When I had written those things on a literal exposition, and my soul thought over this third part of the 'Tyberiadis', I discovered myself within the hundredth milestone from Rome, near Todi; and I saw there that the things that were written about the river and its channel (alveo) can be said allegorically and morally about what frequently happens, especially in the city of Todi. For our whole life is a river, or the water of a river, according to that verse in 2 Samuel: We all die: and like water, which does not return, we are poured onto the ground. But the channel over which those waters run are those to which we are inclined (affectiones) according to Matthew 6: Where your treasure is, there also is your heart. But I find two factions in the city of Todi: for, some are called Guelfs, some Ghibellines, and in that same place, in any public office, there ought to be as many of one inclination as of another. It even happens that he who is of one inclination at a specific time, changes the channel, and begins to be of another. And concerning these things, many doubts arise. For that reason, let us consider some of them.

First, from where did these labels (nomina) take their origin, and what of their significance? Second, what do they indicate today? Third, whether it is licit to have these inclinations? Fourth, how it might be proved that someone is of these inclinations, whether we speak of a private person or of the public.
sphere (re publica)? Fifth, how it might be proved that someone has changed his inclination?

I

Regarding the first, it must be known that at one time in the past a great discord arose between the Roman Church and Frederick Barbarossa, at that time Emperor of the Romans, from whom we have some laws (when he lived steadfast in devotion to the Church), as is clear in the Libri feudorum.\(^5\) Afterwards, the Church deprived him of his sovereign rule (imperio), as in c. ad apostolice, de re iudicata, libro vi,\(^6\) and de electione, c. fundamenta.\(^7\) And in Germany, a relationship through the male line (agnatio) of the lord Frederick is referred to as ‘de Gebello’.\(^8\) And since the discord endured for a long time, a great part of the Italians adhered to the deposed emperor, and they were called ‘Ghibellines’, as people adhering to the lord ‘de Gebello’. But others adhered to the Church, and were called ‘Guelfs’, as people zealous for the faith. /133/

Concerning the aforesaid, we have the figure in the last chapter of 1 Samuel, and 2 Samuel in the first chapter, at the beginning, where Saul, once a king, then one reproved by God, was conflicted and killed on mount Gelboe, which is interpreted as ‘a place of fortitude’.\(^9\) Thus, Frederick, formerly emperor, subsequently reprobate, trusting in the fortitude of his house of Ghibelline, was conflicted and confounded by the Guelfs, that is, the people zealous for the faith.

For this name ‘Zelpha’ is had in Genesis 30, and is interpreted as ‘the speaking mouth’ or ‘the gaping mouth’, which properly suits the Church in intention: for the emperor was confounded by the words of a sentence of excommunication issued by the highest pontiff. Therefore, speaking properly, just as ‘Gelboe’ is interpreted as ‘place of fortitude’, so ‘Ghibellines’ is interpreted as ‘trust in temporal fortitude’, namely in soldiers and arms. And just as ‘Zelpha’ is interpreted as ‘the speaking mouth’, so ‘Guelfs’ is interpretated as ‘trust in prayers and divine things’, just as the emperor Justinian did in C. de veteri iure enucleando, l. i., in the beginning.\(^10\) /134/

\(^5\) Cf. Libri feudorum 2.53, 2.55–56. \(^6\) VI 2.14.2. \(^7\) sext 1.6.17. \(^8\) Reading cognominabatur for cognominabantur; even so, the syntax seems off. \(^9\) Cf. Jerome, Liber interpretationis Hebraicorum nominum, Interpretationes primi libri Regum (CCL 72:104). \(^10\) Cod. 1.17.1.
Regarding the second [point], what the labels denote today, I say that, as it appears from the aforesaid, they are labels signifying peoples' inclinations. For those favouring (affectantes) the state of the church against the enemy of the Church are called by one name; but their adversaries are called by another. Today, however, the labels endure because of other inclinations. For we see many rebels against the Church who are called Guelfs, and many rebels against the empire who are called Ghibellines. But, just as happens in the provinces and cities in which there are divisions and preferences (partialitates), it is necessary that the said factions (partes) are called by some label; for that reason, the labels are imposed as they are more common. But in some places one comes upon other particular labels about which I do not care at present. And those are [also] preferences, as in ff. de captivis, l. si quis ingenuam, §. qui in alterutras.¹¹

I say therefore that one is called a Guelf today who adheres to and favours the state of the faction that is called the Guelf faction; and he is called a Gebelline, who adheres to and favours the state of the faction that is called the Ghibelline faction. And in this a connection (respectus) to the Church or the empire is not generally had, but only to those preferences which exist in the city or province, as in the §. qui in alterutras.¹² And [so] a gloss thinks there /135/ on the word 'discendent',¹³ where it says: 'Either citizens against citizens, or one city against another'. Likewise, there are sometimes these preferences among the aforesaid; and yet no one rebels against his own lord, namely the Church, empire, king, or people that holds sovereign rule, as in the said l. si quis ingenuam, §. in civilibus.¹⁴ And the evidence of fact shows that this is true.

I infer three things from this:

[1] First, that if ‘Guelf’ and ‘Ghibelline’ is taken in the first way it was introduced, someone cannot be a Guelf in one place and a Ghibelline in another. The reason: because those inclinations, namely of Church and of reprobate empire, receive the whole world universally and uniformly. Therefore, to say that someone in one place was of one inclination and of another inclination in another place contains a contradiction (repugnantium), just like some tutor cannot be the guardian (auctor) of two pupils, who are suing each other over the same thing, as in ff. de auctoritate tutorum, l. accipientis,¹⁵ and the notes there. He does what is said: ‘No one can serve two masters’, namely two contrary ones, in Matthew 6.

¹¹. Dig. 49.15.21.2. ¹². Dig. 49.15.21.2. ¹³. That is, ‘they shall depart’. ¹⁴. Dig. 49.15.21.1.
¹⁵. Dig. 26.8.15.
[2] I infer a second thing, namely that, according to how the labels are accepted today, someone can be a Guelf in one place, and a Ghibelline in another: which is clear, because the inclinations are in reference to different things. Suppose that in one city there is one tyrant, who is called a Guelf with his own sect; [and] some good man is opposed to that inclination, for he is opposed to all tyranny. The person in that land is called a Ghibelline. And in another city, independent of it, one tyrant is considered (ponatur) a Ghibelline. Certainly, the good man is opposed to that tyrant, and in that place he will be a Guelf. Its argument is what we say about the protector (tutor), who can only be the guardian of two people who contend regarding different things, as in the l. accipientis.16

[3] I infer a third point, namely that someone can be of one inclination in one respect, and of another in another respect. Example: in the city of Perugia, there are many who wish to be considered Ghibellines in the respect in which the labels of those inclinations were first introduced, as if considering it an honour that so long ago their forebears were so noble that they were considered to be of the same inclination. But as far as the status that now rules the city is concerned, they are are Guelfs, and for that reason they say are Ghibellines by origin, but Guelfs as far as the status of the city is concerned. Nor is there a contradiction, since they are offered in different respects. It works as we say (Facit id quod dicimus), that someone cannot be the principal and the guarantor for the same money in the same respect, as in l. generaliter, C. de fideissoribus;17 but thus in diverse respects, as ff. de duobus reis, l. reos in principio.18

III

Regarding the third, namely whether having these inclinations is licit, say: if many people are of one inclination, or someone adheres to one inclination not because of some public good, but because of his own utility, or so that he oppresses others, this is simply illicit. And if they resort to this, it will be punishable just like those entering into a partnership for the punishment of innocents, as ff. ad legem Iuliam de vi privata, l. ex senatusconsulto,19 and de concussione, l. i[i].20

Yet, sometimes there is one faction in the city tending principally to the public good, so the city is rightly and peacefully governed; and even so it cannot

16. Dig. 26.8.15. 17. Cod. 8.41.28. 18. Dig. 45.2.11. 19. Dig. 48.7.6. 20. Dig. 47.13.2.
resist adversaries unless under one label of preference. And, then, I think such an inclination and preference is licit. For, just as it is licit for friends to gather for the protection of their things, so is it much more licit for public protection, as in ff. *de vi et vi armata*, l. iii, §. eum igitur.\(^{21}\)

Sometimes one faction wishes not only to resist, but wishes even /138/ to depose from government those who govern others. Then, if indeed they rise up against a just government, it would be unqualifiedly illicit, as in *C. de seditiosis*, l. i;\(^{22}\) and note there about the one who wishes to depose the authorities (*potestatem*). But if the government that they wished to depose was tyrannical and extremely wicked, then for this it was licit to be of one preference and label, with the two [following things] co-existing:

1. first, that the tyrant cannot be disposed by having recourse to a superior without great difficulty;
2. second, that they do this for the sake of public utility, so that the status of the city be restored. Otherwise, they did this in order to initiate a new tyranny once the others had been expelled.\(^{23}\)

The first is proved because it is licit to declare a law (*ius*) for one’s self by one’s own authority when access to a judge is not available, as in *C. de ludeis*, l. nullus,\(^{24}\) and the notes there; ff. *que in fraudem creditorum*, l. ait pretor, §. si debitorem;\(^{25}\) and xxiii, q. ii, c. Dominus.\(^{26}\) Therefore, if this is licit for individual advantage, all are admitted that much more for libertating the commonwealth, [or] for defending it, as in ff. *de novi operis nunciatione*, l. de pupillo, §. finali,\(^{27}\) and the following lex.\(^{28}\) Moreover, if this is permitted for anyone against a plunderer of fields or a deserter from military service, it ought be permitted that much more against those who plunder a commonwealth and its state, and place it under the yoke of servitude.

The second is proved, that it is not licit for personal (*proprium*) utility because those who hold the commonwealth through tyranny, /139/ possess it by force from that commonwealth or a superior lord, not from some private person. Otherwise, then, he who tries to depose such a tyranny for himself does uses (*facit*) illicit force, as in ff. *de vi et vi armata*, l. i. §. qui vi a me,\(^{29}\) l. colonus,\(^{30}\) and l. cum fundum.\(^{31}\) Therefore, it is licit for public utility, and if he comes to the deed, such that a rumour or commotion erupts in the city, he does fall into l. i, *C. de seditiosis*,\(^{32}\) because he acts licitly, as it was said. For this, I induce the

\(^{21}\) Dig.43.16.3.9.  \(^{22}\) Cod.9.30.1.  \(^{23}\) Omitting the *si* in this sentence.  \(^{24}\) Cod.1.9.14.  \(^{25}\) Dig.42.8.10.16.  \(^{26}\) C. 23 q. 2 c. 2.  \(^{27}\) Dig.39.1.5.20.  \(^{28}\) Dig.39.1.6.  \(^{29}\) Dig.43.16.1.30.  \(^{30}\) Dig.43.16.12.  \(^{31}\) Dig.43.16.18.  \(^{32}\) Cod.9.30.1.
blessed Thomas Aquinas, in the *secunda secundae*, q. xlii, article ii, at the end.\(^{33}\)

\'A tyrannical government is not just because it is not ordered to the common good, but to the private good of the ruler. And, for this reason, a disturbance of this government does not have the character (*rationem*) of sedition—unless, perhaps, when the government of the tyrant is disturbed so inordinately that the subject multitude suffers a greater injury from the consequent disturbance than from the government of the tyrant.\(^{155}\)

I say also that, assuming these labels, although they signify division and preference, still if it happens for a just and deserved end, it is licit. For the apostle, Paul, *exclaimed in the council, knowing that one part was of the Saducees and the other of the Pharisees: 'Brothers, men, I am a Pharisee, a son of Pharisees',* in Acts 23. [Yet, I see that many have perished since they have made sedition against tyrants, although they were moved by a holy and just zeal.] Yet, because the aforesaid labels /140/ denote division and schism, I think that it is not fitting for an upright man to assume something of these labels except for a serious reason (*ex magna causa*), as it was said: argument in ff. *ad Trebellianum*, l. facta, §. si dande.\(^{34}\)

IV

Now, regarding the fourth [point], namely how it might be proven that someone is of these inclinations, I say that three things need to be proved:

[1.] first, that there are factions in the city;
[2.] second, that they are called by such a label;
[3.] third, that such a person adheres to a faction that is called by such a label.

It is concluded from these that [someone] is of that inclination. Let us examine these things.

[1] First, I said that it must be proved that there are factions in the city. For this, it must be known that whenever there are two factions in a city, one of them has the role of governance (*partem regiminis*), as in Perugia. Proof, then, is easy. Whenever there are two factions, [and] one of them rules the city, the other stands overthrown, but it ruled at another time. And then proof is likewise easy: namely of those who already ruled and of those who now rule. Sometimes

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\(^{33}\) Thomas Aquinas, *Summa theologiae* 2a2ae.42.2 ad 3.  \(^{34}\) Dig. 36.1.63.8.

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On Guelfs and Ghibellines

One city has mostly been ruled since antiquity under one label; and then it is difficult to prove that someone is of another faction than of the one under which the city is [currently] being ruled—as I shall immediately show.

[2] Second, I said that it must be proved that such a faction may be called by such a name. This is easy. /141/

[3] I said that it must be proved that such a man adheres to that faction. Now this is easily proven in Perugia, for there they are called for public office under that name and not otherwise admitted to public offices. It is clear, then, that they are of that inclination, for [a] they bore an act that could not be born without regard for the right (ius) and the label of that inclination, as in ff. de acquirenda hereditate, l. pro herede, §. Papinianus; or [b] it suffices because he expressly says this, namely that he is of that inclination: for no one is seen to say what he has not considered in his mind, as in l. Labeo, ff. de supellectile legata; or [c] because he favoured that faction in councils, both in arms and in other deeds. (And understand this in voluntary deeds.) For why, if one faction was outside the city, and the other, which ruled the city, did he undertake a military campaign (exercitium) against them? Clearly, those who marched for this reason (ex hoc) are not said to be of this inclination with the people inside the city (inrinsecis): for they marched by the order of those ruling the city, whom they have to obey necessarily. Hence, the deed (factum) seems to be in doubt more by the necessity than by the will, as in ff. de acquirenda hereditate, l. qui in aliena, §. si is qui putat. Or, [d] if no such thing can be proved, it suffices if it be proved of his ancestors (ascendentibus). For a son is presumed to be of the same inclination as his father, as in C. ad legem Iuliam maiestatis, l. quisquis, §. i, and ff. de edilitio edicto, l. quod si nolit, §. qui mancipia.

I return to that which I said about the city that has been ruled under one label from antiquity, and does not have exiles by reason of preference, or if it does have [some], it does not have them under the label about which it is being asked [now]. Example: since antiquity, the city of Pisa /142/ has been ruled under the label of Ghibellines and although it has exiles, those inside and outside the city are still called by that label. And, in order for me to declare this, suppose [the following]. It was established (statutum est) at Pisa that no Guelf be admitted to any office. For, I say this statute (statutum) must be understood about he who was of that inclination in the city of Pisa, and with respect to that city. For statutes in doubt must be understood about the things which occur in and look to the territory of the establisher, as in ff. de iurisdictione omnium iudicum, l.

35. Dig. 29.2.20.4. 36. Dig. 29.2.6.4. 37. Dig. 21.1.31.21.

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Bartolus of Saxoferrato

38. Dig. 2.1.20. 39. Dig. 42.5.12.1. 40. VI 1.2.2. 41. Dig. 45.1.56.8. 42. Dig. 46.1.16. 43. Dig. 50.17.178. 44. Dig. 45.3.26. 45. Dig. 45.3.26. 46. Dig. 26.8.15. 47. Dig. 1.1.2. 48. The source remains unidentified.
that he proceeded against a certain noble by this deed, whence it was to be proved that that land was Guelf for offence, for defense it was to be proved that it was Ghibelline. Hence there was a doubt about the manner of proving. And proof from reputation or that he is so considered, so I think, does not suffice, as it was said. There is doubt, therefore, about the manner [of proving].

I respond: I understand a land to be of some inclination when they are so who rule it, as if ff. de condicionibus et demonstrationibus, l. municipibus;\textsuperscript{49} and de rebus dubiis, l. cum senatus.\textsuperscript{50} There are diverse modes, however, regarding those who rule cities. For, some express this when their rulers enter offices, namely: that they will exercise office for the state and honour of such a faction. And sometimes the aforesaid is contained in their statutes, and the proof of the aforesaid is clear. Sometimes there are cities in which the officials are mixed, with the same number of Guelfs and Ghibellines; and if indeed there are many who are of one inclination, then it yields to the faction which is numerically superior (de cuius affectione plures sunt); and the larger group (plures) ought to be the rulers, as in l. quod maior, ⟨ff.⟩ ad municipalem,\textsuperscript{51} et de pactis, l. si plures.\textsuperscript{52} It happens (Facit) in de acquirendo rerum domino, l. quicquid, §. cum partes.\textsuperscript{53} But if they are equal in number in the government, as in Perugia, then it ought to be said that it is not Guelf nor Ghibelline, but a third type, namely neutral (communis), as in the l. quicquid, /\textsuperscript{145}§. cum partes.\textsuperscript{54} Some are cities and fortresses, which are ruled simply without the label of some preference. It must be seen, then, if there are preferences in the city or province to which faction the land adheres or offers favour, just as it was said above about a private person. But if this cannot be made clear, it is presumed to be neither of the one, nor of the other inclination, since it is possible. And there are many men and many lands that, de facto, adhere to no one of the aforesaid inclinations, which is clearly apparent in the ultramontane cities.

V

Regarding the fifth [point], namely how it might be proved that someone has changed his inclination; and I speak of the one concerning whom it is agreed that he was of one inclination [in the past]. For what was not cannot be removed or be changed, as in ff. de inuusto testamento, l. nam etsi, at the line 'post

\textsuperscript{49} Dig. 35.1.97. \textsuperscript{50} Dig. 34.5.20. \textsuperscript{51} Dig. 50.1.19. \textsuperscript{52} Dig. 2.14.9. \textsuperscript{53} Dig. 41.1.27.2. \textsuperscript{54} Dig. 41.1.27.2.
defectum’,\textsuperscript{55} and \textit{de condicionibus et demonstrationibus}, l. Titio usumfructum, at the beginning.\textsuperscript{56}

I say to this that these preferences, as it was said, are certain inclinations, just as possession consists in a certain inclination and spirit of possessing.\textsuperscript{57} And it was written, ‘by our forebears that no one can change the nature (\textit{causa}) of his possession’ without an added extrinsic cause, as in ff. \textit{de acquirenda possessione}, l. iii, §. illud;\textsuperscript{58} and l. qui bona, in the beginning;\textsuperscript{59} and \textit{de usucapionibus}, l. non solum, §. quod vulgo,\textsuperscript{60} with /146/ similar [passages]. Thus, no one can change here his preference and inclination without an added extrinsic cause. And it is proved naturally that a cause must supervene for a change of inclination or will. For, when the object of the will is good—namely, an existing or apparent one—for that reason someone adheres to one faction: because it seems good to him. And thus when he changes his will, it is necessary that there is something on account of which he withdraws from that desire (\textit{voluntate}), and adheres to another. Legislators are moved thence, saying: ‘no one can change the nature of his possession’ without a supervening cause. The causes of the change, however, which we commonly see, are hostilities supervening in that inclination with something more potent than the former ones; or, if an inheritance comes to a person, or a great profit, which he cannot have advantageously unless he give up the former portion (\textit{illam partem}) and adheres to the other; or if it be joined by a new affinity with the opposed portion, as in ff. \textit{de procuratoribus}, l. filiusfamilias,\textsuperscript{62} and the following law,\textsuperscript{63} and the following law,\textsuperscript{64} and l. aut affinitate.\textsuperscript{65} Consequently, if those things intervene with the desertion of the faction, they demonstrate (\textit{faciunt}) the proof of a changed inclination, through the said laws (\textit{iura}).

But, if someone says simply that he has changed his will and that he wishes to adhere to another faction, and he swears this, is he to be believed? I say that the quality of the people must be examined, according to what the text teaches in ff. \textit{de re militari}, l. non omnes, §. a barbaris.\textsuperscript{66} It does what is said of the gentile who recently came to the faith, in the whole of distinction xlvii.\textsuperscript{67}

\begin{itemize}
\item \textsuperscript{55} Dig. 28.3.5.
\item \textsuperscript{56} Dig. 35.1.96.
\item \textsuperscript{57} Cf. Dig. 41.2.3.1.
\item \textsuperscript{58} Dig. 41.2.3.19.
\item \textsuperscript{59} Dig. 41.2.19.1.
\item \textsuperscript{60} Dig. 41.3.3.1.
\item \textsuperscript{61} Aristotle, \textit{Nicomachean Ethics} 1.1 1094a3; \textit{Physics} 3.5 195a26; Thomas Aquinas, \textit{Summa theologiae} 1a2ae.8.1 co.
\item \textsuperscript{62} Dig. 3.3.8.
\item \textsuperscript{63} Dig. 3.3.9.
\item \textsuperscript{64} Dig. 3.3.10.
\item \textsuperscript{65} Dig. 3.3.22.
\item \textsuperscript{66} Dig. 49.16.5.6.
\item \textsuperscript{67} D. 48 cc. 1–2.
\end{itemize}