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FORUM JURIDICUM

BARTOLUS OF SASSOFERRATO

"Nullus bonus jurista nisi sit Bartolista."

Augusto P. Miceli*

The fourteenth century, when Bartolus Severi¹ of Sassoferrato was born, was a transition century, an age when the Italian Renaissance was about to burst upon the Western World. At his birth, Dante, Petrarch and Boccaccio already had begun the creation of modern literature, and Giotto, Nicola Pisano, Arnolfo di Cambio and Orcagna, among others, were releasing art from its rigid Byzantine bounds.²

Cinus of Pistoia (1270-1336), a legal genius who wrote poetry, was teaching jurisprudence to young disciples at Perugia. Bartolus, soon to become one of his pupils, was destined to outstrip the master with his brilliant, penetrating mind which unraveled the intricacies of the law. He discovered and stated legal principles famed to this day for philosophical soundness, lucidity and all-enveloping universality. It was no idle phrase, centuries ago, when someone said:

"Nullus bonus jurista nisi sit Bartolista."

"There can be no good jurist unless he is a follower of Bartolus."

In 1959, at Perugia, the six-hundredth anniversary of the death of Bartolus was celebrated with 31 nations participating. The United States was represented by 12 universities.³ For a jurist who died six hundred

* Member, New Orleans Bar. This article is adapted from an address by the author to the Bartolus Society in New Orleans.

1. Other family names have been advanced for Bartolus—Alfani (his mother's name) and Bentivogli—but the prevailing opinion is that the family name was Severi. A XVI Century painting in the museum of Sassoferrato carries the legend "Bartolus Severus—Monarcha Juris."

2. *Dante Alighieri*, 1265-1321; *Giovanni Boccaccio*, 1313-1375; *Francesco Petrarca*, 1304-1374; *Giotto*, 1276(?) - 1337; *Nicola Pisano*, 1220-1284 (marble sculptor—marble baptistery at Pisa and pulpit in Siena Cathedral); *Arnolfo di Cambio*, 1232-1300 (Florentine architect—built Palazzo Vecchio in Florence, Church of Santa Croce in Florence and Church of Santa Cecilia in Rome); *Orcagna*, 1308-1368 (Florentine painter, sculptor and architect—built Loggia de Lanzi, Santa Maria Novella, San Michele in Florence and Orvieto Cathedral).

3. The Universities that adhered to the celebration were: California, Columbia, Harvard, Indiana, Iowa, Marquette, Montana, North Carolina, Purdue, Stanford, Wayne and Wisconsin.

years ago and whose life span was only 43 years, this world tribute is indeed significant.

Bartolus, the son of Francesco Severi and Santa Alfani, was born near Ancona, at Sassoferrato, a small town which looks down from the Apennines upon the distant Adriatic Sea. His father was a well-to-do farmer.

The exact date of Bartolus' birth is uncertain, but it was between November 10, 1313 and November 10, 1314, as, on November 10, 1334, when he received his doctoral degree, he declared himself to be 21 years of age.

His first teacher was Friar Pietro d'Assisi, a man of great culture, integrity, and piety. Bartolus attributed to Friar Pietro the thorough scholastic preparation which qualified him, at the age of 14, to attend the Civil Law lectures in Perugia given by Cinus of Pistoia. The latter, who was a severe critic of the traditional methodological law system of the two previous centuries, planted in Bartolus' keen and precocious mind the seeds of a new interpretation and application of the rules of civil law. In time, Bartolus developed these interpretations and applications into a body of great legal principles.

Bartolus followed the studies of "*iura civilia*" for six years and at the age of 20, on December 15, 1333, received his degree of Bachelor of Civil Law in Bologna.⁴ The following year, on September 17, 1334, Bartolus took the examinations for his Doctor of Law degree, appearing before a Commission of ten "*doctores legum*" to discuss his theses.⁵ Finally, on November 10, 1334, in the Cathedral of San Pietro in Bologna, the Vicar proclaimed him a Doctor of Law and he received from his sponsor the doctoral book and cap, the embrace of peace and the blessing.

From 1334 to 1339 Bartolus was active in his profession and appeared in several cases in Todi, Cagli and Macerata. Beginning in 1339, he was in Pisa, first as legal advisor to the Podesta (Mayor) and later as professor of Roman Law at the University. The annual stipend was 150 golden florins (a florin had 54 grains of gold), good pay for a 26-year-old teacher on his first assignment. In 1343, Bartolus moved to Perugia where he soon established a widespread reputation as a teacher of law, and pupils

4. His thesis "*Statuta Civitatis Lucanae*" appears as No. 15 of Bartolus "*Questiones*."

5. The other theses for the dissertation for Bartolus' doctoral degree are listed as "*L. illud. ff. quod metus causa*" (D.4,2,10) and "*L.I.C. quemadmodum testamenta aperiantur*" (C.6, 32, 1).

from all parts of Italy and other countries flocked to his lectures. Five years later, the City of Perugia, grateful for his eminent services, conferred upon him honorary citizenship. At this time, Perugia had reached the height of its power; it was not subject to either the Pope or to the Emperor, although politically it supported the former. Relations between Perugia and the Emperor Charles IV were strained in 1355, and Bartolus was sent as an Ambassador to the Emperor, who was then visiting Pisa.

Bartolus obtained from the Emperor many honors for Perugia, including a Charter for the University. His reputation and personality so impressed the Emperor that he made Bartolus an Imperial Counselor and gave him the honorary title of Table Companion; the Emperor ennobled him and granted him a Coat of Arms⁶ with the Imperial Insignia, similar to his own. Bartolus and his descendants, if professors of law, were given the right to legitimize their pupils in cases of illegitimacy or to relieve them from the disadvantage of minority.

Bartolus died in Perugia in July, 1357, at the age of 43 and was buried in the Church of San Francesco where a monument preserves his memory, with a simple inscription "ossa Bartoli"—"Bones of Bartolus." He left two sons and four daughters by his second wife, his first wife having died early in the marriage.

At the time of his death, his library consisted of only 54 books—30 dedicated to the law (basic legal texts and outstanding commentaries upon them) and 24 dedicated to theology, philosophy and religion. Bartolus was a religious man as well as a great student of the law. The small library was not surprising or unusual for this period; it was considered adequate in an age when the thought was that too many books led to "vagueness and instability," for "he is nowhere who is everywhere."⁷

After his death, Bartolus' reputation grew throughout Italy and other countries, particularly in Spain and Portugal, where the "Opinio Bartoli" had force of law.⁸ Portuguese law directives later reached Brazil with the "*Ordenacoes Filipinas*" of 1603, which prescribed that if no direct laws are found on a subject "look in the opinions of Bartolus, because his

6. *Leonem rebeum cum caudis duabus in Campo Aureo* (Red Lion with two tails on a golden field).

7. Oldradus, *Consilia et responsa* (Venice, 1571), Cons. 84; Oldradus was one of the teachers of Bartolus in Bologna. A. SHEEDY, BARTOLUS ON SOCIAL CONDITIONS IN THE FOURTEENTH CENTURY 31-32 (1942) [hereinafter cited as SHEEDY].

8. In Spain, the rules of law proclaimed by John II in 1427 for Leon and in 1433 for Castilla. In Portugal, the Code of 1446 of Alphonse V later confirmed by Emanuele I, 1495-1521.

opinions usually conform to good reason.”⁹ Bartolus received no less recognition from the Courts and Universities of Italy. The well known aphorism already cited, “*Nullus bonus jurista nisi sit Bartolista*,” had become in Italy part of common national conscience. The University of Padua established a Chair of Study, “*Lectura textus, Glossae et Bartoli*,” in 1544. The Universities of Turin, Bologna, Perugia, Macerata and Naples had Chairs also dedicated to the studies of “*repetitiones Bartoli*.”

How did Bartolus acquire such great renown in 23 years of practice and teaching? How did his immense authority spread so far and remain so vigorous for more than three centuries? Bartolus took no part, as far as is known, in the public life of his time except for his Embassy to Charles IV. The reputation of our “Prince of Jurists” rests wholly upon his enormous literary output. It was an incredibly productive life which filled ten closely printed folio volumes. About half of these volumes are filled with tracts which in the thirteenth and fourteenth centuries were treatises on definite legal problems.¹⁰

One cannot understand Bartolus’ real greatness without reviewing briefly the events of the previous centuries and surveying the complex political problems of his day. The *Corpus Juris Civilis* of Rome had held sway in the then civilized world for over a thousand years. It was the fruit of solid legal traditions of a world empire, of a civilization which sprang from the great ancient cities; it was at all times regarded as a model of civic wisdom. After the fall of Rome in 476 and the comparatively brief Byzantine Period in Italy, the Germanic-Barbarian Tribes brought with them their rude structure of military and family laws; the Huns, Goths and Franks brought with them new forms of political representation, and a strong attachment to individual liberty, limiting the authority of the State.

With the rise of Christianity and the conversion of the Barbarians, the Church adopted the Roman Law in its conception of universality, substituting itself for the Empire. The Church, as the center of the High Middle Ages, represented the organized strength of the new Society. The contest between the Emperor and the Universal Church exploded violently during the pontificate of Gregory the Great and the Emperor Henry IV and ended with the Treaty of Worms in 1122. But the treaty did not solve the problem. The Church considered the world a unity, guided by the Church under the absolute control of the Supreme Pontiff, and above any temporal power. On the other hand, the Imperial system asserted the universality of

9. *Se guarde a opinião de Bartolo, porque sua opinião communmente he mais conforme a razão.* (Lib. III, Tit. LXIV, princ.)

10. E. EMERTON, *HUMANISM AND TYRANNY; STUDIES IN THE ITALIAN TRECENTO* 121 (1925).

the Empire and its divine origin, and claimed, as the defender of the faith, the right to assume the government of ecclesiastic affairs when temporal interests were affected. In Italy, there was the old story of the Guelphs and the Ghibellines.

The Roman law continued to control the relations of the indigenous population—the population of the Italian Peninsula, most of modern France, Spain, Portugal and other Roman possessions—the Lombard Law, that of the Germanic tribes, and the Canon Law, that of the Ecclesiastics. In addition, the population had to contend with the rules and customs resulting from the new commercial, industrial, and economic needs of the free cities and principalities. The new wealth created by the industries and commerce challenged the prevalent real property domination and created a definite separation between cities and feudal countryside, changing society from an economy of barter to an economy of money and credit.

At Ravenna, and later at the University of Bologna, a rebirth of the studies of the Roman Law took place. Every branch of the Justinian legislation was discussed, debated and interpreted. The eminent exponent of this rebirth was Jurist Irnerius (1065-1120), the founder of the school of Glossators, which flourished in the twelfth and thirteenth centuries.¹¹ The gloss consisted of commentaries and notes interspersed on the text of the original Roman Law books. These commentaries gained such general repute that they almost superseded the original sources of law.

The thirteenth and fourteenth centuries witnessed the beginning of perhaps the most magnificent cultural rebirth of the human mind. The seeds of the Renaissance were planted at this time. The rebirth occurred not only in the study and application of law, but also in philosophy, art, science, and religion. Among those who led this rebirth were Dante, Giotto, Chaucer, St. Catherine of Siena, Petrarch, Christine de Pisan, and in the law, the Universitas Scholarium of Bologna,¹² Cinus of Pistoia and Bartolus.

11. J. MACDONALD & E. MANSON, GREAT JURISTS OF THE WORLD 47-48 (1914).

12. The University of Bologna founded in 1088 soon acquired a well deserved reputation and students from many foreign countries came to Bologna. The relations between professors and students generally were cordial and close. Both groups enjoyed special privileges granted by Emperor Frederick I. To defend their privileges from the city the students organized themselves as a corporative body to which they gave the name of *Universitas*.

There were so many foreign students that each nationality formed its own "*Societas*." The Italians, the Provençals, the French and the Germans each had a student Rector. The four Rectors formed a united body and called themselves the *Universitas Scholarium*. A. SOLMI, STORIA DEL DIRITTO ITALIANO 446-47 (1930).

The world of Bartolus was one of profound spiritual and political crisis. The weakening of the powers of the Holy Roman Emperors, accelerated at the end of the Swabian dynasty, and the transfer of the Papal Seat from Rome to Avignon were mortal blows to a conscience which firmly believed in the ideal of a Holy Roman universal power supremely directing the *humanum genus*. This belief was not only a political dogma, but a conception of the world and of life itself. The fundamental spiritual crisis of this period was in strange contrast to the prosperity of the new free cities and to the expanding developments in trade, industry, and travel. These new developments could not but affect the ancient political and social structures. It was inevitable that the realities of the new life would prevail and create the base of a new equilibrium. This would not negate the old ideals but would take into consideration the realities of the new political and economic developments. In this difficult task the thoughts of Bartolus reign supreme.

Out of these conflicting ideas the logical mind of Bartolus evolved some principles of general application, suitable to the age in which he lived. He tried to reconcile the enduring principles of the Roman Law, the individualistic liberty concept of the German tribes, the narrowness of the Canon Law and the new rules created by the economic-commercial developments of the free cities and principalities of the period. In this he reached his highest peak, through the refinement of his commentaries, the strength of his dialectic, and above all, through his exceptional capacity to dig into the depth of "litera legis" to extract the "mens et ratio" most hidden. These vital seeds of the new "Societas iuris" Bartolus was able to detect with inspired intuition, and here we have the key to his real greatness and the reasons for the universality of his thought. This was the great purpose of his life—unfortunately cut short by his untimely death.

Bartolus directed the attention of the legal world to the problem of Conflict of Laws—Private International Law, as it is now called in other jurisdictions—and proposed certain rules for its solution. He expanded the theory of statutes, and the division of all statutes into personal and real, the first affecting the status and the capacity of persons in general, and the second, those having as their subject things and properties. There was also a third category of mixed statutes which did not affect directly persons or things, but regulated judicial acts, the form of contracts and testaments. At the time of Bartolus, the only law applicable on international conflict of statutes was exclusively that of the "Lex Fori." A foreigner, a citizen of another city, had no other rights but those of the place in which he happened to be visiting.

Bartolus taught that statutes that affect *persons* follow the citizen even when away from his domicile; statutes concerning *property* are effective in the territory where the property is located and are applicable to non-residents.

The eminent Professor Joseph H. Beale, who translated Bartolus' *Treatise on Statutes*, writes as follows:

While Bartolus' doctrines were fortified by the writings of his predecessors, as well as by the texts of the *Corpus Juris*, he found in these sources only the germs of the general principles that he formulated. To him is due the entire credit for discovering and stating a body of principles on the Conflicts of Laws which will still repay the most careful study. . . . It should be remembered that the condition of medieval Italy was not unlike that of the United States today in this respect: that the ordinary law was a common law, prevailing throughout the whole territory; while each city-state had the power to modify the common law by a statute. . . . One of the most striking things about the work of Bartolus is the modern tone of his opinions, though his conclusions are based on reasoning that is medieval in form.¹³

The teachings of Bartolus also had a preponderant influence on Public International Law—much more than is generally known—through Albericus Gentilis (1552-1608). Gentilis, a Regius Professor of Civil Law at Oxford (1587) and an alumnus of Perugia University, published in 1588 the first book on Public International Law, the "*De Jure Belli*." Professor T.E. Holland, writing on this subject, stated: "The first step towards making International Law what it is, was taken, not by Grotius, but by Gentilis," and Professor Walter Ullman, of Cambridge University, adds: "[I]n this process of making International Law Bartolus deserves the credit that is due to him: it was the Bartolist method and approach, the Bartolist practical sense for reality which enabled Gentilis to do what in fact he did do."¹⁴

An interesting point on international control of the open sea is to be found in Bartolus' "*Tractatus de Insula*." How far can a nation that controls the littoral coast claim ownership of the open sea and the islands

13. J. BEALE, 3 A TREATISE ON THE CONFLICTS OF LAWS 1888-90 (1935). Professor Beale was Chairman and Reporter of the Committee on Conflicts of Laws of the American Law Institute. The late Monte M. Lemann of the New Orleans Bar was also a member of that Committee.

14. Professor Walter Ullman's address at the University of Perugia, on the occasion of the Six Hundredth Anniversary of Bartolus' death in I BARTOLO DA SASSOFERRATO—STUDIES AND DOCUMENTS FOR THE VI CENTENARY 68 (1962).

that may be found therein? Bartolus answers, "One Hundred miles," and he adds that this control should not be extended further than two days travel by sea. It seems odd that Bartolus added this phrase "two days of travel." Could a sailing vessel travel 50 miles in a day? Certain cities in Italy extended their jurisdiction as far as "two days' travel" from their gates. Perhaps Bartolus was following the same wording.

One thinks of traffic and its control as a modern problem, but the problem also existed in ancient times.¹⁵ Under Roman law the streets were public domain and many *Interdicta Perpetua* were issued against encroaching constructions, water flooding, malodorous exhalations. But the Roman law strongly defended the rights of all citizens to use the roads without limitations or restrictions. This created much confusion and litigation.

The first jurist who placed the problem on a clear and sound legal basis was Bartolus, and he stated the principle which now is the foundation of every traffic code in the world. He who has *first* begun to use a road has the right to expect from other users, also citizens with the same rights, that they abstain from interfering and permit him to complete his use. Bartolus was the father of "the right of way."¹⁶

Bartolus always frankly expressed his views on the laws on which he was lecturing. He expressed admiration for useful laws, condemnation for poor or ill-conceived legislation and scorn for opinions which he considered foolish. He frequently used the expression: "*Sed Truffa est*" (but this is nonsense). When he did not understand a law or its interpretation, Bartolus admitted it freely, and asked his students to supply suggestions.¹⁷

The political theory of Bartolus was expressed in his treatise *De Regimine Civitatis*. Of it, Ephraim Emerton writes:

De Regimine civitatis, had a profound influence upon later discussion, seen notably in Rousseau and Montesquieu. He accepts the Aristotelian division of governments into monarchy, aristocracy and democracy, but only as a general scheme. He amplifies this classification in two practical ways: first, by showing the probable perversions of government into tyranny, oligarchy and demagogy,

15. In the ruins of Pompeii, traffic signs have been unearthed—such as "stop at crossing," "one way street," "no parking." Professor Piero Rasi's address at the University of Perugia in *II BARTOLO DA SASSOFERRATO—STUDIES AND DOCUMENTS FOR THE VI CENTENARY* 432-36 (1962).

16. *Id.*

17. Bartolus, I, 20r (D.1.3.32); Bartolus, III, 20v (D.24.3.33); SHEEDY, *supra* note 7, at 38-39.

and second, by noting its special applications to small, large and medium sized communities. Thus democracy is suited only for the small, monarchy only for the large, and a modification of both for the medium sized, governments. There is no absolute standard.¹⁸

Bartolus frequently cited St. Thomas Aquinas upon whom he leaned for Theology and Scholastic Philosophy. Bartolus believed in the world-monarchy, the universality of the Empire as a superstate guarantor of peace in the world.

The law of the church is a part of the law of the Empire. Church and State are not separate societies, but the same community is one or the other according to the point of view. . . . By treating the Papal and Imperial laws as parts of one system, and making the Civil law a sort of ideal . . . he paved the way for those who in a later age were to treat of laws in general, natural, ecclesiastical, civil, all as part of the one State; and, while they acknowledged the supremacy of the civil law as a norm or ideal, found no difficulty in tempering it either by particular statutes or the principles of the canonists and theologians. . . . Thus he helped forward the assumption of the family of states independent, self-sufficient, yet recognizing the common *jus gentium* which is the foundation of modern Europe.¹⁹

The concept of the Imperium Romanum was transferred by Bartolus into the concept of the *societas gentium*. Of great interest is Bartolus' conception of jurisprudence. Again, Ephraim Emerton writes: "The supreme office of the jurist was to interpret law in such ways as would conduce to the greatest good of society as an organic whole. While he taught the highest respect for all authority, human and divine, he claimed the right of individual judgment in applying this authority to practical social needs."²⁰

He understood law as a product of the human spirit, which develops and changes as does the human mind. Law for Bartolus was not so much a professional pursuit, but a passion. He had a profound religious sense of life in his quest for the triumph of law and justice, the foundation and main hinge of human society. The humanistic purpose of a jurist, according to Bartolus, should be not only the exaltation and defense of man, but the defense of man's thoughts and actions. Bartolus has given to humanity a new *word*, which has helped humanity understand and better itself.

18. E. EMERTON, *Bartolus*, in 11 ENCYCLOPEDIA OF SOCIAL SCIENCE 470-71 (1930) [hereinafter cited as EMERTON].

19. J. FIGGIS, *Bartolus and the Development of European Political Idea*, in XIX ROYAL HISTORICAL SOCIETY 158-60 (1905).

20. EMERTON, *supra* note 18.

APPENDIX

Bartolus' writings are contained in his (a) *Commentaries*, on the Justinian Code, (b) *Questions*, debates on point of law, (c) *Tracts*, on public and private laws, (d) *Consilia*, opinions in cases submitted to him, and (e) *Orations*, delivered on special occasions.

Among his tracts, those on public laws included work on *Tyranny*, on *Reprisals*, on *Insignia and Arms* (the first treatise on heraldry), on *Guelphs and Ghibellines*, on the *Government of a City*; on *Criminal law*, two works, *Ad Reprimendum* (the crime of lese majeste), and *Qui sint Rebelles*, (who should be considered a rebel). In the field of private laws, his tract on *Rivers* (in three parts, Flooding, Islands, River Beds), should be of particular interest to Louisianians. On Procedural Law, there is one tract on *Evidence*.

There are some 490 manuscripts of Bartolus to be found in libraries and universities throughout Europe. Some of his works were printed in Venice in 1472, Pavia in 1495 and in Lyons in 1515. Later, a collection of his works appeared in Lyons in 7 volumes in 1563; in Turin in 1577; in Basle, 11 volumes in 1588-89, and in Venice, 11 volumes, in 1590 and 1602.