

## *Bartolus of Saxoferrato* *On the Tyrant*

Translated from:

Diego Quaglioni, ed. 1983. *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, 175–213.<sup>1</sup>

[1] Because<sup>2</sup> I have already laboured for a long time over many tracts, dealing with the sweetest materials, which render body, heart, and soul entirely mellifluous (*saporosam*), I am so full of a sweet taste that I have dared not approach the harshnesses, the difficulties, and the tribulations, especially since I see that tyrannical perfidy is extending its strength. Still, having trusted in the protection of that mercy, which<sup>3</sup> *makes eloquent the tongues of infants*—nay, even makes them shine openly for the nations,<sup>4</sup> I do dare take up (with the help of divine aid) the so severe and horrendous subject matter of tyrannical depravity, not so that I derive any joy or solace from it, but so that all are able to rid themselves completely of the tie and noose of that horrendous wickedness, namely, tyrannical servitude; from this austere and immoderate magisterium God delivers (*liberet*) us; he conserves us in our own holy, good, and perfect tranquility; and he makes us be found (*colletari*) in the sweetness of liberty.

Sap. 10:21

cf. Ex. 40:33; Ps. 76:19;

Ps. 143:6

1. Editorial interventions are marked by angle brackets, while my own are put in double square brackets. 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. Finally, I should mention that, as I was translating this treatise, I came across an earlier one by Ephraim Emerton ([1925] 1964, 126–154). Emerton produced a very readable translation, and one should still consult his introduction and comments, but it must be said that it is inaccurate—though much of this may be attributed to the faulty edition on which he was forced to rely. The other problem is that he systematically removed the references Bartolus made to Roman and canon law, which decreases its value for the serious student. Please also be aware of the forthcoming translations of Julius Kirshner and Osvaldo Cavallar, which will be sure to include excellent introductory and explanatory material in addition to the translations themselves. 2. Note that not all manuscripts have this (or even the same) introductory section. The one given here is the most elaborate. 3. Reading *quae* for *qui*, which would make Bartolus the subject of the quotation, rather than the *sapientia* (wisdom) of the text. 4. The clause beginning 'nay' (*ymmo*) is enclosed in double square brackets, the significance of which is left unexplained. One may suppose, however, that the clause is of questionable provenance.

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Hence, before I proceed any further regarding the present tract on the tyrant, I, Bartolus of Saxoferrato, citizen of Perugia, least doctor of the laws, shall briefly list some questions, which we shall come to later when we show how one should act [should a tyrant arise].

First,<sup>5</sup> I ask, by what source one is called a tyrant; /176/ I ask second<sup>6</sup> in [2] what way is tyrant defined; I ask third<sup>7</sup> whether one may be called a tyrant in [only] one region (*vicinia*); I ask fourth<sup>8</sup> whether one can be a tyrant in a single home; I ask fifth<sup>9</sup> how, regarding the tyrant of the city, many species of it exists; I ask sixth<sup>10</sup> [whether] one is called a manifest tyrant in a city by defect of title; I ask seventh<sup>11</sup> whether the deeds by such a manifest tyrants are valid, even during their reign (*vel eorum tempore*); I ask eighth<sup>12</sup> [whether] someone is called a manifest tyrant by reason of conduct (*ex parte exercitii*); I ask ninth,<sup>13</sup> if some duke, marquis, count, or baron, who has a just title, is proved to be a tyrant by his action, what ought a superior do; I ask tenth<sup>14</sup> what we ought to say about the things that it appears the highest pontiff, emperor, and legates have done; I ask eleventh<sup>15</sup> whether the deeds by the abovesaid tyrants, who truly have a just title, are valid; I ask twelfth<sup>16</sup> ask about the tacit and hidden tyrant.

### I

I ask first by what source one is called a tyrant. I respond: from the Greek [3] *tyro*,<sup>17</sup> which in Latin is called strong or narrowness; hence ‘strong kings are called tyrants. Afterwards it happened that the worst and wicked kings were called tyrants, exercising the desire for immoderate domination and a most cruel domination over the people’;<sup>18</sup> ‘from *tyro*, which is narrowness: because he confines (*angustiat*) and tortures his own people’, according to /177/ Huguccio.<sup>19</sup> And that *tyrus* is interpreted as it is said is clear from the interpretations of the

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5. See p. 2. 6. See p. 3. 7. See p. 5. 8. See p. 7. 9. See p. 8. 10. See p. 8. 11. See p. 10. 12. See p. 15. 13. See p. 18. 14. See p. 19. 15. See p. 20. 16. See p. 22. 17. The Greek word is *τύραννος*, originally from *τυρός*. This comes from the *Derivationes* of Huguccio (not the jurist), ed. in Cecchini et al. 2004, 2:1225: ‘*Tyro* in Greek is called “strong” or “narrowness” in Latin; hence, this *Tyrus*, which is a certain island and city is so called from the narrowness of the place; hence *Tyrus* is also interpreted as “narrowness”, and thence *tyrius*, -a, -um as “gentile” or “paternal”. 18. Isidore, *Etymologiarum sive originum libri XX* 9.3.19–20 (Lindsay 1911). 19. Huguccio, *Derivationes*, s.v. ‘*Tyro*’ (2:1225). These are only two of the four definitions Huguccio provides.

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Bible, where it is maintained so:<sup>20</sup> ‘Tyrus is interpreted as confinement, tribulation, or fortitude’, which all belong to tyrant in a bad way. And these are useful where it is asked about the establishment (*condicione*) of a tyrant and the manner of proving [[that someone is a tyrant]].

II

- [4] Secondly, I ask in what way a tyrant is defined. I respond: Gregory, in the twelfth book of the *Moralia* defines it in this way:<sup>21</sup>

He is properly called a tyrant who does not rule by right in the general commonwealth. But it must be known that every proud man exercises tyranny after his own manner. For, not infrequently, what one does in a commonwealth, that is, through a received power (*potentia*) of dignity, another does in a province, another in a city, another in one’s own home, another does it in his own thoughts by a wickedness hidden within himself. The Lord does not consider how much evil someone is able to do, but how much he wishes to do. And when /178/ the court (*foris*) lacks power, he is a tyrant within himself for whom iniquity exercises lordship within: because even if he does not cause his neighbours harm externally, he still desires to have the power to cause harm.

These are the words of Gregory to the letter, which are to be observed for a law in Distinction 15, c. *sancta Romana*.<sup>22</sup> We should discuss these words in some way or other.

- [5] *Properly a tyrant*, etc. For, just as a king or emperor of the Romans is properly a true and just and universal king, so, if someone wishes to hold that place unjustly, he is called a tyrant. And we hear of such a tyrant in C. *de sacrosanctis ecclesiis*, l. *decernimus*<sup>23</sup> and l. *omni novatione*,<sup>24</sup> and the notes there.
- [6] *In the general commonwealth*: it is understood about the commonwealth of the Romans, as in l. *eum qui vectigal*, ff. *de verborum significatione*.<sup>25</sup>
- [7] *Does not rule by right*: this happens because [i] he lacks a title, [ii] because he was not elected or [iii] not elected by right, [iv] or he was elected and [[then]] reprovved, as in *Extra, de electione*, c. *venerabilem*,<sup>26</sup> or [v] elected, crowned and afterward reprovved by a just judgement, as in *Extra, de re iudicata*, c. *ad*

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20. Jerome, *Liber interpretationis Hebraicorum nominum, De libro Iesu Naue*, ad Js 15:24, 19:29 (CCSL 72:97). 21. Gregory the Great, *Moralia in Iob* 12.38.43 (PL 75:1006). 22. D. 15 c. 3. 23. Cod. 1.2.16. 24. Cod. 1.2.6. 25. Dig. 50.16.16. 26. X 1.6.34.

apostolice, *Liber VI*.<sup>27</sup> And it is said of King Saul in 1 Kings 13, where the prophet Samuel speaks in this way: *You have done foolishly, and have not guarded the commandments of the Lord, your God, which /179/ he commanded of you. But if you had not done so, the Lord would have already prepared your kingship over Israel for ever; but your kingship shall never rise again. The Lord sought him a man according to his own heart, and <the Lord> commanded of him that he be a duke over his people because you have not observed what the Lord commanded.* It is apparent, therefore, that a king is deprived of his kingship due to his sins, and is thenceforth a tyrant because he does not rule by right.

*But it must be known:* he spoke about a universal tyrant; here about a particular one, who is therefore not properly a tyrant. [8]

*Every proud man:* pride is the root of all evil, which is especially apparent in tyrants. And there follows five species of tyrants, which I shall follow in order. For [1] one is a general tyrant in the general commonwealth of the Romans; [2] another is the provincial one, who does not rule by right in a province; [3] there is another one of the city; [4] another of a single house; [5] another of his own self. But it ought to be seen whether there is a tyrant of a single neighbourhood. I shall say [[so]] below.<sup>28</sup> [9]

*That is, through a received power (potentia) of dignity:* this can be determined through the preceding or the following, †there is no force†.<sup>29</sup> [10]

*Another in a province:* someone can rule in a province not by right, as I said above<sup>30</sup> in a general commonwealth. And there is another mode, if someone was made governor of a province for a time or for a favour (*beneplacitum*), and he /180/ did not admit his successor when his time was finished. This one is a tyrant and falls afoul of the l. Iulia maiestatis, as in ff. *ad legem Iuliam maiestatis*, l. 2.<sup>31</sup> [11]

*Another in one's own home:* how this may be, I shall say below.<sup>32</sup> [12]

*Another does it in his own thoughts, by a wickedness hidden within himself:* a tyranny<sup>33</sup> that exists only in thought does not pertain to justice because no one merits punishment for a thought, as in ff. *de penis*, l. cogitationis.<sup>34</sup> Yet, it ought to be known that if someone were to undertake, or procure, [[some action]], although he did not complete it, he is punished as though he had completed [[the action]], as in ff. *ad legem Iuliam maiestatis*, l. 3, at the end.<sup>35</sup> But it is unique in this and in certain other delicts. The account (*littera*) that follows speaks about [13]

27. VI 2.14.2. 28. See §. 16 on p. 5. 29. As Quaglioni notes, and the different manuscript readings attest, the text seems corrupt here. 30. See §. 4 on p. 3. 31. Dig. 48.4.2. 32. See §. 21 on p. 7. 33. Reading *tyrannis* for *tyrannides* (which is the plural form). 34. Dig. 48.19.18. 35. Dig. 48.4.3.

the punishment that happens during the examination of the eternal judge; for that reason, I do not explain it, but I leave it to the theologians.<sup>36</sup> Yet, I accept that which is expedient to us.

[14] *He still desires to have the power to cause harm:* it must be noted particularly that a tyrannical act consists principally in causing one's subjects harm. For he is called a tyrant 'because he confines and tortures his own people', as it was said. But there are many tyrannical acts, as will be said [below](#).<sup>37</sup>

[15] And let these things suffice for an exposition of the account [\[\[in Kings\]\]](#). /181/

### III

[16] Thirdly, I ask whether one may be called a tyrant in a single neighbourhood.

[17] I respond: no, as is clear from the words of Gregory, who did not posit this species of tyranny. This is also proved by reason. The government of a tyrant is the worst, and it is directly opposed to the government of a king, which is the best.<sup>38</sup> And since he is a tyrant who does not rule by right, it is apparent that, where there is no kingship nor principate (*principatus*), there can be no tyrant. Therefore, since a government in the form of a principate (*regimen per modum principatus*) occurs (*cadit*) in a province or a city, a tyrant deservedly [\[\[can\]\]](#) occur there. But a king, or some other government by a mode of jurisdiction, does not usually exist in a neighbourhood; therefore, a tyrant does not occur there. For a neighbourhood is not governed by one person, but by the one who governs the whole city. And although there are some great and powerful men in the neighbourhood who oppress others, even so they are not tyrants. But there are those more powerful people, about whom the text speaks in ff. *de alienatione iudicii mutandi causa facta*, l. 3, at the beginning,<sup>39</sup> and *de officio presidis*, l. illicitas, §. ne potentiores.<sup>40</sup> — Unless you were to posit that someone assumed such great preeminence in one neighbourhood or part of the city that the universal curia of the city could do nothing there except to the extent that

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36. Bartolus is referring here to the earlier quotation of Gregory the Great. 37. See §. 51 on p. 15. 38. Cf. Aristotle, *Nicomachean Ethics* 8.10 1160a31–b23 (Barnes 1995, 2:1834); Thomas Aquinas, *On Kingship for the King of Cyprus* 1.3.21–29 (Phelan 1949, 13–18). This work, which Aquinas left incomplete at 2.4 (or 2.8 in the Leonine edition), was continued by Tolomeo Fiadoni, better known as Ptolemy of Lucca, under the title *On the Government of Princes*. 39. Dig. 4.7.3 pr. 40. Dig. 1.18.6.2.

he wished it (as the Roman nobles do); for, then, they are correctly called tyrants of that part of the city. /182/

But it could be said against the above argument: generally, as in a certain [18] city, it happens that a division occurs in the quarters or parishes, and there are some in a certain part who are called captains or syndics, who preside over the business of that part of the city: concerning which, it is noted in ff. *de pactis*, l. item magistris.<sup>41</sup> Therefore, since there is a government there, it is apparent that a tyrant can be there.

I respond: such people do not have jurisdiction, although sometimes some [19] coercion is allowed them in order to take certain taxes or to denounce evildoers. For they are said to attend upon those who govern the city more than govern it themselves; and thus they do not rule, but attend to those who rule. Hence, they cannot be called tyrants, but are more powerful by reason of their office, and can incur fear and fall afoul of that constitution, *si per impressionem*, in C. *quod metus causa*,<sup>42</sup> and in ff. *de concussionem*, l. 1.<sup>43</sup>

Moreover, the evil deeds of those more powerful individuals who are in the [20] neighbourhoods can be quickly corrected by those who govern the city; for this reason, they cannot be called tyrants; and for this reason, blessed Gregory did not posit a tyranny in the neighbourhood. I say by the same reason that, although someone may be more powerful, there cannot be a tyrant in villages, hamlets, and the fortresses of a count of some city—in which jurisdiction is not exercised legally (*de iure*) or *de facto*. Yet, if a place is so strong that someone rebelled against a city and defended himself from it in such a way that the evil deeds could be corrected there by those who govern the city without great difficulty, then he could be a tyrant there. About /183/ this, we have it in ff. *ad legem Iuliam maiestatis*, l. 3;<sup>44</sup> there, ‘or he holds a tower’;<sup>45</sup> and C. *de fundis limitrophis*, l. quicumque, libro 11.<sup>46</sup> What it is noted in ff. *qui satisdare cogantur*, l. 2, in the beginning,<sup>47</sup> [[also]] supports this argument (*facit*), where it is said that one who is from an exceedingly fortified place or fortress<sup>48</sup> is not suitable [[in terms of]] the ease of being brought to court (*conveniendi facilitate*).

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41. Dig. 2.14.14. 42. Cod. 2.19.11. 43. Dig. 47.13.1. 44. Dig. 48.4.3. 45. Cf. *Glos. ord.* to Dig. 48.4.3, s.v. ‘tenuerit’. 46. Cod. 11.59.2. 47. Dig. 2.8.2. 48. Cf. *Glos. ord.* to Dig. 2.8.2, s.v. ‘fideiussor’.

IV

- [21] Fourth, I ask whether there can be a tyrant in a home.
- [22] It seems that there cannot be one because jurisdiction is not being exercised there. Therefore, etc., as it was said.
- [23] On the contrary, there are the [words of Gregory](#) related above in the [second question](#).<sup>49</sup>
- [24] I respond: the head of a family can be said to have something of regal right in his own household. For he declares his own right amongst his sons and servants,<sup>50</sup> as in l. servi et filii, ff. *de furtis*,<sup>51</sup> and C. *de patria potestate*, l. congruentius.<sup>52</sup> Similarly, a greater or older household has, in some way, a certain kind of jurisdiction over his wife, children, and servants; and so may even an older brother or paternal uncle over minors under twenty-five years old who are in that household, as in C. *de emendatione servorum*, l. 1,<sup>53</sup> and *de emendatione propinquorum*, l. 1.<sup>54</sup> One is deservedly called tyrant if he does not rule in that household by right. And, for that reason, if someone from the family made some contract or something /184/ similar out of fear of one who is a tyrant in the household, it would be rescinded as if it had been made out of fear of the tyrant, as in ff. *quarum rerum actio non datur*, l. 1, §. que onerande,<sup>55</sup> and what is noted there. And in what way it may be proven that it was done out of fear of them, I described there,<sup>56</sup> and it is noted by Innocent in c. 1, <Extra>, *quod metus causa*.<sup>57</sup> If, nonetheless, someone has a brother in the household, or a son of the brother younger than himself but greater than twenty-five years of age, then the older [[brother]] does not have any power over him since he ought to govern himself by himself, as in ff. *de minoribus*, l. 1.<sup>58</sup> Hence, such fear would not suffice; therefore, if someone should wish to rescind the deeds of such a person, then deceit, or general fear, ought to be proven.
- [25] We can also call an abbot of some monastery, one who does not rule by right in it, a tyrant in his own home: because he has intruded (*intrusus*), as in *Extra, de prebendis*, c. eum qui, *Liber VI*,<sup>59</sup> or [[because]] he governs tyrannically even though he has a just title—as I shall say below regarding the [tyrant of the city](#).<sup>60</sup>

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49. See §. 4 on p. 3. 50. The ability and action of *ius dicere* (to declare right) is the root activity of jurisdiction. By using the phrase *ius sibi dicit*, then, Bartolus is pointing out that the *paterfamilias* has something similar to jurisdiction with respect to the members of his household. 51. Dig. 47.2.17. 52. Cod. 8.46.4 pr. 53. Cod. 9.14.1. 54. Cod. 9.15.1. 55. Dig. 44.5.1.5. 56. Bartolus ad Dig. 44.5.1.5. 57. Innocent IV to X 1.40.1 n. 1 ([1570] 1968, 173rb). Quaglioni listed it as title 39, which is incorrect; the full title is *De his quae vi metusve causa fiunt*. Bartolus has seemingly confused the title with the similar title of Dig. 4.2, *Quod metus causa gestum erit*. 58. Dig. 4.4.1. 59. VI 3.4.18. 60. See §. 51 on p. 15.

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### V

Fifth, I ask about the tyrant of the city: how many species of it might there be? [26]

I respond: it is agreed from what was said before that the tyrant of a city [27] is he who does not rule in a city by right. Now, just as not ruling by right happens in many ways, so are there many species of tyrant. For /185/ one kind of tyrant is open and manifest, another is hidden and silent. Similarly, it happens that someone is a manifest tyrant sometimes by defect of title, sometimes by his actions (*ex parte exercitii*). Similarly, a tyrant is hidden in the same way: sometimes on account of title, sometimes on account of a defect of title. We should therefore consider each one.

### VI

Sixth, I ask: is someone a manifest tyrant by defect of title in a city? [28]

I respond: he who manifestly rules in the city without just title so that it [29] apparent from the aforesaid definition. This happens in many ways. [1] First, if a city or fortress, which is invaded, does not have the right of electing a ruler, but someone acts on behalf of the ruler in that city, that person is a tyrant. For, he does not rule by right, and he is bound by the l. Iulia maiestatis, as in ff. *ad legem Iuliam maiestatis*, l. 3, at the end.<sup>61</sup> Likewise, if he remains in his office after his term has ended while the person to whom it pertains is unwilling, as in the same place.<sup>62</sup> But if you posit that a city or fortress has a right of electing a ruler for itself, and that the city transferred jurisdiction to someone, although by force, then it can be doubted because things done by fear are valid, though they may be rescinded by an action because [[they were done]] on account of fear. Therefore, during the time there is a ruler it cannot be said that there is a tyrant by defect of title. The truth is the opposite: for jurisdiction ought to be transferred voluntarily, and if it occurs through fear, then it is not valid by the

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**61.** Dig. 48.4.3. **62.** Bartolus seems to be saying, somewhat unclearly, that an official who stays in office beyond his term and in defiance of his superior's wishes falls afoul of the *Lex Iulia maiestatis*. The 'as in the same place' refers again to Dig. 48.4.3, the relevant part of which reads: 'He is bound by the same law [the *Lex Iulia maiestatis*] who ... when he has been succeeded in the province, does not hand over the army to his successor' (*Eadem lege tenetur et qui ... cum ei in provincia successum esset, exercitum successori non tradidit*).



law itself, /186/ as in ff. *de iudiciis*, l. 2, at the beginning,<sup>63</sup> and as it is noted in ff. *quod metus causa*, l. si qua mulier, §. si dos.<sup>64</sup>

[30] Now it must be seen how violence or fear is inflicted upon the people.

[31] I respond: if an army is gathered against a city without the order of a superior, as in the said l. 3, ff. *ad legem Iuliam maiestatis*,<sup>65</sup> or if it attacks a city by fighting with a foreign people (*gens*), as in ff. *ad legem Iuliam de vi publica*, l. 3, §. in eadem causa.<sup>66</sup> But if he makes himself be elected as lord with the men of the same city by rumour and sedition, then he has more doubt: because a majority (*pars maior*) seems to do this: for it seems to be a majority because he obtained [the election]. But it must be said also that it happens in this case that someone is a manifest tyrant by defect of title and is made [one] on account of force and fear. What is it, indeed, if he occupied the strongholds of some city with a small force (*modica gente*), and with them all occupied, a just fear falls upon the people? Clearly he was elected through fear: argument in *Extra, de restitutione spoliatorum*, c. Pisanis.<sup>67</sup> Or: what if, as commonly happens, he obtained it with the numerically greater part of the people, but the group was low-born (*gens vilis*), men of abject condition? Clearly it does not seem from this to have been done by the greater part of the people: for such people should not be magistrates (*decuriones*) or of the council, as in C. *de dignitatibus*, l. ne quis, book 12.<sup>68</sup> Similarly, if this was done with courtiers (*comitatensibus*), as in C. *ne rusticani ad ullum obsequium devocentur*, l. 1, book 11.<sup>69</sup> Or: posit that, with the small group (*gens*) of one city, he stirred up a rumour since some people live /187/ separated throughout [diverse] households: for a small people united prevail against many separated people. Clearly there was a just fear among the people. Or: posit that he first expelled or killed one or several of the greater individuals of the city with a small group (*gens*), on account of which another people justly fears, because it is written: ‘[.]I shall strike the pastor, and the sheep of his flock shall be scattered And it is proven by many ancient histories, and especially in the book of Judith, that there is a just fear among the people.’<sup>cf. Jt. 14:3, 15:1-7</sup>

[32] And I say simply that if someone is elected illicitly by rumour or sedition, he is a manifest tyrant by defect of title: the case is expressed in 1 q. 1 <c>. principatus,<sup>70</sup> and 14 q. 4, c. neque enim,<sup>71</sup> where it is said that even if he should govern well afterwards, he is a tyrant. This must be understood, unless he be exonerated afterwards, as in *Extra, de renunciatione*, c. nisi cum pridem.<sup>72</sup> The aforesaid appear to be true from this: that, by expelling some from the city

63. Dig. 5.1.2. 64. Dig. 4.2.21.3. 65. Dig. 48.4.3. 66. Dig. 48.6.3.2. 67. X 2.13.19. 68. Cod. 12.1.6. 69. Cod. 11.54.1. 70. C. 1 q. 1 c. 25. 71. C. 14 q. 5 c. 9. 72. X 1.9.10.

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unduly, when a election is celebrated, the expelled individuals can be called despised: for they should have been called as in *C. de decurionibus*, l. 2, book 10.<sup>73</sup> If, therefore, an election was made with those same people despised, it is not valid, as in *Extra, de electione*, c. quod sicut,<sup>74</sup> and c. venerabilem,<sup>75</sup> and the second c. bone memorie.<sup>76</sup> And thus he is a manifest tyrant by defect of title.

Therefore, the mode of proving that some such person is a tyrant is apparent [33] from the aforesaid. /188/

## VII

Seventh, I ask whether the deeds done by such manifest tyrants by defect of [34] title are valid, even while in power (*vel eorum tempore*).

This question has many articles. [35]

[1] First, it must be seen about the things which are done through the mode [36] of jurisdiction: are they valid? And it is agreed that the things that are done by those very tyrants, although they have jurisdiction, they are null by the law itself, as in *C. de sacrosanctis ecclesiis*, l. discernimus,<sup>77</sup> where the text says, ‘utterly empty’, and the gloss explains,<sup>78</sup> ‘[.]’ That is, by the law itself And rightly so: because it in fact says ‘utterly’, as if it were to say: they are null from the foundation, and thus were not valid at any time. The same [is true] about those things which are done by officials placed by those tyrants for the same reason; and it was expressed in *Extra, de scismaticis*, c. 1,<sup>79</sup> and 9 q. 1 c. ordinationes.<sup>80</sup>

But in a city where there is such a tyrant, certainly there is doubt about [37] those things which are done by other officials whom that city elected for itself while suffering a tyrant. And it seems that they are not valid by the same l. discernimus,<sup>81</sup> where it is said that what was done in the time of tyranny is null by the law itself. For it does not speak only about the deeds of a tyrant, but also about the deeds in the time of tyranny; and reason recommends this. For no act is freely done in a city when there is a tyrant there, and thus it seems done by the tyrant himself. For this, [see] *Extra, de prescriptionibus*, c. cum vobis,<sup>82</sup> where it is said that /189/ prescription does not proceed in a time of schism; hence, it notes that it [sc. such an act] cannot be done in a time of schism, otherwise prescription would proceed. But the time of tyranny can be called a time of

73. Cod. 10.32.2. 74. X 1.6.28. 75. X 1.6.34. 76. X 1.6.36. 77. Cod. 1.2.16. 78. *Glos. ord.* to Cod. 1.2.16, s.v. ‘funditus’. Modern editions have ‘infirmatis funditus’ (utterly weak) rather than Bartolus’s ‘vacuatis funditus’. 79. X 5.8.1. 80. C. 9 q. 1 c. 5. 81. Cod. 1.2.16. 82. X 2.26.14.

schism. For a tyrant sunders and separates himself from the communion of the universal empire.<sup>83</sup> This is clear because, as was said, he falls afoul of the *l. Iulia maiestatis*.<sup>84</sup>

[38] On the contrary, because in the said *l. discernimus*<sup>85</sup> it is not said that they are null except for what are done against the churches, the other ones therefore seem to remain valid. Moreover, iniquity would arise: for if tyranny endured for a long time in the city, should we say that everything celebrated and done in the curia is null? It seems hard.

[39] I say the following: that some processes occur against rebels or enemies of a tyrant, and such processes are null by the law itself. For, they should have not come before a judge notoriously hostile to them, or in a place notoriously suspect to them, as in ff. *ad Trebellianum*, *l. de etate*;<sup>86</sup> for these reasons (*causis*) it enters into possession, *l. Fulcinus*, §. 1,<sup>87</sup> and *de legationibus*, *l. sciendum*,<sup>88</sup> and it is expressed in *de re iudicata*, *c. pastoralis*, in the *Clementines*.<sup>89</sup> However, some ordinances (*ordinamenta*), sentences, and processes are made against the inhabitants (*intrinsecos*) themselves. There is more doubt then. But it must be noticed that in a free man, who is detained by someone under the power of his homeland /190/ or lord: if he, living so, knowingly does something (or does what he was going to do in any case), then it is valid. It is otherwise if he was going to do something different, as in ff. *de acquirendo rerum dominio*, *l. liber homo*, final §.<sup>90</sup> and *l. homo liber*, at the start,<sup>91</sup> and the notes there; and *de acquirenda hereditate*, *l. qui in aliena*, §. 1.<sup>92</sup> Thus, in this situation (*proposito*), whatever the same free people, now detained under tyrannical power, do—or whatever officials elected by such a people do—which they would have done in any case, even if they were under their own free power (as, for example, decisions of certain common cases, which every tyrant allows to go under the rules of justice), then in that case, they are valid because they were done voluntarily. There are other things, which they would not have done if not because of the tyrant. And these things are not valid as they were not done freely, but through fear of the tyrant, through the aforesaid laws (*iura*). So says the *l. discernimus*.<sup>93</sup> For it is certain that, regarding churches, there is no management by others than by just prelates—if there had been no tyrant. For that reason, the aforesaid [actions] are said to be absolutely empty. And by the quality of the deeds, these are carefully assessed, in the same way as we speak about a minor who did them (which a diligent older individual would not have done). I think also that

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83. Bartolus seems to be playing on the similarity of *scisma*–*scindo* (schism–sunder). 84. Dig. 48.4.3. 85. Cod. 1.2.16. 86. Dig. 36.1.8. 87. Dig. 42.4.7.1. 88. Dig. 50.7.5. 89. Clem. 2.11.2. 90. Dig. 41.1.19. 91. Dig. 41.1.54 pr. 92. Dig. 29.2.6.1. 93. Cod. 1.2.16.

if injuries are done by judges in cases to those whom the tyrant holds suspect, restitution should be given to them by a general clause, as in ff. *ex quibus causis maiores*, l. 1, at the end;<sup>94</sup> and it is noted in *ad Trebellianum*, l. servo invito, §. cum pretor.<sup>95</sup> I think that the time for seeking restitution runs once the tyranny has finished, just as in other [[cases]] once absence has finished, or the age of minority has finished. *Extra, de prescriptionibus*, c. cum vobis does this.<sup>96</sup> /191/

[2] The second investigation regarding the aforesaid is about what happens [40] through the mode of contract. And this [[may occur]] in many forms.

For sometimes a city gives or grants something to the tyrant. In this case, a [41] contract is null by the law itself. For, just as a promise made by the one who is detained to a person who forced him into prison is not valid, so is a promise or any contract not valid, which was made by a people to a tyrant who holds the people captive and, in a way, imprisoned. For, a tyrant is said to hold a people in servitude, as in *Extra, de immunitate ecclesiarum*, c. non minus.<sup>97</sup> We can also say that the aforesaid contracts are null by l. 1, *C. de contractibus iudicum*.<sup>98</sup> For, if the said contracts are annulled by a true judge, they are that much more annulled by a tyrant judging unjustly: argument in *Auth. de restitutionibus et ea que parit*, final §.,<sup>99</sup> and which is noted in *C. quando mulier tutele officio fungi potest*, aut. sacramentum.<sup>100</sup>

Sometimes some contracts occur between the tyrant himself and individuals [42] who live under him. And then the said contract can also be called null by l. 1, *C. de contractibus iudicum*.<sup>101</sup> It can also be said that such a contract will be annulled by the l. si per impressionem, *C. quod metus causa*,<sup>102</sup> especially if he made the thing to be sold to him under coercion. For, then, he falls afoul of that constitution so that he is compelled to return the thing and he loses the value. Now, someone will prove coercion if the tyrant did not permit the thing to be cultivated (*coli*), or he threatened the possessor unless he sell it, or he sought other pretexts, or he made many requests /192/ of the person who does not have the thing for sale. For, the request of a superior is an order, as in ff. *quod iussu*, l. 1, in the beginning, in the gloss on the word '[.]quemadmodum'<sup>103</sup>

Sometimes such a tyrant makes a contract with foreigners in the name of [43] the city. And then, if [[he does so]] by submitting or obliging that city to another, it is not valid by the law itself, as in *C. ut nemo ad suum patrocinium suscipiat*, l.

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94. Dig. 4.6.1.1. 95. Dig. 36.1.67.2. 96. X 2.26.14. 97. X 3.49.6. 98. Cod. 1.53.1. 99. *Auth.* 4.18.2.1 (= Nov. 39.2.1). 100. *Auth.* 'Sacramentum' post Cod. 5.35.2.4. 101. Cod. 1.53.1. 102. Cod. 2.19.11. 103. *Glos. ord.* to Dig. 15.4.1.2, s.v. 'quemadmodum'.

On the Tyrant, c. 7

1, libro 11,<sup>104</sup> and *Extra, de scismaticis*, c. 1,<sup>105</sup> and *de electione*, c. fundamenta, at the end, book 6.<sup>106</sup>

[44] Sometimes he does not submit the city, but makes a contract in another way. And then, if [he does so] in favour of the tyrannized city, it seems that it is not valid, just as it [sc. the Digest] says about the possessor of inheritance in bad faith, as in l. si tibi, §. cum possessor, ff. *de pactis*.<sup>107</sup> Hostiensis determines the contrary in *Extra, de scismaticis*, c. 1,<sup>108</sup> namely, that it may be valid when it is for the utility of the city, just as we say about a minor: argument in C. *de procuratoribus*, l. non eo minus.<sup>109</sup> But if one contract is made (*celebratur*) partly for the city, and partly against, then if there happen to be diverse clauses (*capitula*), it is likewise valid in that it is for the city, as in ff. *de minoribus*, l. etiam, §. 1.<sup>110</sup> But if the clauses are connected, then if the city rejects how much is against it, it will not be able to approve how much is for it, /193/ as in ff. *pro socio*, l. de illo, §. 1,<sup>111</sup> and *de minoribus*, l. si iudex,<sup>112</sup> and l. quod si minor, §. restitutio.<sup>113</sup> So maintains Hostiensis in the said c. 1 *de scismaticis*. I think the aforesaid are true enough and consonant with reason in a person who is aware that such an individual is a tyrant: for, this individual is not helped by the title *quod falso tutore auctore*.<sup>114</sup> But if we were to posit that the person making the contract was unaware, he is helped by the restitution in that title *quod falso tutore auctore*, l. 1, at the end.<sup>115</sup> Now, it is noted by a gloss on 9 q. 1 c. ordinationes<sup>116</sup> how it may be possible that someone may be made so notorious, just as it is that someone can be unaware that a person is a manifest tyrant by defect of title.

[45] Sometimes a tyrant does not make a contract, but sells by receiving (through himself or his officials) a payment of things that are owed to the commonwealth. Are those who make their payments freed [from their debts]? On this point, it must be known that sometimes people pay who are debtors to the city where the contract was made with that tyrant: then it seems that the people who pay are freed, as in l. si urbana, ff. *de conditione indebiti*.<sup>117</sup> But it says those things when someone makes a contract with a thief, by promising to him (*sibi*) in his own name; here, we speak about a person who makes a contract with a tyrant in the name of the city. Yet it seems that it could be paid to him by his contract, just like to a slave or son of the family, as in ff. *de factis*, l. si unus, in

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104. Cod. 11.37.1. 105. X 5.8.1. 106. VI 1.6.17. 107. Dig. 2.14.17.6. 108. Hostiensis, *Commentaria ad X 5.8.1* ([1581] 1965, 2:40v). 109. Cod. 2.12.14. 110. Dig. 4.4.29.1. 111. Dig. 17.2.23.1. 112. Dig. 4.4.41. 113. Dig. 4.4.24.4. 114. Dig. 27.6. 115. Dig. 27.6.1.6. 116. *Glos. ord.* to C. 9 q. 1 c. 5, s.vv. 'nisi pobare' and 'nescisse'. 117. Dig. 12.6.55.

the beginning,<sup>118</sup> *de peculio*, l. /194/ quod servus,<sup>119</sup> and *de solutionibus*, l. quod servus.<sup>120</sup>

Sometimes what is owed is paid to a city in another way than in the way [46] it was done by the tyrant. In that case, it seems that the one paying is not freed, as in the said l. si urbana.<sup>121</sup> What is noted by Innocent on *Extra, de electione*, c. nichil,<sup>122</sup> works best for this [[argument]]: where he is seen to say that individuals, who pay an intrusive (*intruso*) prelate without any title, are not freed. It seems to me, however, that the aforesaid are true in a person who pays a thief, intrusive prelate, or tyrant: he cannot inflict fear upon the person who is paying, nor any threats (*fervorem minacem*), as [[for example]] because he was a debtor of another city. But, if he can inflict fear and force or threats upon him by reason of the jurisdiction that he exercises (although [[only]] *de facto*)—as [[for example]] because he was one of his subjects—, then he is freed by paying him or his official, as in l. Paulo Callimacho, final §., ff. *de legatis* 3,<sup>123</sup> and in *de annuis legatis*, l. liberto, §. Lucius.<sup>124</sup>

This is also proved by reason. For that violent exaction, which occurs to [47] the debtor, becomes an injury to the city of which he is a debtor. For that city tyrannizes principally, and, for that reason, a fault of the city seems to take place, as in ff. *locati*, l. si merces, §. culpe,<sup>125</sup> and in *solutio matrimonio*, penultimate *lex*.<sup>126</sup> But when a quantity owed in kind is lost by the fault of the creditor, the debtor is freed by the help of an exception, as in l. qui decem, ff. *de solutionibus*.<sup>127</sup> /195/ But if a species was owed, then there is less doubt, because he is freed by the same law (*ius*), as in the said l. qui decem.<sup>128</sup> Then a species owed to one person is taken away by force, ff. *de periculo et commodo rei vendite*, l. lectos, best makes the argument (*facit optime*) for this;<sup>129</sup> and the following *lex*,<sup>130</sup> and what is noted there; and *de pigneraticia actione*, final *lex*, at the end;<sup>131</sup> *de evictionibus*, l. Lucius [[also]] argues this;<sup>132</sup> and *de rei vindicatione*, l. item si verberatum, §. 1.<sup>133</sup> The text makes a similar distinctions, namely, either force is inflicted by one who has jurisdiction or not: ff. *si quis cautioni*, l. 2, final §.<sup>134</sup> But perhaps it could be said that if there were such a tyrant of such a condition, from whom payment could be claimed without difficulty, then an exception would not be given to a paying debtor, as it is noted in the said l. 2, at the end.<sup>135</sup> It is otherwise if making a claim would not be easy, as in the final *lex*, ff. *de eo per quem factum erit*.<sup>136</sup>

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118. Dig. 2.14.27. 119. Dig. 15.1.56. 120. Dig. 46.3.35. 121. Dig. 12.6.55. 122. Innocent IV to X 1.6.44, n. 3 ([1570] 1968, 75ra). 123. Dig. 32.1.27.2. 124. Dig. 33.1.21.3. 125. Dig. 19.2.25.4. 126. Dig. 24.3.66. 127. Dig. 46.3.72. 128. Dig. 46.3.72. 129. Dig. 18.6.13. 130. Dig. 8.6.14. 131. Dig. 13.7.43.1. 132. Dig. 21.2.11. 133. Dig. 6.1.15.1. 134. Dig. 2.11.2.9. 135. Dig. 2.11.2.9. 136. Dig. 2.10.3.

But, in my opinion, the said distinction has a place when violence is inflicted upon somebody in injury of the one on whom it is inflicted. It is otherwise, by the same reasons, if [\[\[it is done\]\]](#) in injury of his creditor. Nor do I think in the aforesaid that someone necessarily has to point out a fear inflicted upon him by a tyrant: in fact, it suffices if he made a law or a proclamation (*preconium*) that everyone should pay in this way. For, he who paid due to the proclamation, was justly afraid that fear would be inflicted: which suffices, as the text says in ff. *quod falso tutore auctore*, l. novissime, in the beginning.<sup>137</sup> This text does much for excusing those debtors who do pay. For, a tutor is compelled there at the ruin of his pupil, just as a debtor is here at the ruin of his city. It is clear from the aforesaid that the exactors, and others placed by these tyrants, who demand money and spend it afterwards at the command of the tyrant, or give it to the tyrant, are freed. /196/

[48] Sometimes such tyrants do not make contracts or sales, but allow the goods and rights of the city to be lost and prescribed; I think then that it would not be prescribed against the city, as in *C. de prescriptione*, l. 1,<sup>138</sup> and *Extra, prescriptionibus*, c. cum vobis.<sup>139</sup>

[49] I also say that if a tyrant were to use some right or jurisdiction belonging to the city, not so that it would be recognized by the city, but by another, he seems to use another person's right with respect to himself, but not with respect to the city. But the city retains its right by that usage, as it is notably gathered in ff. *de itinere actuque privato*, l. 1, §. si tibi fundum.<sup>140</sup>

## VIII

[50] Eighth, I ask about the manifest tyrant by reason of conduct (*ex parte exercitii*), although he has a just title, he is [\[\[still\]\]](#) called a tyrant, although less properly, as in 14 q. 4, c. neque enim.<sup>141</sup>

[51] I say that the person who does tyrannical works is a tyrant by reason of conduct; that is, his works do not aim for the common good, but for the exclusive good of the tyrant. For that is not to rule by law (*ius*). But /197/ let us descend to more particular actions so that a mode of proving may be had more easily. These actions are in large measure included above [in the first book of this tract](#).<sup>142</sup> These actions consist in this: that he causes his subjects harm. Aristotle

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137. Dig. 27.6.7.1. 138. Cod. 7.33.1. 139. X 2.26.14. 140. Dig. 43.19.1.11. 141. C. 14 q. 5 c. 9. 142. See p. 2.

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enumerates these acts more clearly in *Politics* 5;<sup>143</sup> and Giles does in his book *On the Rule of Princes*.<sup>144</sup>

- [1.] First, it is a characteristic of a tyrant to kill the excellent and powerful men of the city so that they cannot rise up against him. We shall also see that they kill their own brothers and relatives, which is the worst sign of tyranny.
- [2.] Second, that they destroy the wise men so that they, recognizing their evil deeds, do not accuse [[the tyrants]] and provoke the people against them.
- [3.] Third, that they end [[all]] teaching and study. For they not only kill the wise, but also work so that none come to be. For, they are always afraid that they will be caught through wisdom. /198/
- [4.] Fourth, that they do not even permit licit fraternities and associations; for they fear that they will rise against them.
- [5.] Fifth, that they have many spies throughout the city. For, since they know that they act wickedly, they always believe that men speak wickedly about them and plot against them. And, because of this, they gladly listen to such informers.
- [6.] Sixth, that a tyrant strives to keep the city in division so that, with each part afraid of the other, none rises up against him.
- [7.] Seventh, that he ensures (*procurat*) to make his subjects poor so that they are so occupied with their own concerns about how they might live that they do not think to plot anything against him.
- [8.] Eighth, that he attempts to send wars and warriors to foreign regions (*partes*) in such a way that they, intent upon them, do not consider [[anything]] against him. And [[he acts thus]] because men are made poor from wars, and are called from their pursuits, which the tyrant desires. And [[he acts thus]] so that he has warriors for himself when it is expedient.
- [9.] Ninth, that he does not protect himself with his own citizens, but through foreigners: for he is afraid of his own citizens. /199/
- [10.] Tenth, when there are factions in the city, he adheres to one and causes another harm with it.

So the said philosophers say, which we should examine. [52]

First,<sup>145</sup> killing excellent men and brothers is a tyrannical act. It is true unless [53]  
[[it is done]] due to a just cause, as Romulus did with Remus, as in the final *lex*,

143. Aristotle, *Politics* 5.11 1313a33–b32 (Barnes 1995, 2:2085). 144. Giles of Rome, *De regimine principum* 3.2.10 (Venice 1498, 104vb–105va). 145. See [1.] on p. 16.



ff. *de rerum divisione*.<sup>146</sup> For who doubts that, if there were some quarrelsome, seditious, and powerful individual in the city, he ought to be expelled by a just judge, as in ff. *de penis*, l. capitalium, §. solent,<sup>147</sup> and l. si quis aliquid, §. auctores,<sup>148</sup> and *de officio prefecti urbi*, l. 1, final §.<sup>149</sup> Then, because it would have been done with just cause, it would not be a tyrannical act.

[54] **Second**,<sup>150</sup> namely, killing prudent men: it likewise must be understood to be without cause by the same laws (*iura*).

[55] **Third**,<sup>151</sup> that they end [[all]] teaching and study: understand this about studies fitting for that city, as in ff. *de excusationibus tutorum*, l. si duas, §. est autem.<sup>152</sup> But if study is prohibited for which the city is not suited, then it is not a tyrannical act, as in ff. first constitution, §. hec autem tria.<sup>153</sup>

[56] **Fourth**,<sup>154</sup> that they do not permit even licit associations: /200/ understand it ‘[.]’except by cause For, what if one association, even a licit one, commits delict on one occasion? Certainly, it can be dissolved legally (*de iure*), as in ff. *de re militari*, l. 3, §. si plures.<sup>155</sup> For I see that some people form an association under the pretext of religion, and they disrupt the status of the city. Therefore, one comprehends by the quality of the persons whether disrupting those fraternities is a tyrannical act.

[57] **Fifth**,<sup>156</sup> namely, that they have many spies in the city: this can be the action of a just ruler if it be done for an appropriate end, as in ff. *de officio prefecti urbi*, l. 1, penultimate §.<sup>157</sup> For an upright judge has spies in order to correct delicts and other things which occur unjustly in the city. But a tyrant has spies for the things which might damage his status. Indeed, he relates all things to his own exclusive advantage.

[58] **Sixth**,<sup>158</sup> that he strives to keep the city in division: this is a tyrannical act without exception since the peace (*quies*) of the citizens pertains principally to a just judge, as in l. 1, §. quies, ff. *de officio prefecti urbi*,<sup>159</sup> and *de officio presidis*, l. congruit, at the beginning,<sup>160</sup> and in aut. *de mandatis principum*, §. deinde conveniens,<sup>161</sup> where this is specified more explicitly.

[59] **Seventh**,<sup>162</sup> that he attempts to make his subjects poor: this is a tyrannical act without exception. For an upright judge ought to receive nothing beyond his due, nor afflict his subjects with real or personal burdens, /201/ as in C. *ad*

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146. Dig. 1.18.11. 147. Dig. 48.19.28.3. 148. Dig. 48.19.38.2. 149. Dig. 1.12.1.14. 150. See [2.] on p. 16. 151. See [3.] on p. 16. 152. Dig. 27.1.6.2. 153. D. const. *Omnem*, 7. 154. See [4.] on p. 16. 155. Dig. 49.16.3.9. 156. See [5.] on p. 16. 157. Dig. 1.12.1.13. 158. See [6.] on p. 16. 159. Dig. 1.12.1.12. 160. Dig. 1.18.13 pr. 161. Auth. 3.4.2 (= Nov. 17.4.2). 162. See [7.] on p. 16.

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*legem Iuliam repetundarum*, l. iubemus,<sup>163</sup> and the final *lex*,<sup>164</sup> and in auth. *de mandatis principum*, §. illud tamen.<sup>165</sup>

**Eighth**,<sup>166</sup> that he procures wars: causing (*procurare*) internal wars is a [60] tyrannical act without exception; but procuring external wars can sometimes be just; causing an unjust war, however, is a tyrannical act without exception, as in *Collatio* 10, in the title *hic finitur lex*, c. domino guerram.<sup>167</sup>

**Ninth**,<sup>168</sup> that he does not protect himself with his own citizens. This can be [61] a just act. For a people can be so untamable and so perverse that even a just lord cannot have confidence in them. This happens especially in cities which are recently recovered—even [[those recovered]] by just lords. And, for this reason, emperors would sometimes expel all the men of one city and place others [[there]], as in *C. de iure fisci*, l. 1, libro 10,<sup>169</sup> and *non licere metrocomie habitatoribus*, l. 1, libro 11.<sup>170</sup> So we even sometimes see that just lords make fortifications and strongholds in the city. These are indeed of regal right as in *Collation* 10, *que sint regalie*, c. 1.<sup>171</sup> But these things occur occasionally (*casualia*) with a just lord; they are common with a tyrant.

**Tenth**,<sup>172</sup> adhering to one faction and oppressing the other is a tyrannical [62] act without exception since the final end of political science (*civilitatis*) is the rest and peace (*quies et pax*) of the citizens, as it was said. /202/

All the aforesaid, therefore, are signs for proving tyranny, but principally [63] those two: namely keeping a city in division, and to impoverish one's subjects, afflicting them in their person and their things<sup>173</sup>—which is best proved in the chapters given above.

It is clear from the aforesaid how such a person is proven to be a tyrant. [64]

## IX

Ninth, I ask: what ought a superior do if some duke, marquis, count, or baron, [65] who has a just title, is proved to be a tyrant by his conduct (*exercitio*)?

I respond: he ought to depose him since lords who do such things keep [66] their people in servitude. But it pertains to a superior to rescue his people from

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163. Cod. 9.27.4. 164. Cod. 9.27.6. 165. Auth. 3.4.9 (= Nov. 17.4.9). 166. See [8.] on p. 16. 167. L.F. 2.28.1. 168. See [9.] on p. 16. 169. Cod. 10.1.4. 170. Cod. 11.55.1. 171. L.F. 2.56.1. 172. See [10.] on p. 16. 173. Bartolus has switched from talking about afflicting by means of 'real and personal burdens' (*gravaminibus realibus vel personalibus*) in the seventh characteristic (which sounds related to the 'real'/'personal' distinction in Roman law) to afflicting them with respect to 'persons and things' (*in personis et rebus*). It is not clear if these are meant as precise equivalents.

servitude, as in *C. de officio prefecti pretorio Africe*, l. 1, near the beginning.<sup>174</sup> Likewise, deposing tyrants belongs to the superior, as in the same title, *de officio prefecti pretorio Africe*, l. in nomine Domini, at the start, there: ‘[.]we have cast down the strongest of tyrants<sup>175</sup> /203/

[67] But what law do tyrants fall afoul of, and through what law do they come to be deposed?

[68] I respond: regarding that tyrant who seizes [[power]] for himself without a just title, it is certain that he is bound by the *l. Iulia maiestatis*.<sup>176</sup> On the other hand, regarding the tyrant who has a just title, but appears a tyrant by his conduct, I say that because he causes his subjects bodily (*in corpus*) harm, he falls afoul of the *l. Iulia de vi publica*.<sup>177</sup> Likewise, because he holds the city in division and thus does not allow legal processes (*iudicia*) to take place as he ought to do, he falls afoul of the same law, as in *ff. ad legem Iuliam de vi publica*, l. qui dolo malo.<sup>178</sup> Likewise, because he imposes new exactions, and new taxes, he falls afoul of the same law, as in the same title, final law;<sup>179</sup> the penalty of this law is deportation, as in *Institutiones, de publicis iudiciis*, §. item lex.<sup>180</sup> And thus he loses everything which is of civil law (*ius*), as in *l. quidam, ff. de penis*;<sup>181</sup> and thus, as he is notorious (*infamis*), he loses office (*dignitas*) and jurisdiction, as it is expressly said in *ff. ad legem Iuliam de vi privata*, l. 1, at the start.<sup>182</sup> Likewise, by this he falls afoul of the *l. Iulia de ambitu*, as in *ff. ad legem Iuliam abitus*, l. 1, §. 1,<sup>183</sup> and of the constitution *C. nova vectigalia*, final law.<sup>184</sup> Likewise, perhaps, he falls afoul of capital punishment, as in *C. de superexactionibus*, l. 1, libro 10.<sup>185</sup>

[69] I also say that, if people living under such a tyranny, ‘howsoever they plot publicly or secretly’ against a prince or his /204/ officials, they are rebels of the empire by that same law (*ius*), and they lose office (*dignitas*) according to the new law of the emperor Henry.<sup>186</sup>

X

[70] Tenth, I ask: what should we say about what we have seen the high pontiff, the emperor, and their legates do? For they established some of those whom they clearly knew were tyrants as vicars over lands which they held through tyranny: as Clement VI did in the city of Bologna regarding Lord Thaddeo dei Pepoli and

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174. Cod. 1.27.1.5. 175. Cod. 1.27.2 pr. 176. Dig. 48.4.3. 177. Dig. 48.6.3. 178. Dig. 48.6.10. 179. Dig. 48.6.12. 180. Inst. 4.18.8. 181. Dig. 48.19.17. 182. Dig. 48.7.1 pr. 183. Dig. 48.-14.1.1. 184. Cod. 4.52.4. 185. Cod. 10.20.1. 186. *Extravagantes Henrici VII*, 2, *Qui sint rebelles*.

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his sons, Lords Jacob and John. Our Emperor Charles did the same things with the tyrants of Lombardy. Lord Giles, bishop of Sabina, legate of the Apostolic See, did the same thing with many tyrants in the March of Ancona.<sup>187</sup>

I respond: It must be presumed that such great lords do not do this without [71] great reason (*causa*). Indeed, the reason can be twofold. [1] First, [it could be] due to some great and difficult things, which fall to them to handle (*eis expedienda incumbunt*): for, just as the diligent sailor casts overboard the less valuable in order to save the more precious, as in ff. *ad legem Rodiam de iactu*, l. qui levande,<sup>188</sup> and the diligent head of the household ought to prefer to make his more valuable things are safe, as it is noted in ff. *commodati*, l. si ut certo, §. quod vero senectute,<sup>189</sup> so does a just lord sometimes /205/ work (*pertransit*) with one tyrant and make him his vicar in order to be able to reform first the things that are more difficult. [2] The second reason can be charity and a love for those who are under the tyrant. For, just as we see physicians do naturally when one infirmity cannot be cured without great danger to the person: in that situation, they take pains (*procurant*) to sustain their nature so that the infirmity does not proceed any further—from which it happens that nature helps itself; in the same way, the upright prince sometimes acts, seeing that sometimes one tyrant cannot be deposed without a terrible slaughter (*magno exterminio*) of those who are under the tyrant: for the sake of their good, he makes the tyrant his vicar in order that the tyrant fears less from this and burdens the people less. And, in the meanwhile, a case will occur whereby with justice persuading, the tyrant can, be deposed without harm to the people.

On account of a supervening title, however, the said tyrants do not cease to be [72] tyrants if they undertake the aforesaid tyrannical deeds. For such deeds, which are delicts, do not come [to be legitimate] deeds for them by the commission [of a title], as in ff. *de conditione indebiti*, l. si procurator,<sup>190</sup> and *que in fraudem creditorum*, l. si pater.<sup>191</sup>

## XI

Eleventh, I ask whether the deeds by tyrants who have a just title can be valid. [73]

I say that: either <the tyrant> initiated (*fecit*) processes against the people [74] he exiled (*suos exititios*) and rebels, and [then] they are not valid because they

<sup>187</sup>. Cf. Matteo Villani, *Cronica* 1.59 (Muratori 1723/1751, 14:68–69); [O. Raynaldi,] *Annales Ecclesiastici* ad a. 1350 (Lucca, 1750), 25:505–508. <sup>188</sup>. Dig. 14.2.8. <sup>189</sup>. Dig. 14.6.5.4. <sup>190</sup>. Dig. 12.6.6. <sup>191</sup>. Dig. 42.8.12.

ought not have appeared before /206/ a judge notoriously hostile to them, as it was said in the [preceding discussion](#).<sup>192</sup> But, the things that he himself did against internal [[individuals]] are valid as long as he is tolerated in that office (*dignitas*), as in l. Barbarius, ff. *de officio pretorum*,<sup>193</sup> and C. *de sententiis*, l. si arbiter,<sup>194</sup> and *de testamentis*, l. 1,<sup>195</sup> and *Extra, de rescriptis*, c. sciscitatus,<sup>196</sup> and in the same place by Innocent,<sup>197</sup> and *de re iudicata*, c. ad probandum.<sup>198</sup> And these things are true as long as they are tolerated.

[75] But what if a process has already begun against such a tyrant? Are the deeds valid before the sentence, while the process is pending?

[76] I respond: Sometimes a process takes place which results in a declaratory sentence being issued, as because he committed some delict, on which account he is deprived of jurisdiction by the law itself—or he is called a slave or infamous; then, the deeds done after the process has started are not valid, as in C. *de testamentis*, l. 1, at the end, there: ‘[’;]nor has <anyone>, up to this time, raised a controversy about their status<sup>199</sup> and ff. *qui et a quibus*, l. quesitum.<sup>200</sup> But if a process takes place whereby he comes to be deprived by a sentence, then the deeds done by him in the interim are valid because he retained office (*dignitas*) in the interim, as in ff. *de iure fisci*, l. aufertur, §. in reatu,<sup>201</sup> and it is expressed in ff. *ad municipalem*, l. Lucius, §. in questionibus,<sup>202</sup> and it is noted in C. *de reis postulatis*, l. 1, libro 10.<sup>203</sup>

[77] And, in the same way, if someone makes a contract, or dissolves one with a tyrant, /207/ it is valid, as it is noted by Innocent, *Extra, de electione*, c. nichil.<sup>204</sup> Understand this as, unless he were to make a contract by submitting to the city, as I shall say [below](#).<sup>205</sup>

[78] And by this, I say that if someone is under noble political rule, and he has a just title, although he may be a tyrant with respect to his conduct, he nevertheless has a privilege (*beneficium*), as in *Extra, de baptismo*, c. 1, in the *Clementines*,<sup>206</sup> as long as he is tolerated in his office (*dignitas*). It is otherwise if there were a defect of title, as it is noted there.

[79] Likewise, I say that after such a person holding such a title comes to tyranny due to the manner of his conduct, if he were to make even more jurisdiction be

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192. See §. 39 on p. 11. 193. Dig. 1.15.3. 194. Cod. 7.45.2. 195. Cod. 6.23.1. 196. X 1.3.13. 197. Innocent IV to X 1.3.13, n. 2 ([1570] 1968, 12ra). 198. X 2.27.24. 199. Cod. 6.23.1. 200. Dig. 40.9.15. 201. Dig. 49.14.46.6. 202. Dig. 50.1.17.12. 203. Cod. 10.60.1. 204. Innocent IV to X 1.6.44, n. 3 ([1570] 1968, 75ra). 205. See §. 80 on p. 22. 206. Clem. 3.15.1.

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granted to him by the people, it would not be valid, almost as if the people did so through fear, as it was said in the preceeding [[chapters]].

Likewise, every contract that he made concerning the city itself (submitting [80] and obliging it), would not be valid. For it is not [[done]] in the place of the lord, since he despoils that city of its liberty, as in ff. *pro emptore*, l. si fundum, §. *si tutor*,<sup>207</sup> and it is expressed in *Extra, de iureiurando*, c. intellecto;<sup>208</sup> *de electione*, c. fundamenta, penultimate §., libro 6,<sup>209</sup> makes [[the same point]].

## XII

Twelfth, I ask inquire about the tacit and hidden tyrant. [81]

And he is the one who rules in a city under a kind of veil [[and]] not by law [82] (*ius*). Now that veil happens in two ways: [1] first, by /208/ a title which he makes to be granted to himself; [2] second, by a title which he does not allow to be granted to himself.

[AD 1] Regarding the first type of secrecy—by a title which he makes to [83] be granted to himself—it must be known, as it was said above, that a tyrant is properly opposed to a king. But it is from royal power that he may be a perpetual [[ruler]]; also that he may have all jurisdiction, as is clear in the chapters related above. From these two considerations, two tyrannical veils are found.

[a] First, that someone makes all jurisdiction to be granted to himself for a [84] time, and to be reconfirmed when that time has finished, so that his government thus seems to be more of a judge than a tyrant. But concerning this I say that, even if someone makes this jurisdiction be granted to himself in his own city, the title is null. For no one can have such jurisdiction, as in C. *de assessoribus*, l. in consiliariis.<sup>210</sup> It does not work (*fallit*) in the city of Rome, where someone can be a praetor, as in l. 2, C. *de officio pretorum*,<sup>211</sup> and a senator for only a year and no longer, as in the mentioned c. fundamenta, at the end.<sup>212</sup> Likewise, it does not work for a defender of a city, as in Auth. *de defensoribus civitatum*, §. interim.<sup>213</sup> But those people do not have pure and mixed imperial rule, but [[only]] bare jurisdiction. And thus the same things ought to be said about such a person, who has taken up no title, as was said above about the tyrant by defect of title.

But if you were to posit that the city has [[jurisdiction]], by privilege or [85] custom, in such a way that the power of the people who grant it could not be

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207. Dig. 41.4.7.3. 208. X 2.24.33. 209. VI 1.6.17, §. 7. 210. Cod. 1.51.10. 211. Cod. 1.39.2. 212. VI 1.6.17. 213. Auth. 3.2.1 (= Nov. 15.2.1).

recalled into doubt, and thus the title would be valid, having been granted in the first place, then it must be seen /209/ whether he is a tyrant from the fact that he makes himself be reconfirmed [[in that position]]. This seems to be by a common right because such a confirmation is not valid, but rather falls afoul of the l. Iulia ambitus, as in C. *ad legem Iuliam de amibtu*, l.1.<sup>214</sup>

[86] But if you were to posit that the power of the people was so great that it could make a dispensation against the law, then it must be seen whether he so fortified himself from the start of his government, that the people would necessarily have to elect him for a second term. And then he truly is a tyrant, elected through fear, and so by defect of title. If, on the other hand, he was elected voluntarily, but was a tyrant in the manner of his conduct, then say as in the preceding [[chapters]].

[87] [b] The second veil is that certain tyrants make some title for themselves in which there is, as it were, no jurisdiction: for example, because they make themselves be appointed ‘Standard-bearers’ or ‘Gonfaloniers’,<sup>215</sup> or they make custody of the city be entrusted to themselves, or they make themselves captains of the mercenaries or of the militia (*gentis armigere*). And they say by this that they are not tyrants since all jurisdiction ought to belong to a tyrant, just as it does to a king. For one who has little or no jurisdiction cannot be said to rule. Certainly, he is not a tyrant from this title. But by this he sometimes comes into so much power (*potentia*) that he orders the offices of the city just as he wishes, and the officials obey him as they do a lord. In that case, I say that if he does tyrannical works, or makes them be done, he truly is a tyrant. For he rules in a city /210/ when the offices of the government (*regimina*) obey him; and he does not rule by law (*ius*) because he does tyrannical works. And thus he is a tyrant.

[88] But how will this be able to be proved when so hidden a tyrant does not act through himself [[and]] rarely enters city hall (*palatio*), but all the offices of the government obey his writings and his agents?

[89] I respond: Proof is hard since witnesses are not called when the aforesaid things occur. And, considering this, a decretal established that, in a specific case, the power (*potentia*) of someone is proven by oath, as in *Extra, de rescriptis, c. statutum, libro 6*.<sup>216</sup> But I do not think that this can be a general [[method]]. For, there, the person giving the oath follows the judge alone on this (*ex hoc*). But no other prejudice is generated for the person against whom the oath is given; and, for that reason, I think it is to be proved in another way. For it must be known that, although some acts cannot be proven directly *per se*, they can still

214. Cod. 9.26.1. 215. The two words  *vexilliferos* and  *confalonerios* are practically synonyms. A gonfalon is a banner or a pendent. 216. VI 1.3.1.

be proved, as I say in a book *On Flooding*,<sup>217</sup> which, although it cannot be seen when [[the river]] increases, yet that it has occurred follows of necessity because it produced a stream. Likewise, although the generation of a son is not seen, it is [[taken]] for full proof that he was born in a home from a woman cohabiting with a man, as in ff. *de hiis qui sunt sui vel alieni iuris*, l. filium.<sup>218</sup> For, although proof exists to give the judge confidence, these things lead the judge to enough confidence. Thus, in /211/ the proposition, if someone should prove that a city is in division (for instance, perhaps one faction was expelled), and that wicked and irregular things occur in it and are not punished, and that the citizens are greatly burdened, and similar things, which pertain to the tyrannical acts of which we have spoken; likewise [[if someone should prove]] that there is such a man in the city more powerful (*potentia*) than the one who has the title,<sup>219</sup> and that there is a public opinion (*fama*) that he makes the aforesaid things happen: then I think tyranny has been proved enough. For the aforesaid acts cannot proceed [[more]] from the one than from a more powerful individual. For it is enough when the aforesaid public opinion leads<sup>220</sup> the judge to confidence. For him it is fitting what we say about the person who rules justly: it suffices that he be considered and thought of in this way, as in l. Barbarius, ff. *de officio pretorum*.<sup>221</sup>

Now, are the deeds valid at the time of the said tyranny? [90]

I say the same thing that I said above about the manifest tyrant, who makes [91] the aforesaid take place through officials elected by the city.

And the aforesaid are true when the greater part of the people is oppressed, [92] burdened, or made unhappy (*male contentatur*). For, if some are held outside the city, or some are wickedly treated in the city, not called to honours, but in other parts the city is well governed and attention is paid to common utility, then such an individual holdings such a title or similar preeminence would not be, speaking unqualifiedly, a tyrant: because through such a government the common /212/ utility is attended to—which is directly opposed to tyranny. But in these things, which take place against the outsiders and enemies of that so preeminent man, although he governs the commonwealth well, I think the same thing must be said as if it had been done by a tyrant. For nothing prevents

217. Bartolus, *Tractatus de fluminibus seu Tyberiadis*, I, *De alluvione*, ad vv. ‘Per alluionem autem id videtur adici,’ nn. 1–6, and ‘Quod si vis fluminis,’ nn. 1–2 (Rome 1483, ff. 4va–5ra).

218. Dig. 1.6.6. 219. The text seems to be missing something: ‘item quod ille talis, qui habet illum titulum est potentior homo qui sit in civitate.’ I have added a *quam* (i.e., ‘... potentior homo quam qui...’), but perhaps one could read ‘... potentior homine qui...’. 220. Reading *adducit* for *adducunt* 221. Dig. 1.15.3.



someone being called a tyrant with respect to some people but a just judge with respect to a community, as in C. *si quacunq̄ue p̄editus potestate*, l. 1.<sup>222</sup> On this account it must be known that, just as one man is found rarely healthy in all respects instead of suffering some defect in the body, so rarely is there found some government in which attention is paid to the public good without exception, and in which there is not some tyranny. For it would be more divine than human if those who rule look to their own advantage in no way, but look [\[only\]](#) to the common utility. Still, we say that that is a good government and not tyrannical where more common and public utility prevails than that proper to the one who governs; but [\[we say\]](#) it is tyrannical where his own utility is attended to more. Giles says this in the third book *On the Government of Princes*, in the second part, c. 11.<sup>223</sup> And that is noticed especially when he treats of proving whether someone is a tyrant.

[93] [\[AD 2\]](#) The third veil is when someone allows no title to be given to himself in the city, but so orders the offices of government that all things proceed according to his own wishes. I say that they are proven to be tyrants in the way [it was said above](#),<sup>224</sup> namely, that tyrannical acts occur in the city; likewise, that he is a more powerful man, having a greater following [\[than others\]](#); likewise, that there is a public opinion that he makes aforesaid things take place. And it is necessary that in the time of tyranny many things take place, on which account the depraved mind of the tyrant cannot be hidden, and the mode of proving will appear easy.

[94] But, concerning those things which happen in the time of such tyranny, I say the same thing that I said [just above](#)<sup>225</sup>.

[95] Now, as to whether a tyrant could exist in a neighbourhood or specific part of the city or county (*comitatus*), I said [above](#).<sup>226</sup>

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222. Cod. 5.7.1. 223. Giles of Rome, *De regimine principum* 3.2.11. 224. See §. 89 on p. 23.  
225. See p. 20. 226. See p. 5.

## A NOTE ON THE TRANSLATION

My eventual goal is to provide translations of the three tracts edited in Quaglioni'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.

baron	<i>baro</i>	by the law itself	<i>ipso iure</i>
city	<i>civitas</i>	legally	<i>de iure</i>
command (v.)	<i>imperare</i>	law	<i>lex</i>
commonwealth	<i>respublica</i>	liberty	<i>libertas</i>
comune	<i>commune</i>	marquis (rule of)	<i>marchio</i>
count	<i>comes</i>	nation	<i>gens</i>
count (rule of)	<i>comitatus</i>	oath	<i>iuramentum</i>
delict	<i>delictum</i>	office	<i>officium</i>
domination	<i>dominatio</i>	people	<i>populus</i>
empire	<i>imperium</i>	political rule	<i>potentatus</i>
emperor	<i>imperator</i>	possession	<i>possessio</i>
exaction	<i>exactio</i>	powerful	<i>potens</i>
exercise lordship (v.)	<i>dominari</i>	power	<i>potestas</i>
fisc	<i>fiscum</i>	prince	<i>princeps</i>
fortification	<i>munitio</i>	regal	<i>regalis</i>
fortress	<i>castrum</i>	regalia	<i>regalia</i>
govern (v.)	<i>gubernare, regere</i>	right	<i>ius</i>
governance	<i>gubernatio</i>	rule (v.)	<i>principari</i>
government	<i>regimen</i>	rule	<i>principatus</i>
governor	<i>preses</i>	ruler	<i>rector</i>
grade	<i>gradus</i>	stronghold	<i>fortilicium</i>
imperial rule	<i>imperium</i>	taxes	<i>vectigalia</i>
jurisdiction	<i>iurisdictio</i>	tyrannically	<i>tyrannice</i>
justice	<i>iustitia</i>	tyranny	<i>tyrannis</i>
king	<i>rex</i>	tyrant	<i>tyrannus</i>
kingship	<i>regnum</i>	upright	<i>rectus</i>
law	<i>ius</i>	vicar	<i>vicarius</i>

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