

Bartolus of Saxoferrato *On the Government of a City*

Translated from:

Diego Quaglioni, ed. 1983. *Politica e diritto nel Trecento italiano. Il 'De tyranno' di Bartolo da Saxoferrato (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, 149–70.¹

Because this is² the final part of the Tiber, and thus in the city of Rome, which is the head of the world, we should for that reason look into some things regarding the manner of ruling a city; and this inspection is in regard to two things.

[1] First, in the manner of ruling as far as the rightlaws (*iura*) are concerned; and this is either by written or unwritten law (*ius*), as in the Institutes, *de iure naturali*, §. constat.³ I am not going to pursue this because this is handed down variously in various places.⁴ [2] Second, in the manner of ruling as far as the persons of the rulers are concerned, and this must be examined in some way. Let us see, [a] first, in how many ways a city is governed;⁵ [b] second, which manner is the better one;⁶ and, [c] third, which is worse.⁷ Regarding the aforesaid, let us see some of the everyday doubts.

I

First, namely in how many ways a city is governed, three modes of good ruling and three evil ways contrary to them are gathered from our laws. /150/ Aristotle openly announces these modes in the third book of the *Politics*,⁸ and he labels

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. Attested in later editions. 3. Inst. 1.2.3. 4. Cf. Bartolus's comments to Cod. 10.1.2; Cod. 10.32(31).2; Cod. 10.75.1; Dig. 2.2.1; Dig. 5.1.40.1. 5. See line 13. 6. See line 79. 7. See line 439. 8. Aristotle, *Politics* 3.7 1279a23–b11 (Barnes 1995, 2:2030); cf. Giles of Rome, *De regimine principum* 3.2.2 (Venice 1498, ff. 99va–100ra).

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the modes there with his own names. We indeed shall both make mention of those names, and add names more appropriate to our own times.

Once the kings had been expelled, there were three modes of ruling in the city of Rome: [1] first, through the people, as in ff. *de origine iuris*, l. 2, §. exactis, right through to §. deinde quia difficile.⁹ And Aristotle calls that government a *politia*¹⁰ or ‘political’; but we call it ‘government for the people’ (*regimen ad populum*), and this is when such a government is good, and the common good of everyone (according to their status) is considered principally by the rulers. But if that multitude of rulers is intent on their own advantage and the oppression of the rich or another group (*gentis*), then it is a bad government; and Aristotle calls it by the Greek name ‘democracy’. We, however, call the people perverse. And regarding these modes of ruling, we have in ff. *de muneribus et honoribus*, l. 3, §. preses provincie,¹¹ where it is called good government when honours and duties are divided equally according to the appropriate grades; when they are divided unequally because some are burdened and others are relieved of their burdens, it is called bad government. The commonwealth is destroyed by this, as is clear there.

[2] The second mode of governing in the city of Rome was through the senators, and /151/ thus through a few rich, good, and prudent men, as in the said §. deinde quia difficile.¹² And in that case, if those few men tend toward the common good, then the rule is good, and it is called by Aristotle ‘aristocracy’, which is the same as the rule of good men. In a city, it is called a ‘government of the senators’; in Venice, however, it is called a ‘government of elders’. Now, the name that I spoke of earlier is more common, namely, a rule by, or government of, good men. But if those few men do not tend to the common good, but are some rich or more powerful men who oppress others, aiming for their own profit, then it is a bad government, and is called an ‘oligarchy’ by Aristotle: which is the same as a rule of rich men or a government of evil men. This name is common enough, whence we have in ff. *de officio presidis*, l. illicitas, §. ne potentiores.¹³

[3] The third mode of governing is through one man, about whom [we have] in ff. *de origine iuris*, l. 2, §. novissime.¹⁴ And that is called ‘kingship’ according to Aristotle. If he is a universal lord, however, we call it imperial rule, as in the said §. novissime.¹⁵ But if he is a particular lord, we sometimes call it

9. Dig. 1.2.2.3–9. 10. Πολιτεία came to mean government or state organization in general, though Aristotle also used it to refer to what he called timocracy, which is when a multitude rule together for the common good (*Politics* 3.7 1279a32–37); it is usually translated as ‘regime’ or ‘polity’. 11. Dig. 50.4.3.15. 12. Dig. 1.2.2.9. 13. Dig. 1.18.6.2. 14. Dig. 1.2.2.11. 15. Dig. 1.2.2.11.

50 kingship, sometimes the rule of a duke, sometimes that of a marquis or count, as in *Collatio* 10, *de prohibita feudi alienatione per Fredericum*, c. imperialem, §. preterea ducatus.¹⁶ By a common name, though, do we call kingship natural lordship; and [[we call]] it [[so]] if the lord aims for a common and good end. But if he aims for an evil end and his own advantage, it is called tyranny according to Aristotle; it is also called so according to the laws and customs, as in C. *de sacrosanctis ecclesiis*, /152/ l. decernimus¹⁷ and l. omni novatione,¹⁸ and the notes there; ff. *ex quibus causis in possessionem eatur*, l. Fulcinus, §. quid sit latitare.¹⁹

We have, therefore, six modes of governing, three good and three bad, each one called by their own proper names. Nevertheless, every bad government can be called by the common label tyranny:²⁰ namely, a tyranny of the people, a tyranny of some, and a tyranny of one person.

There is a seventh mode of government, the worst one, which now exists in the city of Rome. For, throughout the different regions there, there are many tyrants there so strong that one [[can]]not prevail against the other. For there is a common government of the whole city so weak that it cannot [[prevail]] against any of the tyrants, nor against anyone adhering to the tyrants, except only so far as they allow it. Aristotle did not discuss (*posuit*) this government, and fittingly so, for it is a monstrous thing. What, indeed, if someone sees one body having one common [[and]] weak head, and many other common heads stronger than it, and all opposed to one another? Certainly it would be a monster. This government, therefore, is called monstrous. In fact, it was created by divine permission in order to show that all glory of the world is fleeting. For the city of Rome, head of the customs, head of the polities, has come to so great a monstrosity regarding its own government that it can more truly be said that it is not a government, nor does it have the form of a government: argument in ff. *de statu hominum*, l. non sunt liberi,²¹ and it is expressed in *Extra*, *de officio ordinarii*, c. quoniam in plerisque.²² /153/

II

80 Secondly it must be seen what mode of governing is better. This investigation is necessary for the jurists, since universal lords either consult the jurists or work (*committunt*) with them when they treat of the reformation of the city; or, when

16. L.F. 2.55.1.2. 17. Cod. 1.2.16. 18. Cod. 1.2.6. 19. Dig. 42.4.7.4. 20. Thomas Aquinas, *On Kingship* 1.1.11 (Phelan 1949, 7–8) 21. Dig. 1.5.14. 22. X 1.31.14.

they assist them, a quarrel about the government of the city emerges (*proponitur*) among them. It must be investigated, then, what mode of governing is better, which Aristotle treats in *Politics* 3.²³ But Giles of Rome, from the Order of the Hermits of St Augustine, who was a great philosopher and a master in theology, 85 treats it more clearly in the book he made *On the Government of Rulers*.²⁴ And so I provide his opinion, and I make use of his reasons; but I shall not use his words or Aristotle's: for the jurists, to whom I speak, do not know them. Instead, I shall use their reasons and I shall prove them through the rightlaws (*iura*). Afterwards, I shall describe what seems good to me. 90

Therefore, Giles says²⁵ that there are three good modes of governing, of which it was said above. [1] The first mode of governing the multitude or for the people, namely, this one is good if it tends to the correct end. [2] The second mode of governing is better, namely, government of a few people. [3] The third mode of governing is best, namely monarchy or the governance of one king. He 95 proves this, namely, that a government of one is the best rule, by four reasons, from which two other things are concluded.

[a] First, in this way: the peace and unity of citizens ought to be the final intention /154/ of the rule, as in ff. *de officio presidis*, l. congruit, at the beginning,²⁶ and in Auth. *de mandatis principum*, §. deinde conveniens, *Collatio* 3.²⁷ 100 But this peace and unity can be effected and conserved more if it is governed by one person than by many. Therefore, it is better to be governed by one person. This is proven in this way: in the rule of many there cannot be peace except so far the many are one in (*per*) will: which is clear, because if they are not in harmony, their action is impeded through the disorder (*concursum*), as in l. consilio, last §., ff. *de curatoribus furioso*;²⁸ and *de servitutibus rusticorum prediorum*, l. itinere,²⁹ with similar ones. From this it is argued in this way, 'whatever is on account of something, that something is greater',³⁰ as in C. *de sacrosancti ecclesiis*, *Authenticae* multo magis;³¹ and ff. *de iureiurando*, l. quanto magis.³² 105 But a government of many is good on account of unity; therefore, a government of that unity itself, which occurs through one person, is that much better. 110

[b] Secondly it is proven because, by this, the city and commonwealth is rendered more powerful, which is proven in this way: the more virtue is united,

23. Aristotle, *Politics* 3.13 1283a23–1284b34 (Barnes 1995, 2:2037–9). 24. Giles of Rome, *De regimine principum* 3.2.3–4 (100rb–101rb). 25. Giles of Rome, *De regimine principum* 3.2.3 (100rb–va). 26. Dig. 1.18.13. 27. Nov. 17.2 (= Coll. 3.4.2). 28. Dig. 27.10.7.3. 29. Dig. 8.3.28. 30. Aristotle, *Posterior Analytics* 1.2 72a30 (Barnes 1995, 1:116); cf. Boethius, *Posteriorum analyticorum interpretatio* 1.2 (PL 64:714–715); Thomas Aquinas, *In posteriores analyticorum*, lectio 6. 31. Auth. 'Multo magis' post Cod. 1.2.14.10; cf. Bartolus ad loc. 32. Dig. 12.2.24.

the stronger it is (than if it is dispersed among many),³³ as in Auth. *de consan-*
115 *guineis et uterinis fratribus*, §. quia igitur, *Collatio* 6.³⁴ If, then, the whole civil
power is gathered in one person, it will be more effective, and the prince will
be able to govern better through it due to the greater power.

[c] Thirdly, art or artifice is better by the degree it more imitates nature, as
in l. si pater in fine, with the following *lex*, ff. *de adoptionibus*.³⁵ But the whole
120 city is one person and one artificial and imaginary man, as in ff. *de iudiciis*, l.
proponetur;³⁶ and *fideiussoribus*, l. /155/ *mortuo*.³⁷ But in a natural man, we
see one head and many members: therefore, the city is governed better if it
be governed in this way. To the same, *Extra, de officio ordinarii*, c. quoniam in
plerisque,³⁸ and this seems determined in 7 q. 1, c. in apibus,³⁹ where bees and
125 many animals,⁴⁰ which lack reason, establish for themselves one king.

[d] Fourthly, he himself says that this is agreed by experience, since he says
that he sees ‘provinces not existing under one king are in penury, they do not
enjoy peace, and they are troubled by dissensions and wars. But those living
differently do not know wars, enjoy peace, and flourish in abundance’.⁴¹ From
130 these things he concludes that a government of the people or multitude is good
if it aims at one end; but a government of the few is better, because it has more
unity; monarchy, however, or a government of one king, is best because unity
is found most perfectly there.

But against the aforesaid, Giles provides some reasons,⁴² which he takes
135 from the claims of Aristotle,⁴³ and he tries to respond to them. And so I shall
relate them, proving them through the rightlaws (*iura*). In order to prove these
things, he presupposes (*premittit*), that three things are required in anyone who
governs well:

- 140 [1.] perfect reason for discerning, so that he knows how to separate just
from unjust, licit from illicit, as in ff. *de iustitia et iure*, l. i;⁴⁴
- [2.] he must have the correct intention;
- [3.] he must have perfect stability.

33. *Book of Causes*, prop. 17, 141; cf. Thomas Aquinas, *Exposition on the Book of Causes*, lectio 17, 333; id. *Summa theologiae* 1a.77.2 and 2a2ae.37.2 ad 3. 34. Nov. 85.1 (= Coll. 6.13.1). 35. Dig. 1.7.15–16. 36. Dig. 5.1.76. 37. Dig. 46.1.22. 38. X 1.31.14. 39. C. 7 q. 1 c. 41. 40. Quaglioni emended *multa* to *muta*, but suggested that we should perhaps understand *multa* <*animalia*>. The chapter *In apibus* only makes mention of bees and cranes (or large birds: *grues*). 41. Giles of Rome, *De regimine principum* 3.2.3 (100va); Aquinas, *On Kingship* 1.2.20 (Phelan 1949, 13). 42. Giles of Rome, *De regimine principum* 3.2.4 (101vb–01ra). 43. Aristotle, *Politics* 3.11 1281a40–b16, 3.15 1286a30–32, 5.1 1302a9–15, and 5.9 1309a34–39 (Barnes 1995, 2:2033–34, 2067, 2079). 44. Dig. 1.1.1.1.

These things are proved by the definition of justice, when it is said that it ‘is the constant and perpetual will, allotting everyone his right’, as in ff. *de iustitia et iure*, l. iustitia.⁴⁵ From these three points three arguments arise against the aforesaid. /156/ 145

The first [point] in this way: the more there are, the more things they see, and there is [therefore] in them a more perceptive power (*ratio*) for discerning than there is in one, as in C. *qui testamentum facere possunt*, l. hac consultissima, at the end;⁴⁶ in that respect, therefore, it is better to be governed by many. 150

The second [point] in this way: when one consiers the public good more than one’s own good, then the intention of the rulers is correct, as in C. *de caducis tollendis*, l. unica, penultimate §.⁴⁷ But if the multitude exercises lordship, with it supposed that it aims for its own good, for this reason it withdraws less from the common good than if one person reigns and aimed for his own advantage. Therefore it is better to be governed by many. 155

The third [point in this way]: governing ought to have perfect stability so that it not be corrupted through anger or concupiscence: because a will ought to be constant and perpetual, as in the said l. iustitia.⁴⁸ But a multitude is angered with greater difficulty and it is corrupted with greater difficulty than one person, as in the said l. hac consultissima,⁴⁹ and the argument in C. *de testibus*, l. iurisiurandi.⁵⁰ Therefore it is better to be governed by many people. 160

Responding to these things,⁵¹ he says that one king or prince ought to have many councilors and able (*valentes*) men with him; and for that reason he will see as if [he were] many men, and he will not be able to be corrupted easily unless the whole council should be corrupted. But if the said king were to follow his own opinion (*caput*), he would already be not a king but a tyrant. Therefore, it would not be good that such a person exercises lordship. So he himself says. 165

I do not think these words are to be understood without qualification. For that reason, I (speaking in the manner of the jurists) add to the declaration of the aforesaid points that not every government of one person is called a government of a king. For sometimes there is /157/ one who governs and yet he is a judge, as when they are governors of the provinces and proconsuls, as in the titles *de officio presidis*⁵² and *de officio proconsulis et legati*;⁵³ as when they are podestas (*potestates*) and rulers (*rectores*) of cities, as in C. *de sententiis ex periculo recitandis*, l. finali,⁵⁴ and in the notes there. For they have to judge according to the laws, and they do not hold the status of kings but [a status] 170

45. Dig. 1.1.10. 46. Cod. 6.22.8. 47. Cod. 6.51.1.14. 48. Dig. 1.1.10. 49. Cod. 6.22.8. 50. Cod. 6.20.9. 51. Giles of Rome, *De regimine principum* 3.2.4 (101ra-b). 52. Dig. 1.18. 53. Dig. 1.16; Cod. 1.35. 54. Cod. 7.44.3.

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180 belonging to ministers; nor do the regalia belong to them but to the cities which they govern, or to another superior, or to the fisc, as in C. *de modo mulctarum*, l. mulctarum;⁵⁵ and in C. *ubi cause fiscales*, l. 1;⁵⁶ and in ff. *de iure fisci*, l. 1.⁵⁷ And God governed the people of the Jews for a long time by means of those judges. Sometimes one governs a city or province who makes the law as he wishes, and all things pertain to him; and this is called the government of a king.

185 Now, let us see what is the right of that king in order to learn in this way whether it is good to be governed by kings. Regarding this, the Lord speaks so through the prophet Samuel in 1 Kings 8: *This will be the right of the king, who will command over you. He will take up your sons and put them in his chariots (curribus), and make them as his cavalrymen and the vanguard of his chariot teams (quadrigarum); and he will establish them as his tribunes and centurions, and the plowers of his fields, and the reapers of his corn, and makers of his arms and chariots; and he will also make your daughters as makers of ointments, and cooks, and bakers; and he will take up your fields and vines and best olive-yards and give them to his servants. But he will take one-tenth of your corn and the revenues of your vines to give to his eunuchs and servants; he will even take away your servants and handmaids, and your /158/ best young men and your asses, and he will put them to his own work; he will also take one-tenth of your flock, and you will be servants to him.* Behold the words of God. According to this it seems to be governed by kings is the worst: for they introduce so many evils to their subjects, and, what is worse, they reduce them to servitude, which is compared to death, as in l. *servitutum*, ff. *de regulis iuris*.⁵⁸

200 But those words are explained by the holy doctors:⁵⁹ that all the aforesaid things ought not be understood to be licit to the king, but only those things which pertain to the public good. The king, moreover, will do those things, which were posited earlier as burdens, at the time when he begins to be a tyrant—which happens easily. And because it was going to happen to them in this way, so therefore did he make that prediction. For that reason, when he says those words, *This will be the right of the king, who will command over you,* 1 Sm. 8:11 they ought to be understood so, as if he were saying: ‘This is not licit for every king, but the who will command over you will usurpt this right unto himself.’

210 For it was displeasing to the Lord that they had begged for a king, as it is said in the same chapter. And this appears to be true because it is read in Deuteronomy 17 where it is taught clearly what a good and upright (*rectus*) king ought to do. cf. 1 Sm.8:6–8

55. Cod. 1.54.5. 56. Cod. 3.26.1. 57. Dig. 49.14.1. 58. Dig. 50.17.209. 59. Quaglioni, the editor, suggests Sts Jerome, Bede, and Aquinas (along with his ‘continuator’ Tolomeo Fiadoni), as well as some glosses to the biblical passage.

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Dt. 17:16–20 For the Lord says these words about the future king, namely: *And when he is made* [[king]] *he will not multiply horses for himself, nor, having been raised up by the number of cavalry lead the people back to Egypt, especially since the Lord commanded /159/ you to by no means return again by that way. He will not have many wives who might entice his mind, nor immense sums of silver and gold. But after he will sit on the throne of his kingship, he will transcribe for himself the Deuteronomy of this law in a volume, taking the exemplar from the priests of the Levitical tribe; and he will have it with him, and he will read it for all the days of his life that he may learn to fear the Lord, his God, and to guard his words and ceremonies, which are commanded in the law. And his heart may not be raised up in pride over his brothers, nor decline to the right or left, so that he and his sons may reign over Israel for a long time.* 215

These are the words of God, which we should examine somehow. For he says, 225
Dt. 17:16 *when he is made*; it is suggested from this that someone ought to be established king by someone else, not that he take up the kingship for himself by his own authority; for then he would not be a king but a tyrant, as will be said [below](#).⁶⁰

Dt. 17:16 Then he says, *he will not multiply horses for himself*, as if he were saying: let him flee from pomp or vainglory whence he shall not multiply horses for himself. For multiplying is to have beyond what it is expedient for one to have. 230

Dt. 17:16 *Nor lead the people back to Egypt*, etc. These words can be understood literally as they lie: that the king of the Jews ought never go to occupy the land of Egypt. They can also be understood allegorically, as if he were saying: the king may not lead the people back into servitude, a servitude which is signified by Egypt, where the people were held in captivity. By these words, therefore, he prohibits the people to be burdened with personal burdens, which are a sort of species of 235

Dt. 17:17 *He will not have many wives*. Above he prohibited vainglory, /160/ here he prohibets luxury in the king. For that luxury separates the mind of the king from true judgment not only with regard to men, but even with regard to 240

cf. 1 Kgs. 11:1–5 God, as it happens regarding Salomon, who was made an idolater, as it is read in 3 Kings 11. *Nor immense sums of silver and gold*. Here he prohibits avarice. For just as too much is spent due to pomp and the people are thereby burdened, so

Dt. 17:18 *is too much extorted from the people due to avarice. But after he will sit on the throne of his kingship, he will transcribe for himself the Deuteronomy of this law in a volume*. Above he prohibited some things from being done, here he commands 245

Dt. 17:18 *some things to be done. Deuteronomy of this law*. ‘Deuteronomy’, according to Isidore, means ‘second law’, that is, [[it is]] a figure of the evangelical law.⁶¹ The

60. See line 395. 61. Isidore, *Etymologies* 6.2.7.

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king, therefore, ought to be faithful and catholic, and the law commands this
250 in *C. de episcopali audientia*, auth. Statuimus.⁶² *Taking the exemplar from the* Dt. 17:18
priests of the Levitical tribe. The Holy Mother Church is figured by those priests,
from which every king ought to assume the exemplar of the Christian law. *And* Dt. 17:20
his heart may not be raised up in pride. Here he returns to prohibit some other
things, namely pride of the heart, which is the root of all vices. *Over his brothers.* Dt. 17:20
255 It appears, therefore, that those who are subjected to a king are not servants, but
brothers. And thus he understood what was said in the preceding authority
not about a true king, but about a tyrant. *Nor decline to the right or left.* As if Dt. 17:20
he were saying: ‘May his judgment be correct, not in love or in hatred’; as if he
were saying: ‘may he be just’. /161/ A good king, therefore, ought to be faithful,
260 Christian, just, not pompous, not a burdener of his subjects, not given over to
luxury, not avaricious, and not proud.

Now, a king ought to do some things, which are included in 23 q. 5, c. regnum
est⁶³ and c. rex debet.⁶⁴ But those things, which are posited there are adapted
to the aforesaid; and although it is included there what a king ought to do, and
265 how he ought to comport himself, even so it is not included there what he
may demand from his subjects or from what source he may make expenses
appropriate to his royal majesty. But we have this expressed in *Collatio* 10, *que*
sint regalie, c. i.,⁶⁵ where it is said that all tribute, revenues, and public taxes,
which are specially designated (*nominantur*), pertain to the king, and that it
270 also pertains to the king to use (*ponere*) what is collected according to (*ex*) a
necessary cause, as it is said there. And it is even proved by the law (*ius*) of the
*Digest*⁶⁶ that kings have all power, as in ff. *de origine iuris*, l. 2, §. initio.⁶⁷

It having been seen, then, what the right of a king is, let us return to the
question as to whether it is expedient for a city or people to be governed by
275 a king. I say that, if we consider a king in the sense that he is a good one
possessing the said characteristics (*condiciones*), the best government is, by the
arguments made above, the government of a king. And so do I understand the
claim (*dictum*) of Aristotle and Giles. But if we consider what can occur—that
a king sometimes turns into a tyrant (either he himself or those who descend
280 from him)—, then I say that we ought to consider that it can occur when that
thing of which we are treating tends naturally and plausibly to this [sc. tyranny],
as in ff. *locati*, l. si quis domum, S. 1;⁶⁸ and *de dampno infecto*, l. qui bona, §.

62. Auth. ‘Statuimus’ post Cod. 1.4.19 (Nova Const. Fred. II). 63. C. 23 q. 5 c. 23. 64. C. 23 q. 5 c. 40. 65. L.F. 2.56.1. 66. Reading *iure Digestorum* for *ff. orum*, as we have in Bartolus de Saxoferrato (1562) 2007, 678a. 67. Dig. 1.2.2.14. 68. Dig. 19.2.9.1.

cum inter.⁶⁹ Otherwise, this ought not be /162/ considered because ‘chance and adverse fortune’, etc., as in l. inter stipulantem, §. sacram, ff. *de verborum obligationibus*.⁷⁰

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With these preliminaries out of the way, I make a threefold division of cities or peoples. For [1] one city or people is great in the **first grade of magnitude**;⁷¹ [2] another city or people is greater, and is therefore in the **second grade of magnitude**;⁷² [3] another city is or people is the greatest, and thus in the **third grade of magnitude**.⁷³

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If we speak of the nation or people classed in the first grade of magnitude, then I say that it is not expedient for them to be governed by a king. This is proved [a] first by the text, because when the city of Rome was in the first grade of magnitude, it expelled its kings because they had turned to tyranny, as in ff. *de origine iuris*, l. 2, §. exactis⁷⁴ and §. <et quidem> initio.⁷⁵ [b] It is proved secondly by reason: it is of the nature of kings to be magnificent in making great payments, as in Auth. *de immensis donationibus*,⁷⁶ and by Aristotle in the book of *Ethics*.⁷⁷ But regal revenues of a people great in the first grade of magnitude may not suffice for regal expenses; it would be necessary for that reason that he extort from his subjects and become a tyrant. The status of such a king therefore, plausibly tends towards tyranny. It is not, therefore, a good government once what can plausibly occur has been inspected. And this is the reason why it was displeasing to God that the people sought a king in 1 Kings 8. And it is not expedient for such a people /163/ to be governed by a few men, such as by the rich men of the city. For it happens in these cities that the rich are few in number.

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cf. 1 Kgs.8:6–8

A different thing will occur regarding the other two [[grades]]. For either the multitude of the people from the government of those few individuals will be unworthy however well they rule, as in the city of the Sieneſe.⁷⁸ For there was for nearly eighty years an order of rich men governing the city well. Nevertheless, because the multitude of the of the people were unworthy, it was necessary that they always live with a great military force. This order was deposed at the

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69. Dig. 39.2.13.2; cf. Bartolus ad loc. 70. Dig. 45.1.83.5; cf. Bartolus ad loc. This (fairly long) passage deals with stipulations, and the specific part of the passage Bartolus refers to reads as follows: ‘We do not seem to stipulate for the species of wine, but the genus, and the time is tacitly included in it. A free man is contained in a certain species. And it is neither civil nor natural that an accident or adverse fortune of a free man be awaited: for we rightly conduct our business with those things which can immediately be subjected to our uses and lordship.’

71. See line 291. 72. See line 347. 73. See line 373. 74. Dig. 1.2.2.3. 75. Dig. 1.2.2.1. 76. Auth. 6.3 (= Nov. 92). 77. Aristotle, *Nicomachean Ethics* 4.2 122b30–35 (Barnes 1995, 2:1772). 78. Quaglioni suggests some references.

arrival of the lord Charles IV,⁷⁹ the most illustrious emperor of the Romans now reigning. The action of that prince proves that such a mode of governing in these
315 kinds of cities is not good. <Or> another inappropriate thing can follow: because those few individuals, as naturally occurs, can be divided among themselves; from this rumours, seditions, arsons, and civil battles occur in the cities, as we often see in the city of Pisa. It is expedient, however, for a people that is in the first grade of magnitude to be governed by a multitude—which is called a
320 government for the people, as in ff. *de origine iuris*, l. 2, §. exactis 1, right until §. deinde quia difficile.⁸⁰ And that the government is good is apparent because the Roman city at that time was much increased, as is clear in the same l., §. exactis 2⁸¹ and §. populo deinde aucto⁸² and the §. following⁸³ and the following [[after that]].⁸⁴ This is also apparent from the mentioned authority of the book of
325 Kings: for it seems more a government of God than of men. We also experience this in the city of Perugia, which is governed in that way in peace and unity: it grows and flourishes; /164/ governing⁸⁵ it according to its vicars (*vices*), they guard themselves from no one, but they are guarded by all. And it is often seen by the council of common men that some things are considered, which have
330 seemed badly done to the wise and prudent. This is because it is a government more of God than of men. The most illustrious emperor, when I⁸⁶ was with him, commended this mode of governing especially. And so we call that government a government for the people, or a government of the multitude, as was said. This government is so called, however, since the jurisdiction is with the people
335 or multitude: not because the whole multitude joined together should govern, but that a government entrusted to certain individuals for a time according to his vicars (*vices*) and circle [[of advisors]], as in the earlier alleged §. exactis,⁸⁷ and *Collatio* 3, Auth. *de defensoribus civitatum*, §. interim.⁸⁸

But what I say, ‘by a multitude’, I mean with the most worthless people
340 excepted, as in C. *de dignitatibus*, l. ne quis, libro 12.⁸⁹ Likewise, some magnates can be excluded from that government: those who are so powerful that they would oppress others, as in ff. *de officio presidis*, l. illicitas, §. ne potentiores,⁹⁰ and so we see it observed. But in the said cities, if the honours and duties are distributed according to appropriate grades, the government is good; however,

79. Charles reigned from 1346–1378. 80. Dig. 1.2.2.3–9. 81. Dig. 1.2.2.16. 82. Dig. 1.2.2.18. 83. Dig. 1.2.2.19. 84. Dig. 1.2.2.20. 85. The text somewhat unexpectedly switches to the plural here (*regentes ... custodiunt ... custodiuntur*); presumably picking up on the idea of governing by means of a few individuals. 86. Some MSS. have *esset* in place of *essem*. 87. Dig. 1.2.2.16. 88. Auth. 3.2.1 (Nov. 15.1). 89. Cod. 12.1.6. 90. Dig. 1.18.6.2.

if [[it is done]] unequally, then it is a bad government: and its reformation looks 345
to a superior, as in ff. *de muneribus et honoribus*, l. 3, §. preses provincie.⁹¹

Secondly, it must be seen about the greater nation or greater, and [[which
is]] thus in the second grade of magnitude. In this case, it is not expedient for
them to be governed by one king for the abovesaid reasons; nor is it expedient
to be governed by a multitude: for it would be very difficult and dangerous for 350
so great a multitude to be gathered together. But it is expedient for them to be
governed by a few, that is, by the rich and /165/ good men of that city. So it is
expressly proved in ff. *de origine iuris*, l. 2, §. deinde quia difficile,⁹² where, once
the city of Rome had increased in size, senators were made, and all power was
given to them. 355

For so was the city of Venice governed, so the city of Florence: for I include
these cities in number of greater cities. Indeed, the aforesaid suspicions cease in
them. For although they are said to be governed by means of a few men, I say
that they are few with respect to the multitude of the city, but are many with
respect to another city. And because they are many, for that reason the multitude 360
does not refuse to be governed by them. Likewise, because they are many they
cannot easily be divided amongst themselves; rather, many remain in the middle
(*medii*), who sustain (*substantant*) the state of the city. And concerning that
mode of governing through a few, when the city has grown into the second
grade of magnitude, the gloss discusses (*ponit*) in the said §. interim, in Auth. 365
de defensoribus civitatum.⁹³ The aforesaid [[points]] are true, except it appears
to be otherwise concerning the ancient mode of governing a city. For it can be
that one nation or people is so accustomed to a certain mode of governing that
they were turned back, as it were, to nature, and they did not know how to live
differently. In that case, the ancient mode of government is to be observed, as 370
in ff. *de muneribus et honoribus*, l. 1, §. 1,⁹⁴ and l. 3, §. preses provincie,⁹⁵ and l.
hoc honor, §. de honoribus.⁹⁶

Thirdly, it must be seen about the greatest nation or people, which is in the
third grade of magnitude. Now this cannot truly happen in one city by itself.
But if it were a city which were to exercise lordship over many other cities 375
and provinces, it would be good for this nation to be governed by one person.
This is proved in ff. *de origine iuris*, l. 2, §. novissime,⁹⁷ when, after the Roman
empire had grown much and many provinces had been taken, it came to one
person, namely the prince. All the reasons made above by brother Giles also

91. Dig. 50.4.3.15. 92. Dig. 1.2.2.9. 93. *Glos. ord.* ad Nov. 15.1 (Auth. 3.2.1), s.v. 'circulum'.
94. Dig. 50.4.1.1. 95. Dig. 50.4.3.15. 96. Dig. 50.4.14.3. 97. Dig. 50.4.14.3.

380 prove this; here, the reasons made by the opposite [[side]] yield. For in such a
multitude there are of necessity many /166/ good people through whom it will
be necessary to counsel the king and to put him⁹⁸ on the path of justice. And
so, generally we see de facto that the better a nation or people is governed, the
more it is governed under a greater or more powerful king. And concerning
385 this point we have the authority of sacred scripture, in Deuteronomy 17, where
the Lord speaks so: *When you have entered the land, which the Lord <your> God* Dt. 17:14–15
will give you, and possess it, and when you have lived in it and said ‘I shall set a
king over me, just as have all nations (nationes) round about’; you shall establish
one whom the Lord your God shall choose from the number of your brothers. You
390 *will not be able to make a man of another nation, who is not your brother, king.*
These are the words of the Lord.

From what he says, *When you have entered and have possessed and have* Dt. 17:14
lived, etc., he suggested that not a small but great nation would have a king,
which is in a great state and exercises lordship over many, as it was said above.

395 From what he says, *whom the Lord your God shall choose*, it ought to be Dt. 17:15
known that every king is either chosen by God immediately or by the electors
with God looking on. For *the heart* of the electors is *in the hand of God*, and Pr. 21:1
it will incline where *he wishes*, as it is said of the king in C. *de summa Trinitate*,
epistola inter claras.⁹⁹ And note from this that a government that is by election
400 is more divine than one which is by succession; for that reason, succession is
altogether detested in ecclesiastical matters, /167/ *Extra, de filiis presbiterorum*,
c. *ex transmissa*¹⁰⁰ and c. *ad extirpandas*.¹⁰¹ And for that reason the election
of a prince, who is a universal king, occurs by the election of the prelates and
princes, does not take place through succession, as in *Extra, de electione*, c. *ven-*
405 *erabilem*,¹⁰² and *de re iudicata*, c. *ad apostolice*, libro VI.¹⁰³ For ‘God established
this empire from heaven’, as in the *Authenticum, quomodo oporteat episcopos* in
the beginning,¹⁰⁴ and *de instrumentorum cautela et fide*, §. 1.¹⁰⁵ But particular
kings are more due to a constitution of men, as in ff. *de iustitia et iure*, l. *ex*
hoc.¹⁰⁶ And for this reason it is permitted in these matters that they take place
410 through succession. And thus what Giles says in his book *On the Government of*
Princes ought to be understood in this way, where he determines that it is better
for a kingship to advance through succession: for it ought to be understood of
a particular kingship, which can be transmitted just like our other goods and

98. Reading *eum* for *se*. 99. Cod. 1.1.8.3. 100. X 1.17.7. 101. X 1.17.11. 102. X 1.6.34.
103. VI 2.14.2. 104. Auth. 1.1 pr. (= Nov. 6 pr.). 105. Auth. 6.2 pr. (= Nov. 73 pr. §. 1). 106.
Dig. 1.1.5.

rights. It is otherwise in a universal kingship because it would be against divine authority and against the canons.

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Dt. 17:15 From what he says, *from the number of your brothers*, note that it is dangerous to have a king of another nation. But you will say: how, therefore, was the Roman empire translated by the Church to the Germans, that is, the Teutons, as in *Extra, de electione, c. venerabilem?*¹⁰⁷ I respond: all Christians are called our brothers, and thus it did not go against the said authority; but it could not be transferred to a Saracen, pagan, or unbeliever. And therefore if follows *You will not be able to have a king of another nation*. And on account of this, an examination of the one who is to be crowned as emperor is necessary. Or, explain those words according to Augustine,¹⁰⁸ as the gloss *non poteris* says in the same place: /169/ ‘that is, you must not’. For a kingship is not thereby preserved by a king of another nation. And for that reason, the Roman empire, after it was separated from the Italians, decreed it for ever in our eyes. Yet this was not done without the hidden judgment of God.

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Now I am not speaking about a small people, because they either do not subsist one city, as in ff. *ad municipalem*, l. qui ex vico,¹⁰⁹ or they are confederated for another city or king by some treaty such that they venerate the majesty of someone else, as in ff. *de captivis*, l. non dubito.¹¹⁰ And we see this in cities and castra that are under the protection of this city, Perugia.

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For, just as a weak and small human body cannot be governed through itself without the help of a tutor or curate, so that small people cannot be governed through itself in any way, unless it submits to another, or adheres to another. And these are of the three modes of governing, which are good.

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III

I ask, of the evil modes of governing, which is worse? On this point all philosophers say that tyranny is the worst [[kind of]] rule: for it holds the ultimate grade of wickedness. The very same Giles says in his book /169/ *On the Government of Princes*¹¹¹ that (as it was said) a government is called good for the reason that attention is chiefly paid through it to the common good. But by a tyrant it withdraws chiefly from an intention for the common good; hence tyranny is the worst [[kind of]] rule. Hence if many people exercise lordship because they

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¹⁰⁷. X 1.6.34. ¹⁰⁸. Augustine, *Questions on the Heptateuch* q. 26 (PL 34:760) on Deut. 17:14–15. ¹⁰⁹. Dig. 50.1.30. ¹¹⁰. Dig. 49.15.7.1 cf. Bartolus ad loc. ¹¹¹. Giles of Rome, *De regimine principum* 3.2.1 (99vb).

are believed to be rich or good, or if a multitude exercises lordship, although those who are governing tend to their own good, and not to the common good, and thus it is a government of the wicked or a perverse people, it still does not entirely (*non tantum*) withdraw from an intention for the common good: for,
450 from the fact that there are many, it knows (*sapit*) something of the nature of the common good.¹¹² But if one is a tyrant, he recedes entirely from the common good.

Moreover, just as virtue united to the good is better, so [[virtue]] united to the bad (*deterius*) is worse. Therefore, a tyrant is the worst. This, moreover, is
455 so clear that it does not need demonstration.¹¹³

Now, the thing which was said above, that a government of many evil men is not as evil as a government of one tyrant, ought to be understood if those many men aim for one [[end]] and cannot [[do anything]] except all together. It is different if each one cultivates tyranny through himself and the one does not
460 care about the other—as I said above about the monstrous government, which now exists in the city of Rome. For, just as if one corrupt humour exists that predominates in the whole body, it is evil; if, nevertheless, all humours were corrupted and they are each opposed to one another, it would be far worse. Woe, therefore, to the city that has many tyrants not aiming for one [[end]]! /170/

Likewise, it must be noticed that a government of many evil people or a government of a perverse people does not endure for a long time, but is easily brought to a tyranny of one person: for we often see this de facto. This yielding
465 [[to tyranny]] is even divine, since it is written: *Who makes a hypocrite reign on account of the sins of the people?* Job 34. [[And because today the whole of Italy
470 is full of tyrants, let us therefore see some things about the tyrant that concern the jurists.]]¹¹⁴

112. Cf. Aristotle, *Nicomachean Ethics* 8.10 1160b1–21 (Barnes 1995, 2:1834); Giles of Rome, *De regimine principum* 3.2.4 (100vb). **113.** Cf. Aquinas, *On Kingship* 1.3 (Phelan 1949, 13–18).

114. These double-brackets come from the edition; Bartolus probably did not pen these words himself, but they do refer to his related treatise *On the Tyrant*.

A NOTE ON THE TRANSLATION

My eventual goal is to provide translations of the three tracts edited in Quagli-
oni's book that are, moreover, consistent with one another with respect to how
certain 'technical' terms are translated. It therefore seems appropriate to alert
readers of these translations (assuming there are any) to the choices I have made.
This list will likely grow and change (some) as this project continues. As always,
comments, corrections, and suggestions are welcome.

to command	<i>imperare</i>	kingship	<i>regnum</i>
commonwealth	<i>respublica</i>	law	<i>lex</i>
count (rule of)	<i>comitatus</i>	magnate	<i>magnas</i>
custom	<i>mos</i>	manner; mode	<i>modus</i>
duke (rule of)	<i>ducatus</i>	marquis (rule of)	<i>marchio</i>
to exercise lordship	<i>dominari</i>	mode; manner	<i>modus</i>
duty	<i>munus</i>	nation	<i>gens; natio</i>
empire; imperial rule	<i>imperium</i>	people	<i>populus</i>
grade	<i>gradus</i>	plausibly	<i>verisimiliter</i>
to govern	<i>gubernare</i>	polity	<i>politia</i>
governance	<i>gubernatio</i>	power	<i>potestas</i>
government	<i>regimen</i>	powerful	<i>potens</i>
governor	<i>preses</i>	prince	<i>princeps</i>
fisc	<i>fiscum</i>	rule	<i>principatus</i>
emperor	<i>imperator</i>	regalia	<i>regalia</i>
imperial rule; empire	<i>imperium</i>	to rule	<i>regere</i>
jurisdiction	<i>iurisdictio</i>	to reign	<i>regnare</i>
right	<i>ius</i>	state	<i>status</i>
justice	<i>iustitia</i>	status	<i>status</i>
king	<i>rex</i>	virtue	<i>virtus</i>

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