

Bartolus of Saxoferrato On Guelfs and Ghibellines

Translated from:

Diego Quaglioni, ed., *Politica e diritto nel Trecento italiano. Il 'De tyranno' di Bartolo da Sassoferrato (1314–1357) con l'edizione critica dei trattati 'De guelphis et gebellinis', 'De regimine civitatis' e 'De tyranno'*, Il pensiero politico, Biblioteca 11 (Florence: Leo S. Olschki Editore, 1983), 131–146.¹

When I had written those things on a literal exposition, and my soul thought over this third part of the *Tyberiadis*,² I discovered myself within the hundredth milestone from Rome, near Todi;³ 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 14: *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 factions⁴ 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 /132/ 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

1. Editorial interventions are marked by <angle brackets>, while my own are put in [[double square brackets]]. At the first instance of what I consider to be key terms in this text, I provide the Latin in parentheses (or where I am translating in a way that others might find questionable). One might also note that demonstrative pronouns are often rendered simply by the definite article, and that Bartolus's use of (*prae*)*dictus* (etc.) is often ignored. 2. Bartolus, *Tractatus de fluminibus seu Tyberiadis*, 3. 3. Bartolus lived and worked in Todi as an assessor around 1336. 4. The term is *affectiones* again; 'inclination', even political inclination, is perhaps too weak to capture Bartolus' meaning. It is reasonable to suppose Bartolus is playing off the similarity to *factiones*, or factions.

Bartolus of Saxoferrato

20 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 I, who was is called Frederick
25 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
30 Frederick is referred to as [[being]] ‘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, *cf.* 1 Sm.31:1–9
35 and 2 Samuel in the first chapter, at the beginning, where Saul, once a king, *cf.* 2 Sm.1:6 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
40 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’
45 is interpreted as ‘place of fortitude’, so ‘Ghibellines’ is interpreted as ‘trusting in temporal fortitude’, namely in soldiers and arms. And just as ‘Zelpha’ is interpreted as ‘the speaking mouth’, so ‘Guelfs’ is interpreted as ‘trusting 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* (CCSL 72:104). 10. Cod. 1.17.1.

On Guelfs and Ghibellines

II

50

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
55 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
60 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 Ghibelline,
65 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 'discedent',¹³ where it says: 'Either citizens against citizens, or one city against
70 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
75 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
80 in another place contains a contradiction (*repugnantiam*), 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.

cf. Mt.6:24

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.

85 [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 /136/ 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
90 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.
95 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
100 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 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*
105 *dicimus*), that someone cannot be the principal and the guarantor for the same money in the same respect /137/, as in l. generaliter, C. de fideiussoribus;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
110 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*
115 *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.

On Guelfs and Ghibellines

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
120 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:

- 130 [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
135 one's own authority when access to a judge is not available, as in C. *de Iudeis*, 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
140 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
145 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
150 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.’

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* Act. 23:6
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

33. Thomas Aquinas, *Summa theologiae* 2a2ae.42.2 ad 3. 34. Dig. 36.1.63.8.

On Guelfs and Ghibellines

one city has mostly been ruled since antiquity under one label; and then it is
185 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.
190 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;³⁵ or [b] it suffices because
195 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
200 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 (*intrinsecis*): 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*,
205 l. qui in aliena, §. si is qui putat.³⁶ 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.³⁷

I return to that which I said about the city that has been ruled under one label
210 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
215 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.

220 finali;³⁸ *de bonis auctoritate iudicis possidendis*, l. cum unus, §. penultimo;³⁹ and
Extra, *de consitutionibus*, c. ut animarum, libro vi.⁴⁰

And, for that reason, since such a faction is not that city, it does not seem that
someone can have an inclination for that which does not exist, as l. eum qui ita,
§. finali, ff. *de verborum obligationibus*;⁴¹ *de fideiussoribus*, l. fideiussor obligari, at
225 the beginning;⁴² *de regulis iuris*, l. cum principalis;⁴³ and *de stipulatione servorum*,
l. ususfructus.⁴⁴

Hence, I say that if there is some city of a Guelf inclination in a province,
which plans to harm (*insidiaretur*) the state of the city of Pisa, and some citizen
adheres to that city by providing it help, counsel, or favour against the state
230 of Pisa, then he is truly a Guelf. Argument: ff. *ad legem Iuliam maiestatis*, l.
cuiusque.⁴⁵ For, he truly takes action (*committit*) in that city against it [[sc. Pisa]].
But if you posit that one Pisan is the ruler in /143/ Perugia (the status of which
is Guelf), he is nonetheless not opposed, but a friend to the city of Pisa, then,
although such a one is a Guelf of Perugia, he is nonetheless not called a Guelf
235 by this [[in Pisa]], nor covered by that statute, since someone can be of different
inclinations with respect to different things, as it was said: argument in ff. *de*
auctoritate tutorum, l. accipientis.⁴⁶

I likewise say: if it be proved that someone was born of Guelf stock in the
respect in which it was in antiquity, in the time when there was dissension
240 between the Church and the emperor, Frederick, one is still not called a Guelf
by this in the respect in which the statute speaks, as I said above. Nor do I think
that it suffices to be proved by reputation or because someone thinks it so. For,
everyone is believed *de iure* to be of the same inclination as his homeland. For
it is from the precepts of the law (*ius*) of nations ‘that we obey our parents and
245 our homeland’, as in ff. *de iustitia et iure*, l. veluti.⁴⁷ Therefore, not by reputation
alone nor by suspicion alone is the contrary induced.

Therefore, proof of the aforesaid is difficult, for that reason, all who are said
to be of such an inclination, are described in some cities in a certain book—as it
is thus taught from a consideration (*respectione*) of the book.⁴⁸ Yet this seems
250 disagreeable and against equity.

Now, how it might be proven that one city, fortress, or other community is of
some inclination is a matter of doubt. And, in order to make this clear, suppose:
it was established in Perugia that every citizen [[who]] /144/ has produced cavlary
or infantry against Guelf lands is to be punished by a fixed penalty. It happens

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.

On Guelfs and Ghibellines

255 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]].

260 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;⁴⁹ and *de rebus dubiis*, l. cum senatus.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. 265 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*,⁵¹ et *de pactis*, l. si 270 plures.⁵² It happens (*Facit*) in *de acquirendo rerum dominio*, l. quicquid, §. cum partes.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, /145/ §. cum partes.⁵⁴ Some are cities 275 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 280 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 285 that he was of one inclination [[in the past]]. For what was not cannot be removed or be changed, as in ff. *de iniusto testamento*, l. nam etsi, at the line ‘post

49. Dig. 35.1.97. 50. Dig. 34.5.20. 51. Dig. 50.1.19. 52. Dig. 2.14.9. 53. Dig. 41.1.27.2. 54. Dig. 41.1.27.2.

defectum⁵⁵ and *de condicionibus et demonstrationibus*, l. Titio usumfructum, at the beginning.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.⁵⁷ And it was written, ‘by our forebears that no one can change the nature (*causa*) of his possession’ without an added extrinsic cause, as in ff. *de acquirenda possessione*, l. iii, §. illud;⁵⁸ and l. qui bona, in the beginning;⁵⁹ and *de usucapionibus*, l. non solum, §. quod vulgo,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 good⁶¹—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 (*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 (*illam partem*) and adheres to the other; or if it be joined by a new affinity with the opposed portion, as in ff. *de procuratoribus*, l. filiusfamilias,⁶² and the following law,⁶³ and the following law,⁶⁴ and l. aut affinitate.⁶⁵ Consequently, if those things intervene with the desertion of the faction, they demonstrate (*faciunt*) the proof of a changed inclination, through the said laws (*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. *de re militari*, l. non omnes, §. a barbaris.⁶⁶ It does what is said of the gentile who recently came to the faith, in the whole of distinction xlviij.⁶⁷

55. Dig. 28.3.5. 56. Dig. 35.1.96. 57. Cf. Dig. 41.2.3.1. 58. Dig. 41.2.3.19. 59. Dig. 41.2.19.1. 60. Dig. 41.3.33.1. 61. Aristotle, *Nicomachean Ethics* 1.1 1094a3; *Physics* 3.5 195a26; Thomas Aquinas, *Summa theologiae* 1a2ae.8.1 co. 62. Dig. 3.3.8. 63. Dig. 3.3.9. 64. Dig. 3.3.10. 65. Dig. 3.3.22. 66. Dig. 49.16.5.6. 67. D. 48 cc. 1–2.