato, Dantis Alligherii studioso, commentatiuncula*.... Halle, 1861.
- Zabarella (Card.), *Commentarium in Decretales*. Venice, 1502.

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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