STUDIES IN COMPARATIVE LEGAL HISTORY

A Grammar of Signs

Bartolo da Sassoferato's *Tract on Insignia and Coats of Arms*

Osvaldo Cavallar  Susanne Degenring  Julius Kirshner

A Robbins Collection Publication
University of California at Berkeley
Contents

Preface xi
Acknowledgments xv

A Grammar of Signs: Introduction 1

The Traditional Tale of the Privileges Bartolo Received from Charles IV 8
A Conflicting Voice: Angelo degli Ubaldi 13
Bartolo on His Own Privileges 18
Visual Evidence of Bartolo’s Coats of Arms 23
Did Bartolo Know Hebrew? 26
Nicola Alessandri and the Legacy of Bartolo 29
Ante Bartolo 40
De insigniis: Part I 42
De insigniis: Part II 74
Conclusion 85

Appendices

1. Edition: Bartolo da Sassoferrato, De insigniis et armis 93
2. Translation: Bartolo da Sassoferrato, On Insignia and Coats of Arms 145
3. Antonio da Butrio: Ad c. Dilecta, De excessibus pretlorum (X. 5. 31. 14) 159
4. Pietro degli Ubaldi: De duobus fratribus 163
5. Lorenzo Valla’s Letter to Pier Candido Decembrio 179
Preface

At some time in the first half of the thirteenth century in Bologna, Accursius, a professor at the already famous local school of law, embarked on the project of an extensive commentary on the Roman law compiled several centuries earlier at the initiative of the Roman emperor Justinian. At the time, however, such an undertaking was no longer considered an innovation. Other fundamental texts of the medieval tradition such as the Bible or Gratian’s compilation of the laws of the Church known as the Decreta were also the subject of exhaustive commentaries. Moreover, during the previous century, since the rediscovery of the Roman legal sources, generations of jurists and law teachers had produced a sizable corpus of annotations. But none of the attempts made by the first glossators had the scope and the thoroughness of the Accursian project which was soon regarded as the official commentary on the Corpus Iuris Civilis.

The success of this work, known as the ordinary gloss, contributed to its author’s fame which spread quickly outside the walls of the bolognese school. With the exception of its unusual magnitude, Accursius’ work did not differ significantly from the model long established by the bolognese legal scholars. In fact, the ordinary gloss combines mostly a critical compilation of the prior commentaries with a methodical study of the numerous sections of the Justinian corpus. In this perspective, it is difficult to consider Accursius’ contribution as a revolutionary interpretation of the Roman law.

Most of the opinions and interpretations expressed by predecessors such as Azu, Johannes Bassianus and Bulgars are dutifully reported. Since the pioneering works of Iuvenius and his two main successors, Bulgars and Martinus, the young legal science had remained closely bound to the Roman text. With the exception of canon law which witnessed the development of a flourishing intellectual tradition, few attempts were made to take into account other legal sources which were often dismissed in favor of the preeminence of the Roman legal paradigm. The ordinary gloss reflected this doctrinal tradition which had been solidly built upon more than a century of teaching exclusively dedicated to the study of the monumental Roman legal compilations. Yet, the difference between the earlier corpuses of
glosses and Accursius' work is significant. Accursius' methodical treatment of the Roman texts in what was still a traditional approach produced nevertheless a form of commentary following its own inner logic which was neither a summary nor a collection of disparate comments scattered in the margins or between the lines of the text. Accursius gave the gloss a new dimension in a legal tradition which, in the following century, would give pride of place to the commentary as a literary form, emancipated from the original text. By then, the difficult language of the Roman law was digested and well incorporated into the legal discourse. On the foundations provided by the science of the glossators, a new generation of legum doctores would endow the Western legal tradition with most of the principles which still characterize it to this day. By the time of Bartolus' teachings, which garnered for him undisputed prestige among jurists, medieval society was experiencing a significant transformation in the traditional systems of representation. From the perspective of a legal science, the fourteenth century exemplified a period of prosperity. Everywhere the multiplication of urban statutes reflected the cities' importance and their strong sense of independence; local usage and ancient tradition were now defined as customary law. Secular princes increasingly exercised their legislative prerogative as expression of their sovereign power while competing against the claims of the papacy that relied upon the numerous texts which then constituted the canon law tradition. As a result, medieval towns witnessed the social and political rise of the jurists. Judges, lawyers and notaries enjoyed a monopoly in the exercise of the legal profession. Local lords, secular as well as ecclesiastical, were increasingly relying on legal experts for advice and assistance in their numerous quarrels over feudal rights or family matters. In the vast majority of these cases, arguments were often borrowed from the Roman law. Defined as the written reason, ratio scripta, the law had reached the rank of a universal knowledge as predicted by Accursius' declaration that "to know the law was to know of everything." Such a legal discourse delimited a textual space in which the medieval man could find the primary elements of a new legal identity. As a method of regulation of the social order, law contributed to the definition of a new mode of life. To the jurists, the thriving legal system based on the ius commune was both a source of satisfaction and multiple challenges. Expressing this enthusiasm Lucas de Penna, Bartolus' contemporary, could declare that law was nothing less than the "light and path of life." Altogether, the writings of Bartolus have come to symbolize this intellectual movement of which he was a part. Perhaps, Bartolus' lasting fame was due less to his creative and learned opinions than, as this exceptional study reveals, to his singular ability to capture in the language of the law the vigor and the spirit of this social and political change.

Laurent Mayali
Berkeley, August 1994
Acknowledgments

Our interest in Bartolo’s *De insigniis* began when we attempted to translate the tract into English for a forthcoming anthology of medieval legal texts. It soon became apparent to us that the early printed and modern editions of the tract were unreliable, and that therefore our translation would have to be based on a new edition. The preparation of this edition, in turn, raised questions about the authorship, context, and reception of the tract—questions that we have tried to answer in the following pages. To clarify our respective contributions to this volume, the two of us, with Susanne Degenring, working over a period of many months, often together and sometimes independently, are collectively responsible for the research and writing that constitute the analysis of the tract. Cavallar is largely responsible for preparing the edition of *De insigniis* in Appendix 1. The other four appendices are the result of the collaborative labors of Cavallar and Kirshner.

Special thanks are due to both the Division of Social Sciences and the College of the University of Chicago for indispensable research support. We owe a debt of gratitude to John Boyer, Dean of the College, for his support of teaching and research in legal history at Chicago. We are grateful to Laurent Mayali, Director of the Robbins Religious and Civil Law Collection, University of California at Berkeley, for encouraging us to publish our work in *Studies in Comparative Legal History*. Additional thanks are due to Alicia Cozme for obtaining copies of the four manuscripts of Bartolo’s tract in Prague; Mary Van Steenbergh for her expert assistance with the translation of Bartolo’s tract; Professor Robert Kaster for his constructive criticism of our translation of Lorenzo Valla’s letter to Pier Candido Decembrio; and finally, Professor Reinhard Elze for his helpful suggestions.

Julius Kirshner
Osvaldo Cavallar
Chicago, August 1994
A Grammar of Signs

What we from our point of view call colonization, missions to the heathen, spread of civilization, etc., has another face—the face of a bird of prey seeking with cruel intentness for distant quarry—a face worthy of a race of pirates and highwaymen. All the eagles and other predatory creatures that adorn our coats of arms seem to me apt psychological representatives of our true nature.

—C.G. Jung, *Memories, Dreams, Reflections*  
Introduction

Bartolo da Sassoferatto’s (1314-57) De insignitis et armis is generally regarded as among his most popular and protean tracts, no doubt owing to the jurist’s international fame and his groundbreaking and authoritative treatment of heraldic arms and insignia central to the proper ranking of late medieval and early modern hereditary aristocracies. Keen, a distinguished historian of medieval chivalry, calls the tract “the first learned discussion of heraldry.” Noteworthy, too, is the precocious discussion of the use, ownership, and transmission of trademarks. Beyond these novelties, the tract has also served as a unique source for the jurist’s biography. It provides the key piece of evidence for the universally accepted “fact” that the Emperor Charles IV granted Bartolo a coat of arms in 1355 (a double-tailed lion, the traditional symbol of the Bohemian territorial state), a token not only of imperial favor but also of Bartolo’s preeminence among the jurists of his time. It is the unique source for the oft-repeated assertion that Bartolo studied Hebrew, a remarkable intellectual quest unmatched by any contemporary jurist. And it remains the sole basis for attributing to Bartolo a professional interest in and knowledge of optics.

Although De insignitis remained unfinished at the time of

---

*We have adopted the following abbreviations: ASF = Archivio di Stato, Florence; DBI = Dizionario biografico degli Italiani, Rome 1960-; EDI = Enciclopedia del diritto italiano, Milan 1958-; TRU = Tractatus universi turris (Venice, 1584), IV, c. 4 = Bartolo, De insignitis et armis, capitulum 4, in Appendix 1. For Bartolo’s De flaminibus, we have relied on the edition (prima editione Rurcium) printed in Bologna, 1576. Unless otherwise noted, all other references to Bartolo’s commentaries, tracts, and consilia are in his Opera omnia (Venice 1570-71), a copy of which is located in Special Collections at Regenstein Library of the University of Chicago. Where possible, we have compared our references to the printed edition of Bartolo with several manuscripts of his commentary preserved in the Vatican Library. For the sake of economy, we have indicated only those variants that we consider significant. For the Glossa ordinaria compiled by Accursio, we have used the edition printed in Venice, 1591. All references to Baldo’s commentaries to the Coda and Digest of Justinian and the Libri feudorum are in the four-volume edition printed in Lyon, 1498, a copy of which is located in the Old Library, Queens’ College, Cambridge.

1 M. Keen, Chivalry (New Haven, Conn., and London, 1983), p. 148. Keen, however, incorrectly dates the tract “c. 1350.”
Bartolo’s death in 1357, it was subsequently edited and published in January 1358 by his son-in-law, Nicola Alessandrini of Perugia, a civilian who succeeded the great jurist at the University of Perugia. We estimate that the tract is transmitted in about 100 manuscripts; it was printed for the first time in 1472, in the earliest edition of Bartolo’s works. It was also translated into Spanish in the sixteenth century and edited and translated into German in the late nineteenth century. A flawed yet serviceable edition was published by Jones in 1943. Apart from the sheer number of manuscripts and printed editions, the tract became an authoritative source for almost all later works on heraldic questions, and is still cited in contemporary manuals. Already in 1376 its contents were commandeered and modified in the French political-ecclesiastical work Somnium viridarius. The daughter of Emperor Charles IV may have carried the tract to England, where it became a source for Jacques de Bado Aureo’s Tractatus de armis (ca. 1395) and, in turn, for Nicholas Upton’s De studio militari (ca. 1446). A cluster of works were directly dependent on the tract; Honoré de Boet’s Arbre des batailles (1387), Clément Prinsault’s Un trai de blason (ca. 1465), the Argentay Tract (late fifteenth century), the Dialogus de nobilitate et rusticitate (1444) of Felix Hemmerlin (Malleb), and Peter of Auclan’s De imperio Romano-Germanico (1460). Select passages of the tract appear in Christine de Pisan’s Le livre des fais d’armes et de chevalerie (1410), from which William Caxton published his Fayettes of Armes in 1489. We shall find Bartolo’s words echoing down the centuries, Denny appropriately writes, “being quoted and misquoted, usually without any acknowledgment, in treatise after treatise.” A notable exception is Bartholomé Chasseneau’s Catalogus de gloria mundi (1529), in which the larger part of his first book deals with heraldic questions. Not only did Chasseneau give credit to Bartolo as well as other authorities, but he also went on to discuss them critically.

The reception of the tract, as all scholars of Renaissance humanism know, was not uniformly favorable. Lorenzo Valla (d. 1457), riding the hobbyhorse of Eloquence, subjected the tract to a notorious, self-aggrandizing assault (for the translation, see Appendix 5). In a letter of 1433, originally directed to his friend Caterino Saco (d. 1463), a jurist sympathetic to the humanists at the University of

(Stockholm, 1961), p. 293.


We used the later edition: Catalogus de gloria mundi (Venice, 1569). We owe the reference to this important sixteenth-century manual of manner, style, and social behavior, written by this French jurist at the Burgundian Parliament, to Professor Paolo Cherchi at the University of Chicago.
Valla's heat-seeking words also provoked sympathy for Bartolo. Andrea Alciato (d. 1550), while remaining “skeptical about Valla's uncompromising historicism,” paid frequent tribute to Bartolo, as did Guillaume Budé in France, and the jurists at the University of Basel. Indeed, Joachim Vadian, professor of poetry and eloquence at Basel, considered Bartolo a genius and defended him in his preface to the Basel edition (1518) of Valla's attack (Contra Bartoli libellum, cui titulus De insigniis et armis epistola). André Tiraqueau, in his tract on nobility, agreed with Valla that insigniis was the normative form for the grammarians and that the term arma was also used improperly by Bartolo. Yet he was ready to forgive Bartolo's latinity on the historiographic grounds that none of Bartolo’s contemporaries wrote in classical Latin (ad normam grammaticam) and that Bartolo, when he used the term arma, was conforming to the common speech of his time. Today we would say that the tract was a product of a different historico-cultural milieu.

Modern scholars have also reached conflicting conclusions about the tract’s significance. Historians of heraldry who assess it positively, like Mladen, Zag Tuceci, and Pastoreau, emphasize that Bartolo was the first to develop programmatic legal principles for the new phenomenon of heraldic arms, thereby laying the foundations of heraldry as a science. Scaglione, confusing De...
singing out Bartolo for criticism is somewhat misleading, for the first nontantiquarian treatment of the coats of arms of cities was Dupré Theseider’s excellent piece published in 1966.

Given the seminal, if contested, role attributed to Bartolo in the formation of the science of heraldry, it is extraordinary that so far there has not been a critical edition, an up-to-date translation, or even an analysis of the tract, a state of affairs Denny has deplored. For far too long, regrettably, the text of De insigniis has been monopolized by the retrospective inventions and tediousanities of the heraldrists, effacing the creative environment (Schaffensspielraum) of the Italian city-states, which made possible and conditioned Bartolo’s grammar of signs. We approach De insigniis in this study not as experts in the science of heraldry but as historians of law. The overarching purpose of our essay is to elucidate how coats of arms and insignia were construed as legal phenomena by Bartolo and other Italian jurists in the late Middle Ages and Renaissance. At the same time, historians of law have been more content by relying on this tract as a source for Bartolo’s biography, resulting in an idealization of the jurist which has severely distorted the relationship between his life and his works. In the following pages we hope to clarify this relationship by reexamining the autobiographical material contained in De insigniis as well as the historical tradition which has credited Bartolo with sole authorship of the tract and made him personally responsible for its contents. We also assess the extent to which Nicola Alessandri appropriated and transformed the work Bartolo left unfinished at the time of his death. This leads us to analyze the tract’s ideas on heraldic and other signs by situating them in Bartolo’s intellectual and social universe, his commentaries, and the ins communes. On the basis of our examination of twenty-three manuscripts of De insigniis et armis, we present a new working edition (Appendix 1) and English translation

20 A. Scaglione, Knights at Court: Courtliness, Chivalry, and Courtesy from Ottonian Germany to the Italian Renaissance (Berkeley and Los Angeles, 1991), p.178. He also errs in calling Bartolo a canonist as well as a civilian.


of the tract (Appendix 2). The appropriation of Bartolo’s grammar of signs by both canonists and civilians is illustrated by the texts of Antonio da Butrio (Appendix 3) and Pietro degli Ubaldi (Appendix 4). Finally, we have taken this occasion to include a translation of Valla’s lateful de(con)struction of Bartolo’s tract (Appendix 5).

The Traditional Tale of the Privileges Bartolo Received from Charles IV

Ever since Nicola Alessandri made the tract De insignitis et armis available to the public, biographers of Bartolo and of the Emperor Charles IV, historians of law and of the University of Perugia, scholars of political thought, and experts on heraldry, quoting the tract or each other, have repeated endlessly that Bartolo received some privileges (including his alleged legitimation) and a coat of arms from the Emperor Charles IV when he visited Pisa as a member of a Perugian embassy in 1355. More often than not, these scholars have stressed that the grant of a coat of arms and of the privileges was conferred by an emperor impressed by Bartolo’s luminous reputation; and that the jurist, in turn flattered and elated by this stroke of good fortune, was inspired to write a tract on the legal implications of coats of arms and insignia.

Early in the sixteenth century, Tommaso Diplovataccio, the foremost biographer of medieval jurists, wrote that Bartolo was

26 The rumor that Bartolo was of illegitimate birth was reported by a number of distinguished jurists. It ultimately derived from Bartolo’s own commentary to the Dig. 15. 1. 132, Quodiam cum filiis, where he referred to his first teacher, Petrus de Assisa (Ven. lat. 2604, fol. 103v). In commenting on X. 1. 3. 4, Inter ueteres, Felice Sande di Lucca (d. 1503) observed that it was not altogether clear whether the lay canonist Giovanni d’Andrea was of legitimate birth, and added that “siue nec apertam Bar. de se in I. quidam cum filiis, ff. de ver. ob.” (Ven. 1498, fol. 83b). André Tiraqueau also reported: “Sunt et qui suspirabant Bar. alterius urbis civiles, quius nature et exposition, ex his quae ipsae scribit in I. quidam cum filiis, col. 3 ff. de ver. obilig.” (Opera in. 18 above, 1. 53 n. 32). G. Palocci, in his De notis spuriis fictis (Bologna, 1550), fol. 90v, abandoning the canton of his predecessors, listed Bartolo, along with Giovanni d’Andrea, among the illegitimate children that became “insignis.” For an early reaction to this insistent rumor and for an analysis of the tract of Bartolo’s commentary to the lex Quodiam cum filiis, see Giovanni Paolo Lancellotto, Vita Bartoli insignis (Perugia, 1576), pp. 4–7.

28 Angelo degli Ubaldi, in Cod. 9, 8, 5 (1514, 1561), fol. 262v: “Notis quidam commissa consiliarii principis intelliguntur illustrare: et ideo quisque dux principis in summa consiliarii Bartoli assumptus est idem armi decorati, fecit cum illustri” (cited by G. Rossi in Bartolo de Sassoferrato, 480 n. 69). See also Alberico da Ragusa, Dictionarium urb. (Venice, 1525), sec. illustr, p. 339: “Illustris quis dicitur incontinentem cum est assumpsit ad iatus principis. I. l. C. De praep., lib. XII (Cod. 12, 5. 1, Suei cubiculi praepositi, et tabulis est commissa insignitas, ut illi Ange.”
year (**venia actatis**). The last two privileges were also extended to all of Bartolo's descendants who attained the rank of doctor of law. Curiously, Lancelotto failed to produce any documentation concerning the bestowal of the coat of arms, except an engraving of the coat of arms borne by Bartolo's descendants. From the time Lancelotto published his *Vita Bartoli* in 1576 until the present, no document affirming the grant of a coat of arms has been found. This lacuna is in striking contrast, for instance, to the grant of a coat of arms bearing the imperial eagle ("apponere, impegnare ai impegni et sculpit facere insignia nostra cum bicipiti aquila") to Johannes Beatus, a citizen of Venice, his sons, and his descendants, a bestowal witnessed by no less than an archbishop, five bishops, and several nobles. Obviously, a coat of arms granted by the emperor was such a solemn event that the absence of written attestation makes one doubt whether the occasion itself could have occurred.

Undeterred, scholars have made the most of the existing, though sparse, evidence. Rossi, who republished the two documents Lancelotto had discovered in his collection of materials for the history of the University of Perugia (see *Vita summarum dignitatum et evoelione novarum ex reversione monumenta literarii adi restitutione* (Lugbn, 1715), pp. 6s-72. The two documents were also reprinted in A. Rossi, "Documenti per la storia della Università di Perugia," *Giornale di archeologia artistica* (1878, 7: 1s-75 n. 39 (hereafter all references are to the number of the document); and more recently by C. Musselli and M. Del Pianco, *Insegne e simboli, studi storici e politici e privati medievali e moderni* (Rome, 1973), p. 211, who, without providing a reference to their source, reproduce only the document related to the successful attempt of granting Bartolo this honor.

---

32 Rossi, "Documenti" (no. 29 above), no. 77: "L'imperatore, oltre a questi privilegi, donò a Bartolo e suoi discendenti anche il proprio stemma, e ciò abbaini sopra testimonia dello stesso Bartolo, il quale, nel principio del trattato, detto de insignias et Armis ha questo prologo: 'Et muti time consiliarii eos concessit (Caroli iii) inter eceru, ut ego e ceteri de aequalione mea aequo rubicere cum caudis duabus in campo aureo portare.'


35 C. N. Walker, *Bartolus of Sassoferrato, His Position in the History of Medieval Political Thought* (Cambridge, 1913), pp. 3-4; J. L. Van der Kamp, *Bartolus de Sassoferrato* 1313-1357 (Amsterdam, 1936), pp. 128-33; A. T. Sh培育, *Social Conditions in the Fourteenth Century* (New York, 1942), pp. 24-25, and p. 105, where, contradicting her previously correct statement, she asserts that "the emperor had granted to Bartolo the titles of..."
that were it not for reference to Bartolo’s coat of arms in *De insignitis, “certe fuisseus in abrupto!”*

The jurists did not fare much better than the historians. In his tract *De modo studendi in utroque iure* (1472), Giovanni Battista Caccialupi (d. 1496), arguably aware that the form *insignitis* offended the stylistic sensibility of fashionable humanists, reported that Bartolo received “many insignia” (*pluribus insignibus*) and privileges from the emperor.32 His impeccable grammar would surely have delighted Lorenzo Valla, but his text leaves experts on heraldry and historians wondering how many and what kind of coats of arms Bartolo bore. Citing Angelo degli Ubaldi, Gianfranco da Maino (d. 1519), who was Diputazione’s teacher as well as one of his main sources for the *Vita Bartoli*, referred to the conferment of the title of “counselor” and the gift of the coat of arms. But taking issue with Angelo, for whom imperial counselors were automatically *illustres*, more telling than what these two jurists had to say is the silence of Angelo’s brother, Baldo degli Ubaldi (d. 1400), in his commentary to X. 2, 24. 18, *Quanto*, where one would have reasonably reference to Bartolo’s tract, given that the topic at hand concerned coats of arms, trademarks, and notarial signs.39 Nor did Baldo refer to the tract in his commentary to the Cod. 2. 16(17). 2, *Saepe rescriptam*, where he discussed the use of trademarks, or to Dig. 1. 16. 1, *Procurali*, where he dealt with the granting of insignia.

A Conflicting Voice: Angelo degli Ubaldi

All the authorities mentioned above assumed that the grant of a coat of arms to Bartolo was initiated by the emperor. There is, however, a hitherto unnoticed conflicting voice. In a *consilium* devoted to the question of whether it is licit for an ambassador to mix public and family affairs in a diplomatic mission, Angelo degli Ubaldi claimed that it was Bartolo himself who requested from the emperor the privilege to bear his coat of arms and to be reckoned among the *comiatus sacri palatii*. Angelo’s opinion deserves close attention for two reasons: first, because of his peculiar account of the origin of Bartolo’s coat of arms and, second, because of the conflicting views on the proper conduct of an ambassador, a conflict that helps to shed light on the likelihood of Bartolo’s requesting a coat of arms from the emperor.40

The case submitted to the jurist concerned a citizen of Bologna who, having been sent to the pope as an ambassador, took advantage of his mission by requesting a certain ecclesiastical benefice in the diocese of Bologna for one of his sons.41 The question arose of whether or not he should be punished, to which Angelo took a pragmatic approach. Adhering to the letter of the *Glossa ordinaria*32 that forbade a legate to present a petition to a judicial magistrate (*libellus conventionalis*), Angelo contended that if the ambassador’s pursuit of family affairs did not interfere with, delay, or impede the execution of the mission, his deeds were not punishable according to either ordinary or extraordinary procedure. His primary argument relied on customary practice and can be expressed by the legal maxim that actions which have the approval of custom ought not to be condemned. Pushing the consequences of acting against customary practice to their limit, Angelo argued that if punishment were inflicted upon every person who, upon accession to the Apostolic Curia, had requested some kind of benefice (and Florentine citizens,


31 Angelo degli Ubaldi, *Consilia* (Lyon, 1551), fol. 176r, cols. 329.

Angelo pointedly remarked, were noticeably prominent among such petitioners), carnage could be hardly avoided. Then there was the case, reported by the Glossa ordinaria and widely commented upon by jurists thereafter, of the Milanese ambassadors to the emperor.\textsuperscript{43} But that example was hardly germane, as the question addressed by the Glossa was whether the legates could keep the gifts received from the emperor or whether they were obligated to restore them to the city, whereas in the case at hand the question concerned the lawfulness of confounding public and family affairs.

The example of Bartolo and his colleagues of the Perugian embassy to Charles IV was indeed an instantiating example of intermingling official affairs with personal advantage. According to Angelo, on that occasion Bartolo himself sought the privilege of bearing the same coat of arms as the emperor, namely, a "lion with a double tail" (see fig. 1), and he received it. Furthermore, Bartolo and the other members of that embassy also asked to be made "count of the sacred palace," and that request, too, was granted.\textsuperscript{44} Angelo accounted for only one element of the traditional description of Bartolo's coat of arms, the two-tailed lion, and he did not specify either the color of the field on which the lion should have been depicted or the color of the lion itself. His omissions and his vague description raise three questions.\textsuperscript{45} The first is strictly heraldic, centering on whether the lion was borne as an accessory image and as an appurtenance to a preexisting coat of arms or as a main element.\textsuperscript{46}

Second, Angelo's reference to the lion is odd, since the imperial insignia was the eagle, which Angelo was bound to know. Indeed, according to Zug Tucci, the lion was hoisted as an anti-imperial symbol by the Italian communions to express their determination to resist the emperor.\textsuperscript{47} The third question concerns the overall reliability of Angelo's account. His recollection of this episode seems quite genuine, since he was able to name correctly no less than three out of five members of the Pisan embassy: Bartolo, Legerio, and Theo.\textsuperscript{48} Whether Angelo was in Perugia when this episode occurred is uncertain; it is certain, however, that in the summer of 1351 he was appointed as professor by the officials of the University of Perugia for a period of three years and perhaps subsequently reappointed for another period.\textsuperscript{49}

Angelo's account does not command our assent for several reasons. First, it appears to contradict what he said in his commentary to the Cod. 9. 8. 5, Quisquis, where he noted that Charles IV chose Bartolo as his own counselor, granted him a coat of arms, and thus made him illustris.\textsuperscript{50} To be sure, even though the logical and grammatical subject of this statement is Charles, it could be countered that Charles was responding to a prior request made by Bartolo. Even granting that memory may not have betrayed Angelo either in his lectures or in his consilium, his account is still in conflict with the opinion Bartolo held with regard to what a legate is permitted to do during an embassy. To Dig. 50. 7. 9(8). 2, Paulus, Bartolo com-

\textsuperscript{43} Gl. ord. Dig. 3. 3. 36. 4. Quo prorsus, sc. nomine, p. 237. Odifredo to Dig. 24. 3. 64. 5. Si vero, Lecture super Infrarum (Lyon, 1550), vol. 1, fol. 104; Cino da Pistoia, to Cod. n. 2. 22. 3, Manifestissimis, In Codicem commentaria (Frankfurt am Main, 1573), vol. 2, fols. 34v-45v, esp. fol. 34v n. 21; Bartolo, to Dig. 3. 33. 34. 4, Quo prorsus, fol. 110v; Urb. lat. 172, fols. 97v-98r.

\textsuperscript{44} Angelo, Consilia (n. 41 above), fol. 176r n. 4: "Iac etiam nostris temporibus inueniunt, unde recordor Bartolum, Legemiam et Theum de Michelis de Perusio ad Carolum quantum Pisae accessisse legatos communit Perusij, et iluam Bart. impetravit ab eo armis imperialis, dicitur Leuenn in cameram, et habuit, et illi et ipse interpellaverunt curates sacri palatij et balneum."

\textsuperscript{45} Writing from the perspective of heraldry, Johannes de Bado Aureo had also noted the improper description of Bartolo's coat of arms in Dig. c. 3. See Jones, Medieval Heraldry (n. 4 above), p. 141. The same criticism also appears in two other treatises edited by Jones in the same volume, pp. 85, 199.

\textsuperscript{46} For the distinction between main charge (principali) and appurtenance (accessories), see Dig. c. 2. The possibility that Bartolo already possessed his own insignia before the imperial conformation cannot be excluded. Mazuchelli sustains such a case in his life of Bartolo (n. 35 above), though with no evidence.

\textsuperscript{47} Zug Tucci, "Un linguaggio feudato" (n. 19 above), p. 815, who cites G. B. Crollalanza, Gli emblemi di Guelfi e Ghibellini (Ravena San Cassiano, 1873).

\textsuperscript{48} For all the names of the ambassadors, see Pompeo Pellini, Historia di Perugia (Venose, 1664), pp. 552-554, who lists Colino di Pedalo, Bartolo Sereni da Sassoferato, Legendri Nicoluccio d'Andretto, Theo de Pianoe de Michelis, and Felice de Bramante. Pellini also states that the same privileges granted to Bartolo, coat of arms included, were bestowed upon Colino di Pedalo, also a doctor of law. For a solid analysis of the political context in which that mission took place, see D. Segoloni, "Bartolus et la cistens Perusina" (n. 36 above), 2:649-71.

\textsuperscript{49} Rossi, "Documenti" (n. 29 above), nos. 77-78.

\textsuperscript{50} Angelo, to Cod. 9. 8. 5, Quisquis, Lecture super Codice (Lyon, 1570), fol. 262v.
mented that the legate cannot pursue other affairs except those connected with his ambassadorial duties. With an eye to the relevance and applications of this disposition, and without commenting further on the kind of deeds the legate can perform, he observed that the teachers at the University of Perugia were in an analogous position, for they could not practice as lawyers in the city, which was contrary, for instance, to the Bolognese practice. Though that prohibition had its remote origin in the papal provision that established Perugia’s studium, which prescribed the employment of foreign teachers only, and was subsequently reaffirmed by the statutes of the city, the situation was rapidly changing during Bartolo’s lifetime.51 Elsewhere, expounding on the Dig. 50, 7, 16(15), Is qui legatone, while modifying the position of the Glossa, Bartolo laconically observed that, as a general rule, the legate is forbidden to attend affairs other than those required by his office.52 Explaining the Roman prohibition against submitting a Libellus to the emperor, the Glossa added the modifier conventioalis and left open to doubts whether this was the only form of Libellus excluded.53 Bartolo, noticing this ambiguity, added that the same prohibition applies to a petition to the emperor (Libellus supplicatorius), and thus, as a rule, the legate is forbidden to submit any requests and consequently forbidden to conclave public and personal affairs.

Bartolo also addressed the question of the gifts to ambassadors in his comment to Dig. 24, 3, 64, 5, Sí vero. Following Cino da Pistoia (d. 1336) and Guillaume de Cani (d. 1335), he asserted that ambassadors should not restore the gifts they received while on an official mission, unless the gifts were expressly meant for the commune that had sent them. He stated that donations made by the emperor were deemed to be for the benefit of the ducum (contemplationes cun dantur) and cited the texts of Dig. 48, 20, 6, Dives, and Cod. 6, 61, 7, Cun multa, from which one could infer the practice of rewarding ambassadors.54 Had Bartolo asked the emperor for the titles and the coat of arms, he would have in effect disavowed his professional tenets. Much more meaningful than whether Bartolo had violated a disposition of the ius commune, or whether his actions can counter to his own words, was that Angelo was aware of the embarrassing position in which he had put his predecessor. Angelo’s adherence to the principle that a legate is restricted in his actions insomuch as they may delay, impede, or prejudice the entrusted mission can be understood as an attempt to rescue Bartolo from contradiction and embarrassment. Angelo’s insistence that the Glossa only prohibited the submission of a Libellus convenioalis was another way he attempted to rescue Bartolo. Resort to the auctoritas of the prince to exempt from law was a further option considered in the passus—and one that he did not exclude altogether. Besides this, there is a further argument that cautions us not to hasten to embrace Angelo’s account. The concluding section of his consiliun displays a definite rhetorical overtone that at times verges on exaggeration, for instance, when he claims that careness will result if all the persons requesting privileges during an embassy were to be punished. Moreover, his reference to the Milanese ambassadors

51 Bartolo, to Dig. 50, 7, 9(8), 2, Paulus, fol. 238r; Vit. lat. 2696, fol 290vo: “No, quod legatus non debet attendere ad alium quam ad officium legationis, item no, pro doctoribus ludis civilitatis, qui non possunt esse ad vivendos manus cedentis, vel si loquentur non propter hoc viendetur advocare. Tene mendi.” For the same argument, see also Bartolo, to Dig. 3, 1, 3, 2, Haec titulatio, fol. 98v; Ubb. lat. 172, fol. 67ra, where, concerning the university teacher’s promise not to plead cases in Perugia, he distinguished between in camera consimilitudin and postulare, which means in indicio aliquum dicere; and to Dig. 50, 13, 1, 11, Flores propositae & Adversatis, fol. 242r; Vit. lat. 2004, fol. 294vr: “Et ista faciunt pro doctoribus ludis civilitatis, qui hanc pacta cum publico communi, ut non sint advocati. Nam non prohibentur a indece gratu aliquem impetrare, ut hic.” For the papal provision on employing foreign teachers, see Rossie, “Documenti” (n. 29 above), no. 33; for the reasons behind the statutory prohibition on jurists’ participation in the political life of the city, see Ermini, “Statuta” (n. 33 above), 1:45-49.
52 Bartolo, to Dig. 50, 7, 16(15), Is qui legatone, fol. 238r: “Gl. intelligi hic de Libellio conventioalis, idem in Libellio supplicatorio ad impetrandum aliquem, cum generaliter prohibitis si aliquam facere, qui vidistis supra, eum cum qui, alias meipar Paulus & Paulus (Dig. 50, 7, 9(8), 2).”
53 Gl. ord. Dig. 50, 7, 16(15), sv. Libellum. For the restrictions placed on a legate, see also Gl. ord. Dig. 5, 1, 25. Si legatone, sv. eneia: “Seclum Roman et causa sui ministerii: nam ab eo non debet aliquum facere.” For a statute forbidding ambassadors to mix private with public affairs, see Statuta della Repubblica fiorentina, Statuto del Podesta, ed. R. Caggese, (Florence, 1921), lbr.
54 Bartolo, to Dig. 24, 3, 64, 5, Sí vero, fol. 30v; Vit. lat. 2597, fol. 43vra. Two other passages he alleged are Cod. 12, 63(64), 1, Quodcumque ministrium, and, if understood correctly, Dig. 17, 2, 60, Siveo qui in ea.
widely misses the point, namely, whether the gifts given to an ambassador belong to him or to the city that had sent him, and blurs the difference between asking for a benefit and accepting a gift or a benefit that was given gratuitously. The only support Angelo could muster in his testam was his own recollections, certainly not Bartolo’s doctrinal authority.

Bartolo on His Own Privileges

The puzzling absence of any document attesting to the imperial bestowal of the coat of arms as well as Angelo’s conflicting accounts of that concession invite a close examination of what Bartolo himself had to say concerning his encounter with the emperor, the privileges he received, and the imperial insignia he allegedly asked to bear. His meeting with the emperor in Pisa was undoubtedly one of the most memorable moments, if not the outstanding event, of his entire life. Not only was it mentioned several times in his later writings, but it also moved him to compose a highly regarded commentary on the constitutions Ad reprimendum and Qui sim rebellerunt promulgated by Henry VII. While assuredly a sign of his great admiration for the emperor, this commentary was not a gesture of sheer flattery inasmuch as it is directed not to Charles himself but to his ancestor. As stated in the rubric of Ad reprimendum, Bartolo was moved to write a commentary for two reasons. The first was didactic, “so that the many useful things therein contained may become known,” and the second, to praise the good memory of their promulgator.55

With the exception of De insignis, the grant of a coat of arms was omitted from all of the references Bartolo made to the imperial privileges he obtained, unless one wishes to include it under the vague refrain “and many other privileges and signs of benevolence.” In the commentary on the opening rubric of the constitution Ad reprimendum, Bartolo mentioned the titles of “counselor” and “table companion” as well as the privileges to legitimate and to grant the vetus actatis; he added that these last two privileges were extended to all of his descendants, provided they were doctors of law. To this, however, Bartolo added that the emperor honored him (decoravit) with “other privileges and signs of benevolence.”56 What those “other privileges and signs of benevolence” may comprise remains unclear and open to speculation. Since Bartolo was included among the members of the embassy requesting privileges for the studium of Perugia, which was badly shaken after the Black Death of 1348, it seems plausible that the privileges he mentioned included those granted to the studium and to the academic body of teachers, such as the faculty to substitute the local bishop in conferring various academic degrees and jurisdiction over the students.57 The other privileges normally associated with a studium, such as immunity from reprisals, access to the city’s institutions of justice, and legal capacity to enter into a valid contractual relation, which were crucial in attracting foreign students and teachers, did not apply to Bartolo who

55 Bartolo, Tractatus super constitutio Exemplarissimi Ad reprimendam, fol. 97v: “Postea supervencentia istae constitutiones, quas undeconum collationem appellabimus, gisare videmus erga nos (sic) Bar. ad Saxer. civis Perugiam, ut multi utiliter, in eis sunt omnium innumeros. et itum ad laudem divinae recordationis dominii Henrici Imperatoris, ipsius constitutionum auctores, auctissimi dominii i. Canali IV.”

56 Ibid., fol. 98r: “quia me susum consaldiurium, ut domestico numero aggregaverunt, et me, meamque posteros, quos legum docentes esse continguerit, legitimationes, et concessiones, venes actatis, aliaque privilegia, et gratias decernaverit.”

57 For the privileges, see Rossi, “Documenti” (n. 29 above), nos. 96–97; Ermini, Studia, (n. 33 above), 1:147–175, 179–187, and for a juridical elaboration of the privileges, see D. Maffei, “Biblior e studenti nel peristernio di Simone da Bassano,” Studia gentiliana 15 (1972), 229–239, and Shively, Bartolo on Social Conditions (n. 36 above), pp. 149–162.
had been made a citizen of Perugia in 1348.60 Given Bartolo’s strong identification with the city of Perugia, one is encouraged to think that he was referring to all the privileges granted to his new patria. But that they should include the grant of a coat of arms is questionable, for the prerogative to bear the same coat of arms as the emperor was too critical to be relegated indistinctly among “other privileges.”

With formulaic variations required by the different context, Bartolo furnished similar details in his Tractatus testimoniiorum under the word “Oeconomicus.” Speaking of the “prudent head of the family” and of the various ways in which prudence guides his individual actions, he gave two examples: choosing a tutor and granting the venia aetatis. In Roman law the venia aetatis was a privilege granted by the emperor to minors, by which they were considered to have attained the majority before the age of twenty-five. Besides giving minors the legal capacity to conclude any transaction, save alienation, it also exempted them from the need of a curator. Integrity and sagacity were the prerequisites and the reasons for conceding this benefit. Needless to say, such a privilege played a role in the life of students away from home who desired to be sui iuris and gave prestige to the professor empowered to grant it. Bartolo related that the emperor gave him, as well as his descendants who happened to be doctors of law, the right to concede that benefit in accordance with the form established by law.61 In contrast to legitimation, which he could grant only to the students of the University of Perugia, the exemption from legal age had no territorial or institutional limitations and included the entire empire (per universum imperium). As he had already done in his commentary on the imperial constitution, Bartolo mentioned here that he received that privilege among “many other things.”

It is less obvious but no less important that the right of legitima-

60 Rossi, “Documenti” (n. 29 above), nos. 66-88 for his citizenship, and no. 97 for the exemption from reprimands.

61 Bartolo, Tractatus testimoniiorum, fol. 160r, n. 91; sce oeconomicus: “cum Carolus quattuor sanctiss. nobiliss. Imperator inter multis aitia concessit, ut ego, multique descendentes, quo legibus doct. esse contingat per universum Imperium aetatis veniam concedere valeamus, serenat forma, quo legibus reperitur inserta.”

tion, the other documented privilege, was not mentioned in the Tractatus testimoniiorum. Bartolo considered it while commenting on Dig. 36. 1. 18(17). 4, Ex facto, a relevant place for such a reference, because the text required a discussion of legitimation and emancipation.62 Addressing the question of whether the presence of a “natural child” defies the condition “if he dies without children” attached to a fideicommissum, he stated that children born in seruitud defeated the condition, but it is otherwise when born ex dignitate, so that one has to judge case by case and according to the status of the person involved. Yet, some jurists argued that, regardless of status, natural children would always deny that condition. Responding to this “false opinion,” Bartolo asserted that such offspring “are abhorred” by persons of high standing; in support of his position, he enlisted the privilege of legitimation he received from the emperor, which excluded filii illustrium, spectabilium et procerum.63 Thus his privilege was not somehow diminished because of that exclusion, but was consonant with the limitations foreseen and imposed by law. Similarly, he mentioned the privilege again while commenting on Dig. 28. 2. 29. 8, Gallus, immediately after his return from his Pisan mission. In contrast to the preceding case, where he employed his privilege to bolster his argument, it was now the privilege itself that induced a practical question; namely, whether a father could legitimate a child who was a student in Perugia through a procurator, or, in other words, whether the father had to be present at the legitimation.64 Although this precisely limited context did not necessitate any mention of Bartolo’s other privileges, it nevertheless reveals the
value and importance he attributed to them and how carefully he pondered their legal implications. In this light it is all the more startling that nowhere in his commentary to the Corpus iuris civilis can one find a single reference to the concession of the coat of arms.

Stylistic idiosyncrasies also cast doubts on the imperial concession of a coat of arms and insignia. In all the preceding references to his privileges, Bartolo spoke of concessions from the emperor alone, whereas the De insigniti added a suspicious reference to the “king of Bohemia.” What mattered to Bartolo as a jurist, after all, was that Charles was the emperor, not the king of Bohemia. Admittedly, the insignia he supposedly received—that is, the lion—were those of the king of Bohemia, not those of the emperor, which may explain the reference to the king of Bohemia. The same stylistic variation can be found in the use of the term serenissimus, which appears only in the tract and not in any of the other passages referring to his privileges, where he opted for the term illustriusus. Equally suspicious is the term agnates, which appears in the tract but not in his commentaries, where references to his other privileges occur and where he favored the term descendientes or, more rarely, posteri.

The absence of a critical edition of Bartolo’s opera omnia makes perils any ironclad conclusions based on style about the authenticity of a passage or phrase. It is true that, with one exception, all the manuscripts of De insigniti we have consulted contain a reference to the imperial concession. Taken together, however, the lack of any contemporaneous, corroborating document, the conflicting evidence provided by Angelo, and the load silence of Bartolo himself on the conferment of a coat of arms constitute sufficient reason for treating the traditional tale of the grant of a coat of arms by the emperor as a fable.

Visual Evidence of Bartolo’s Coat of Arms

Visual evidence for the imperial concession is scarce and late. None of Bartolo’s contemporaries or immediate successors ever reported seeing his coat of arms. Had Bartolo actually received a coat of arms, one assuredly would expect to find it engraved or depicted on his tomb in the Alfani chapel in San Francesco at Perugia, which is named after his descendants. Indeed it was commonplace for sepulchral monuments to be decorated with coats of arms. Among the jurists who had their coat of arms engraved on their tombs were Giovanni d’Andrea (d. 1348), Baldo degli Ubaldi, Pietro d’Ancone (d. 1416), and Alessandro Tartagni da Imola (d. 1477), to name just a few. Yet the vicissitudes of Bartolo’s sepulchral monument, built, rebuilt, and relocated several times over the centuries, make it extremely difficult to determine whether or not his arms had been engraved. His last will (14 May 1356) contains the disposition concerning his place of burial, the church of San Francesco near the gate of Santa Susanna, should he die in the city of Perugia, as happened, but nothing concerning the construction of the tomb itself. According to Rossi, his first tomb was a slab of red marble on the floor with his effigy and the inelegant caption Bartolus hic iacet.

65. Val. lat. 2625, fol. 191r. It should be noted that the section of the tract referring to the imperial grant of arms was omitted by Antonio da Batrio when he appropriated the first seven chapters of De insigniti for his commentary to X. 5. 31. 14. Biblica. For the text, see Appendix 3 below.

66. For other jurists who had their coat of arms engraved on their sepulchral monuments, see Monumenta historiæ et elugiae, cura ac studio Marci Zacutii Bashomii (Amsterdam, 1638), p. 113, p. 56, for Giovanni d’Andrea; p. 117, p. 58 for Ludovico Bolognini; p. 119, p. 59 for Giovanni Cotti; p. 125, p. 62, for Agostino Zanetti; p. 129, p. 61, for Alessandro Tartagni; p. 137, p. 68, for Pietro d’Ancone; p. 151, p. 75, for Giovanni da Placentia; p. 169, p. 84, for Carlo Ibarri. For a reproduction of the tomb of Baldo in Pavia, now preserved in the University, see Emman. Storia (n. 33 above), pl. 6. The Museo Civico Medievale in Bologna contains splendid examples of tombs displaying the coats of arms of Bolognese doctors of law.

67. The vicissitudes of Bartolo’s tomb are described by Van der Kemp, Bartolus (n. 36 above), pp. 148-54.

68. Published by Lance-Buono, Vita Bartoli (n. 26 above), pp. 193-7; Rossi, "Documenti" (n. 29 above), nos. 108; Van der Kemp, Bartolus, pp. 271-74; and, for a brief ricordo of Bartolo’s tomb, see also “Memorie perugine di Teseo Alfani nell’anno 1502 al 1527,” Archivio storico italiano 16, pl. 2 (1854): 267.

Since the sepulchre was replaced in the late cinquecento, there is no way to determine whether or not his coat of arms had been engraved. The remaining engraving on the new monument commissioned by the Alfani family omits the coat of arms of their illustrious ancestor, though in its upper part two putti were each holding an empty shield.26

Iconographical evidence for Bartolo's coat of arms is both late and inconclusive, confirming what has emerged from documentary and textual sources: the coat of arms appears rarely and always in connection with the Alfani family. In the gallery of portraits of Bartolo assembled by Van der Kemp, which includes engravings, paintings, and miniatures on manuscripts, there is no representation of the alleged coat of arms.27 An early portrait of Bartolo by Justus of Gent (1463-75), presently in the Galleria Nazionale of Urbino, does not depict his coat of arms. In contrast, a portrait housed in the museum of the University of Perugia, dating from the sixteenth century, features the arms. Yet, the caption at the bottom of the painting indicates that the work was commissioned by the Alfani family in commemoration of their illustrious lineage. The encounter between the emperor and the prince of jurists was also depicted, though without the arms, in a painting now housed in the University of Perugia. Owing to its location, this painting, crafted centuries after the event itself, has served to nourish a legend that was, and continues to be, accepted as historical reality by generations of students and professors at Bartolo's alma mater. Finally, it is worth noting the equally late representations of the imperial grant of the coat of arms in Lancellotto's Vita Bartoli (see fig. 2) and on the title page of the Venetian edition of Bartolo's opera published in 1602-3.

Even though it should now be beyond doubt that the imperial grant never actually occurred, our confusion should not minimize its historical significance as a sign of Bartolo's political allegiance to the empire. A telling example is Jean Bodin, who deployed the tale of Bartolo's mission to the emperor and of the imperial concession in his formulation of the theory of undivided sovereignty, like Angelo degli Ubaldi and many of his fellow jurisists, Bodin, who was also a jurist, knew of Bartolo's mission to Charles IV and of the alleged concession of the coat of arms. But rather than questioning those two "facts" or searching for corroborating evidence, he adopted the two oft-repeated elements at face value and interwove them in the rich texture of the first book of the République, thus making them part of his discourse on sovereignty. Bodin employed Bartolo's embassy and doctrine and the concession Charles made to the city of Perugia to exemplify his key concept that a ruler is not constrained in the exercise of sovereignty, even by the privileges he himself or his predecessors granted.28

Gazing at the political map of Europe, Bodin examined the compatibility of his definition of sovereignty with the network of feudal obligations that linked many of the highly fragmented European political entities. Discussing the relationship between France and the Empire, he censured Bartolo and Andrea Alciato, the standard-bearer of the humanistically trained Italian jurists, for having written that the French king is a subject of the Empire. Alciato was viewed as ungrateful, given the warm reception that he received in France where he had been invited "to teach and write the truth"; Bartolo had been won over to the imperial side by the privileges the emperor had accorded him, including his own legitimation, according to the Latin version of the République. Furthermore, as a token of gratitude for so many and such great benefits, Bodin argued that Bartolo had inserted into his commentary the view that all who deny that the German emperor is lord of the world should be declared heretical.29 However, Woolf has dismissed this allegation, because Bartolo wrote his commentary to Dig. 49, 15, 24, Hostes, before

---

26 Lancellotto, Vita Bartoli, pp. 49-50; Bussi, "Documenti," pp. 137-62; Van der Kemp, Bartolus (n. 30 above), pl. 7, and pp. 149-51; for other reproductions of the monument, we have checked the plate reproduced in the 1638 edition of the Monumenta Illustrium virorum et eloquentiae (p. 60 above), p. 103 n. 51, for the reproduction, and p. 102, for the respective elogium, which does contain a reference to the title of consulvius but not to the coat of arms.

27 Van der Kemp, Bartolus, pp. 247-48, and the corresponding plates in the appendices of his volume.


29 Bodin, Les six livres, pp. 131-32; idem, De re publibi libri sex, p. 129; The Six Books, p. 135.
going to Pisa.\textsuperscript{74} Although the French and Latin editions of the République refer to De insignitis in a marginal note, it is highly unlikely that Bodin knew it firsthand. Had he read it, he certainly would not have described Bartolo’s coat of arms as a “lion de guêles en champ d’argent,” or as a “leoneum purpureum in area argentae,” to quote from the Latin edition, or as a “Lyon Azure in a field Argent,” as it was translated into English.\textsuperscript{75} Nevertheless, he was cognizant of the ideological importance and imperial implications of Bartolo’s embassy to Charles IV. Bodin’s example illustrates the generativity of De insignitis in the development of early modern political thought—that is, in a field not directly connected to heraldry within whose boundaries the tract had been habitually confined.

Did Bartolo Know Hebrew?

The remarkable intellectual accomplishment of having studied and learned Hebrew, well before the Jeronimian cry “back to the Hebrews veritas” was made fashionable by the humanists, is the other alleged autobiographical detail derived from De insignitis (DL, c. 29). The second part of the tract introduces a quæstio with these words: “præmilio unam quæstionem, que fuit inter Judaeos et me, cum Hebrewam adscribecbam.” From the Renaissance to the present, this statement has encouraged many scholars to believe that Bartolo studied Hebrew. Valla accepted Bartolo’s knowledge of Hebrew, but then reproached him for wasting time learning it when he should have concentrated on improving his barbarous Latin.\textsuperscript{76} When Rossi discovered that the early printed editions of Diploiavatische’s Vita Bartoli have a reference to the study of Hebrew—which was not included in an earlier draft of the Vita—he hailed this unexpected biographical curiosity as one of the “novelties that go beyond the boundaries of a simple citation or of an extension introduced for the purpose of clarification.”\textsuperscript{77} However, we believe the editors of the modern edition of the Vita Bartoli were justified in not relying on the early printed editions. Relying on Savigny, Roth attempted to establish a credible historical pedigree for Bartolo’s accomplishment. He conjectured that Bartolo’s Hebrew teacher was a certain Guido de Perusio or perhaps Judah of Perugia.\textsuperscript{78} Though our knowledge of Bartolo’s life is hampered by lack of solid biographical information, the identification of Guido de Perusio with Judah of Perugia and the link between the latter and Hebrew, as conjectured by Roth, must be rejected. Toaff, the preeminent authority on the Jews in fourteenth-century Perugia, calls Roth’s thesis “fanciful” but accepts that “the renowned Perugian jurist knew Hebrew.”\textsuperscript{79} When Speroni omitted the qualification “perhaps” that Roth had wisely placed before Judah of Perugia, conjecture was transformed into an unassailable fact.\textsuperscript{80} The reality of Bartolo’s fluency in Hebrew was highlighted by Segoloni, who contends that this is one of the best signs of his cultural breadth, which extended immeasurably beyond the precincts of civil and canon law.\textsuperscript{81}

Though doubts about whether Bartolo knew Hebrew have been in the air for many centuries, they have been conveniently unheard. In his short chapter on Bartolo’s teachers, Lancellotto remarked that there is not sufficient evidence to maintain that Bartolo learned Hebrew.\textsuperscript{82} Admittedly, Hebrew was germane for understanding Scripture and for delving into the sacra mysteria, wrote Lancellotto, but it has no bearing on learning and teaching civil law.\textsuperscript{83} A friar named Guido de Perusio, possibly a Franciscan, enters the stage in the introduction of Bartolo’s De fluminibus. After waking up from a dream, Bartolo was visited by the friar, who is described as “quidam frater Guidus de Perusia, magus theologus, universali in omnibus, qui mens fuerat, et erat in geometria magister.”\textsuperscript{84} As an expert on geometry, this deus ex machina may have

\textsuperscript{74} Woolf, Bartolus of Sassoferato (n. 30 above), p. 24.
\textsuperscript{75} Bodin, Les six livres (n. 72 above), p. 189; De republica libri sex, p. 129; The Six Books, p. 135.
\textsuperscript{76} Valla, Letter to Pier Candido Decembrio (n. 12 above), p. 639.
\textsuperscript{77} Rossi, Vita Bartoli (n. 27 above), 1349.
\textsuperscript{79} A. Toaff, Gli ebrei a Perugia (Perugia, 1975), p. 22.
\textsuperscript{81} D. Segoloni, “Aspetti” (n. 21 above), p. 367 n. 9.
\textsuperscript{82} Lancellotto, Vita Bartoli (n. 26 above), p. 7.
\textsuperscript{83} Ibid., p. 60.
\textsuperscript{84} Bartolo, De fluminibus, p. 3. On Bartolo’s real teacher, Petrus de Assisiis, see A. Fortini, “Frate Piero da Assisi, primo maestro di Bartolo Sassoferato,”
been helpful in drawing up the figures adorning this tract and may have been a pleasant companion for learned and religious conversation. Beyond the tenuous historical reliability of Bartolo’s narrative, it is difficult to imagine that this “magnus theologus,” albeit “universalis in omnibus,” was Bartolo’s Hebrew teacher. Until the historical contours of this providential apparition can be better defined, the identification of Guido de Perusio with Judah of Perugia should be rejected. Further, one should be cautious before letting this providential apparition slip out of the eucenic dimension of the introduction of De fluminibus into the stream of history.

There are several other strong reasons for dismissing Bartolo’s knowledge of Hebrew. Evidence of his alleged knowledge of Hebrew cannot be found anywhere in his commentaries and other tracts. In commenting on 1 Kings 8:11-17, Deut. 17:16-20, and Deut. 17:14-15 in De regimine civilitatis, he relied on the traditional methods and tools of scholastic exegesis: the ordinary and interlinear gloss, the Positilla of Nicolaus of Lyra, and the authoritative interpretation of the Church Fathers, such as Augustine (who was notoriously ignorant of Hebrew). It is also hazardous to gauge Bartolo’s knowledge of Hebrew from his overall interest in the culture of the Jewish communities settled in Italian municipalities because, if nothing else, the main reason for learning Hebrew was apologetic, at best.

It is also deceptive to assess his knowledge of that language against the backdrop of his legal culture and of his elaboration of the legal norms that regulated the relations between two culturally diverse groups, for these norms were dictated to a tiny minority by a hostile

**Bartholus da Sassoferrato’s Tract on Insignia and Coats of Arms**

Majority. All this urges us to believe that attempting to prove that Bartholus studied Hebrew is unproductive as well as futile. Above all, we are persuaded that the second part of the tract, in which the allegedly autobiographical reference to Hebrew surfaces, was not written by Bartholus himself but by his son-in-law, Nicola Alessandri.

Nicola Alessandri and the Legacy of Bartholus

Hovering over the puzzling questions raised by De insignis is the enigmatic figure of Nicola Alessandri. In concluding his short biographical profile of Alessandri, Segoloni suggests that he “deserves to be freed from the dust of the centuries that barely lets his name emerge.” Indeed, this provincial figure was omitted from the authoritative Dizionario biografico italiano. As a jurist, Nicola was overshadowed by Bartholus and Baldus, as a professor at the University of Perugia by Jacopo da Belviso (d. 1335) and Cino da Pistoia, and as a public figure by the turbulent Angelo degli Ulibaldi. Yet, as a successor to Bartholus, he earned his spot in the sun, on account of which Diplovataceio included him in his biobibliographical profiles of medieval jurists. Nicola’s fleeting moment of prominence was made possible by his marriage to Bartholus’s daughter, Paola (another daughter, Santa, was married to the jurist Giovanni Nucci di Piero da Sassoferrato). More than his autonomous academic production of commentaries, repetitioes, legal opinions, and the like, what interests us here is his relationship to Bartholus and the formative role he played in the production and transmission of his father-in-law’s opera.

It was Diplovataceio who first called attention to the enigmatic relationship between these two figures. Following leads given by Giovanni da Plata (fl. 1388) and Andrea Barbazzia da Messina (d. 1477), Diplovataceio reported that the substantial repetitio in the lex

---

39 Segoloni (ibid.) announced that he was writing the note on Alessandri for the BHI, but it never appeared.
Bartolo da Sassoferrato’s Tract on Insignia and Coats of Arms

Si quis argentarii (Dig. 2. 13. 6), which circulated under the name of Bartolo, was actually composed by Nicola in 1354 (but more likely in 1358-59). Although later jurists were quick to bring out the differences in style between the two jurists, the repetitio entered the corpus of Bartolo’s opera where it has resided permanently. Further, according to Segoloni, the tract De alimentis, which traditionally circulated under Bartolo’s name, was also likely composed by Nicola. The same opinion had already been advanced by Diplovalaccio, who, after having presented contrasting evidence on its attribution, left to the reader the ultimate decision on authorship. We lack documentation to determine whether Bartolo and Nicola collaborated on a professional level, either in the form of subscribing to each other’s consilia or in composing them jointly. While we believe that this probably occurred, only one opinion written by Nicola entered the printed collections of consilia commonly attributed to Bartolo.

Diplovalaccio alluded to another textual link between these two jurists: Nicola’s “solemn” tract De substitutionibus, where he arranged in an orderly fashion materials that in Bartolo’s work were “scattered over various places.” It may be that Diplovalaccio’s view derived from Giovanni da Imola (d. 1356), who had treated Nicola’s tract as a composition ex dictis Bartoli. Since his tract has not yet been thoroughly examined, inferences concerning its composition ex dictis Bartoli or dependence on Bartolo’s work must be suspended for now and Diplovalaccio’s and Giovanni da Imola’s judgments not taken at face value.

Still, it is indisputable that Nicola, in the period immediately after Bartolo’s death, was busily engaged in editing and publishing several works that were left unfinished by his father-in-law’s sudden death. An apposite example is the repetitio to the Authentica Ingressi monasteria (Cod. 1. 2. 13). Repetitiones were monographic lectures that took as a starting point one or more laws, already explained by a teacher, and expanded them beyond the constraints imposed by the ordinary lecture. Perugia’s regulations—which, as far as method and style of teaching were concerned, followed the Bolognese example—required repetitiones to be held before Easter. To understand

---

91 Ibid., pp. 276, 324. It is very unlikely that Nicola composed this repetitio in 1354, when most of the examples referring to dates in notarial documents given in the text have the year 1358/59; see Bartolo, repetitio to Dig. 2. 13. 6, Si quis argentarii, fol. 74v–77v n. 9: “Artum in tali loco temporum mortalitatis magna, quae, licet in uno anno quo consulis Hugh, Carolus III [IV?] Rom. imp.;” n. 13 (fol. 75v): “In post, consistet anno dom. 1358, quo anno currunt, et est XII, indictiones...” In una instrumento est annos cum M. CCC, LX, anno, et est expressa indicio, quo case delicto tunc indicet esse XIII”, n. 19 (fol. 75v): “Hec dico si mutatur in principio in uno contratu dicit possit, et in sequenti contratu dicit, anno Dom. 1359”, n. 35 (fol. 77v): “In anno Dom. anuen, 1359, indec. XI, tempore huius Pont. a. menest December” but see also n. 10 (fol. 75v): “done quondam milliesimo CCC, XVII, die B. mensis Ianuarii”, n. 23 (fol. 76v): “anno Dom. 1359”, n. 24 (fol. 76v): “anno Dom. 1359”.

92 Bartolo, fol. 74v–77v, esp. the note on fol. 74v, where the editor rejected the attribution to Bartolo on the authority of Andrea Barbozza.

93 Segoloni, “Schelle” (n. 80 above), p. 282; but see also Van der Kamp, Bartolo, n. 30 above, pp. 71-72, who, basing himself on the various explicit citations in the manuscripts he consulted, attributed it to Bartula.

94 Bartolo, Tractatus de alimentis, fols. 128v–129v, esp. fol. 128v, where Diplovalaccio wrote: “namen iste tractatus est dominii Nicola. Arcand, de Pernicino, qui huit gener Bartol, et sta vult in multa libris numeros manuscript, in quibus iste tractatus subscript praeceito d. Nico, nihilominus cogita.”


96 Vat. lat. 2618, fols. 245r–264r, for a description of which see A Catalogue of Canon and Roman Law Manuscripts in the Vatican Library, Codices Vaticani latini 2300-2746, ed. S. Kuttner and R. Elze (Vatican City, 1967), vol. 2, p. 102. This tract, which circulated under the name Apparatus substitutionum, was often attributed to Baldo degli Ubaldi after it was published in VUL, vol. 8, pt. 1, fols. 201r–211v.

97 Cited by A. Padovani, Studi storici sulla doctrina delle sostituzioni (Padua, 1983), p. 289, who assumes that Nicola’s tract was penned by Pietro degli Ubaldi, but see the attribution to Nicola in Vat. lat. 2618, fols. 245r–264r. Compare the text of Giovanni da Imola to Dig. 28. 6 (tract by Padovani, p. 289), “Ex dictis Bar. compositum quendam tractatum, tractando in eo de omnibus substitutionibus, quando Bart. sparsi in diversis locis posserat,” with that of Diplovalaccio, “Composuit etiam sollemnem tractatum de substitutionibus, in quo tractatus de omnibus substitutionibus, quos Bartolos sparsi in diversis locis posse.”
Nicola’s role, one further requirement of the repetitio must be kept in mind: the teacher who delivered it had the duty to put it in writing and to present a copy to the caretakers of the statio of the university, who then made it available to other teachers and students.109 If Bartolo selected the topic and put together the greater part of this repetitio, it fell to Nicola to deliver it in public, to give it final form, and to present it to the statio of the university. The precise extent of his manipulation of the materials prepared by Bartolo is unknown, and perhaps unknowable. But, given the structure of the repetitio, it can be assumed that the extant text was put together by Nicola.

According to the explicit of one manuscript edited by Quaglioni, another tract, De tyranno, was also left unfinished but was published by Nicola on 11 November 1357, just a few months after Bartolo’s death (13 July 1357).110 A peculiarity of this explicit must be pointed out: Bartolo was presented as Comes Palatinus, not as a “counselor” and “able companion,” as it should have been according to the document attesting his imperial titles.112 Who had a stake in making Bartolo “more noble” than he was? Can his elevation in rank be connected with his alleged coat of arms and with the privileges attested at the beginning of De insignis? True, the title of “count” may not be so arbitrary as it appears at first sight. It was a common

---


108 Quaglioni, Politica e diritto (n. 55 above) p. 109 (Florence, Biblioteca Nazionale, II IV 108, fol. 31r): “Explicit tractatus triumquiades per d. bar. de sax. in legum doc. juriscommentatori ac etiam Comitem Palatinam quem non publicavit morte preventus. sed publicavit post eius mortem d. Nicolaus alans-dri de persica legum doc. eius gener sub anno domini M. CCC. LVIII, die XI mensis novembris et dictur quod ideo ipsum non publicavit quia non perficerat ipsum.”

109 Milden, “Arms and Names” (n. 6 above), p. 295 n. 17, doubts the concession of the title Comes Palatinus on grounds of lack of documentation. However, he ignores the legislation published in the Code concerning the privileges granted to university professors, which included, after twenty years of teaching, the title illustri.

110 Bartolo, to Cod. 12, 15, 1, Grammaticus, fol. 50r, n. 1: “No, habet legum pro doctoribus qui legunt in civitate Perusij nunc gaudelant privilegiolum hunc legis, cum haec eiusdem incolae privilegia stulti, pristin civitates Constantinopoli, et alia libro 29, 1, 42, Ex eo tempore, col. 159b, n. 4; Vat. lat. 2597, fol. 154r: “Sed quid in ducem? Caro in solet notari in loco. Digesti eletus, ubi doctor appellatur illustri: sed si legebit per XX. consequitur dignitatem committen.” Diplomatico had calculated that Bartolo had been teaching at the university for twenty-three years (liber de clavis [n. 27 above] p. 216).

111 Quaglioni, Politica e diritto (n. 55 above), p. 125; for Baldi’s comment on the identity of Bartolo’s tract, see idem, “Un Trattato di tiranno: il commento di Baldi degli Udalsi (1327–1400) alla lex De incolomia, C. De sacrorum ecclesiae (C. 1, 2, 16),” Il pensiero politico 13 (1980): 63–83, esp. 79.

112 D. Quaglioni, “Intorno al testo del Trattato De tyranno di Bartolo da
ternity of De tyranno, Quaglioni neglects to consider the proximity of the two dates that appear in the explicit of both tracts. They are separated by only a few months: 11 November 1357 (De tyranno) and 20 January 1358 (De insignis). To this, one may add the publication of the two repetitions in 1358 or, at the latest, in 1359. The temporal proximity connecting these texts suggests to us that Nicola, in the months immediately after Bartolo’s death, took a keen interest in the work of his father-in-law and decided to publish what he found unfinished or, at least, part of it, including De tyranno.

In sharp contrast to the single explicit of the tract De tyranno, the explicitis of De insignis furnish abundant evidence of Nicola’s role as the editor/publisher of the tract. Not only is it repeatedly reported that Bartolo left it unfinished and that Nicola subsequently published it, but also the precise date of its publication is given: 20 January 1358, indicione XI. Six out of ten explicitis in manuscripts conserved in Spanish libraries listed by García y García state that Bartolo left the tract unfinished, give the full date of its publication, indicate the role played by Nicola, and reveal the circumstance of its publication. The same applies to six out of forty explicitis in manuscripts conserved in German libraries listed by Casamassima, while seven other explicitis, although they omit the publication date, contain either a reference to Nicola’s role or indicate that Bartolo left it unfinished, or mention both matters. Casamassima has also explained that indicione XI corresponds to the year 1358, which, in his view, means that these manuscripts stem from a “tradizione genuina”.

A further consideration of the date of composition of De insignis is necessary. If the explicit of Tractatus testimoniorum contained in the cod. Rossiano 1061 is reliable, Bartolo was working on this tract at the moment of his death. Assuming that this was his final work, it is conceivable that Bartolo set aside De insignis, an act of scriptus interruptus, so that he could complete the highly demanding Tractatus testimoniorum. After having completed his masterly commentaries on the Corpus juris civilis, he became more issue-oriented, focusing on topical issues such as the organization of the city-state government, fictional strife, and tyranny, as well as coats of arms and insignia. As Quaglioni has persuasively argued, these tracts, but above all Tractatus testimoniorum, highlight Bartolo’s annulus interests. Bartolo’s language also underwent a change at this time. Without forsaking the specificities of juridical discourse, he abandoned the constricted language of the Glossa ordinaria—for instance, by experimenting with the language of Euclidean geometry in De fluminibus and of the grammar of signs in De insignis. The subject matter of Tractatus testimoniorum is not judicial praxis or procedure but the testimonial proof or deposition of the witness, how to evaluate it, and its logical and conceptual foundations. This fascinating tract ranges from the examination of witnesses’ declarations based on sensorial perceptions to depositions that do not have a base in sensorial experience but require complex


100 García y García, Cadices operum Bartoli (n. 2 above), nos. 1, 3, 15, 40, 43, 60, 65, 69, 86, 88.

101 Casamassima, Cadices operum Bartoli (n. 2 above), nos. 140, 160, 170, 171, 179 this last one has the correct indication of the month and day but not of the year, 1338, instead of 1339.

102 Ibid., nos. 26, 69, 112, 147, 145, 147.

103 Ibid., nos. 140, 160, 171. More difficult to assess are the circumstances surrounding the publication of this tract. Casamassima contends that the explicitis, which comprise a genuine tradition, are linked to Nicola’s first public disputatio (quando disputavit primam questionem). Since the date is 20 January, it can be safely assumed that the expression prima quaestio refers to the first quaestio disputata of the calendar year and not to Nicola’s holding the first quaestio disputata of his academic career. Furthermore, if he disputed at the beginning of January, it seems possible that he was a relatively young professor, for in the order of the disputations, the younger teachers preceded the older ones. That this quaestio disputata may be the repetitio of the lex Sic quis argumentat (Dig. 2, 13, 6) or, more likely, the repetitio ingressa in materia (Cod. 1, 2, 13), both datable to the period immediately after Bartolo’s death, is a tentative suggestion, though not an improbable one. The obvious difference between the quaestio disputata and the repetitio makes it difficult to transform our suggestion into something more substantial.

104 The explicit of this tract was published by Quaglioni, “Ditto e teologia nel Tractatus testimoniorum Bartoliano,” in Cadices sulpessionis (n. 81 above), pp. 102–25; see esp. pp. 120 and 123 for the position of Baldi, who reports on Bartolo’s death as the cause for not completing the tract.

105 Ibid., pp. 111–19.

106 For the debate on the concept of proof, see A. Giuliani, Il concetto di prova. Contributo alla logica giuridica (Milan, 1971), and G. Alessi Palazzo, Prova legale e proof. La crisi del sistema tra i diritto medio e moderno (Naples, 1979).
intellectual operations, including those that imply moral judgment. Baldo considered this tract an intellectual flight into “things that cannot be understood, or even proved,” lest by “summos viris.” Nicola did not even touch it, as he devoted most of his time and energies to Bartolo’s more mulcible tract on insignia and a useful but not intellectually challenging repetitio regarding dates in notarial documents.

Defining the respective roles played by Bartolo and Nicola in the construction of this tract is a daunting task. Several options are available. The first is to embark on a quest for the ipsumsima vox Bartoli. With the tools of philology, it would be possible to distill the ipsumsima verba Bartoli. The critical edition of three of his tracts (De tyranno, De Gaebphis et Cebellinis, and De regimine civitatis) and some of his legal opinions, as well as a substantial number of manuscripts, furnish copious materials for stylistic and linguistic comparison, so that one could, at least theoretically, establish the stylus Bartoli. Far from being original, this approach had already been contemplated by Florentine lawyers in the Renaissance, and the refrain hoc non est stylus Bartoli was sung by the generations of jurists that followed him. Nevertheless, the project of hypothetically reconstructing what Bartolo may have originally written in order to reveal the author’s intention at the moment of composition is inherently problematic, probably impossible, and even undesirable. Such a project, by attributing this piece to Bartolo, that piece to Nicola, would have the unintended result of dismembering the work beyond recognition. It would trivialize the tract in failing to account for its historical reception as a work of Bartolo and the auctoritas it has exerted down to the very end of the twentieth century.

A second option is to treat Bartolo and Nicola as coauthors of the tract, just as the three of us are coauthors of this essay. This would mean considering Nicola as one who was associated with and collaborated with Bartolo in a common action—that is, planning, discussing, and composing the text collectively. Of course, there is no evidence of a premortem agreement for this common enterprise. At any rate, the concept of coauthorship did not exist at the time. A third option is to consider Nicola as an editor. Here, too, applying the modern term “editor” to Nicola would be anachronistic, for the simple reason that the activity of editing was synonymous with authorship.

The various explicit of the manuscripts furnish evidence that helps us to gauge their respective roles. With regard to Bartolo, his authorship was represented by three terms, given here in decreasing order of frequency: compomo, edo, and compilo. All three terms, commonly employed to designate the authorial role, were very familiar to jurists, who found them glossed in the beginning of the Digest and the Institutes. Compono, which means to put, place, lay together, and also to collect, aggregate, compose, conveys the idea of a well-ordered and regular construction, generally done with preexisting material. This term was employed by the Justinianic compilers in the preface to the Digest and Institutes to describe how they handled the writings of earlier jurists. Medieval students of law found composto explained several times in the first glosses they read in school. The gloss composirem stressed the abridgment of material in a state of disarray into a systematic compilation without thereby neglecting the contribution of individual authors (sed ab aliis adinventum). More elaborately, the gloss non quia recalled the work of the glossator and hinted at the problem of the attribution of single glosses. Rustic farmers, the gloss recites, may say “this field is mine” when they are really cultivating it for the owner. By analogy, the glossator is dominus of his glossa, and confusing the role of a...
compiler with that of a glossator is a form of intellectual rusticity. In contrast, the gloss *compositis* brought into the limelight the contribution of the compiler or his improvement upon the preexisting material (*reformulare in melius*).\(^{110}\)

The term *eddo*, with an entire title of the Digest devoted to it, was a self-evident procedure. Its primary meaning, to put forth, encompassed the plaintiff’s notification to the defendant of the action he intended to bring against the latter.\(^ {110}\) Thus the idea of making something known publicly was inherent in this term. The term *compilis*,\(^ {111}\) in contrast, could have a negative connotation, since its original meaning was to carry off, plunder, and pilage. The Glossa *ordinaria* in the narrative to the title *De seditionis* used the term with this negative connotation (*compilando = rapiendo et furando*). Yet the authorial role and authority of the compiler was not neglected.\(^ {112}\) Taken together, all three terms represent the varying but complimentary roles attributed to Bartolo as the author of the tract.

The representation of Bartolo’s role as author becomes clearer when compared to the representation of Nicola’s role. The explicit of the tract univocally represent Nicola’s editorial handiwork by the single term, *publico*, in agreement with the repetition *Ingressi monasteria*. The term *publicare* was common coinage among notaries and jurists. Innocent IV, in his commentary to X. 2. 22. 14, *Si instrumenta*, distinguished between *publicare* and *exemplare*. Only private writings (*privata*) and documents that did not exist in the original (*non authentica*) could “become public” (*publicandum*). On the other hand, when the original and public instrument existed, it could only be copied. Thus recovering the original meaning of the term *publicare*, Nicola’s role may be described as an “act of expiation,” since he transformed what was essentially *scripta privata* into a text that could only be copied. Furthermore, the text he published had the same authority as the original—that is, just as it were written by Bartolo himself. It is thus understandable that no one has ever cited or treated Nicola as the author. In this sense, despite the reference that Bartolo left the text unfinished, the explicit perpetuate the topos of Bartolo as the sole author of the tract—a topos that we consciously adopt concerning both the contents and reception of the tract. Bartolo, as a master of the *fictio iuris*, would certainly have appreciated the artifices making possible the transformation of his notes on coats of arms into a tract.

Beyond representation, the question is begged: to what extent did Nicola modify the text that Bartolo began after his mission to Pisa and left unfinished? As it comes down to us, the tract was divided into two distinct, incompatible parts. The first part deals with legal questions on bearing arms and insignia, a topic connected with his late tracts on the city-states. We believe that Bartolo is chiefly responsible for both the organization and questions comprising this part. We also believe that it was Nicola who likely inserted the reference to the imperial concession of arms. The second part concerns the material execution and the decoding of coats of arms and insignia. It is improbable that Bartolo had a hand in composing this part of the tract, which helps to explain its tepid reception among jurists. We believe that Nicola was responsible for the second part, which he compiled from a patchwork of nonlegal sources. As we shall see, the second part, which is unremittingly alien to juridical
discourse as a conventional medieval treatise on optics and colors, if not as a manual for painters, explains the tract's appeal to the heraldrists.

Ante Bartolo

None of the civilian predecessors of Bartolo in Italy, such as Odderodo (d. 1265), Dino del Magnolo, and Cino da Pistoia, or in France, such as Jacques de Révigny (d. 1266) and Pierre Belleperche (d. 1303), gave consideration to the topic of heraldry. As for nonjuridical sources, only the Anglo-Norman tract De heraudie, dating from about 1300, is earlier than De insigniis, and it depicted individual heraldic arms without giving a systematic survey of the field. For the everyday use of heralds, who were responsible for the recognition of knights in tournaments, collections of depicted heraldic arms with the genealogical stemma of the corresponding family were compiled. There were two categories: so-called Occasional Rolls, conceived for one specific event, such as a tournament, and Ordinary Rolls, listing the most important families of a region. Of both types together, there survive approximately eight examples for the period preceding De insigniis, mainly from northern France and the Holy Roman Empire. An encyclopedic interest informed some private collections of different coats of arms on the walls and ceiling beams in houses and castles like the Haus zum Loh in Zürich. Dante's *Divina commedia* lists coats of arms that any Florentine citizen should know—for instance, the imperial eagle, the Florentine lily, the keys of the papacy, the French lilies, and arms of prominent Florentine families. More important was an extraordi-

122 In two of the treatises on heraldry published by Jones, *Medieval Heraldry* (n. 4 above), Bartolo's tract is tellingly cited as *Praecitius de armis pingentia*, see pp. 96–97, 104, 121, 115, 153, 156, 164, 170–71.

123 Dumont, *The Heroic Imagination* (n. 9 above), p. 59, dates it to 1300, whereas Manning, "The Relation-ship" (n. 7 above), p. 65, dates it to the mid-fourteenth century.


125 Hauptmann, *Wappenkunde* (n. 7 above), p. 5.

126 Baseggi and Del Piazzo, *Insigne e simboli* (n. 29 above), p. 78.
De insigniis: Part I

When Bartolo composed his tract he was not dealing with some obscure phenomenon but with a realm of visual signs that dominated everyday life in the Italian city-states. A consequential innovation of De insigniis was Bartolo’s organization of the entire realm of insignia into three categories: (1) those pertaining to an office, such as the insignia of bishops; (2) those granted by a princeps; and (3) those that persons assumed of their own initiative. He thus opened his investigation with the question of who may bear insignia of office (D1, c. 1).

To answer this question, he turned to the Roman Law, citing Dig. 16. 1. Proconsul ubique, and Dig. 1. 8. 3, Sanctum est. The first lex stated that proconsuls might bear their honorific signs immediately after departing from Rome; the second referred to legates who carried a special bunch of herbs with them to indicate their status of immunity. In both cases these insignia were used only by persons allowed to bear them because they held an office. Anyone else who bore them without holding this office was liable of fraudulent assumption of an office (Dig. 48. 10. 27. 2, Eis ). Bartolo opened his discussion with these signs of rank because they were the ones known in antiquity and thus found their way into the Corpus iuris civilis. One has to remember that these Roman insignia were not coats of arms but consisted of other status symbols like the right to have fasces carried before the magistrate, to sit on a sella curulis, or to wear a special toga praetexta.130 These were the only examples in Roman Law approximating the medieval practice of coats of arms.

As for contemporary examples of insignia pertaining to an office, Bartolo could think only of insignia episcopalia, whose use was widely discussed by the canonists.

In the Middle Ages, signs connected with a specific civic office or rank were also known but much less common than in antiquity. In Germany, court offices (marshal, chamberlain, or seneschal) allowed the officeholder to bear a distinct coat of arms symbolizing the office. This coat of arms was mostly worn in a red shield in the middle (heart position) of the family coat of arms.131 But since these offices were hereditary, even these dignitary coats of arms were not really equivalent to the Roman conception of insignia strictly pertaining to an office. It is comprehensible, therefore, that Bartolo did not underscore these passages in the Digest. Neither in his commentary on the insignia of the proconsuls nor in the passage on the punishments for fraudulent use of insignia did Bartolo refer to signs; he was far more concerned with the jurisdiction of the proconsul and the assumption of the privileges attached to an office.132 In commenting on the passage relating to the sacrosanctitas of legates, he reported the opinion of Guillaume de Caunh, who stated that somebody fearing an attack by his enemies can obtain from the judge a specific sign indicating that he stands under the special protection of the court. But, without refusing the opinion of his predecessor, Bartolo maintained that asking the judge for a bodyguard was a more effective way to secure safety.133

A real parallel to antique rank signs in the Middle Ages were the insignia of university doctors, which Bartolo took up at the end of this chapter (D1, c. 1). Although he did not elaborate on the insignia of the doctorate here, which signaled a certain rank or office that was not hereditary, Bartolo dealt with the visual signs attending the dignity of a doctor in his commentaries. The insignia of the doctor included the ring, book, and biretta.134 The doctorate gave one precedence over other persons.135 After having been a doctor for

---


---

131 Humptmann, Das Rapparecht (n. 7 above), pp. 386, 405–7.

132 Bartolo, to Dig. 1. 16. 1, Proconsul ubique, fol. 35v n. 1; Urb. lat. 172, fols. 43vb–44ra.

133 Bartolo, to Dig. 1. 8. 8, Sanctum est, fol. 36v n. 1; Urb. lat. 172, fols. 41va: “quod si aliquid dubium offendi ab inimicis suis, patet a indice inspectare, ut sibi concedatur (ascendatur cod.) aliquod signum, per quod appareat de voluntate indicis, licet nono debat (debiet cod.) signum opponere.”

134 Bartolo, to Cod. 10. 53(52). 7, Magistros studium, fol. 23r n. 1; Vat. lat. 2608, fol. 229va. For the insignia of the doctor of law, see also the two citations in doctorata, one for Romanus of Namen and the other for Innocent of Saxenofrato, this last one usually attributed to Bartolo, (Opere, fol. 174v–175r); and E. Conte, "Un serva più prevedere insignias al tempo di Azzzone e Bagadotto," Rivista di storia del diritto italiano 60 (1907), 71–80.

135 Bartolo, to Cod. 10. 53(52). 7, Magistros studium, fol. 23v n. 1. See also
twenty years, one would automatically rise to the rank of count. Bartolo explicitly stated that one who bears the insignia of the doctorate without holding this dignity is liable of a crimen falsi, if he takes advantage of the tax and other legal immunities customarily granted to doctors.

Turning to true coats of arms (insignia), Bartolo asserted that no one may depict on his belongings the coat of arms of a higher-ranking officeholder like a king or any other mighty person (DI, c. 2). In support of his position, he cited Cod. 2, 14(15), 1, Animadveertimus, and Cod. 2, 15(16), 2, Ne quis vel a, which stipulated the names, titles, and royal cloth that might not be used by someone else under penalty of forfeiting the object on which the sign had been placed. Writing in the fourteenth century, Bartolo understood these texts to refer, in contemporary terms, to the dignity of an office and its privileges. More importantly, he introduced the term arma per regia, because arma were considered a constitutive element of the dignity of an office. In the fifteenth century, Paolo di Castello (d. 1541) illustrated Bartolo’s doctrine with cases from Venice

Bartolo, to Cod. 10, 53(52), 11, Grammatico, fol. 23b; Vat. lat. 2009, fol. 299r; and to Cod. 10, 53(52), 6, Medicea, fol. 23v; Vat. lat. 2009, fol. 299v, where the local exception is extended, by law, to the children and the wife of the jurist.

Bartolo, to Dig. 29, 1, 42, Ex eo tempore, fol. 154r; to Cod. 10, 32(31), 30, Alexandrinus principalis, fol. 18r; Vat. lat. 2008, fol. 295rab.

Bartolo, to Cod. 10, 53(52), 8, Redditar unaquaque, fol. 23v n. 1; Vat. lat. 2008, fol. 299r.

Bartolo, to Cod. 2, 15(16), 2, fol. 76v; Vat. lat. 2008, fol. 46v-49r.

Ibid.; “Breviser dit, verba aliena non potest quis titulum, vel arma aliae imponere, et facies printum, et passa calidit locet eversae sine metu processus.” See also Angelo degli Ulboi, to Cod. 2, 15(16), 2 (Lyon, 1522), fol. 20ra n. 1, who wrote: “(Verba aliena non potest quis titulum vel arma aliae imponere, et facies printum, et passa calidit est ficient eversae sine metu processus et proce, h. d. ista lex.”

Paolo di Castello, to Cod. 2, 15(16) (Milan, 1496) s.f.; “Nam non se nos dominus esse vel possessiones ferit describi nomen imperatoris vel arma imperatoris, ut videatur sibi nullum acceptus vel eius familiaris. Et vidi multis qui faciunt pingi arma aliae cardinale vel pape. Et in ista civitate faciunt pingi arma sancti Marci, et vidunt h. d. tabis dominus confecerunt, qua non debit aliquis privatis hue presenore, cum eodem in dedens principos, non tamen decreti pingi nisi supra dominos principios, et hoc secundum numm intellectum.”

Siena.

Bartolo also alluded to the canonistic discussion of insignia belonging to the office of a bishop or an abbot (DI, c. 4). Among canon lawyers, the canon Dixent (X. 5, 31.14), the locus classicus of this topic, addressed a dispute between an abbot and the clergy subject to his jurisdiction. The dispute arose when the clergy, who did not constitute a collegiateity, devised their own seal. In general, the canonists determined that no private person or group can bear insignia belonging to a collegium, unless granted a special privilege. In glossing the words in ipso proprio monasterio in X. 1, 14, 11, Cum contingat—which allowed an abbot who was also a priest to confer clerical orders in his own monastery—Hostiensis produced an argument to help settle controversies between bishops and abbots over the use of insignia pertaining to office. Unless there are provisions to the contrary, Hostiensis reasoned, an abbot can use his insignia episcopalia only within the monastery subject to his jurisdiction. Diocesan bishops could rightfully forbid an abbot to use the insignia outside the monastery. Hostiensis recognized that the bishops were

Secondum alium dictum, quod etiam nomen suum proprium non delect describere, quae est magne teneratissima. Alud tamen signum non tamen textum apponere potest. . . . Non tamen evescitur hoc et, nec secessus primum nec secessus intellectum. Lex autem secunda loquitur quando quis in intimum aliquis facit opus alienum signum, etc. . . . Non fuerit, etc., nec secessus primum nec secessus intellectum: sed fuerit signum suum et, nec secessus primum nec secessus intellectum. Nec autem facit secessus sapienter quia non alius signum secessus intellectum: sed fuerit signum suum et, nec secessus primum nec secessus intellectum.”
liable to forfeit their rights in the event that they had failed to exercise them continuously.\textsuperscript{12} The lay canonist Giovanni d’Andrea immediately grasped the implications of Hostiensis’ position. In his view, Hostiensis’ concession to custom, namely that an abbot could bear the insignia episcopalia outside his own monastery, if allowed by custom, was irrational (irrationabilis consistendu). A prohibition against using the insignia of another’s office, he advised, could be enforced even against custom.\textsuperscript{13}

While Bartolo did not enter directly into this debate over insignia and office, he amplified the terms by which it would be conducted. Henceforth the treatment of insignia would be recast in accordance with Bartolo’s categorization of insignia rather than the narrowly confined debate between Hostiensis and Giovanni d’Andrea. The distinguished canonist Antonio da Butrio (d. 1408), for instance, introduced his discussion of insignia by reproducing, albeit without acknowledgment of his source, the first seven chapters of De insignitis.\textsuperscript{14} Other leading canonists—Pietro d’Ancarano (d. 1410), Cardinal Francesco Zabarella (d. 1417), and Niccolò de’ Tedeschi (Pannomitano, d. 1445)—adopted Bartolo’s grammar of signs and explicitly acknowledged De insignitis as the source for their respective doctrines on the assumption of insignia and use of signs.

Bartolo restricted the general prohibition of bearing the coats of arms of a superior to those cases in which someone else bore them as the main charge or image on his shield ( principals ) (D1, c. 2). He admitted, however, that it was lawful to bear the coat of arms of a superior as a sign of subjection to the mightier person, if it was borne simply as an accessory image or appurtenance (accessorium). While he did justify this distinction, it is likely that he had in mind a common medieval practice. In Germany, the new class of ministerials carried the arms of their lords, which explains why so many new noble families, who had their origins in ministerial relationships, bore the eagle of the Empire.\textsuperscript{15} In Italy, it was conventional to depict in the chief—that is, above the family arms—the arms of one’s lord as an expression of loyalty,\textsuperscript{16} or as a sign that one was holding a special office from this lord, for instance, the imperial or papal vicariate. The Casali of Cortona offer a striking example of this custom.\textsuperscript{17}

Assuredly, Bartolo—the author of Tractatus de Guelphis et Ghibellinis—\textsuperscript{18} was conversant in the language of these political signs. Cities in Italy traditionally announced their Ghibelline adherence by affixing the imperial eagle on their walls or by a coat of arms consisting of a red cross on a white background, while Guelph cities reversed these colors, using a silver cross on a red background.\textsuperscript{19}

\textsuperscript{12} Hostiensis, to X. 1, 14, 11, Cam contingat, In Decretalium commentaria (Venice, 1501), fol. 140v.

\textsuperscript{13} Giovanni d’Andrea, to VI. 5, 7, 3, Abbates, In Decretalium commentaria (Venice, 1501), fol. 149r.

\textsuperscript{14} Antonio da Butrio, to X. 5, 31, 14, Dilicet. For the text, see Appendix 3 below. Antonio’s text was cited by Niccolò de’ Milia (d. ca. 1440), an auditor of the Roman Rota, in his Repertorium iuris (Rome, 1471), sv. arma. He also cited Bartolo’s tract, sv. insignia.

\textsuperscript{15} Pietro d’Ancarano, to X. 5, 31, 14, Dilicet. Super quoquis decretaliam (Bologna, 1518), fol. 142vb n. 144vb n. 14; Francesco Zabarella, to X. 5, 31, 14, Dilicet, Val. lat. 2252a, fol. 201ra-202vb, esp. fol. 201rabc “Quinto nota, quod non licet fabricare signum vel uti ex in principieum alterius, et per hoc arguatur, que si quis signum vel arma alterius defecto vicario illius, ille potest potere esse prohibito, quod tenet Bartol facilitates, per hoc vel [Dilicet] in tractata de insignias et armis,” Pannomitano, to X. 31, 14, Dilicet, Lexica super V libris decretalium (Lyon, 1522), fol. 83vb-84va nos. 3-4.


\textsuperscript{18} Bascapè e Del Piazzo, Insegne e simboli (n. 29 above), p. 28; "Casali, signori di Cortona, uno scono a tre fascie, cui fu sovraposto il capo dell’impero nel 1312, con la nomina di Guglielmo a vicario; Ugolino suo figlio invece assume il capo del leone di San Marco, simbolo di Pisa, in quanto egli era capitanato del popolo più noto, conseguito il vicariato, affidandolo ad esso due aquile.


\textsuperscript{19} Bartolo, Tractatus de Guelphis et Ghibellinis, ed D. Quaglioni, in Politica e diritto (n. 55 above), pp. 129–40.

\textsuperscript{20} Bascapè e Del Piazzo, Insegne e simboli (n. 29 above), pp. 242, 247, 257;
reality, the symbolic ordering was rarely exclusively Ghibelline or Guelph. When Guelph Casali, lord of Cortona, died in Florence in 1400, he was honored with a civic funeral at the priors' palace. Among the banners before the Ier was one bearing the arms of the Guelph party, which was normally unfurled in funeral processions of important personages. On this occasion, however, the Guelph party balked at paying for its banner because of Guccio's ties with the Ghibelines. Filippo Maria Visconti, duke of Milan, tried to placate both groups when he decreed in 1440 that the consiglio generale elect eight persons, four of whom would bear Guelph colors, the other four Ghibelline. This decree was soon rescinded when the duke, realizing that upholding ideological symmetry was counterproductive, promulgated a new decree which made merit rather than ideological affiliation the official criterion for office holding.

Although Bartolo did not discuss the authority of cities to grant coats of arms, he did approve their authority to grant honors and nobility. Surely, he would have recognized their right to make grants of arms like the imperator, rex, or any other dominus, as he recognized the Italian city-states as fully free and independent political entities (citizensi sibi princeps). Bartolo recognized the practice

Zug Tucci, “Un linguaggio feudale” (n. 19 above), pp. 355-56. It is worth noting that the papal legate, Cardinal Egidio Albornoz, included in his constitutions for the Papal States (1357) a chapter devoted to insignia and coats of arms. Albornoz established that individual communities were required to insert in their coats of arms and seal the arms of the Church and the papal keys. See Le costituzioni egiliane dell’anno 1357, ed. P. Sella (Rome, 1912), pp. 119–20, rub. 30 (De armis claritum Ecclesiae oppenendi in portis, palatis, bouderes et sigillis). On the application of this constitution, see A. De Santis, “Arredi nel Trecento (1350–1400)” (Arcidiocesi Firenze, 1980), 2:145–52.


133 Bartolo, to Cod. 12. 1. 1. 1. Si, ut propanitis, fol. 47v, n. 78. On Bartolo’s conception of the papacy as a source of dignitas et nobilitates, see A. Visconti, “Della nobiltade e della sua prove secondo il diritto comune,” Rivista di storia del diritto italiano 15 (1942): 273–76. It should be noted that the issue of visiting officials freely assuming coats of arms of the city they serve is addressed in a single manuscript copy of the tract produced in Pistoia in 1384 (DI. c. 11 in Appendix 1).

134 Woolf, Bartolus of Sassoferrato (n. 36 above), pp. 154–60.

of dependent towns bearing the coats of arms of the dominant city (DI. c. 2). In reality, such towns were either forced to assume the arms of the dominant city or at the minimum a characteristic element of the dominant arms. An oft-cited example is Florence’s grant of arms in 1332 to its newly created dependency, Frenzulona. Thus the Florentine lily and lion found their way into the arms of the localities that had officially submitted to the superior jurisdiction of Florence, while a miniature representation of the balzana, the flag bearing the insignia of Siena, was incorporated into the arms of her dependencies. (More recently, the communist regime in the former Czechoslovakian Socialist Republic vividly underscored its political domination by placing a “red” star, a symbol of socialism, over the double-tailed lion, the traditional symbol of the Bohemian territorial state [see fig. 3]). It was also fairly common for small dependent towns as well as dominant cities to honor foreign magistrates, upon completing a term in office, with a grant of arms. Rieti, in 1379, thus bestowed on its capitano del popolo the right to bear the city’s arms. The statutes of Florence made provision for the grant of coats of arms to foreign officials. In turn, the Florentine patrician Lapo Niccolini received coats of arms from two Florentine dependencies, Pistoia where he had served as podestà and from Vico Pisanu over which he was presiding as governor at the time of his death in 1430. Both coats of arms were proudly displayed at his funeral. Devices of the house of Este were routinely bestowed on the podesta of fifteenth-century Ferrara, as they were on other officials and condottieri.


156 Ibid., p. 314 n. 5. The question of whether a podestà or an official can bear the coats of arms of the city where he served is found in the oldest manuscript we have consulted: Nitriberg, Stadhollinck, Gent. IV, 54, fol. 443v: “et un réctor vel officialis possit portare arma illius civitatis vel loci ubi regit, die quod non, nisi illa sibi concedantur a domino vel communi cui servium in officio.”

157 Such grants required the approval of the city’s councils. Statuta communis et papali Florentiae (n. 129 above), 2:692–93, 10, 1, tract. 1, rub. 212, Quod non possint concedi insignia communis rectorum, nisi delibertis per consilium.


As a matter of protocol, Bartolo considered it advantageous to receive one's coat of arms from a prince (DL, c. 9). A princely grant conferred a higher dignity, just as the last will made in the presence of the prince had a higher ranking. A grant by a ruler also influenced the right to bear arms itself, since one could not be prohibited by another from bearing them. If two military officers had the same coat of arms and were of equal dignity, the arms granted by the prince took precedence. If confusion arose when two persons bore the same coat of arms, and it was unclear whose coats of arms or insignia had temporal precedence, then the coat of arms granted by the prince would take precedence, provided that the two claimants were of equal rank. By connecting coats of arms to the issue of protocol, Bartolo's discussion enlarged the important treatment of questions of protocol found in the Glossa ordinaria to the canon Per iTunes (X. 1. 33. 7). Although the canon itself, which Bartolo cited, said nothing about protocol, the Glossa declared:

dicit, quod primo scribenda sunt nomina eorum qui dignitates iuridie principis sunt consecuti... et hic argumentum pro exemplo episcopis ut in synodo sedentibus in meliori loco.160

The other allegation, toCod. 12. 3. 1. 1, Antiquitas statutum est, was invoked to justify the protocol that rank or office decides precedence when arms are of equal dignity. Bartolo had espoused a similar position in his commentary to this lex:

Inter habentes eandem dignitatem ille debit prius antecedente, qui est prius dignitatem adoptus, etiam si posterior fuerit eadem pluries assecutus. Si tamen prior in consulto Principatus honorem fuerit assecutus post eum, qui est in consultatu, est posterior, et in Principatu prior hoc causa praefertur.161

Bartolo's pronouncements on protocol were endorsed by the Neapolitan jurist Paride del Pozzo (d. 1493) and the French jurist Nicolaus Boerius (d. 1539).162

Mladen overstates his case by calling such princely grants a useful "machinery of registration" or "registering" of the arms,163 because a registration would have required the prince to keep some official record in which the granted arms were listed and thus protected. We find such a genuine mechanism of registration in the late Middle Ages, as in our oft-quoted example of Florence after 1349, or in England and France, where the Colleges of Arms kept official records. The heralds with their occasional and Ordinary Rolls did not function as registers164 because their rolls were used only as a memory aid. On the other hand, as far as the guilds were concerned, there existed such registers, mostly books kept by the guilds, in which the different signs of the artisans had to be listed.165 Even if grants of arms were not tantamount to a registration, their importance lay in their public profile. In addition to the grant, a prince would issue a privilege in which the granted coat of arms was detailed.166 This advantage was considered so great that some old noble families, who claimed that their coat of arms had been in the family from time immemorial, would ask for imperial recognition of these arms in order to receive such a privilege as proof.167

160 Paride del Pozzo, De re militari, TUI, vol. 16, fol. 403v n. 4; Nicolaus Boerius, Praticus de ordine et praecedentia, TUI, vol. 16, fol. 270v n. 21.
162 But this is what F. Agro claims, see "Arazlida," EDS (1954), 283.
165 See, for example, the petition (16 Feb. 1358) to the Patriarch of Aquileia made by Giovanni di Giorgio da San Gintignano, an inhabitant of Gemona, who asked for superior recognition of the arms his family had traditionally borne: C. M. Del fiesso, Famigli towel in Firenzi e loro stemma gentilizi, in I Toscans in
Next, Bartolo considered coats of arms of private persons, in
distinction to those of officeholders and those granted by a prince
(Dl, c. 3). Clearly, one receiving a coat of arms by concession of the
emperor or any other prince can legitimately bear them. Bartolo
was less clear, even self-contradictory, over the issue of whether an
individual could bear arms without a concession from a superior.
On the one hand, he denied this possibility by proposing that if some-
thing is prohibited without the authorization of a judge, it must
necessarily be allowed with it. Accordingly he seems to be suggesting
that, without concession from a superior, one could not bear arms.
Yet this possibility contradicts his subsequent assertions that any-
one can assume arms of his own free will and that arms might be
assumed and depicted on all personal belongings (Dl, c. 4). This last
point had previously been made by the Glossa ordinaria to Cod. 2,
16(17). 2, Rebus quas alius, reminding us that in the Middle Ages
there existed a broad consensus that one could affix one’s own in-
signia and coats of arms to one’s property.

In a celebrated passage, Bartolo drew an analogy between the
assumption of arms and the adoption of names. In his commentary on
Dig., 10. 13, Falsi nominis, he opined that anyone could freely and
legitimately modify his name—for example, when he changed his
name to correspond to a new status as a miles or doctor. But the
adoption of a name for fraudulent purposes was a serious crime,
which applied equally to the fraudulent assumption of coats of arms.
His doctrine on names bore the stamp of tradition. It was grounded

Frondisi, ed. A. Malecagni (Florence, 1992), pp. 31-42, esp. p. 142 for the
approval of Giovanni’s petition.

For grants of arms by the Este to private persons in the fifteenth century,
see Besior, “The Este of Ferrara” (n. 159 above), pp. 258ff.

Cl. ord. Cod. 2, 16, 2, fol. 445: “sed ius quis ipse iurebat, sunt sine et ipsi
potest impune signa, sed non vexillum vel vexa.”

Bartolo, to Dig., 16, 10. 13, Falsi nominis, fol. 180v: Val. lat. 2604, folis.
239vb-240la: “Ant ergo est mutatio nominum fit fraudulose et ad ilium de-
venendum et tunc mutatis nomen sumitur lege Cornelia de falsis. Ant fit ab ibi
causam, non fraudulose et tunc fieri potest, ut ibi. Nam quando quis mutat
status, super uni mutatio nominis fit, puta quando efficitur (fit cod.) miles vel
doctur.” It was fairly common for cities to include in their statutes a provi-
sion for penalizing persons who fraudulently assumed another’s name in a contract, will,
or any legal instrument.

in Cod. 9, 25 (Mutatio nominis non fraudulosa, libero homini est per-
missa), in the Glossa ordinaria to Dig. 48, 10, 13, sv. coeretur, and in the
commentaries of his predecessors. Fearing that Bartolo’s doc-
trine would encourage double-dealing, Baldo declared that name
changing after baptism is indicative of fraud. His inflexible posi-
tion was entirely in keeping with the policies of cities such as
Bologna (1284), Ascoli Piceno (1377), and Carrara (1399), which,
operating on the assumption that name changing is a sign of fraud un-
less the opposite is proven, enacted procedures with which citizens
had to comply if they wished to change their surnames. Baldo as
well as Bartolo would have applauded the decision of the New
Jersey Appellate Division (29 Dec. 1993) denying a convicted mur-
dern’s petition to assume the name of the warden of the prison in
which he was incarcerated. The court, although recognizing that no
legal precedent existed to support its ruling and that common law in
the state of New Jersey allows residents to freely change their
names, was nevertheless persuaded that the potential for fraud and
harm to the warden was substantial.

In Italy the distinction between a “knightly class” and other
persons had never been as sharply etched as north of the Alps, where
arms were considered “the adornment of the nobility.” Bartolo
and his contemporaries were only dimly aware of the original
interdependence between coats of arms and hereditary nobility.

doctrine. See also the lovely example given by Giovanni d’Andrea (n. 141 above)
in his commentary to the procuration of the Liber Sextus, Sacrorum, fol. 36v n.
13, 16-17. Giovanni related that Pope Sergius, prior to his election, was called as
pretex, which necessitated the assumption of another name.

162 Baldo, to Cod. 9, 25. 1, Sicut.

163 Zucchi, “Lo linguaggio feudale” (n. 19 above), p. 365; Spagnesi,
“Nome” (n. 171 above), 20:297.

164 This case was reported in the New York Times of 31 Dec. 1993, B13.

165 H. Keller, “Adel, Rittertum und Ritterstand nach italienischen Zeugnissen
Mittelalter, Festchrift für Josef Fleckenstein, ed. L. Fenske, W. Rösner, and Th.

166 Keena, Chivalry (n. 1 above), p. 13.

167 Sheedy, Bartoli on Social Conditions (n. 36 above), pp. 105-25; J. K. Hyde,
Padua in the Age of Dante. A Social History of an Italian City State (Manchester,
1966), pp. 57-100; M. Tungleroni, “Famiglia nobili e ceto dirigente: a Pisa nel
In this, they reflected the late medieval development in Italy of a continuous extension of coats of arms across the social spectrum, which had eroded the distinction between arma nobilium et populatium. The use of arms extended to cities in the twelfth century, to merchants and ministers in the thirteenth, and finally to Jews and peasants in the fourteenth. These parvenus were the target of Francesco Sacchetti’s novella caricaturing a man of low status (uomo di piccolo affare) with aristocratic pretensions, who asked Giotto to depict his coat of arms on a shield. Coats of arms increasingly served as powerful visual aids proclaiming the honor and antiquity of the family—“honore de casa nostra et il seggio della nostra antichità.”

Coats of arms worn by the men attached to a casa attested to its grande reputation and the royalty it commanded.


Conversely, the degrading of familial arms was taken as degradation of the casa itself. This happened when a member of a family committed crimine lucane maiestatis. As punishment the arms of his casa would be effaced and replaced, which actually happened to the Pazzi after their unsuccessful conspiracy in 1476 against Lorenzo de’ Medici, and, in a reversal of fortune, to the Medici themselves in 1494. Although there is no mention in De insigniis of the arms of exiles, rebels, and those convicted of crimes against the government, this topic was treated in Bartolo’s commentary to Dig. 48. 19. 24, Eorum. “When anyone is expelled from a city because of treason,” Bartolo wrote succinctly, “his arms must be destroyed wherever they are depicted in his honor.” The communis opinio on this explosive issue was grounded in Bartolo’s doctrine, which remained influential throughout the sixteenth century.

Coats of arms were conspicuous on ceremonial occasions, such
as public processions, weddings, and funerals.\textsuperscript{113} As decorative symbols, they embellished every conceivable object from clothing to books to palaces. Francesco di Marco Datini of Prato, the son of a poor taverner who became a merchant prince, not only had his arms placed on shields and floors and over doorways but also on his dishes, forks, and bed curtains, and even on the frescoes and statues he presented to the church.\textsuperscript{114} They were depicted, sculptured, or engraved on tomb plates, altarpieces, liturgical paraphernalia, church windows, frescoes, columns and their capitals, in floor mosaics, and in all sorts of combinations with architecture.\textsuperscript{115} The demand for armorial insignia helped to keep the workshops of tailors, armorers and shield-workers, and artists like Luca della Robbia, Neri di Bicci, Desiderio da Settignano, and Donatello humming. The armorial bearings Luca della Robbia’s workshop produced for wealthy Florentine families can still be seen today above the entrances and in the halls of urban palaces and country villas.\textsuperscript{116}

Viewing coats of arms and insignia as a semiotic map of the social, corporate, and political universe, some scholars legitimately admonish against reducing coats of arms to aggressive social climbing, private ostentation, or the savage mind imagined by C. G. Jung.

\textsuperscript{113} Stewartha, \textit{Death and Ritual} (n. 151 above), pp. 5ff.


---

and \textit{Levi-Strauss.}\textsuperscript{119} In Florence, the standard-bearers and the chambers of the \textit{societates} were obliged to have coats of arms painted over the main entrance of their meeting places. Visible and recognizable from both sides of the street, these signs marked and shaped urban turf.\textsuperscript{120} The same applies to “les armes marquant le paysage urbain” in Venice and Genoa.\textsuperscript{121} Family coats of arms were critical in publicizing a \textit{casa’s} proprietorship of city palaces and country villas and farmhouses, as well as its patronal rights to tombs, chapels, and churches.\textsuperscript{122} Still, by the opening of the fifteenth century, the function of arms had decidedly shifted from a means of unmistakable identification of a family and its political and corporate affiliations to a fetish expressing the pride and wealth of a family, as a mise-en-scène.\textsuperscript{123} This state of affairs was succinctly denounced by Bartholomeo Chasseneuz:

\begin{quote}
donans seu legens pecuniam ut sit aliquod opus, puta templum, aedes sacrae, hospitale, etc., imagines, nomen vel arma sua in codem inscribere, ponere sive depingi facere putest: nec debet...
\end{quote}

\textsuperscript{119} See, for example, F. Cardini, “Concerto di cavalleria e mentalità cavalleresca nei romani e nei cantori fiorentini,” in \textit{I setori dirigenti nella Toscana tardo comunale} (Florence, 1983), pp. 164–65.

\textsuperscript{120} \textit{Statuta communis et populi Florentiae} (n. 129 above), 23625–26, esp. 2826, lib. 5, tract. 1, rub. 741, \textit{De habendo apothecaris pro quilibet societate pro tenendo armis}; “Et quod quilibet vexillarius, et camerarius societatis praedictae teneat, depingi facere armis dictae societatis ex haure viac ad utique parte itinoris ipsius apothecaris, ut quidomin de ipso societatis vexillator, et aperie se parte vacantis apothecarius potestas.”


abradi seu deleri, etiam ut alterius arma ponuntur. . . . Adverte
lumen quod ponentes arma sua in ecclesiis quas facient aut in or-
namentis quae donant ecclesiis perdunt meritum.194

In reaction to the widespread appropriation of coats of arms by
noomable townsme, sporadic attempts were made to regulate their
use. As early as 1313, the statutes of Pisa declared that no popularis
was allowed to display the coat of arms of a noble citizen, unless he
had already borne them for twenty years.195 As a professor of law at
the Pisan studium and as an advisor to the podestà,196 Bartolo was
acquainted with this requirement. In England the assumption of arms
without royal concession was prohibited in 1417 and is still in force
today.197 A comparable attempt to restrict the use of arms in
Germany in 1467 was not successful.198 In France, too, the entire
apparatus surrounding the concession of coats of arms was institu-
tionalized in 1407, when Charles VII founded the College of
Heralds.199

At the same time Bartolo himself was sharply criticized for what
was perceived as his ringing endorsement of the practice of free
assumption of arms. Nowhere in De insigniis was any distinction made
between nobles, who always have a right to assume a coat of arms,
and nonnobles, who can bear arms only by concession of a superior.
The fifteenth-century Argenteriae Tract made “nobility of spirit”200

191 Chasseuneuf, Catalogus (n. 10 above), fol. 10v, n. 13.
192 “Poderis teueatur et debit non permettere vel pati quod aliquis popularis
civitatis pisane et eius coniugis habebat . . . arma deputa signo vel armas
alienas nobiliis civitatis pisane, nisi talia arma vel simul coniugis sit habere a
vingenti annis retro”: F. Bonfini, Statuti editti della città di Pisa dal XII al XIV
secolo (Florence, 1857), 2:2376. This rule was a literal repetition of the statute of
1290, except that here the period of prescription was only ten years (ibid., 1:617).
194 Mauclerc, “Arms and Names” (n. 6 above), p. 292.
195 Hauptmann, Das Wappenrecht (n. 7 above), pp. 62, 63; D. L. Galbreath and
196 R. Mathieu, Le système heraldique français (Dijon, 1946); A. C. Fox
Davies, A Complete Guide to Heraldry, revised and annotated by J. P. Brooke-
197 Manning, “The Relationship” (n. 7 above), p. 70. For a similar reaction,
see the untitled treatise edited by Jones (n. 4 above), p. 171, where the author,
quoting Bartolo, wrote “conclusum erga quod licitum est unicunque nobili

the minimum requirement for those lacking a noble pedigree, a nec-

essary precondition for the right to bear a coat of arms. In his De
nobilitate, the French jurist Bonas de Cartilli departed from Bartolo,
insisting that nobles and plebeians should differentiate their shields
regarding both form and content, so that each order could be prop-

erly identified. While nobles were permitted to use animals, roses,
lilies, and crosses, plebeians were limited to certain letters, ciphers,
numbers, and lines.201 Chasseuneuf, too, broke ranks with Bartolo:

Videreur quod Bartolus in hoc multum excusus fuerit et
quod istud non sit indistincte verum, maxime in villanis seu rustici
civibus non habitibus aliquam praecernitionem aut dignitatem seu
nobilitatem, quantum credo quod talibus non sit licitum portare
arma, hoc est scuta in quibus sunt arma cum talia solum com-
petent nobilibus ex aliqua nobilitate.202

These sharp reactions were symptomatic of an aristocratic under-
standing of the function of coats of arms as an adornment of nobility
and must be taken as a backlash against Bartolo’s democratic ap-

proach. After 1450, according to Borgin and Cambi Gado, the term
stemme, instead of arma, began to be employed by families who
wished to distinguish their noble arms from nonnoble ones.203 Yet,
owing to the widespread use of arms fortified by Bartolo’s doctrine
of free assumption, a family’s coat of arms alone was never accepted
as presumptive proof of nobility.204

Gabrielle Paleotti, in his widely acclaimed Discorso intorno alle
immagini (1582), which is regarded as the first significant manifesto
of Neo-Renaissance art, relied on Bartolo’s tract to suppress what he
perceived as an abuse: the deployment of coats of arms as a sign of
status and ownership (dominio) in churches and on liturgical para-

sili arma vel insignia ad libitum assumere.”
201 Bonas de Cartilli, De nobilitate (n. 184 above), fol. 10v ff. 169–72 (for the
discussion of Bartolo’s tract).
202 Chasseuneuf, Catalogus (n. 10 above), fol. 12v n. 29.
203 L. Borgin and F. Fumi Cambi Gado, “Insegne araldiche e imprese nella
Firenze medicea del Quattrocento,” in Consorterie politiche e scelte isti-
204 Visconti, “Della nobilita” (n. 152 above), pp. 802–85.
phernalia. Yet Bartolo’s conception of the coat of arms and insignia as a sign of identification inspired Paleotti to counter what he perceived as an abuse in Tridentine Italian society: the inflationary use of coats of arms and insignia in churches and on liturgical paraphernalia. If the abuse was the ostentatious display of coats of arms as a symbol of status, if not ownership, the remedy was to restore them to their original significance as it had been codified by Bartolo: an arbitrary sign which had no other purpose than to distinguish between persons. Paleotti reappropriated the analogy between names and coats of arms—a step that has escaped the attention of the editor of Paleotti’s Discorso. Paraphrasing Bartolo, Paleotti wrote:

come i nomi sono posti per distinzione di molti contenuti sotto questo commune di uomo, così l’arme, significando la diversità del cognome, sono poste per differenza di quei che possono partecipar il medesimo nome.

Though coats of arms and insignia were in themselves neither good nor bad, one could err in their use in three ways: in the kind of attachment (affetto) people had to them, in the way in which they were displayed, and in the place in which they were used. To those who “embraced their own coat of arms with passion (amore) and regarded them as a very valuable asset, as if their entire reputation seems to rest on them,” Paleotti countered, quoting Bartolo, that one can freely make one’s own coat of arms. He thought that equal access to insignia could be a convincing argument—certainly more convincing than any argument extracted from the writings of the Church Fathers—to destabilize the entire construction of coats of arms as a status symbol, for, if nothing else, arms were a symbolic construct of meanings to be appropriated by tutto il popolo. Ostentatious display of status was not the only meaning Paleotti was able to read into the display of insignia. They were objects that also proclaimed ownership (certo segno di dominio), which made them all the more unfitting a display for churches and liturgical paraphernalia. Besides a few citations from Justinian’s Code (8. 11(12). 12. Omnes provinciarum: 11. 41(40). 9. Si qua in publicis), Bartolo’s tract fortified his reading of coats of arms as signs of ownership (Di, c. 4).

After having discussed the question of who can assume coats of arms, Bartolo moved on to the core question of protecting one’s arms against use by others (Di, c. 5). He assumed that several people can wear the same coats of arms, again making an analogy to the paradigm of names, which can also be borne by several persons. The double usage of arms is one of the most important themes developed in De insigniis. He located several Roman law passages which mention casually that in a certain case several people shared the same name (Dig. 36. I. 64(62). 10. A filia; Dig. 31. [1]. 76. 5. Cum filius divisus; Dig. 26. 2. 30. Quod papillae; Dig. 31. [1]. 8. 3, Si quis seruam). Even though these passages did not deal principally with the question of whether it is lawful to bear the same name, they served as an authoritative example of this practice. Reading what Bartolo had written on these passages in his commentaries, we can see that he neither commented at all on these texts or only dealt with legal questions, such as possibilities of proof by double usage of names, but not with the question of whether it is lawful for two persons to have the same name.

An argument against the theory that one can freely assume someone else’s coat of arms might be that arms are akin to an asset, a nostrum, which therefore can be used by someone else only if it was conferred on that person (Di, c. 5). This counterargument derives from Dig. 50. 17, 11, Id quad nostrum est. “Something which is ours cannot be transferred to others without our consent.” But Bartolo immediately defeated this argument with Dig. 13. 6. 5, 15. Si ut certa loca, a lex on which he commented extensively, where two persons cannot “own or possess the entirety of something” simultaneously. This norm, however, was not applicable to public squares.


206 Idem, p. 474.

207 Ibid., p. 175.

208 Ibid., pp. 490–92.
and baths, which one always uses in common with other people, so that “the use of others does not mean that I use them less.” To lex Si ut certo loco, he applied the contract of commodatum to the use of squares, baths, and colonnades. As a gratuitous loan of a thing to the exclusive benefit of the borrower, who was subject to liabilities, the commodatum can explain the usage (usu) of a thing, the insignia in our case. It can account also for the exclusion of ownership and possession, which serves Bartolo’s theory that anyone can freely assume a coat of arms and insignia.

Yet, when constraining coat of arms and insignia as a form of commodatum, there is an inherent obstacle; the absence of the lender (commodator) to whom the thing ought to be restored. The second indication that may help to construe coats of arms and insignia as a legal phenomenon is an analogy to the banks of a river. In De futili debitis (p. 2), Bartolo posed the question of whether, when one sells a piece of land bordering a river, the banks of the river should be measured. He answered that ordinarily they should not be measured. Banks are not sold; rather they are attached to the property being sold. Further, according to the ius gentium, the right to use the banks is common to all. In this sense their sole ownership (sola proprietas) is impossible, since others enjoy the right to use them constantly. As in the case of commodatum, the key element is the use, which is free to all. Placing coats of arms and insignia under the ius gentium presents fewer difficulties than constraining them as a contract of commodatum, for it is hard to conceive of a commodator in this realm of signs.210

When Bartolo concluded that identical signs are never one and the same but different things having similarity in every respect, he was assuming that an individual coat of arms affixed somewhere is not the same as the one that is reproduced by somebody else (DL, c. 5). Both stem from a more general idea, a certain combination of signs, whose usage is free to everyone. Hauptmann calls his distinction spitzfindig,211 but it is fundamental to Bartolo’s argument. In his commentaries, he insisted that common usage (plures in solidum usi) included an individual personal right, but one which was not exclusive.212 Nevertheless the use of the same coat of arms can be restricted if the original bearer is injured by the double usage—as would happen when the other person bears the arms contemptuously, when a third party is injured, or when it creates an official scandal. To prevent this from happening, public authority can prohibit the use of arms on the basis of Cod. 7. 6. 1. Cum deditii usus liberti. Bartolo was the first jurist to link Roman law restrictions to the use of coats of arms, restrictions on double usage that became a commonplace in the literature on heraldry.

The ability to identify individuals unmistakably from their coats of arms was desirable and in the public interest. To remedy the inevitable confusion of identities arising from the promiscuous usage of coats of arms, cities like Florence granted officially registered coats of arms to prevent double usage.213 A notion of public interest similarly informs the Pisan prohibition (1236) of double usage of names.214 Bartolo was intent on protecting the interest of individuals by prohibiting one person from bearing another’s coat of arms (DL, c. 6). He related what would become a popular story of a German knight who discovered, on a pilgrimage to Rome during the holy year, that an Italian bore the same coat of arms as he did.215 In such a

209 Bartolo, to Dig. 13. 6. 15, Si ut certo loco, fols. 82v–33r; Ulp. lat. 172, fol. 244b: “Sequitur ver., usum autem habere, hic allegat, quod tenentur in solidum, et forma argum. sic, in commodato concedunt usas, nam dominium, vel possessio, sed usus minis et potest esse apud plurès in solidum. Nam platea ego utor in solidum, seu in totum, et in alterius cod. in totum, et sic de singularibus et singulis us. cod.” Ideo in benef., vel portio, et similim. ergo plurès commodationis obligantur in solidum, id est.

210 On the multifaceted issues related to the ownership and use of property, see the monumental work of P. Grossi, Il domini o e le case (Milan, 1992). See also G. Rossi, La natura dell’usura in nella sistemazione di Bartolo (Florence, 1989).

211 Hauptmann, Das Wappenrecht (n. 7 above), p. 235.

212 Bartolo, to Dig. 50. 17. 11, Id quod nostrum est, fol. 251r; Vat. lat. 1201, fol. 304r: “et nota quo modo commissum est, hoc est veniam ex interpretatione, non vero.”


214 Bonomi, Statuti inediti (n. 195 above), I.386.

215 This example, with the opportune personal variations—the German knight visiting Paris instead of Rome—was adapted by the author of the Argentarius tract (n. 7 above), pp. 71–72. See also F. Sacchetti (n. 179 above), Novella 81, pp. 446–9, in which “un cavaliere de’ Bardi,” wearing a “gran camino dell’orna,” is called to Padua to assume the office of podestà. Passing through
case, he contended, the German knight has no legitimate interest in prohibiting the use of the coat of arms to the Italian, because they normally live too far apart to be injured by the similarity. Although we have been unable to track down mention of this incident in contemporary German or Italian chronicles, it is plausible that this story exemplifies an historical event during the year of indulgence, 1350. Bartolo was opposed to anyone assuming another's coats of arms when it endangered the life of the original arms bearer.

Inheritance of coats of arms, as a rule, hinged on legitimate birth of the children (DL, c. 10). For Bartolo, all legitimate descendants in the agnatic line have the right to inherit and bear the family's coats of arms. Fathers could not prevent legitimate children by testamentary disposition from inheriting the family's coat of arms. The child's claim to the coat of arms was not contingent on being an heir. Regarding children born out of wedlock, either "bastards" (illegitimate children of a known relationship) or "spurious" (illegitimate children whose father is unknown), Bartolo stated that they belong neither to the house nor to the agnatic line, and therefore they are disqualified from bearing coats of arms (DL, c. 11). In support of this, he cited Dig. 50. 16. 195, Pronumptiatiia, a text dear to the defenders of lineage purity. He observed, however, that in Tuscia (comprising most of central Italy) bastards customarily can bear arms, and he saw no way that this custom could be repudiated. Bartolo, ignoring Bartolo's practice-informed observation, stated that properly and strictly speaking spurious and natural children are not included in the household and that bastards do not belong to the household or agnatic line. Accordingly, they are not entitled to bear the coat of arms and insignia of the household, since arms and insignia confer an honor which is not suitable for such children. Citing de insigniis, Benedetto de' Barzi of Perugia (d. 1459) dismissed the general applicability of Bartolo's doctrine on the grounds that local custom does not invalidate the disposition of the itas commune. He also qualified the restrictive opinion of Baldus. Barzi agreed with him on the exclusion of spurious children, but upheld "that a natural child is of his father's household and can bear its arms and paternal insignia just as a legitimate and natural child."

Valla reproached Bartolo for being partial to women and therefore effeminate. Yet Bartolo was silent on the issue of women bearing family armorial insignia, which they did, though sparingly. Despite his silence, there is good reason to believe that he simply would have assumed a woman's right to bear her father's coat of arms. Strictly speaking, a woman is an agnate of her father, and indeed we find depictions of women bearing the coat of arms of their medium senti." Although Chasseneux is speaking of a different geographic region, it seems from the way he describes the same concept of rule and exception, and even the same word, "observatorium," that we might conclude that Bartolo had a similar usage in mind when he spoke about Tuscia.

Baldus ignored de insigniis, citing only Bartolo's commentary on the Digest. Baldus, to Cod. 6, 25. 7. 1, Generalit. § 40 ante: "qui [bastard] propri non sunt de domino nec de agnatiuno nec de inre nec de consecutinis. Nec possunt portare arma illiis domi insigni. E maximo quae portare arma est honor qui non competet bastardis." In the Lyon edition published in 1483, this passage ends with the sigillum of Nico de Mata. (Nicolay de Moutierde). See also Baldus, to Cod. 6. 38. 5, Suggestio. These passages were paraphrased by Benedetto de' Barzi.

Benedetto de' Barzi, Tractatus de filiis non legitime natis (1456), in THI, vol. 8, pt. 2, fols. 23r-29v, esp. fol. 23v mm. 12-13. "[Bartolus] dicit, quod in partibus Tusciae annum descendentes descendunt de domino suo, et sic vult, quod erant naturales comprehenderant, sed ipsum legatum secundum consuetudinem locum, et non de inre communi, sed tamen in suo tractatu de insigniis et annis, dicit quod bastardi possunt portare arma et insignia dominus, et quod in mentem esse consuerint." 210

Baldus, to Cod. 6, 38. 5, Suggestio. "Ego autem praeclare tenere filium naturalem esse de domino patris et possis portare arma et paterna insigni, nemo potest legatum et naturalis."

Valla, Letter to Pier Candido Decembrio (n. 12 above), p. 610.
fathers as well as of their husbands.\textsuperscript{222} Sometimes in marriage alliances we find split shields containing the two emblems.\textsuperscript{223} But since a woman’s children were not considered agnates of their maternal grandfather, they had no legal right to bear his arms. Bonus de Curtilli, citing Bartolo’s tract, observed that no one is allowed to bear the insignia of the maternal line, “quia tale insi de derrendi arma non competit cognatis.”\textsuperscript{224} While Bartolo did not elaborate on the transmission of coats of arms, either in the tract or in his commentaries, he presupposed, as the convenient analogical extension to inheritance law makes clear, that coats of arms could be transmitted just like ancestral tombs or any \textit{rex religiosa}.\textsuperscript{225}

Recognizing the confusion resulting from the situation where many members of one family might bear the same coat of arms, Bartolo ventured that distinguishing marks be added to the original coat of arms (DI, c. 11). It was customary for younger family lines to add so-called brisures or marks of cadency\textsuperscript{226} to the main family coat of arms, although this practice was infrequent in Italy.\textsuperscript{227} Other supplementary signs, of which Bartolo was probably aware but did not discuss, were those found in Florence. Here, in 1349, the magnates receiving new coats of arms were required to use a black margin around their shield during a probation period.\textsuperscript{228} North of the Alps we find the “Bastardhalben” or “hein sinister,” to use modern terminology.\textsuperscript{229} A “Bastardhalben” was a thin black line, running diagonally from heraldic left down to right, which bastards would wear above their natural father’s coat of arms and which they might drop as a special privilege granted by the sovereign.\textsuperscript{230} This practice was not observed in central Italy.

The cases in which Bartolo unequivocally admitted a public interest entailed trademarks (\textit{marche}), which had been used in the Italian city-states since the early Middle Ages (DI, c. 7). If a master-smith pressed his sign on swords or similar products, he reasoned, it would lead to a greater demand for this specific product, and therefore a public interest existed in forbidding imitation of his sign. Likewise, the signs of notaries and merchants, or watermarks which paper mills pressed on their paper, must be protected. Since these cases concerned public interest, Bartolo concluded that it is the official duty of the judge to take appropriate measures to prevent this abuse. He did not explain how these judicial proceedings \textit{ex officio} are supposed to be conducted. In general, his opinions served to confirm guild and statutory regulations of trademarks. Members of guilds were required to put a general sign (presumably the guild sign) on their products in order to control their quality. Non-guild members were prohibited from using these signs,\textsuperscript{231} which could vary from city to city and were not indicative of the specific trade. Finally, in addition to the guild sign, masters were required to use individualized signs, which were also protected against fraudulent use. The guilds of the smiths (\textit{fabbi}) and carpenters (\textit{legnaioli}) of Florence required their members to register their signs in a book to guarantee exclusivity and prevent abuse.\textsuperscript{232}

\textsuperscript{222} Bascape and Del Piazza, \textit{Insegne e simboli} (n. 29 above), p. 179; J. Pope-Hennessy, \textit{Lucas della Rochele} (n. 128 above), pl. 189, for the coats of arms of Maddalena de’ Persiari, Professor Carolyn Vannone of Trinity University, Texas, is currently preparing a study of women’s coats of arms in sixteenth-century Rome.

\textsuperscript{223} Marquard, \textit{Rubin Heraldry} (n. 131 above), pl. 26, 46, 48, 67.

\textsuperscript{224} Bonus de Curtilli, \textit{De nobilitate} (n. 184 above), fol. 13v n. 37.

\textsuperscript{225} Hapsmann, \textit{Das Wappenrecht} (n. 7 above), p. 39.

\textsuperscript{226} Although Mladen, “Arms and Names” (n. 6 above), p. 259, dismisses them as “unremarkable,” they were an important feature of medieval heraldy.

\textsuperscript{227} Bouillon, “Insignia of Power” (n. 147 above), p. 165; Pastoureau, \textit{“Strategies héraldiques”} (n. 133 above), p. 1243.

\textsuperscript{228} Ibid., \textit{“Stratégies héraldiques”}, p. 1249.


\textsuperscript{230} Bascape and Del Piazza, \textit{Insegne e simboli} (n. 29 above), p. 179.


\textsuperscript{232} Statuti dei fabbi di Firenze, in \textit{Statuti delle arti dei corneggi} (n. 165 above), p. 186: “Et si quis de membro predicato facientium cultelleis territorios non consueverit apponere in suis ferris et laboreris alicuius siginum, tenere et
The chief function of merchant signs or marks was to assure the consumer of the origin and quality of the purchased product. It cannot be upheld, as Schiechter, Guglielmetti, Benedetto, and Mari have done, that these signs were essentially guild "policiemarks" used to enforce quality standards on member artisans. They also deny that such signs had not yet achieved the status of trademarks, because they were designed to prohibit competition within their craft. But considering the evidence, it is hard to comprehend why individualized marks would have been used if not to guarantee the quality of one specific artisan. The artisan signs, often consisting of linear figures, were obviously envisioned by self-confident artisans as almost equivalent to coats of arms. Ironically, the equal treatment of arms and artisan signs, which is a notable feature of De insigniis, has not been sufficiently appreciated and has even been ridiculed by modern scholars.

One of the most arresting sections of De insigniis deals with the disposition and transmission of signs of a partnership (signum societatis) (D1, c. 12). For a partnership, division is the legal equivalent to natural death. Bartolo distinguished between two cases, one in which the partnership was entirely dissolved and the other in which some business activity (negotium) of the original partnership continued.

Bartolo da Sossiferrato's Tract on Insignia and Coats of Arms

ued. In the first case, the sign is treated like any other asset both before and after dissolution of the partnership. Accordingly, upon dissolution the head partner would retain the sign because of his superior rank in the former partnership. If there had been no such managing partner, the one with the largest share was entitled to the sign. When all partners were equal, determination by lot was used to decide who would receive the sign of the partnership. In the second case, when a business activity continued despite the dissolution of the original partnership, a further distinction is made: if the trademark indicates the quality of a certain place or, as Karl Marx would later call it, Produktionsstätte, it would belong to the person who continued the business in that place. Bartolo gave as an example the paper mills of Fabriano, which were the first to use watermarks (from 1282 on) naming the mill and which experimented in using the names of the craftsmen as watermarks. This experiment came to an abrupt halt in 1307, when it became clear that the quality of papers was determined by other factors of production, such as the purity of the water used, rather than the skill of the paper maker. Bartolo concluded that in such cases the watermark should be treated as an asset accessory to the mill, so that anyone who owned or possessed the mill and produced in it may use the watermark independent of his title to the mill or his relationship to the former producer.

The close connection of the right to use a special trademark with

237 With an actio communis dividendi, such a distribution of all assets of the corporation would be carried out. See M. Kaser, Das rémische Privatrecht. Abschnitt: das atriumische, urklaassische und klasseische Recht (Münch, 1971), 1: 591.
239 Ibid., 1: 10.
240 Hauptmann, Das Wappenrecht (n. 7 above), p. 111, wrongly tries to include all medieval trademarks in this category, where their usage is entirely dependent on the possession of an estate. His conclusion stems from a desire to show the close analogy of these marks to coats of arms. For Hauptmann, "true" coats of arms are associated with the lordly class and hereditary possession of fields; thus he always emphasizes the connection of real property and sign. The better approach is to stress the importance of sign as identifying an individual or a group of persons—family or partnership and workshop.

237 With an actio communis dividendi, such a distribution of all assets of the corporation would be carried out. See M. Kaser, Das rémische Privatrecht. Abschnitt: das atriumische, urklaassische und klasseische Recht (Münch, 1971), 1: 591.
239 Ibid., 1: 10.
240 Hauptmann, Das Wappenrecht (n. 7 above), p. 111, wrongly tries to include all medieval trademarks in this category, where their usage is entirely dependent on the possession of an estate. His conclusion stems from a desire to show the close analogy of these marks to coats of arms. For Hauptmann, "true" coats of arms are associated with the lordly class and hereditary possession of fields; thus he always emphasizes the connection of real property and sign. The better approach is to stress the importance of sign as identifying an individual or a group of persons—family or partnership and workshop.
a certain, determined business or workshop was also repeatedly expressed in other sources. In the guild statutes of the carpenters in Florence (1301), we read:

statutum et ordinatum est quod quilibet buius artis qui voluerit signare lignamen cum brusto, vel sinopia debeat habere et facere tantum unum signum et non alium devisatum ab illo; et si in una apotece, vel in pluribus apotecis essent duo, vel pluris solum, non possint, vel debeat habere, nisi unum singuum et illud et non alium devisatum ab illo facere.241

Although in one such workshop (apotece) there were several artisans working, they could use only one trademark, that of their master, who also had certain control functions over the work of the others.242

Turning to individualized trademarks, Bartolo explained that their function was to protect consumers from deception243 as well as to foster the sale of quality products (melius venduntur et avidius emuntur) (I I, c. 7, 12). Where the trademark was an indicator of the skill of a certain master in a workshop, as it is the case with smittis, then the master is the one who may continue using the trademark. Again, when the partners were equal, the disposition of the trademark would be determined by lot. A famous instance of smittis’ personal marks were the workshops of Milanese armor production. We find examples of a double usage of trademarks on the armories: first the general mark of the workshop and then the individual producer’s marks.244

The contemporary usage of trademarks was much more extensive than Bartolo’s tract would lead us to believe. Had Bartolo him-

self completed his tract, he might have considered the brisk market in trademarks, in which individual marks were sold and leased as valuable commodities.245 Another omission is the transmission of trademarks by inheritance, which appears to have been commonplace. In the guild statutes of the Florentine smiths, we read that these trademarks were passed down in one family from father to son, as if they were a coat of arms:

Item quod si aliquis magister de dicta arte decederet vel dece- sisset et ex eo remanerent vel remanissent filii vel filiae legitimi et naturales, possit et licet corum matri, donec cum talibus filiis et filiabus staret, pro dictis filiis tenere apotecam, quam tenebat talis faber condam vir ipsius domine, et facere fieri artem pro dictis filiis suis ad ipsorum filiornm suorum voluntatem, quam faciebat talis faber et etiam apponi facere singum et ut signa quo utebat talis condam faber in labororis suis suo tempore, et hoc dum tales fili vel filiae fuerint etatis legitime.246

Other sources reveal that artisans increasingly regarded their trademarks as complete counterparts to coats of arms. They wanted to create a legacy by depicting their artisans’ marks not only on their products, but also on houses, windows, or gravestones,247 as one would do with a coat of arms.

Bartolo’s discussion of trademarks was not cited by his immediate successors. For example, Baldus, in his commentary to X. 2, 24, 18, Quanto, inserted a discussion of coats of arms, signs used by notaries, and marks applied by merchants on their wares, which closely echoed De insignitiis.248 It is indeed perplexing that, given both the similarities and differences in dealing with the same subject matter as well as his knowledge of and familiarity with Bartolo’s writings,

242 The statutes of the Florentine smiths from 1344, Statuti delle arti dei corazzati (n. 165 above), p. 190, assume that in every workshop there is a master and other artisans working for him: “vis vel sui laborantes.”
243 This point is particularly stressed by Mari, “Problemi di critica” (n. 234 above), p. 31, as indicative of the “modernity” of Bartolo’s ideas.

248 For what follows, see Baldo, In Decretalium commentarium (Venice, 1595), fol. 252r n. 3.
Baldo failed to refer to his tract either to support his positions or to disclaim some of its theses. At any rate, Baldo’s first query was whether a soldier can bear the coat of arms of another without permission. Following the Glossa ordinaria, which held that anyone is permitted to depict his own coat of arms, he stated that two soldiers can bear the same coat of arms if no deceit or contrivance is involved. But there was an exception to this rule: no one was permitted to bear the coat of arms of a prince, except by special privilege. In the case of merchants employing the same mark on their bales, caution was required, for the adoption of similar marks may cause confusion and lead to economic damage. The case of notaries, too, required discretion, since at times the need arose to compare notarial marks in order to determine the authenticity of a document. Baldo also considered the topic of notarial signs in his questio disputata, Accusata est di vi turbativa.

On soldiers, a group that did not appear as a central concern of Bartolo, both jurists stood on similar ground. On merchants, Bartolo had in mind a multifaceted category, ranging from smiths to paper makers and including partnerships of merchants, while Baldo fixed his sights on wool merchants and traders. On notaries, while Bartolo mentioned them en passant (DI, c. 8), Baldo considered the authenticity of their instruments. Yet the most noticeable departure occurs when Baldo considered those inanimate objects that fall under the heading of publica facultas. While Bartolo, who had in mind works done on rivers and their banks, pleaded that a complaint cannot be lodged against the user of a publica facultas except for a serious reason, Baldo upheld the position of the original holder of the mark or sign either because he possessed it longer or because it was recognized as a privilege.

On the transmission of trademarks, Baldo’s reasoning and conclusions diverged from Bartolo’s, as he was more troubled than his predecessor by the potential for fraudulent use of partnership signs. Upon dissolution of a partnership, Baldo asked whether the remaining head partner could continue to use the sign. At first glance, it seems that he can do so “because this sign is common to the entire partnership.” It can be objected, however, that one cannot assume a name by which a person represents himself falsely. Baldo’s solution was that where there is no agreement among the partners, the unity of the sign has no reason for being and therefore can no longer be employed, lest there be false representation. In contrast to Bartolo, who viewed signs more as a matter of personal identification, Baldo conceived of them as representing the collectivity to which persons belong.

These contrasting approaches to insignia and trademarks were eventually integrated by Baldo’s grandnephew, Pietro degli Ubaldi, in his Tractatus de duobus fratribus, published simultaneously in Avignon and Venice in 1500, and in the authoritative Tractatus universi iuris of 1584 (for this and what follows, see Appendix 4). Pietro openly acknowledged his dependence on De insignitis as the model for his own treatment of insignia and trademarks. He quoted extensively from the first part of De insignitis and related with great pride the grant of arms that his father had received from the Emperor Sigismund at the time of the Council of Constance (1414–18), which was reconfirmed in 1433 when the emperor passed through Perugia.

252 Bartolo aptly referred to Dig. 43. 12. 1. 6, Actum potest, which foresees an exception to the interdict on works on rivers and their banks.

253 Baldo, In Decretalium commentarium, fol. 252r n. 3: “Et in iis, quae sunt publicae facultatis, non est condition occupantis, vel ex consuetudine, ut ex privilegio nas habilens.” See also DI, c. 6.
What is significant about Pietro's work is the considerable attention he gave to the disposition and deviation of trademarks. Building on the doctrines of his predecessors, Pietro emphasized that trademarks are signs of trust (signa fiduciae) assuring the buyer of the distinctive qualities of the product to which they are attached. He also provided legal justification for the practice of estimating the economic value of a trademark when it remained with one partner upon dissolution of a partnership. Pietro's eclectic yet valuable tract, ignored by modern scholars and often incorrectly attributed to Pietro's grandfather, demands a full-dress study. For our purposes, his tract shows that De insigniis became a foundational text for the construction of legal doctrines on partnerships and trademarks in the fifteenth and sixteenth centuries.

De insigniis: Part II

When Nicola Alessandri, the compiler of the second part of De insigniis, set in motion the discussion of optical matters relating to coats of arms, he apparently forgot about the outline proposed beforehand: how coats of arms are to be painted, how one should distinguish between geometrical forms and natural figures, and how coats of arms are to be depicted and borne on different objects (Di, c. 13). The first question considered was how motifs are to be depicted when they are affixed on banners. Here the term vexillum indiscriminately refers to square banners, triangular ones, and to the gonfalone, thus confusing the reader. The terminology becomes even more entangled when the text speaks about nobler and less noble sections of coats of arms and states that the nobler side is anterior—presumably to the staff—and the less noble is posterior. It is assumed here that the standard has the staff in the middle of the cloth and the motif is borne horizontally from the point of view of the bearer.

The general rule is that animals and all other natural things having a front and backside should face the staff of the banner, because they thus appear as if they were walking forward and not backward, which would be unnatural and monstrous (Di, c. 14).254 Only if the depicted motif were a part of an animal, like a head (e.g., the logo of that great basketball team, Michael Jordan's Chicago Bulls), which does not have any clearly identifiable front and backside because it is symmetrical, could it be depicted facing the spectator and looking out of the banner. The presumption that animals have to be depicted in a natural way derives from the maxim ars initiatum naturam. Originally an Aristotelian formulation, ars initiatum naturam became a productive legal maxim.255 Lorenzo Valla objected that it does not make good sense to put so much emphasis on the fact that the animal has to face the staff, unless one assumes that the animal is depicted on both sides of the cloth. It then would become necessary to invert the posture of the animal on one side.

The compiler now turned to the first point of the outline—how animals have to be painted on coats of arms (Di, c. 15-19). All animals must be shown in a posture in which they appear most vigorous and noble according to their nature. Accordingly, a lion has to look wild, with gnawing teeth; a horse has to look lively but not untamed; and a sheep simply has to walk about. The general assumption that every animal should be depicted in its noblest posture was supported by an allegation to Dig. 3. 1. 1. 6, Hanc titulum. This lex, as well as Bartolo's commentary on it, postulated that since lions could be tamed, they were therefore not wild by necessity. As Bartolo commented:

vel dic, quod quaedam sunt naturalia proprie, et ista sunt immutabilia ... quaedam non sunt de natura ex necessitate, sed ex

254 For the material construction of the medieval vexillum see H. Zug, Tucii, "Il carroccio nella vita comunale italiana," Quellen und Forschungen aus Italienischen Archiven und Bibliotheken 65 (1965): 16-25. On immutality as a symbolic form, see M. Shapiro, "Frontal and Profile as Symbolic Forms," in his Words and Pictures: On the Literal and the Symbolic in the Illustration of a Text (The Hague and Paris, 1973), pp. 37-49. We wish to thank Dianne Philips for calling our attention to Shapiro's work.

praesumptione naturae, ut quod leon habeat naturam ferocem, et quod homo sit bonus, et ista ex accidenti possunt mutari.\footnote{257}

However, these distinctions were dropped from the tract, which led Valla to attack Bartolo, arguing that it is preposterous to suppose that animals have to be depicted only according to nature. Valla insisted that, according to Bartolo’s own theory, there could never exist any mythological animals like a double-tailed lion, chimera, sphinx, Minotaur, and winged people.\footnote{258}

The discussion of animal motifs is overly facile, showing an inexplicable neglect of actual customs. If we consider the species of animals (lions, horses, bears, and sheep) named in the tract, it is astonishing that of the classic heraldic motifs only the lion was used in practice. Horses and sheep are not included in Pastoureau’s list of the most common heraldic animals in Europe.\footnote{259} The absence of eagle as a heraldic figure is incomprehensible, since in Northern Italy the eagle was the symbol of the Ghibelline party, and those appointed imperial vicars bore the eagle as chief on their shields. Moreover, when Bartolo went on his embassy to Pisa in 1355 and received his privileges, he probably saw plenty of eagles in the court decoration of the newly crowned Emperor Charles IV. It is therefore very difficult to conceive that Bartolo, who in the first part of De insignitis and in his other works demonstrated himself to be well versed in the customs of his times, would simply have overlooked the eagle as a heraldic motif. This glaring omission is yet another strong indication that Bartolo had little hand in the composition of the second part of the tract.

Regarding depictions of animals on standards and banners, the text postulates that the animal’s right paw has to lead, because it would be unnatural and vicious if the left were to come first (DI, c. 19).\footnote{261} But even this postulate did not take into account why it necessarily has to be the right side that leads. If one looks at a banner from the backside, it appears that the left paw of an animal precedes the right, apparently an exception to this rule. The same problem occurs when script is depicted, because the letters are inverted and therefore unreadable when seen from the reverse side of a banner. This seemingly minor question of script on banners was exceedingly important, because in humanistic circles in Italy it was very popular to bear mottoes in addition to, or instead of, coats of arms. The solution to this problem is simple: one should consider only the side that faces the spectator, because seeing it from the backside happens only accidentally and is not the purpose of the depiction. This solution did not convince Valla, who argued, with some justification, that the script on the backside of banners would appear to run inverted if the banners were painted only on one side,\footnote{262} thus allowing the script to shine through. When a banner is painted from both sides, the possibility of confusion would be obviated. Neither Nicola nor Valla advanced this solution.

The assumption that the right side has precedence received its rational and cosmological justification in Bartolo’s De fluminibus. Following Aristotle’s De coelo et mundo, Bartolo accepted the position that the right side is the source of motion (De fluminibus, pp. 73, 74; Aquinas, De coelo et mundo, lib. II, lectio II and III). In contrast to De insignitis, he explained that, properly speaking, left and right can be applied only to animals, not to inanimate objects. Only in animals can the right side be regarded as the beginning of motion and the left as its end. It commonly occurs that a person who begins to walk begins with the right foot and, similarly, a person who is about to perform an action begins it with the right hand, unless lefthanded. Citing Dig. 21. 1. 12. 3, Qui clamat, Bartolo asseverated that “left-handedness is neither a defect nor a disease.” Consequently, it is improper to make a distinction between left and right in “things that are immovable” (De fluminibus, p. 73). De insignitis transforms a
contingent, anthropocentric system of spatial coordinates into an absolute one, yet another sign that Bartolo was not responsible for the second part of this tract.

In De fluminibus Bartolo subtly proposed different ways in which jurists can identify left and right when dealing with inanimate objects. When things are referred to, persons can still be the discriminating point— for instance, when one sells a piece of land on the right side of the road leading from Perugia to Florence. With regard to elevated objects, such as a building or a temple, left and right can be determined by turning one’s back to the edifice and looking in the same direction toward which the edifice faces. In the case of rivers, the right and left bank must be determined according to their flow. Thus Bartolo imagined a person floating in the water with his feet pointing in the direction of the mouth of the river. In another case, when, by analogy to human beings, a thing may be said to have a “head and feet,” Bartolo imagined a person lying supine on the surface of the thing in question, so that the determination of the sides became self-evident. When none of these methods could be applied satisfactorily, Bartolo relied on another system of orientation, which may be termed cosmological (or absolute). Since, according to Aristotle, the sky has its left and right, by necessity the “head” of the globe is in the south, the “feet” in the north and, obviously, the right is to the east and the left is to the west (De fluminibus, pp. 73–74). The compiler of the second part of the tract was undoubtedly acquainted with the fiction of imagining a person lying on the ground or on a bed, or standing, and he frequently employed it, though in a pedantic fashion and without any of the authoritative references that appear in De fluminibus.

After considering spatial coordinates of motion, De insigniis proceeds to address the question of how animal motifs should be affixed to trumpets (DI, c. 21). Whereas the staff of a banner is borne upright, so that the depicted animal which faces the staff is borne upright too, the trumpet when held to be played is kept horizontally or, as it is formulated here, the trumpet is above and not in front of the depicted animal. Therefore the animal has to be depicted with consideration to the holding of the trumpet. The depiction of symmetrical geometric motifs did not pose the same kinds of problems as the depiction of animals, namely, which side should face the staff, because geometrical motifs do not have a clear front side (DI, c. 23). What is important for the proper depiction of geometrical motifs is the hierarchy of colors. Accordingly, nobler colors should be borne on the nobler side of the coat of arms. If the coat of arms is vertically split, the nobler place—where the nobler color has to be depicted—is before the staff, the baser after it. If the coat of arms, on the other hand, is parted horizontally or diagonally, the nobler side is the one oriented toward the sky. It is also very peculiar that the text dwells exclusively on banners and standards, since coats of arms were primarily used on shields. If the nobler parts in coats of arms had been defined according to the standard way of describing them, that is, on a shield, readers might have spared themselves this clumsy discussion about parts before and after the staff. One would look upon coats of arms on a shield from the point of view of the shield bearer and would determine that his right side is the nobler one. This (heraldic) right side would consequently appear to a spectator as the left side, thus establishing the hierarchy of sides in exactly the same way as the text had postulated, but without the confusing argument relating to the staff.

Concerning the hierarchy of colors, the text presents two alternate, incomplete systems (DI, c. 24). One system is based on the represented elements—absent the elements earth and water—leading to a hierarchy of decreasing values of colors: gold representing light, purple or red representing fire, and blue representing air. Gold and purple or red are so noble that only the emperor was allowed to bear them on his clothing. Missing from this hierarchy were the colors white and black, which belonged to the heraldic palette. The other system centered on the inherent qualities of the colors. The text concludes that, within a range of possible colors, white and black formed opposites and that all other colors stood some place between them. The more a color approached white, the greater its nobility, a view which is allegedly based on Aristotle’s De sensu et

263 Von Brandt, Werkzeug des Historikers (n. 146 above), p. 123.
264 On the variety and use of colors in coats of arms borne by families in early modern Tuscany, see I blasoni delle famiglie toscane conservati nella raccolta Gramelli-Pisanini, ed. P. Marchi (Rome, 1992).
sensatu. However, Aristotle had only referred to white and black as the opposing colors of a scale; he did not evaluate white as the noblest color, nor did he propose a theory that the nobility of all other colors is dependent on the varying degrees of white and black they contained. This theory was developed in the Middle Ages, above all by Avicenna in his commentary to Aristotle. In view of the basic differences between Aristotle's and Aquinas' position on colors, Schedel's assertion that Bartolo once cited, and thus was familiar with, De sensu et sensatu cannot be upheld any longer. We also wish to point out that the text fails to indicate where colors like red and blue were located within the range. Nor does it address the position of the color gold, which is defined in the first system as the noblest and as the color of the emperor.

Even allowing for the disjointed character of this part of the tract, it nonetheless seems to us that the whole discussion of colors is fantastic. First of all, the hierarchy of colors was atypical and never accepted in the Middle Ages; in fact, it was explicitly rejected by Baha Aureo in his Tractatus de armis, who usually followed

Bartolo's tract closely. Second, it is peculiar that the text omits the standard medieval equations associating colors with planets or precious stones. It is also remarkable that it mistakenly refers to white, rather than silver, as the other metallic color. Finally, it is surprising not to find a reference to the color green, which was, and continues to be, one of the major heraldic colors. The absence of green was noticed by several scribes who copied the tract. If Bartolo had composed this section, it is likely that he would have referred to the color green, because green was the color used to signify one's political affiliation to the Ghibelline party. What can explain these omissions and peculiarities? It is likely that this section of the text derived from an optical treatise devoted to technical and theoretical questions rather than practical issues, such as the relationship of colors in coats of arms and the political significance of colors.

The assertion that the color gold is reserved solely for the emperor is another unexpected oversimplification when compared with Bartolo's discussion of golden vestments in his commentary to the title De vestibus holbrixi (Cod. f. 9v) (D1, c. 24). His attention here is focused on the applicability of imperial summmary legislation on social practice. Commenting on Cod. 11, 9(8), 1, Auratus, he pointed out that men cannot wear cloth made of gold, but he also added that this prohibition is now ignored (de consuetudine non servatur hodie). To Cod. 11, 9(8), 3, Velatus, he stated that wool cannot be dyed in purple-and, that private persons cannot use scarlet.


266 Schedel, Bartolus on Social Conditions (n. 36 above), p. 36. For a manuscript copy of text of the tract De insigniis cruminatis with references to Aristotle's works, the "summi philosophorum principes" (De sensu et sensato and De animali), see Munich, Bayerische Staatsbibliothek, Cod. Lat. 362, fols. 143v–146v; Casamassima, Codices (n. 2 above), p. 124 n. 103, notes that this manuscript is mostly humanistic, which may help to explain why the copyist "supplanted" Bartolo's knowledge of Aristotle.


268 Denys, The Heraldic Imagination (n. 9 above), p. 66.

269 Nickel, "Heraldry" (n. 124 above), pp. 172–73.


271 Prague, Dobrovolcova Knihovna, MS A 5, fol. 40ra; Prague, Knihovna, Metropolitani Kapituly, I 29, fol. 263r.


273 Bartolo, to Cod. 11, 9(8), 1, Auratus ac seriose, fol. 32r; Vat. lat. 2639, fol. 307vra.
Capital punishment, the harsh penalty for contravening this lex, prompted him to remark that substantial penalties can be imposed even for small contraventions (pro minima delicto imponitur magna poena). But he also observed that if this prohibition were truly effective, many of his contemporaries would incur (incurrant) capital punishment. The lex Vellera, in fact, remained unenforceable (calcata legis calcata) because it was superseded by the lex Tempore (Cod. 11. 9(3), 5), which replaced capital punishment with monetary fines. Lastly, we are puzzled by the absence in De insigni of an appeal to the privilege of doctors of law and their wives to wear gold vestments, a privilege they tenaciously defended.

When a coat of arms is depicted on the breast of the bearer, the nobler side of the motif has to be on the right side (DL, c. 23). The right side is considered nobler because it is the origin of movement. It is much more difficult, however, to determine how a coat of arms is depicted on the backside of a person (DL, c. 29). It has to be depicted in a way that, for the spectator, it appears in the same way as if it were depicted on the breast of the bearer, even though in this case the nobler color would be on the left side of the bearer. To demonstrate the necessity of inversion in such cases, there is a description of a debate that Bartolo allegedly had with some Jews, when he was learning Hebrew, as to whether this procedure holds for the writing of Hebrew. He would appear that the way of writing Hebrew from right to left was more rational. But one should not consider the script per se, but the purpose for which script exists, that is, to be seen and to make vision possible. In the process of vision, however, the script was the active part, which could be ascertained from the fact that the eyes suffered pain. Since the script was the moving part, the right side from the point of view of the script, which is the left for the reader, had to be the beginning of the writing. Consequently, the Latin way of writing from left to right is preferable. The principle that vision and visibility is the essential purpose of any depiction is applied to another example, the cutting of seals. Here, too, the script or any other motif has to be incised "backward" in order that it might then be correctly perceived by the spectator when it is impressed on wax or another material.

The expression "cum Hebraicum adsciscam," which introduces the question of whether the Hebrew or Christian way of writing is more rational, may be regarded as a rhetorical device to personify an otherwise purely intellectual dispute on optics (DL, c. 29). Though we are unable to pinpoint where and when this "exemplum optimum ad exemplificandum in . . . questione Iudae" (DL, c. 29) originated and who authored it, this question—certainly not a theological one—conveys concepts that by the middle of the fourteenth century were common coinage among experts of optics, such as the intromission.

274 Bartolo, to Cod.11.9(8), 3, Vellera, fol. 32r, Vat. lat. 2609, fol. 307vb.
275 Bartolo, to Cod.11.9(8), 5, fol. 32r, Vat. lat. 2609, fol. 307vb, v.a.
276 G. S. Salter, "La digestio canonica nel comun di Firenze e altri scritti," ed. F. Sestan (Florence, 1972), p. 134 n. 159. See also a consilium on the Florentine ordinance originating in 1377, which remained in force into the fifteenth century, allowing "quod quidem utrum aliquis vel doctoris alius cum civilis vel canonicai, seu medicis doctorum possess portare et secum habere et tenere vestum casuamque generis seu specieri, et eorum drappos de auro vel argento." Stefano di Giovanni Burchiaccos (d. 1433), in the lead opinion, defended the right of an "avio cum hmodem generis Florentina" to wear clothing decorated with silver and gold "quam dictum statutum concedit tabulis rudere possit portare vestum casuamque generis seu specieri, et eorum drappos de auro vel argento: et dictum statutum debet favorelibiliter interpretari, ut sedet intelligatur vestes casuamquae specieris de auro vel argento, et eorum drappos, sedet de auro vel argento, et maxime cum ex verbis ipsius non apparet quod alia punctua debet fieri." Several other jurists, including Francesco Zabarella (d. 1417), subscribed to Burchiaccos’ opinion. The consilium was edited by Giovanni Battista Ziliti, Consilium seu responsa ad causas criminales (Venice, 1572), fol. 3r–9v. The summary law of 1377 is found in ASF, Capitoli del Comune di Firenze, 12, fol. 67v–73v, cited in extenso and discussed by R. Huney, "Summary Legislation in Renaissance Florence" (Ph.D. diss., Columbia University, 1985), pp. 210–27, esp. p. 272 n. 36.
277 On left and right in medieval culture, see R. Elze, "Rechts und Links: Bemerkungen zu einem hebräischen Problem," in Das Andere Wahrnehmung, ed. M. Knisberger, W. Stümper, and J. Zehlen (Cologne, Weimar, and Vienna, 1991), pp. 73–82.
278 Here we agree with Valla, Letter to Pier Candido Decembrio (n. 12 above), p. 642 who referred to this debate as a fabula.
279 D. C. Lindberg, Theories of Vision from Al-Khwarizmi to Kepler (Chicago and London, 1976), pp. 61, 71. The idea that script is the active part in the vision process originated with Aristotle and was widely accepted in the Middle Ages. It had been further elaborated by Albacor, who stated that in the vision process the eye even suffers pain, which is the clearest proof of its passive function.
theory of vision and the "pain" caused by vision on the eyes. Thus, from a scientific point of view, this dispute does not present anything new. It confirms the dominant position of the intromission theory, which constitutes the presumption on which the case was built. More significant is that Bartolo did not make any reference to such a dispute in his lengthy and elaborate discussion on the six sides (above, below, front, back, left, and right) as used in contracts and other legal dispositions. In *De fluminibus*, the entire argument and the list of authorities quoted (ranging from Aristotle's *De Coelo et mundo* to the book of Ezekiel as well as to Roman law) are far removed from the muddled presentation found in *De insigniis*. Further, though the two tracts are not far removed in time, it is striking that there are no cross-references between them—which is a salient feature of Bartolo's writings.

It is only at the close of the second section that consideration is given to coats of arms affixed on shields (DL, c. 31). In such cases the nobler side of the motif had to face the right side of the bearer, which would be the left side for the spectator. This formulation conformed to the general use of coats of arms in the Middle Ages. If depicted on a caparison, the motif on both sides of the horse had to face the animal's head. Otherwise, if only the point of view of the spectator was taken into consideration, the depicted animal would seem to recede, which is viewed as monstrous. As far as bedcovers were concerned, a distinction is made between covers lying flat on the bed and those hanging from the sides. Covers lying flat on the bed have to take the form of the person lying in bed, so that the nobler side will be on the right side of the recumbent person, which will be the left of the spectator. Covers hanging from the bed sides follow the form of a person standing upright. The nobler part is thus on the right side of the bearer, or the left of the spectator.

When a motif is depicted on walls, its nobler side has to be on the left side of the spectator. An exception to this rule is made when there is a painted figure of a prince or a coat of arms of a preeminent person in the middle of the wall (DL, c. 33). Lesser coats of arms affixed on both sides of a painted figure do not follow this rule in all cases. The ones on the left side of a painted figure are inverted and present their nobler side to the higher-ranking person in the middle, as if it were a matter of protocol. Finally the matter of how coats of arms should be painted on the ceiling or the floor is taken up. One had to consider a person lying on the floor, head turned toward a person entering the room, then the right and left have to be determined from the point of view of the person lying down. The coat of arms is correspondingly depicted with its nobler side on the right side of the recumbent person.

The final issue concerns a matter of protocol (DL, c. 33). No one may depict the coat of arms of his lord or any other higher-ranking person on the ground, a prohibition intended to prevent someone from stepping on them and thereby besmirching the dignity of the person who is represented by the arms. One might have anticipated this passage, which may have been drafted by Bartolo himself, in the first part of the tract where he treated the concession of arms by a superior. Be that as it may, its placement at the end of the tract nicely brackets the lengthy discussion of the material execution of arms, reminding the reader that *De insigniis* is, after all, a legal tract.

Conclusion

Ours is the first discussion of the entire text of *De insigniis* in its historical context. Along the way, we make a number of claims about the circumstances of its composition and contents. It can no longer be maintained that Bartolo received a coat of arms from the Emperor Charles IV, an event which supposedly inspired him to write the tract. The image of Bartolo as a student of Hebrew appearing in the second part of the tract, which has led to all sorts of unproductive speculations, is clearly a mirage. Traditionally, Bartolo has been considered the author of the entire tract published posthumously by his son-in-law, Nicola Alessandri, in 1358. We agree that Bartolo conceived of the topic and that he was chiefly responsible for the first part, but go on to argue that the second was probably compiled by Nicola. Further research on the manuscript tradition of the tract should help refine our understanding of its

---

200 Ibid., pp. 122-47.
201 Bartolo, *De fluminibus*, pp. 69-75.
composition, transmission, and reception.

We emphasize that the most original and lasting feature of the tract is Bartolo's creation of a grammar of signs. He was the first jurist to set forth the principles, derived from Roman law and local customs, governing the assumption, protection, and transmission of signs ranging from coats of arms to trademarks. His tripartite division of signs and insignia, which the canonists found so appealing, set the parameters of future discussion. By grounding the free assumption of arms and insignia in the *ius gentium*, Bartolo earned the enmity of the nobility by precluding them from claiming exclusive right to bear arms. That is why issues of the social standing of the bearer played an almost negligible role in his grammar. Not surprisingly, given the progressive aristocratization of the Italian city-states, Bartolo's conception of the use of arms in an open society was criticized for subverting the new social order.

Our findings make Lorenzo Valla's attack against Bartolo and the tradition he came to represent highly problematic. Valla admitted that he had few objections to the first part of the tract, which we attribute to Bartolo. The target of his entire assault was the second part, which the jurist did not compose. The issue here is not just the failure of Valla's philological skills to detect interpolations, his unfamiliarity with medieval legal discourse, his annihilating wit, or his penchant for archaising Bartolo's text.283 Valla's attack, rather than demolishing *De insigniis*, contributed more than anything else to perpetuating the belief that Bartolo authored the entire tract, that he received a coat of arms from the emperor, and that he studied Hebrew. Valla's influence on the reading of *De insigniis* has been, and continues to be, enormous among rethoric scholars captivated by Renaissance rhetoric. Like Valla, many readers have focused their attention on the material execution of coats of arms, to the detriment of Bartolo's grammar of signs.

Our study, admittedly, has raised questions that we have not been fully successful in answering. We have not been able to identify all the legal and nonlegal sources that underlie or appear in the tract. A telling example is the optical sources for the second part of the tract. A future critical edition should go a long way in identifying these sources. Equally necessary is sustained research, undertaken by historians rather than antiquarians, on coats of arms and trademarks in medieval and early modern Italy, so that we can have a nuanced understanding of the meaning and function of these signs. Finally, the use and abuse of *De insigniis*, over the past six hundred years, by jurists, heraldrists, and historians of law constitute a fascinating chapter in the history of iurisgenerativity meriting its own investigation.

---

283 Among the many examples that we could offer, the following should suffice. Valla made it appear that Bartolo had discussed the Roman imperial eagle (Letter to Pier Candido Decembrio [n. 12 above], p. 67), when in fact the eagle is not mentioned anywhere in *De insigniis*. Valla also substituted the classical *cornu alabaster* for the scholastic *congruentia* (p. 640) and *supra vestas* for *in super vestibus* (p. 641).
Figure 1. The Emperor Charles IV (d. 1378) with his imperial and royal insignia, St. Vitus Cathedral, Prague (Photo: Julius Kirshner).
Insignia Bartolo, & eius posteris à Carolō
III. Imperatore conceßa.

Figure 2. The coats of arms allegedly granted by Charles IV to Bartolo and his descendants (Photo from Lancellotto, Vita Bartoli [Perugia, 1576], p. 36).

Figure 3. Medal of Universitas Carolina Pragensis, bronze, ca. 1930s, obverse and reverse (Photo: Julius Kirchner).
Appendix 1. Edition:  
Bartolo da Sassoferrato, De insignis et armis

As our study has made clear, a dependable edition of De insignis et armis is long overdue. It is well known that the European diffusion of Bartolo's writings has resulted in many "adaptations, contaminations, banalizations, and interpolations of various kinds." This observation is particularly apposite for the textual transmission of De insignis, which has come down to us in approximately one hundred manuscripts containing a bewildering number of variants. A few examples may suffice to illustrate the multifaceted readings that one can encounter in a single passage. For instance, the list of superiors whose insignia one is allowed to place on coats of arms as a sign of subjection not only covers the whole spectrum of feudal hierarchy from emperors to kings to lords to dukes and counts, but in some manuscripts it also includes cities and communes. North of the Alps, Bartolo's little zoo (the lions, bears, oxen, rams, horses, and lambs to be found on coats of arms) was augmented with deer. Some manuscripts would have it that when the emperor was represented next to a pope garbed in his pontifical robes, the majesty of the emperor would be inadequate unless a crown and other imperial insignia were included. Local coats of arms also found their way into the tract: for instance, the "golden lilies on a blue field."²

From a grammatical and syntactical point of view, the variations among the manuscripts we have consulted are certainly more numerous than the adaptations and contaminations. In c. 4, for instance, the subject of the first sentence changes from quidam to quodam. Though this difference appears to be minor, the reading quodam sanie arma et insignia que suggests, beyond the three groups of insignia (insignia dignitatis, insignia singularis dignitatis, and insignia privatorum hominum) outlined by Bartolo, the existence of a

2 Vat. lat. 2641, fol. 21r-b-22v, and Jones, Medieval Heraldry (p. 2, n. 4 above), p. 254: “arma regia sunt liliis armis in campo azureo.” This is probably a reference to the coat of arms of the kings of France.
fourth group accessible to anyone—a device that could safeguard the distinction and the peculiarities of noble insignia, as can be seen, for instance, in Bonus de Curtili's tract on nobility. In some manuscripts the sentence *ille cuivs signum aii portant* (c. 5) is changed into *signum alieum portare*. Though the change does not impede the availability of a legal action against abusers, the focus nonetheless shifts; in the latter case the stress is on a more general prohibition against the use of signs, perhaps reflecting social conditions where more strictures and controls were placed on their assumption.

The editions produced first by Hauptmann and then by Jones attempted to overcome the problems generated by the variety of the manuscript tradition. Hauptmann's text was based on a collation of sixteenth-century printed editions and had no critical apparatus. An excellent scholar, Hauptmann provided a consistently readable text, yet he classicized Bartolo's medieval Latin by adding diphthongs and by supplying the grammatically correct form of the ablative singular of the present participle and adjectives. He was unable to reconstruct the text for the second part of the tract, admitting that the printed editions had "corrupte Stellen." Jones attempted to produce a serviceable edition by collating the editions of Bysshe, Feschius, and Hauptmann with two manuscripts housed in the British Museum (Arundel MS. 489 and Addit. MS. 29901) and by recording "the more significant variant readings." The two passages that constituted an obstacle to Hauptmann remained obstacles to Jones. Furthermore, Jones's text is not exempt from conflated readings, as in c. 2, or from truncated sentences, as in c. 5. His unfamiliarity with the Glossa ordinaria led him to read *et ibi nata per glossam, aliquis et facit*; *et ibi glossam in verbis, unum corpus instead of et ibi nota per glossam, aliquis, et facit ibi glossam in verbis, unum*

---

3 Bonus de Curtilli, *De nobilitate*, THI, vol. 16, fol. 10v n. 172.
4 Hauptmann's (p. 2, n. 3 above), *Tractatus*, p. 25: "hacres ego istius arma sic a parte posteriori," and p. 27: "Nam si statua . . . (et ita) a dextera vel sinistra volvantur." In the first part of the tract, for instance, in c. 6, he maintained the redundant "locum sine domiciliis" (p. 9), and in c. 8 he omitted the reference to merchants.
5 Jones, *Medieval Heraldry*, pp. 249 and 251, where Hauptmann's note is reported.

corpus (c. 4). Similarly, ignorance of medieval interpretations of Roman law led him to reintroduce a reading correctly eliminated by Hauptmann, namely, *l. Neminis* instead of *l. Miniec* (c. 5). Some other minor faults, such as *circum quod* instead of *circum primum* in c. 1, *sunt* instead of *passunt* in c. 9, *tunc invicem* instead of *nisi invicem* in c. 12, and *triumvira* instead of *circumire* in c. 33, as well as the erratic numeration of paragraphs (nos. 14, 24, and 30 are omitted), have certainly caught the attention of discerning readers and need not detain us. Produced for noble audiences, the printed editions, including Hauptmann's and Jones's, neglected the merchants (c. 8) and cities (c. 2), thus misrepresenting the social and cultural context in which Bartolo operated. Such shortcomings have led us to undertake a new working edition of the tract solidly grounded in the manuscript traditions. Ours does not pretend to be the definitive critical edition, however. Given the large number of manuscripts, and especially the absence of a census of Bartolo's works in the libraries and archives of Italy, France, Austria, and other countries, we decided that it would be far too time-consuming and costly to attempt to consult all extant manuscripts that would be required to produce a critical edition.

The following is a list of the incipits and explicit of the manuscripts we have consulted for the present edition and the sigla with which we refer to them in the apparatus:


Lb Leipzig, Universitätsbibliothek, Ms. 951, fols. 175v–182v,
Tractatus de armis et insigniis domini Bartoli de Saxo ferrato. Eorum gratia de insigniis et armis que quis portat in clipepis videamus . . . .

Unum tamen seias quod licet quis arma sua et sua insignia possit in terra sculpture vel pingere tamen arma alienius domini vel maioris non licet in terra sculpture vel pingere C. necmini licet signum salvatoris Christi lhesu humi vel silice vel marmore sculpture vel pingere in rubro et nigro etc. Hunc tractatum (sic) de insigniis et armis compositum egregius doctor legum dominus Bartolus de Saxo ferrato civis Perusinus qui post mortem eius inventus est et videtur nondum [etc.] complectus. Scriptum Licepk anno Domini MCCXXXIIX feria secunda ante festum Nativitatis Marie.


Mb München, Bayerische Staatsbibliothek, Cod. Lat. 6573, fols. 133v–139v, Tractatus Bar[toli] de insigniis et armis. Horum gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . .

---

\(\text{(on the margin)}\) Unum tamen seias quod licet quis arma sua et sua insignia possit in terra sculpture vel pingere tamen arma alienius domini vel maioris non licet in terra sculpture vel pingere ut C. ne licet signum sal[vatoris] Christi in silice aut marmore aut sculpture alias pingere in rubro et nigro. (in the text) Hunc tractatum de insigniis et armis editum a domino Bartholo publicavit de[mium] Nicolas Alexandri legum doctor eius gener post mortem dicti domini Bartholi etc.

Me München, Bayerische Staatsbibliothek, Cod. Lat. 269/12, fols. 119v–121vb, Tractatus de insigniis et armis. [H]orum gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . . Unum tamen seias quod licet quis arma seu insignia sua possit in terra depingere tamen arma alienius domini sui vel maioris non licet in terra sculpture vel depingere ut C. ne licet signum salvatoris lhesu Christi humi vel silice silice (sic) vel marmore sculpture vel pingere in rubro et nigro. Qui cum Patre et Spiritu Sancto vivit et regnat Deus per infinita secula seculorum. Amen. Explicit tractatus de armis et insigniis compositus per dominum Bartolom de Saxo fertario legum doctorem etc.


Me München, Bayerische Staatsbibliothek, Cod. Lat. 362, fols. 143r–146v, Tractatus Bartoli de insigniis et armis. Horum gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . . Si autem locus ubi pinguntur habet se ut solum vel terra tune cedam modo considera caput et pedes et finge hominem inacuten versus nos visum volventem et cognosco dextram sive sinisteram et modum depingendi rationebilem invenies. Laut trino et uno.

---

\(\text{\textsuperscript{6}}\) Against the reading given by Casamassima, Reinhard Elze suggests we read "Nathari" instead of "Ithari," for the former is a common German name.

Nb  Nürnberg, Stadtbibliothek, Cent. IV, 97 (Einband 115), fols. 299rb–301vb, Tractatus de insigniis et armis per [domum] Bartholom. Quorum (sic) gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . Si autem locus ubi pingitur se habet ut solium seu terra tunc eodem modo considera caput et pedes et finge hominem incensum et versus nos visum volventem et consensus dexteram seu sinisteram et medium depictendi rationabiliter inventus etc. Hunc tractatum de signis et armis editum a domino Bartolo publicavit dominus Nicolai Alexandri legum doctor eius gener post mortem dicti domini Barthol.

Pa  Praga, Národní Muzeum, ms. III, B, 21, n. 6, fols. 159–161v, Horum autem gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . Unum tamen scias quod licet quis arma sua et insignia possit in terra sculptura vel pingere tamen arma alienius domini sui vel maioris non licet in terra pingere vel sculptura ut C. nemini licere signum salvatoris etc. in rubro et nigro. Finis tractatus Bartholi de armis et insigniis.


Pe  Praha, Národní Muzeum, Ms. a. 5, fols. 377va–40va, Tractatus de armis et insigniis. Horum gratia de insigniis et armis que quis portat in vexillis et clipeis videamus . . . Quandque figuratur et pingitur in parietibus vel aliis locis stabilibus et tum si quidem locus ubi pingitur habet se ut partes considerata (sic) quasi partes volvatur faciem suam versus nos et sic latus dextrum partem cognoscere et sic pars nobilior armorum volvatur versus partem dextram predicta vera nisi ex causa alius fieret.


Sa  Madrid, Biblioteca Nacional, Cod. 2209, fols. 168ra–170rb, Sequitur tractatus compositus a domino Bartholo[lo] de Saxoferrato de insigniis et armis ubi videre poteris multa pulchra et curiosa. Horum gratia de insigniis et armis que quis portat in vellis (sic) et clipeis videamus . . . Unum tamen scias quod licet arma sua in terra possit sculpturae vel depingere tamen arma alienius domini sui vel maioris non licet in terra depingere vel sculpturae ut C. ut nemini licet signum salvatoris etc., in rubro et in nigro etc. Hunc tractatum de insigniis et armis a domino Bartholo de Saxoferrato excellentissimo legum doctor compositum quem credo non complexissim publicavit post mortem eius dominus Alexander suus gener legum excellentissimi doctor quando disputavist questionem primam sub anno Domini 1345 (sic) die 20ma mensis Ianuarii. Deo gratias.

Sb  Madrid, Biblioteca Nacional, Cod. 7099, fols. 1r–5v, Incipit tractatus de insigniis et armis per dominum Bartulum compositus. Horum gratia de insigniis et armis que quis portat in vexillis vel in clipeis videamus . . . Unum tamen scias quod licet quis arma sua sive insignia sua possit in terra sculptura vel depingere tamen arma


putavit prioram questionem sub annis Domini M.CCCC.LVIII (corr ex M.CCCC.LVIII), XI indictione, die XX Ianuarii. Amen. Scriptum per me Conrado, G.

Of all the manuscripts we have consulted for the present study and edition, only one, Na, dates back to the fourteenth century. It was transcribed in Pistoia by Florio de Figgnano (Frignano) around the year 1334. The remaining manuscripts were transcribed at various times during the fifteenth century, e.g., Ma (1456–60, at Ingolstadt); La (1437 ca); Lb (1449); Mb (post 1442–47, at Padua); Md (1444 ca, at Heidelberg). The number of manuscripts we have included, totaling twenty-three, prevents us from presenting a complete description of the textual tradition of De insignitis from its archetype to the early printed editions and from charting exhaustively the links between manuscripts. Nevertheless, there are observable links between our manuscripts, which enable us to divide them into several groups.

One group comprises three of the four manuscripts from Prague: Pb, Pe, and Pd. Pe and Pd are both incomplete; Pe ends abruptly in the midst of c. 33 and Pd in the midst of c. 29. Particularly in the second part of the tract, both manuscripts present a significant number of interpolations that do not have a correspondent in any of the other manuscripts we have consulted. In c. 17, for instance, Pe, after viro deum est in aqua, adds sicut in altis animalibus quae vivunt in silentio non exercit nutritum sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant sed omnibus stant. Similarly, in c. 18, the last sentence is expanded to read in hoc corum naturam et proprietatem pingenda et forerad sunt. The interpolations presented in Pd are more extensive. In the same c. 17, after eventum et levatum, it adds in alium quia aitio-

---

7 Casamassima, Iter Germanicum (p. 2, 2 above), p. 174, at f. 451r: "Scriptus per me Floriano de Fignnano in M.CCCC.LXXXIII die quintae initii huius quartae noctis in civitate Pistorii . . . ."; at fol. 451v: "Scriptus per me Floriano de Fignnano in officio existentium ad civitatem sub anno Nativitatis Domini M.CCCC.LXXXIII die quintae initii . . . in civitate Pistorii . . . . Since the text of De insignitis extends from fol. 442r to fol. 447r, and since the section 335v–469v constitutes a self-standing codex written entirely by a single hand (Florio de Figgnano), it seems very plausible that the tract was copied around just this period.

sum esset in aqua, eo quod alias dorso operatur et possidetibus iugulatori sed extensus pedibus ad carere dispositis, sic servus et simul ad salutandum, hinc enim acerbus nix corum exercitatur. Two other substantial (and confusing) interpolations appear in c. 18 and c. 23, where reference is made to the arrangement of ecclesiastical coat of arms and to their superiority to secular ones. In contrast to Pe and Pd, the elegantly written Pb presents the entire text of the tract without the interpolations. Despite the additions peculiar to Pe and Pd, and their abrupt endings, all three of these manuscripts seem to derive from a common source. Common readings unique to these manuscripts are: (c. 1) incidi in primo, omission of qui non sunt doctores; (c. 2) privatorum vel populorum, multos; (c. 7) populorum; (c. 8) verum sed seque; (c. 9) cum concessione, l. minor autem § in magistratu; (c. 10) siue non sinit; (c. 12) operantium; (c. 12) societate; (c. 13) ut miles faciant; (c. 14) significabit; (c. 16) aequitas. Other readings of these three manuscripts, such as (c. 1) eo caussa; (c. 2) ut puto; (c. 3) permittit; (c. 6) portare; (c. 7) aequitas, unitatem, show that their common source was close to the tradition represented by Le, Ve, Va, and Vb. The text of the tract presented in Pa, which contains readings such as en ho, habens, incursit, permittit, imprimit, portentem, aequitas, unitatem, and membri, supports the text as given in Ma, Sa, Wa, and Vb. The copyist of Pa seems to have checked the text against the readings of another manuscript, which can be identified with La or a closely related manuscript. For instance, in c. 5, after vituperator it adds (superscript) alias iniquitar, and after e. dilectum, it adds alias de concess. prebent. e. dilectum, ar. C. de sede, l. iudex quoque; both readings are peculiar to La. Similarly, in c. 5, after decepsum, Pa adds alias dissessitum; and in c. 16 the reading common to Ma and Sa is juxtaposed to that found in La.

Another link between our manuscripts is that Nb is a copy of Mb. A group of variants is common to both: (c. 2) regis vel coma, privatorum concessione; (c. 5) non est verum, ubi citant illas, (c. 12) retinet negociacionem, idem in doctore; (c. 15) cum corona et signis impertibus; (c. 20) potestia; (c. 21) tabularum partes quando; and (c. 24) nobilitarum. The omissions in c. 19, tanquam—aem; in c. 25, seu rubens—corpus; and in c. 29, incipitum—rationabilis, show that Mb is the source and Nb the copy. The manuscripts Md and Me are also
closely related. Some of their peculiar readings are (c. 3) ut plurimum, ex consensus; (c. 5) est neum, ad scandalum subiectos esse; (c. 7) proper nonum amore; (c. 12) signum societatis societate dividit; (c. 20) in se dextrum dextrem. Omissions common to Mb, Nb, Md, and Me, such as (c. 19) tanquam—non; (c. 29) incipitum-rationabilis, as well as common readings (c. 14) debet assignari; (c. 21) tabulatorum partes; (c. 24) nihiliter, indicate that this group of manuscripts has a common ancestor that is represented by the textual tradition of Ma, Sa, Wa, Wb, Pa, and Na, though the last two of these depart from Ma and Sa in two significant places. The major differences between the traditions represented by Va and Lb, and by Ma, Sa, Wa, and Wb, can be shown schematically as follows:

(c. 1) In. 5 an eo Ma Sa Mb Vd Md Me Sb Na; eo Ve Lb Va Le Vb Ve Me

(c. 1) In. 12 habens Ma Sa Va Me Mb Md Me Sb La Pa Wa Wb Na; qui habet Ve Lb Le Vb G

(c. 1) In. 13 incurrit Pa Wa Wb La Na Le Va Mb; incurreret Ve Lb Vd Ve Vd

(c. 2) In. 23 ut in Ma Sa Lb Mb Md Me Sb Pa Wa WLNa; ut puta in Ve La Va Le Vb Ve Vd

(c. 3) In. 37 permittitur Ma Sa Va Mb Md Me Sb La Pa Na Wa Wb; permittit Ve Lb Vb Ve Vd

(c. 5) In. 58 imprime re Ma Lb Va Le Vd Mb Md Me Sb Pa Na Wa; imponere Ve Lb La Vb Me

(c. 5) In. 58 utranque equi Ve Lb Ve Vd Pa Na (Le equo)

(c. 6) In. 83 portantem Ma Sa Ve Vd Mb Md Me Sb La Pa Na Wa Wb; portare Ve Lb Le Vb

(c. 7) In. 93 odiis Ma Sa Mb Md Me Sb Pa Na Wa Wb; odiis Ve Lb Va Le Vb Ve Me

(c. 7) In. 97 unionem Ma La Pa Wa Wb; unitatem Ve Lb Va Vb Ve Vd

(c. 14) In. 227 membro Ma Mb Md Me Pa Na Wa Wb; libro Sa

---

Ve La Va Le Vb Vd Me
(c. 18) In. 253–255 sed—oseculitur omitted Ma Sa Ve Lb Va Me
(c. 23) In. 305 unde Le Ve Mb Md Me Na; unde Ve Lb Va Vb Vd
(c. 24) In. 319–320 et—sol omitted Ma Sa Le Vd Mb Md Me La Pa Na Wa Wb
(c. 29) In. 387–391 istud—indei Ma Sa Pa Wa Wb

Sharing Casamassima's view that the manuscripts containing the exact induction (XI indictione, which corresponds to the year 1353) seem to derive from a "tradizione genuina," we based our edition on four manuscripts (Ma, Sa, Wa, and Wb) representing this tradition. Exact induction aside, a salient characteristic of this group of manuscripts is a passage in c. 29 that is not found in the other manuscripts we have examined. Though it is absent in Hauptmann's text, Jones inserted it in his edition on the grounds that he found it in Addit. MS. 29901.8 The omission of the passage describing the posture of the lamb (c. 18), in Ma, Sa, Wa, and Wb, though also common to Ve, Lb, Va, and Me, can be explained as an homoeoteleuton, and its insertion is supported by La, Vb, Ve, Mb, Md, Me, Sb, Pa, and Na.

The relationship between the three printed editions we have consulted—Lu (Lyon, 1498), Ly (Lyon, 1535), and Vn (Venice, 1570–71)—is clear. The two editions printed in Lyon are practically the same. Ly departs from Lu in c. 4, where it has arma et instead of arma seu; in c. 12 it has etiam in alis furiam multum bonus instead of etiam di faciet multum bonitas operantur; and in c. 13 it reads rexillis et rexillulcis instead of rexillis et vehiculis. Common to both editions are a series of singular references to Roman law: l. annuntiatio (l. promuntiatio), l. que citationes (l. si que sunt cautiones), and l. post domum (l. possessio). This indicates that the edition of Ly reproduced the text of the earlier edition by Siber. Though in the Venetian edition these three citations were given in their correct

---

8 See Hauptmann, Tractatus, p. 25; Jones, Medieval Heraldry, p. 230.
form, the text of this edition does not depart in any significant way from the two editions printed in Lyon. All three give January 8 instead of January 20 as the date for the publication of the tract. Other common readings are: plebe vinctum in c. 5; locum sine domicilium in c. 6; quod incept[a]t tractatur in c. 22; ev[e]s quem representat secundum se in c. 23; Matt. VII c. and Mat. XXIII c. in c. 24; videre autem est facti in c. 29; and caput et ubi aude vel camere in c. 33. The manuscript on which these three printed editions depend can be identified with the textual tradition as represented by Lα. Common readings between Lα and the printed editions are: alius de conces. preh., I. I[ncia], and plebe vinctum in c. 5; locum sine domicilium in c. 6; incept[a]t tractatur in c. 22; ev[e]s quem representat secundum se in c. 33. Some omissions, such as the reference to the merchants in c. 8 and the expression signum quod portat in c. 5, are common to both Lα and the three printed editions. Dissimilarities between Lα and the printed editions include the omission of the date of publication (January 8) and of one of the two scriptural passages (Matthew 17:2) in Lα; the three printed editions also omit sine quo vis dilo titulo sine in tatun sine in partem in c. 12, which is found in Lα. These differences indicate that Lα is not the immediate source for the printed editions, yet it cannot be doubted that it is the manuscript tradition represented by Lα that found its way into the early printed editions.

The spelling has been standardized: e.g., ratio for ratio, pingenda for pingenda, clipes for clipes, afferium for offium. Inversions of words, unless impinging on the meaning, are not indicated. Similarly, variants that seem to derive from an error of the copyist—e.g., velis instead of vexillis—are not indicated unless they appear in other ms.

SIGLA

Lα Leipzig, Universitätsbibliothek, Ms. 1089, fols. 187rb–193rd, sec. xv.
Lb Leipzig, Universitätsbibliothek, Ms. 951, fols. 175v–182v, sec. xv.

Ma München, Bayerische Staatsbibliothek, Cod. Lat. 137, fols. 137r–139v, sec. xv.
Mb München, Bayerische Staatsbibliothek, Cod. Lat. 6753, fols. 119va–121vb, sec. xv.
Me München, Bayerische Staatsbibliothek, Cod. Lat. 26912, fols. 16v–20r, sec. xv.
Md München, Bayerische Staatsbibliothek, ii Cod. ms. 263, fols. 143r–146v, sec. xv.
Na Nürnberg, Stadtbibliothek, Cent. IV, 54, fols. 442v–447r, sec. xiv.
Nb Nürnberg, Stadtbibliothek, Cent. IV, 97 (Einband), fols. 299v–304vb, sec. xv.
Pa Praha, Národní Knihovna, ms. III, B. 21, fols. 159–161v.
Pa* variant readings contained in Pa.
Pc Praha, Národní Muzeum, Ma. a. 5, fols. 37va–40va.
Pd Praha, Národní Muzeum, Ma. a. 5, fols. 94ra–97rb.
Va Città del Vaticano, Vat. Lat. 2625, fols. 194r–196r, sec. xv.
Vb Città del Vaticano, Vat. Lat. 2641, fols. 19vb–22ra, sec. xv.
Ve Città del Vaticano, Vat. Lat. 2678, fols. 77ra–79vb, sec. xv.
Vd Città del Vaticano, Vat. Lat. 2289, fols. 15rb–17rb, sec. xv.
Ve Città del Vaticano, Vat. Lat. 10726, fols. 326r–329v, sec. xv.
Bartolus de Saxoferrato:
De insigniis et armis

(1) Horum gratia de insigniis et armis, quae quis portat in vexillis et elipeis, videamus. Primo, an hoc sit licitum; secundo, an eo casu quo licitum est, qualiter sint portanda et pingenda.

Circa primum dicam, quod quidam sunt insignia dignitatis vel officii, quae potest portare quilibet habens illam dignitatem vel officium, ut insignia proconsularia et legatorum, ut l. i. ff. de officio proconsulis et legati (Dig. 1. 16. 1), et l. sanetum, de rerum divisione (Dig. 1. 8. 8), sicut de facto videmus hodie insignia episcoporum, et ista potest portare quilibet habens illam dignitatem, ut dicitis legis. Aliis autem portare non licet, in quo portans incurrit crimen falsi, ut ff. de [lege Cornelii de] falsis, l. cos. § finali (Dig. 48. 10. 27. 2). Et idem pato quod illi, qui portant insignia doctoratus cum non sint doctores, teneantur illa pena.

(2) Quedam sunt insignia in modum singularis dignitatis, ut videamus quilibet rex, quilibet principes et ceteri potentiores habent arma et sua insignia, et ista nemo alieri licet deferre vel sub rebus sui depingere, ut C. de his qui potestiones nomine, (Cod. 2. 14[15]), et notatur in aut. de mandatis principium, § penultimum (Nov. 17 = A. 3. 4. 16). Quod tamen intellegi principaliter, sed accessorio non est prohibitum, ut in signum subelucrescens supponere insignia propriis insigniis regis, domini vel comitis vel communis; et hoc consuetudinur.

(3) Quedam sunt insignia seu arma privatum hominum nobilium et popularium; de istis quidam reperimur, qui habent arma vel insignia quae portant ex concessione imperatoris vel altioris domini, ut vidi concedi multis a serenissimo princepe Karolo quarto Romanorum imperatore nec non regis Bohemie. Et mihi tunc eius consilia inter cetera concessit, ut ego et ceteri de aegatione mea leonem rubrum cum candida duabus in campo aureo portarentem. Et istis licet portare talia insignia non est dubium; de principis enim potestate disputare sacrilegium est, ut C. de crinunc sacrilegi, l. ii (Cod. 9. 29).

ad idem C. ut nemini licet sine indicis auctoritate (Cod. 2. 14[17]). in rubro et in nigro; si enim sine indicis auctoritate prohibetur, ergo cun indicis auctoritate permittitur.
(4) Quidam tamen arma seu insignia sua propria auctoritate assumunt sibi, et istic an licet videndum est. Et puto quod licet.

Sicut enim nomina inventa sunt ad recognoscendum homines, ut C. de ingeniosis manumissis, l. ad recognoscendos (Cod. 7. 1. 14, 10), ita et ista insignia inventa sunt, ff. de rerum divisione, l. sanctum (Dig. 1. 8. 3). Sed talia nomina licet eulibet sibi imponere ad placentum, ut dicta l. ad recognoscendos (Dig. 1. 8. 3), et ff. de [lege] Cornelia de falsis, l. falsi (Dig. 48. 1. 13), in principio. Ita ista insignia eulibet licet portare et depingere in suo loco, non in alio, ut C. ut necurrat hiccat sine indecius auctoritate, l. ii (Cod. 2. 16(17). 2), etibi notatur per glossam, facti extra, de excessibus praetorium, c. difecata (X. 5. 31. 14), et quod ibi notatur per glossam.

(5) Sed quern, unus portat certa arma vel insignia, alius vult portare cedem, an licet vel prohiberi possit? Et videtur quod licet, quia potest quis assumere nomen alterius, ut ff. ad senatusconsultum Trebellium, l. facta, § si vero nominis (Dig. 36. 1. 65(66). 10), et ff. de legatis ii, l. cum filius, § pater cum filia (Dig. 31. 76). 5. Et posse esse plures cieusdem nominis, ut l. duo sunt Titii, ff. de testamentaria tutela (Dig. 26. 30. 30), et de legatis ii, l. si quis servum, § si inter duos (Dig. 31. 1. 8. 3). Ergo potest quis assumere arma alterius, et plures cedem insignia portare et rebus imponere, cum utrumque fiat ad recognoscendum. Eo contra videtur ff. de diversis regalis turris, l. id quod nostrum (Dig. 50. 17. 11). Si enim primo signum est nostrum, sine facto nostro a nobis auferri non potest. Sed hoc non bene facit; loquitur enim in his quibus plures in solidum uti non possunt, alias securis, ut in usu platei et balnei, et similibus, ut l. si ut certe, § si duobus vehiculum, ff. commodati (Dig. 13. 6. 5. 15).

Preterea signum quod portat unus et signum quod portat alterius non est unum et idem, immo sunt diversa, habentia ommendam similitudinem. Ad decisionem ergo preceptorum premitur; primo, quod ille cuius signum aliquis portaret potest prohibere, se petere ut prohiberetur, si ille cieus est signum ex hoc inimicum, qua facta illud portaret cum viinperio vel vituperose tractant, ut. C. de Indicis, l. Indicis quam (Cod. 1. 9. 11), et C. de episcopali auditio, l. minime (Cod. 1. 4. 4), et est expressum extra, de excessibus praetorium, c. difecata (X. 5. 31. 14). Secundo, de hoc potest conqueri quilibet tertius, qui ledit, et ad eius petitionem prohiberi ne portent, ut C. de hii qui

(6) His premisissis, in questione proposita distinguere: quandoque annus assumit arma que alius portavit ab antiquo, et illius non interess, nec ex hoc verisimiliter ludi potest. Exemplum: Theutonici tempore indulgentiae venit Roman, ubi repert quendam Italici armas et insignia suorum antiquorum portantium, et de hoc volebat conqueri. Certe non poterit: tanta enim est distantia inter urbis res publicae, quod ex hoc ille primum ludi non potest. Et in his, in quibus quidam publica facultate quis occupat sibi usum, non liceat conqueri nisi ex causa magna, ut ff. ne quid in funime publica, l. i, § sunt qui

(7) Quandoque potest contingere quod alienus multum interess. Quic enim si homo odius plenus, cuitis vie multi insigniatur, assumere arma et insignia hominum pacifici et quicet? Certe illius interesse et poterit facere eum prohiberi. Sicut enim potest peti prohibito ne ipsius arma seu insignia vituperose portaret, ut dictum est, multo fortius potest peti prohibito ne ex hoc, propter unitatem armorum, alius pro alio occidatur vel immittatur. Ibi enim et si per violentiam pruni aliquid spectat ad quietem publicam, ar. dicta l. nime, et l. Indicis, nam ad officium indicis spectat quies publicorum, ut ff. de officio prefecti urbi, l. i, § quies quaque (Dig. 1. 12. 1. 12).

Quandoque potest esse quod multorum de populo interesse. Ponamus exemplum in alius signis quam in his qui portant pro armis. Pone quemdam fribrum doctissimum, qui in gladiis et aliis suis operibus facti certa signa, ex quibus opus hujus magistri esse dignoscitur, et ex hoc tales merces mediis vendantur et avidissim emuntur. Posito quod alius faceret tale signum posset prohiberi, quia ex hoc populus decipitur; accipitur enim opus uniis magistris pro opere alterius, ar. dicta l. i, c. de latina libertate tollenda (Cod. 7. 6. 1), et extra, de Indicis, c. in nonnullis (X. 5. 6. 15).
(8) Et cadem ratione, dico in signis quibus utitur notarii, ut C. de assessoribus, l. nemo (Cod. 1. 51. 14. 2), ibi, nec calidus, et in autem, de instrumentorum cautela et fide, § sed et si instrumenta, et § opertet (Nov. 73 = A. 6. 3. 5, 6), et ibi notatur quod si alius signum
unius assumere, potest prohiberi. Idem in signis quibus utitur mercatores. Idem in signis quibus utitur fabricatores cartarum de
papire et similium per easdem rationes, et hoc similiter expeditur officio officii, ut dictum est.

(9) Sed secundum hoc quero, quid relever habere ista arma ex consensu principis? Respondendo: multum. Primo, quia est maius
oblivitatis, ut dicatur in testamento facta curam principis, C. de
testamentis, l. omium (Cod. 6. 23. 19). Secundo, quia non potest alius
prohibere illi portare, ar. C. de inre aurocerum anulorum, l. ii (Cod. 6.
3. 2), et ff. de minoribus, l. minor autem magistratus, in principio, et
§ i (Dig. 4. 4. 1, 1). Tertio, quia si duo assumunt eadem arma seu
insignia nec de prioritate nec posterioritate appareat, preferatur qui a
principi habuit, ut ff. de excusationibus tutorum, l. si duos (Dig. 27.
1. 6). Quartum, quia si essent in exercitu vel alio loco et quereretur
quis deleretur precedere, debent precedere illius arma quae a principe
concessa sunt, ut ff. de albo scribendo, l. finali (Dig. 50. 3. 2), et extra,
de maioritate et obedientiæ, c. per tuas (X. 1. 33, 7), et ar. dicta l.
si duos, ff. de excusationibus tutorum (Dig. 27. 1. 6). Et predicta
intellige ceteris paribus, sed heri quod isti, qui habent arma, sint
equalis dignitatis, alias preferatur arma illius qui esset in maior
dignitate, ar. ff. de albo scribendo, l. i (Dig. 50. 3. 1), et C. de
consulibus, l. i (Cod. 12. 3. 1), ibidem.

(10) Quero quateris ista arma seu insignia transact ad successe
sores? Respondens: quidam sunt unius damas seu aognationes, et ista
transact ad omnes de illa aognatione successent, sive sint
heredes patris sive avi, sive non, ar. ff. de religiosis, l. i. familias (Dig.
11. 7. 5), et l. sequentem (Dig. 11. 7. 6). Nec per divisionem possunt
assignari unui, C. de religiosis, l. se quaerat (Cod. 3. 44. 2), ad
cognatos vero vel inlimes non pertinent, ut C. de religiosis, l. i. us
familiae (Cod. 3. 44. 3).

(11) Ex hoc posset qui, in bastardi vel spurii possunt uti illos
signis. Et videtur quod non, quia non sunt de familia seu aognatione,
ut l. pronuntiatio, ff. de verborum significature (Dig. 50. 16. 195).

Contrarium tamen servatur in Tuscia de consuetudine, cui stamnum
est. Quando tamen multiplicatur his quibus competunt cadem arma,
consuetum est per aliquos aliquid apponit ultra ut ab alius
decernatur, quod licet, sicut nonum addicist promemum.

(12) Quidam vero sunt signa alicuosis societatis et negotiorum,
it hic cum societas non transact ad heredem non est tratamentum de
heredem. Sed ad quern remanebit signum societate divisa? Quod
enim utitur omnes cedem signum non est cedum, ut dictum est. Si
quidem erat unus societate, qui erat capitaneus et quasi magister
societatis, sive dicatur in simibi, ff. de legatis, l. l. pereulati, § i
(Dig. 31. 1. 65. 1), tunc apud eum debet remanere signum, quia ipse
erat inter eos maius honoris, ar. ff. de fide instrumentorum, l. finali
(Dig. 22. 4. 6). Si vero hic non erat, tunc apud eum remanebit qui
erat socius maius honoris, ff. locum hincviscente, l. si quod
sunt censure (Dig. 10. 2. 5). Quid si omnes sunt equales? Tunc sorte
dirimentem est, ut dicta l. si quod sunt censure (Dig. 10. 2. 5).

Puto tanum quod si dissoluta societate unus ex socii remanet
neggiorat, ali non, quod apud eum, qui remanet negotior debeat
remanere signum et hoc quia aliqua non interest. Item quia licet sit
dissoluta societas, tamen negotio remanet pene illum. Ergo in
quum esset quod signum, quod erat accessorium illius negociatio-
nis, ab eo separatur, ar. C. communia utinasse officiis, l. possessio
(Xod. 3. 33. 11).

Quidam vero sunt signa ciusdam artificii se petere. Et hic ad
vertendum, quandoque sunt signa artificii in quo principaliter oper-
atur qualitas loci. Exemplum: in municipio Aenomita est quod se
castrum mobile cuius nonum est Fabrum, ubi artificium faciendo
cartas de papire principaliter vestig, ibique sunt eincidentia multa et e
et ex quibusdam edificiis meliores carte proveniant, licet ibi facet
multum bonitas operant. Et, ut videmus, quodlibet folium carte
sumi habet signatum proprium quod significatur cuius edificii est carta.
Dico ergo, quod isto caso apud illum remanebit signum apud quem
remanebat edificium in quo sit, sive iure proprietatis, sive iure con-
ductiohis, sive quois alio titulo, sive in toton, sive in parte, sive
eamala fide tenat, tuto tempore quo tenet non potest prohiberi
uti signo, sicut in ceteris iuribus reallibus, ar. ff. de servitusibus rusti-
corium prediorum, l. via constitui, § finali (Dig. 8. 3. 23. 3), et si servi-
De natura autem vexilli, cum portatur in hasta secundum illum usum ad quem vexillum est destinatum, hasta precedit et vexillum sequitur. Unde, quodcumque animal, quod debeamus pingere in vexillo, facies eius debet respicere hastam, cum de natura faciei sit antecedere.

Idem in omni re figurata que habet partes, que non nominantur per ante et post, ut in precedenti membro dictum est. Tunc enim pars rei anterior debet esse versus hastam, alias enim videtur incedere tamquam monstrum. Sed si aliemus rei solutummodo pars anterior portaretur pro armis, ut sunt quidam qui faciunt arietis vel bovis pro sigillo suo portant, tunc non potest pars anterior respicere hastam, sed a latere respicit.

(15) Sed dubitatur qualiter debet in predicta animad figurari, utrum quasi steat recta an quasi per terram plane ambulet vel quo modo? Respondeo: dicta animalia debent depingi in nubibus actu corum et in quo magis suum vigorem ostendunt, ut ff. de statu hominum, l. queritur (Dig. 1. 5. 10), et de adquirendo rerum dominio, l. quidquid, § cum partes (Dig. 41. 1. 27. 2), sic enim ab antiquo usitatum videmus quod principes in maiestate pontificibus depinguntur et figurantur.

(16) Nunc ad propositum dico, quod quedam sunt animalia quorum natura fera est, ut ff. de postulando, l. i. § bestias (Dig. 3. 1. 6 in c.), et ista debent figurari in actu fericiori, ut leo, ursus et similia. Et figurabitur ergo leo rectus et elevatus, mundus ore et scindens pedibus, et idem in similibus animalibus. In hoc enim actu magis suum vigorem ostendant.

(17) Quaedam sunt animalia non fera, et in his similiter debet inspici nubilis actu corum diversi modo tamen. Si quis enim eum pro sua arte portaret, non debet eum designare rectum et elevatum, hoc est enim vitiosum in equo, sed eum debet figurare a parte anteriori aliqua qualiter elevatum, quasi sit equus curens vel saliens, in hoc enim actu maior eius vigor ostenditur.

(18) Sed si quis pro suis armis agnam portaret, tune eum designare debet quasi plane ambulante per terram, in hoc enim actu maxime eius vigor ostenditur. Similia de avibus et aliis animalibus dicenda sunt.
(19) Circa pedes advertendum est, quod semper is qui antecedit sit pis dexter, quia, ut in precedentibus membro dictum est, pars dextra est principium motorius, atque significat talem figuram secevam esse, quod in vitium solut, ut fl. de edificio edificii, l. qui elevam, § item seceendum (Dig. 21. 1. 12. 3). Sed hic occurrerat dubium: quia si in vexillo figuratur ab una parte tamen pis dexter precedent, ab alia parte videbatur pis sinistra precedere. Hec autem incongruitas magis visibilis appareat in his qui pro sua arma aliquam litteram vel literas portant. Nam ab una parte sunt litterae recte, ab alia parte communiter non est forma literarum, quod apparatus si quis cartam scriptam a converso late inseriat.

(20) Sed dicendum est, sicut in literis inspectur illa pars que respicit sciribenam non pars conversa, ita in vexillo inspectur pars que respicit portantem, non alia; quod enim ex alia parte est, non ex principali proposito contingit sed per accidentem; sicut cum quis se in speculo inspectit, quod enim in se dextrum est in speculo sinistram appareat. Et predicta vera in vexillis que portantur in hastula, cutis recta natura est ut elevata et rectaportant, ut fl. de servitutibus rusticorum prudorum, l. qui scella (Dig. 8. 3. 7), in principio.

(21) Sed si loquantur in vexillis et in vexiculis que portantur in tabis, quarum natura propria est ut ad os tubarorum portantur, quia plane àcecentur portantur, tune facies vel rei designate pars anterior non debet respiciere tubum sique hastam. Non enim est tuba pars anterior sed superior, et idem debet respiciere partem anteriores illius vexilli, tuba plane àcecenti portanti. Et predicta vera in dubio.

(22) Quodque de proprietate armæ est quod respiciant, ut si portantur duo animilia se invicem respicientium vel unum respiciens aliam. Tune non est locus predictus investigationi, quia in incertis non certis locus est coniecturis, l. continuas, § cum ita, de verborum obligationibus (Dig. 45. 1. 137. 2).

(23) Circa secundum vero, quando arma sunt quedam signa simplicia, ut varietates quorumnam colorum, tune hic es advertendum qualiter debeat portari. Et presumto quod nihil res debet preferri et in nobiliari loco ponit, fl. de officio prefecti urbi, l. i (Dig. 1. 12. 1), [C.] de officio rectoris provincie, l. potioris (Cod. 1. 40. 5), de consulis, l. i (Cod. 12. 3. 1), libro xii. Item presumto, quod locus prior et locus superior est nobilior inferior et posterior, ut dictis legibus, et fl. de albo scribenda, l. i (Dig. 50. 3. 2).

295 His premisis, dico quod, quandoque arma variantur per media, ut quia quis pro arma portat banderiam duorum colorum, et tune aut dividitur per medium ut supra et subitus, aut per medium ut ante et post. Et in istis casibus in dubio nobilior color debet esse supra, et in ea parte que respicit cellum, vel ante, inste in ea parte que respicit hastum. Si vero variatur per quarteria, tune nobilior color debet esse in quarterio superiori et anteriori, id est propo hastam. Si vero variatur per listas directas, tune prima lista coloris nobilioris debet esse prope hastam; si vero variatur per listas transversas, tune lista coloris nobilioris debet esse prima versus cellum. Si vero sunt listae vel bande pendentum, tune cum has habit habeat se tamquam pars anterior in banderia, et idem pars magis elevata debet respicere hastam. Istam omnia probant ex presuppositione.

(24) Sed dubitatur quis color sit nobilior. Dico quod unus color dicitur nobilior respectu eius quod representat, alius secundum se.

310 Primo modo, color aureus dicitur nobilior, per eum enim representatur lux. Si quis enim velit figurare radius solis, quod est corpus maxime luminosum, de hoc textus de maioritate et obedientia, e. soli (X. 1. 33. 6. 4), hoc non possit congruellus facere quam per radios aureos. Consit autem quod nil luce nobilius, certe nil, ut C. de summa trinitate et fide catholica, epistula, inter claras (Cod. 1. 1. 8), ibi, nichil est enim quod lumine clarior, et C. ne fuisse pro patre, auten, habitas (Cod. 4. 13. 5), ibi, totus mundus illuminatur. Et in sacra scriptura pro re maxime excellentie designatur sol, ut, fulgebunt in isti sicut sol, Mt. xiii. c. (Math. 13:43), et alibi, respelieunt facies eius sicut sol, Mt. xvii. c. (Math. 17:2). Et propter hune nobilitatem nulli licet portare vestes aureas nisi soli principi, ut C. de vestibus holoscrips, l. i, et ii (Cod. 11. 9[3]. 1. 2), libro xi.

(25) Sequens color nobilis est color purpureus seu ruberis, qui figuratur per ignem, qui est super alia elementa et est corpus post solem secundario luminosum. Et propter eius nobilitatem nulli licet portare vestes coeptas de dicto colore nisi principi, ut C. de vestibus holoscrips, l. iii, iv et v (Cod. 11. 9[3]. 3. 4. 5). Et in dieta lege iii exprimitur lune colorum esse nobiliorum alii.
(26) Sequens post predictos nobilior color est color azurus, per
cum enim designatur aer, qui est corpus transparentes et diaphanum
et maxime receptivum lucis, et est sequens elementum post ignem
et nobilium alium. Unde predicti colores per id quod representant
dicuntur nobiliores.

(27) Qualiter autem colores dicantur nobiliores secundum se
dico, quod siue lux est nobilissima, eius contrarium dicuntur tenue
bre et sic viillissime. Sic in coloribus secundum se, color albus est
nobilior quia magis appropinquat luci; color niger est infimus, quia
magis appropinquat tenebris. Colores autem medii sunt nobiliores et
minus nobiles secundum quod plus vel minus appropinquat albedo
vel nigredini, et istud est de mente Aristotelis in libro De sensu et
sensato.

(28) Quandoque dixi, quod ista arma portantur in super vestibus
hominum, et tunc illud, quod in armis habet se ut pars superior, debet
esse versus caput hominis et quod habet se ut inferior versus pedes.
Item in eo quod depingitur ex anteriori parte hominis, ut in pectore,
pars nobilior arne debet respiciere latus dextrum, cum illa sit nobilior
pars hominis et principium motus, ut in precedentibus dictum est.

(29) De eo vero quod depingitur ex posteriori parte hominis
potest dubitari. Pro eius declaratione premito unam questionem
que huius inter ledes et me cum ebraicam addicseam. Diecunt
enim quod modus scribendi noster non erat rationabilis, incepimus
enim a latere sinistro scribere et praebemus literam versus latus
dextrum, et sic illud quod debet esse principium motus est terminus,
et illud quod debet esse terminus est principium. Eckenant autem
modus scribendi eorum est rationabilis, quia incepunt a latere dextro
et cadunt ad sinistrum.

Ad quod tollendum dicens, quod aliquid rationabiliter fieri dicitur
respectu finis ad quem ordinatur. Et idem finis dicetur primum in
intellectu operantis, et naturaliter hie vera sunt et probantur per
leges. Nam si in intellectu operantis finis sit rationabilis et si postea
non sequitur, dicitur rationabiliter operari, ff. de negatis gestis, 1.,
sed an ultra, § i (Dig. 3. 5. 9(10). 1), cum similibus. Sed scriptura fit
ut legatur; legi autem est oculis perspici, ut ff. de hius quod in testa-
mento delineatur, l. i., § i (Dig. 28. 4. 1. 1), et sic legi fit per visum.
Videre autem est pati, ut philosophi dierunt. Scriptura autem repre-

sentata in oculis nostris agit in oculos nostros; oculus autem pati
dicitur quod patet quia ex hoc lecitur. Cum ergo scriptura agat in
oculos nostros, debet incipi ista actio a latere dextrum ipsius
scripture, quia illud latus est principium motus seu actionis. Sed
latus dextrum ipsius scripture, quae nos respetit, est respectu lateris
sinistri. Nam sic et si unus homo volvat vultum suum versus meum
directo, latus eius dextrum est respectu mei sinistri. Et sic appareat,
quod nos scribendo magis rationabiliter operamur; inspiciemus enim finem, scis secum a latere dextro scriptura in nobis
incipiat operari; secundum modum literarum incipiamus a latere
sinistri.

Ad propositum questionis, quater arma delectant depingenti ra-

tionabiliter a parte posteriori super vestes hominum, dieo quod illa pars
arne, quae se habet ut anterior vel ut nobilior, debet esse versus
latus sinistrum hominis portantis. Ratio: quia illa arma fit ut alius
respiciens retro illud videat; facies ergo illius arne est a parte pos-
teriori.

Sed finge hominem habere unam faciem retro, procul dubio latus
quod auter erat sinistrum ex parte posteriori erit dextrum. Vel pone
aliquem velle scribere laudem in spatulis alienis, sine dubio incipiet
a parte sinistri, quia illa respicet letris in se erat dextra, ut supra
ostensum est. Iustus melius ad ulsum exemplificatur in incisione
sigilli, quia magister ad modum literarum incipit scribere et per to-
tum contrarium ad hoc ut in cera ad modum eis erat exemplificatu
primatur; et istud exemplum est optimum ad exemplificandum in pre-
missa questione ludei.

(30) Ex his ei iam appareat, quod literae et arma in sigillis deuent
incidi per conversum, quia fit ad finem imprimendi ceram vel abiam
material, et illud quod est in sigillo conversum in cera remanet rect.
Eo et inspiciere debeam a quem finem fit, non id quod fin.
Si vero incideretur non ad sigillandum, sed ut sic esset, tune dehet
incidi directe.

(31) Quandoque dicta arma depinguntur in elipea, et tunc miniliter
pars elipei qui secundum modum communem potandi respicit latus
dextrum hominis, illa est assumenda ut potior, ut patet ex his quae
dicta sunt.
(32) Quandoque portantur et depinguntur in coöperta etis equorum, et tune sive a parte dextra sive a parte sinistra, debet inspiciere pars nobilior armæ caput equi—siend si plures irent ad servitium equi vel equinis, quidam a dextris quidam a sinistris, quilibet respiceret caput equi: mostrasum enim esset quod unus respiceret caput et alius caedam. Hece autem que nulli lateri magis accedant, ut si debere sit stare in anteriori vel in grappa, tune debet latus dextrum inspicerre, secundum ea quae dicta sunt.

(33) Quandoque depinguntur in coöperta lectorum, et tune debet inspici actus in quo debet esse cum stat in suo proprio esse. Sunt enim in coöperta lectorum quodam partes, que dependent circumcire lectum, quodam que plane inaeque super lectum; et in parte inaequa forma pingendi assumatur a forma hominis inaequit in lecto, in parte vero pendenti assumatur forma hominis recte stantis.

Quandoque etiam figurantur et depinguntur in parietibus vel aliis stabilius locis, et tune si quidem locus uti depingitur habet se ut paries, considera quod paries volvat faciem versus nos, et latus dextrum parietis cognosce, et sic facies et pars nobilior armorum voluatur versus partem dextram, predicta vera nisi ex causa.

Quid enim si in medio minus parietis depingatur statua principis, regis vel alterius excellenteri vel forte arma regia? Tune alia arma que ab utrique parte depinguntur, debent illam statuam vel illa arma respicerre, non inspecto a dextris vel a sinistris, volvat ad similitudinem hominem circum circa dominum existentium, omnes enim volvant se versus eum. Sed si locus uti depingitur habet se ut cellum alietum, puta camere vel aule, tune ex dictis in precedentibus membris cognoscendam est uti dictur caput et uti pes.

Postea fingo hominem inaequem uti versus nos vultum voluventem. Ex quo considero dextram partem et sinistram, et sic modum pingendi cognosce, ut ex predictis liquet. Si autem locus uti depingitur habet se ut solutum aut terra, tune eodem modo considera caput et pedes, et fingo hominem inaequem versus nos vultum voluventem, et egressos dextarem et sinistram, et modum pingendi rationibus inaeqvem.

Unum tamen scias, quod licet quis arma sua et insignia possit in terra sculptere vel pingere, tamen arma alienius domini sui vel
Variants


Appendix 2. Translation:

Bartolo da Sassoferrato, On Insignia and Coats of Arms

Let us consider the insignia and coats of arms that are borne on banners and shields.

1. First, whether it is permitted to bear them, and second, if it is permitted, how they are to be painted and borne.

I say that some insignia are proper to a rank or office and that anyone may bear them if he holds that rank or office, as for example the insignia of praetors or legates, or, as we can indeed see today, the insignia of bishops. And anyone who has that rank can bear these insignia. This is not permitted to others, and if someone who is not entitled to them has them he incurs the charge of fraud. And so I think that those who bear the insignia of the doctor of law when they are not doctors are liable to that penalty.

2. Some insignia are proper to anyone of a particular rank—for example, any king, prince, or other potentate has his own coat of arms and insignia, and it is permitted to no one else to bestow them or to depict them on their own belongings. I believe that this means that one cannot copy the insignia as such; however, it is not prohibited to use such insignia as an accompaniment—for instance, to place the insignia of a king, lord, count, or commune on one’s own coat of arms as a sign of subject. And this is a common practice.

3. Some insignia or coats of arms belong to private persons, either nobles or commoners, and some of these have coats of arms and insignia which they bear by the grant of an emperor or other lord. I have seen the Serene Prince Charles IV, Emperor of the Romans and King of Bohemia, grant many insignia and coats of arms. Among other concessions, the prince gave me (his counsel) and my agnates a red lion with two tails on a golden field. And there is no doubt that it is permitted to such persons to bear such insignia, for it is sacrilegious to question the power of a prince. If something is forbidden without the authority of a judge, then it is certainly permissible by his authority.

4. Some assume coats of arms and insignia on their own initiative, and we should consider whether they are permitted to do it. I think that they are permitted. Just as names are created to identify
persons, so insignia and coats of arms are devised for this purpose. Anyone is permitted to use such names for himself, and thus anyone can bear these insignia and depict them on his own belongings, but not on another's.

5. I ask whether anyone is permitted to bear the same coat of arms or insignia as another or whether he can be prohibited. It seems that he is permitted because anyone can assume the name of another, and many may have the same name. Therefore, anyone can assume the coat of arms of another, and many can bear the same insignia and place them on their belongings since this is done for the purpose of identification. It also seems, however, that he can be prohibited, for if we were the first to adopt the sign and thus it belongs to us, it cannot be taken away except by our own consent. But this fundamental principle of ownership cannot be applied here. It applies when several persons cannot use the same object at the same time; however, it does not apply to the use of a facility such as a square, a bath, or a theater.

Furthermore, the sign that someone bears is not really identical to the same sign borne by another; rather, they are different, although they might appear to be alike. Therefore, concerning the initial question, I say first that one can prohibit or seek to prohibit another from using his sign if he is injured by it because the other party bears the coat of arms with contempt or treats it shamefully.

Second, a third party who is harmed can lodge a complaint about the improper use of the coat of arms, and by his petition the bearer can be prohibited from using it.

Third, if a judge, by virtue of his office, sees that such use may cause public scandal and confusion among the subjects, he can prohibit it lest the people be deceived.

6. Having established these three points, I make the following distinctions. Sometimes someone assumes a coat of arms that another has borne from antiquity and it does not affect or damage the original bearer, nor can he be harmed because of the likeness. For example, a German went to Rome at the time of the jubilee, where he found a certain Italian bearing a coat of arms and insignia of his ancestors, and he wanted to lodge a complaint against the other bearer. Certainly, he could not do it, for the distance between their respective permanent places of residence is so great that the original bearer could not be harmed by the other. Therefore, as in those cases in which someone uses a facility accessible to all, a complaint cannot be lodged without a good reason.

7. Sometimes it may happen that the use of a coat of arms or insignia by one individual may impinge on another who uses the same insignia. If a person who has many enemies and against whose life many are plotting assumes the coat of arms and insignia of another peaceful or quiet person, certainly it matters much to the latter, and he can see to it that the former is prohibited. Just as a complaint can be lodged against someone who bears a coat of arms or insignia contemptuously, all the more can a complaint be lodged to prevent one from being mistakenly killed or injured in place of another who has adopted the identical coat of arms. Similarly, one can appeal to a judge whose concern is the peace of the people, if the person assuming the coat of arms of another is a public threat.

Sometimes it may happen that the use of the same coat of arms or insignia may impinge on many members of the community. Let us provide an example of insignia other than those which are borne for coats of arms. Suppose that there is a very skilled craftsman—a smith—who places certain marks on his swords and other products he makes, by which one recognizes that those products are made by that master. And therefore such merchandise sells well and is in high demand. In this case, I think that if another smith uses the same mark, he can be prohibited because when the work of one is in fact taken as the work of another it damages the people.

8. The same argument applies to the signs used by notaries. A notary can be prohibited from using the sign of another notary. The same applies to the signs used by merchants. The same also applies to the watermarks used by paper makers, and to similar cases for the reasons stated above. Disputes over the use of these signs will come under the authority of a judge, as was said above.

9. Next, I ask what are the advantages of having coats of arms by imperial grant. There are many.

First, they are of greater dignity, as we say in the case of a testament made before the emperor.

Second, one cannot be prohibited by another from bearing such
coats of arms.

Third, if two persons assumed the same coat of arms and it is not clear who had them first, the one who had them from the prince is preferred.

Fourth, if a question of precedence arises regarding military persons on the battlefield or somewhere else, then the coats of arms granted by the prince should have precedence.

The aforesaid apply when all other things are equal—namely, when those who have coats of arms are of equal rank; otherwise, the coat of arms of the one of greater dignity should have precedence.

10. I ask how such coats of arms or insignia pass on to successors. I reply that some coats of arms belong to a house or agnate. These pass on to all agnates, whether or not they are heirs of the father or his ancestors. When an inheritance is divided, coats of arms cannot be transmitted to a single heir. They do not belong to the agnates or those related by marriage.

11. And it is possible to ask whether bastards or illegitimate children can use these insignia. It seems that they cannot, as they are not legitimately from the family or agnation. But this practice is not observed in Tuscany by custom and this custom ought to stand. When the number of those who bear the same coats of arms increases, it is customary for some to add a new element to their coats of arms, just as a personal name is added to the family name, in order that they may be recognized and distinguished from others, and this is permitted.

12. There are also certain insignia that belong to some partnerships of merchants; and in this context, since the partnership does not pass on to the heirs, transmission of such insignia by inheritance does not have to be considered. But with whom will the trademark remain when the partnership has been dissolved? It is not fair that all the partners have the right to use the same trademark, as has been said. I respond that, if there were someone in the company who was the head and very close to being the master of the company, he should keep the trademark, since it should remain with the one who was in the position of greatest honor. But if there were not such a person, then it should remain with the one who had the greatest share in the partnership.

What if all are equals? Then the use of the trademark ought to be decided by lot. Nevertheless, I think that if, after the company has been dissolved, one of the partners continues the business, the trademark should belong to him, since his business does not affect the former partners. Similarly, although the partnership has been dissolved, the business nevertheless remains with him. Therefore, it would be unfair if the trademark, which is the accessory of the business itself, did not stay with the merchant who continues the business.

Some trademarks are proper to a particular craft or skill, and here it should be noted that sometimes they are connected to the nature of the place in which the product is made. For example, in the March of Ancona, there is a certain renowned town named Fabriano, where the manufacture of paper is the main business. Here there are many paper mills, and some of them produce better paper, although even here the skill of the worker is of considerable importance. And here each sheet of paper has its own watermark by which one can recognize the paper mill. Therefore, in this case the watermark should belong to the one to whom the mill itself belongs, no matter whether it remains in his possession by right of ownership or lease, or by any other title, wholly or in part, or even in bad faith. During the entire time in which he has possession of the mill, he cannot be prohibited from using the watermark, as with other rights to immovable property. The same applies to the lessee of such buildings.

Some insignia of a craft depend on the characteristics of the craftsman, as we see in the trademarks placed on swords and other products of metal. In this case, all who work in the same shop can use that trademark, since the head master of that shop approves of those works. But if they should separate, then the trademark should belong to the head of the shop. If perhaps all were equals and they

---

1 A Roman name typically had three parts: the praenomen (the first name), the nomen (the name of the gens), and the cognomen (the name of the family). The praenomen, however, was the least important, and sometimes a Roman would add an agnomen as a form of distinction. For example, Scipio used the agnomen Africanus after his successful African campaign against Carthaginian forces, and thereafter his full name was Publius Cornelius Scipio Africanus.
fail to come to an agreement, then the question of who has the right to use the trademark should be decided by lot.

13. Next we should consider how these coats of arms and insignia are to be painted, attached, and borne. Wherefore, it should be known that they are borne sometimes on banners, sometimes on clothing, shields, bed coverings, and other similar objects, and sometimes they are depicted or represented on walls and buildings. Let us say something about each of these cases.

It should be known that some of these insignia are taken from existing objects; for example, many make use of some animal, castrum,2 mountain, flower, or similar objects. Sometimes the insignia are simple and do not depict preexistent objects, in which case they consist of a variety of colors, either divided in half or quarters, with horizontal, diagonal, or vertical bands, and the like. Sometimes they are of mixed nature. With this said, let us consider how they are borne.

14. Signs that refer to preexistent objects are displayed on banners. In this case, I say that art imitates nature as much as possible. Whence, the insignia ought to conform to the essence and nature of the things they depict and not otherwise. With regard to the nature of the banner, since it is placed on a staff according to the use for which the banner is designed, the staff precedes and the banner follows. Therefore, whatever animal is depicted on the banner should have its head looking at the staff since it is in conformity with nature for the head to be in front. The same applies to every object and figure which has a front and back as in the preceding example. Then the front should always face the staff; otherwise, it may seem to be moving backwards like a monster. But if only the front part of some object is used in coats of arms and insignia, as some, for instance, use the head of a ram, ox, or other animal—in that case, the head cannot face the staff, but faces sideways.

15. One might wonder how these animals should be depicted, whether standing upright, or walking on the ground, or in some other way. I reply that these animals should be depicted in their noblest positions, so that they might evince their own strength. As we see from antiquity, it was common to represent and depict the emperor in his majesty, the pontiff in his pontifical robe.

16. Concerning this, I say that some animals are wild by nature, and these animals must be portrayed in a fierce stance, such as the lion, bear, and similar animals. Therefore, the lion is represented upright, raised, gnawing with its teeth, and clawing with its paws, and similar animals are depicted in the same way. From this stance, indeed, these animals better show their strength.

17. Some animals are not fierce, and in this case, too, we must consider their noblest posture, but in a different way. Therefore, if someone bears a horse on his coat of arms, he should not depict it upright and raised, since this is an inappropriate stance for a horse. Rather, a horse should be depicted slightly upright and with the front part somewhat elevated, as if the horse is running and leaping, since its strength is shown more in this posture.

18. But if someone bears a lamb, then he ought to depict it as if walking on all fours on the ground, since its strength is shown more in this position. The same observation applies all other animals and birds.

19. With regard to feet, it should be noted that the right foot is always first because, as has been said above, the right side is the source of motion. To represent such a figure otherwise would mean that it is clumsy,3 which is inappropriate; but a further doubt arises here.

What if only one side of the banner is painted, so that from one side it seems that the right foot is first, but from the other side it seems that the left foot is first? This inconsistency will be more apparent for those who bear some letter or letters for their coat of arms, since from one side the letters are correct, while from the other side they do not look like letters, which becomes evident if one looks at the written page from the reverse side.

20. Concerning letters, the solution to this inconsistency is that, just as one looks at the side that faces the writer, not the opposite

---

2 Literally, castrum refers to a fortified city. In the context in which it is used here, castrum probably refers to the image of a city tower or gate.

3 The text has saecus, literally meaning left-handed.
side, so on the banner one looks at the part that faces the bearer, not the other. That which is on the other side is not the part that mainly concerns us but is there by accident, just as, when someone sees himself in the mirror, what is actually on the right side appears to be on the left. The aforesaid is true for banners and flags that are attached to a staff and hoisted upright.

21. If we speak about banners and flags hanging from trumpets which are designed to be placed on the lips of the trumpeters and carried in a horizontal plane, then the head or the front part of the designed object should not face the trumpet as if it were a staff. The trumpet is not the front but the top, and therefore the front of the image should face the front part of the banner when the trumpet is lying flat and is being carried. And this should clarify the above-mentioned doubts.

22. Sometimes it might happen that in coats of arms figures face each other—for example, when two animals look at each other or when an animal faces an object. In that case, there is no need for further investigation, because where uncertainty exists there is room for conjecture.

23. Concerning our second point, when coats of arms are made of simple signs—for instance, a variety of certain colors—then, in order to understand how they should be borne, let me say that nobler things should be preferred and placed in a privileged position, and also that the right and top are nobler than the left and bottom.²

Having said this, I say that sometimes coats of arms are divided into two parts, as when someone carries a bicolored banner, and banners can be further divided either horizontally or vertically. And in this case, if you are in doubt, the nobler color should be at the top—that is, the part facing the sky—or in front—that is, the part next to the staff. If the colors are divided into quarters, then the nobler color should be in the top and foremost quarter—that is, next to the staff. If the bands are vertical, then the nobler color should be next to the staff. If the bands are diagonal, then the nobler color should face the sky. If the bands are vertical, then, since the staff itself is the main element here, the nobler part should be next to the staff. All these points can be demonstrated from what I have already said.

But there is a question as to which color is nobler. And one must know that one color is said to be nobler than another either with respect to what the color stands for or with regard to its inherent qualities. In the first sense, the color gold is said to be noblest, since light is represented by gold. If someone wishes to depict the beams of the sun, the most luminous body, he cannot do it in a more appropriate way than by using golden beams, because it is agreed that nothing is nobler than light. And so in Scripture the sun stands for the most outstanding object, for it says “the righteous will shine as bright as the sun,” and elsewhere, “his face shone like the sun.” And because of the nobility of gold, no one can wear golden garments except the prince.

25. The next noble color is purple or red, which stands for fire. Fire is nobler than all the other elements and is the second luminous body after the sun. And because of the nobility of the color, no one may wear garments of purple or red except the prince. And it is said in the above-cited laws that this color is nobler than the others.

26. The next noble color is blue, which stands for air. Air is a transparent and diaphanous body and is highly receptive to light. It is the next element after fire and is nobler than the other two. Therefore, these colors are said to be nobler than the others based on what they represent.

27. In what way are colors said to be nobler with respect to their inherent qualities? I say that as light is very noble, its opposite, namely darkness, is very base. Therefore, if one considers the colors in themselves, the color white is the noblest because it comes closest to light. The color black is the base because it comes closest to darkness. The colors in between are more or less noble according to the extent to which they approach whiteness or blackness. This seems to be the position of Aristotle in his book, De sensu et sensato.

28. I said before that sometimes coats of arms are worn on the clothes of a person. In this case, the top part should be placed toward the head, the bottom toward the feet. Similarly, the nobler part of the coat of arms, when placed on the front side of a person (for

---

¹ See above, p. 1
² B. 50, 3, 1. Top-left and bottom-right are taken from the point of view of a person standing behind the shield and looking forward.
example, on the chest), should be oriented toward the right side. For that side is nobler and is the source of motion, as was said earlier.

29. There are, however, questions about how coats of arms should be worn on a person’s back. In order to give an answer to this, I will first present the question which I discussed with some Jews while I was learning Hebrew. They said that our method of writing [from left to right] is not rational; we begin writing from the left side, drawing the letters toward the right side, and thus what should be the source of motion becomes the end and what should be the end becomes the beginning. The Jewish method of writing, in contrast, is rational, because they begin writing on the right side and move to the left. In order to settle this question, I said that something is said to be done rationally with respect to the end to which it is directed. And therefore the end is said to be the determining reason in the mind of the actor. This is obvious and can be proved by law. If the end in the mind of the actor is rational he is still said to function rationally, even though the end is not achieved. Writing is made to be read; to be read is to be seen by the eyes, and therefore reading is performed through sight. To see is a passive operation, as the philosophers say. The image of scripture as perceived by our eyes acts on them, so that the eyes become the recipient of an action, which is evident also because they can be injured by reading. In order that writing might affect our eyes, this action must begin on the right side of the writing, because that side is the source of motion and action. But the right side of the writing that faces us is, from our perspective, the left side, just as, if a person turns his face in my direction, his right side is on the left from my perspective. And so it appears that we in our writing operate more rationally, since we consider the end, namely, that writing may begin from the right side, while according to Jewish custom it begins from the left side.  

Therefore, for the question at hand—namely, in what way coats of arms should properly be depicted when worn on the back of a person’s clothing—I say that the part of the coat of arms which is the foremost and nobler part should be placed toward the left side of the person bearing them. The reason is that coats of arms should be arranged so that anyone looking at them might see them correctly. Therefore the face of the coat of arms will be on the correct side from the perspective of the person’s back.

Imagine that a man has his head on backwards. Without doubt, the side which was the left will be the right from the perspective of the person’s back. Or suppose that someone wishes to engrave some letters on a blade: he will doubtless begin from the left side, which, with regard to the letters, will be the right side, as was said above. This can be better exemplified in the engraving of a seal. The engraver indeed begins writing in the same manner as the Jews, moving from right to left, in order that the impression on the wax conforms to the Christian manner of writing. And this is an excellent example that can be employed when beating with the Jews.

30. It also appears from this that letters and coats of arms on seals should be incised backwards, since they are for impressing on wax or other material, and that which is backwards on the seal will be correct on the wax or other material. Therefore, we should look at the end for which it is made, not that which is made. If a coat of arms is incised on some other object, not for making a seal but to be seen as it is, then it should be incised directly.

31. Sometimes coats of arms are depicted on shields. In a similar way, the part of the shield directly in front of the right side of the carrier is the principal part, appears from what we said before.

32. Sometimes coats of arms are placed and depicted on both sides of a caparison. The nobler part of the arms should face the head of the horse, so that if many come to serve the horse or rider, some from the left, some from the right, each one sees the nobler part at head of the horse. It would be monstrous for one to face the head, another the tail. However, when a coat of arms cannot be accessed from either side, because it stands in the front or in the back, then the right side should be painted as usual.

33. Sometimes coats of arms are depicted on bed covers and on

---

6 This sentence is garbled in the manuscripts we have consulted, thus making any translation particularly problematic.

7 The text reads in spatulæ aliam, which can also refer to a person's back or shoulder.
similar objects. And in this case, the object on which the coat of arms is to be depicted should be viewed as others are expected to see it. Some parts of the covers lie flat on the bed, and some hang down from it. The part on the section lying flat follows the pattern of a person lying on the bed. On the section hanging down, the design of the coat of arms follows the pattern of a person standing up.

Sometimes coats of arms are even depicted and painted on walls and buildings. In this case, if the place where the coat of arms is painted is a wall, then it should be treated as a wall with the front facing us; thus one knows how to distinguish the right side of a wall. And thus the face or nobler part of the coat of arms should be turned toward the right side. The aforesaid is true unless for a good reason one does otherwise.

What if a figure of a prince or another preeminent person, or perhaps a royal coat of arms, has to be painted in the middle of a wall? In this case, the coats of arms that are depicted on both sides of that figure should be turned toward the figure, thus disregarding left or right, as, for example, with a group of persons who are turning toward their superior. But if the place where the coat of arms is depicted is, for example, the ceiling of a room or a court, then from what was said above one can determine which is the top and bottom of the coat of arms.

Now imagine a person depicted on the ceiling and facing us, consider his right and left side, and thus the correct method of painting and the correct determination of the right and left side of the person will be evident from what was said before. If the place where the coat of arms is painted is on the ground or floor, then in the same way consider the head and feet and imagine the person lying there and facing us. And so one will know the right and left and will find the rational way to paint.

Nevertheless, keep one thing in mind: that although someone can carve or paint his own insignia on the floor, he is not permitted to carve or paint the insignia of his lord or persons of higher rank on the floor.

8 The unusual orientation of coats of arms required in this passage is puzzling to us. As far as we know, such symmetry was not observed in practice.

9 We have been unable to identify the author of this explicit.
Appendix 3. Antonio da Butrio:

Ad c. Dilecta, De excessibus prelatorum (X. 5. 31. 14)*

Ultimo quero de insigniis, aut sit licitem ipsa portare. Die quod quidam sunt insignia dignitatis vel officii, ut insignia consularia, legatorum et episcoporum, et ista potest portare qui habet istam dignitatem, ut i. i, ff. de officio praconsellis (Dig. 1. 16. 1), alius non, ymmo portans incurrat penam falsi, ut i. cos. § finali, ff. de [lege Cornelia de] falsis (Dig. 48. 10. 27. 2), nisi superveniret specialis principis concessio, ut in c. ut apostolice, de privilegiis, liber vi (VI. 5. 7. 6).

Quidam sunt insignia euniam singularis dignitatis, ut rex, principes, et ceteri potestiores habent sua arma et insignia, que ceiam aliiis defferi non debent, ut G. de his, qui potentiorem nomine, l. i (Cod. 2. 14(15). 1). Quidam sunt insignia seu arma privatorum hominum nobilium, seu populairum: de istis enim quidam repetuntur, qui habent arma et insignia, que portant ex concessione imperatoris, et istis licere portare faltia arma non est dubium. De principis enim postestate dubitare sacrilegium est, ut G. de crimine sacrilegii, l. ii (Cod. 9. 20. 2).

Quidam eunium sunt, qui arma seu insignia sua propria auctoritate assumunt sibi, et istis au licet videndum [est]. Et die quod licet, si eum nominis inventa sunt ad recognoscendum homines, l. ad recognoscendos, C. de ingenii munificentis (Cod. 7. 14. 10), ita eum ista insignia ad hoc sunt inventa, ut ff. de rerum divisione, l. sanctum (Dig. 1. 8. 3). Sed talia nominis cuiuslibet est licitem inponere ad placitum, ut dicta l. ad recognoscendos. Ita ista insignia cuiuslibet

---

* It is beyond our purpose to present a critical edition of Antonio da Butrio’s commentary to c. Dilecta. Nevertheless we preserve his text which illustrates the reliance of the canonists on Butrio’s tract. Our text is based on a collation of the printed edition (Venice, 1578, fol. 314rb) (+R) with the ms. Vat. Lat. 2210, ff. 280ra-281ra (=Y).

1 licet V.
2 et dicet quod licet, sunt eum nominis inventa ad recognoscendum homines, ut l. ad recognoscendum, C. de ingen., etc. set. Ita E; et dicet licet sunt eum nominis eum inventa ad recognoscendum homines, C. de ingen., et manum. Item V.
3 sanctum E.
4 recognoscendum V.
licet portare\textsuperscript{5} et desingere in suo tantum, non alieno, ut C. ut nemini licet sine indicis auctoritate signa imponere, l. i. (Cod. 2. 16(17). 2).

Quero, unus portat certa insignia, alius vult portare eadem, an prohiberit possit? Videatur quod non, sic patet, quia potest quis assumere nomen alterius, ut possint esse pluribus eisdem nominis, ut l. facta, § si vero nominis, ad [senatus consultum] Trebellianam (Dig. 36. 1. 63(63). 10), et l. duum sum Titii, de testamentaria tutela (Dig. 26. 2. 30). Econtra videtur [l. id] quod nostrum, de [diversis] regulis iuris (Dig. 50. 17. 11).

Pro solutione questionis premitte, quod signum alienum portans potest prohiberi per illum eum est signum, si ex hoc ei immittatur, quia forte ille cum vituperio\textsuperscript{6} portat vel vituperiose tractat, ar. C. de Iudeis, l. Iudeis (Cod. 1. 9. 11), et est expressum hic. Ad hoc faciit\textsuperscript{7} C. de Latina libertate tollenda, l. i, § sed et qui domini (Cod. 7. 6. 1. 5), ibi, circa eos qui piletati antecedunt,\textsuperscript{8} lex aliquam statuit,\textsuperscript{9} ne populus decipiatur, et expressus, de Iudeis, c. in nomnulis (X. 5. 6. 15).

Hic ergo premisis in questione possit distinguer, quandoque unus adsumit insignia, quae alius portavit ab antiquo, et illum non interest, nec ex hoc verisimiliter potest ledi, ut si unus Italicus portat arma unius Thetumici,\textsuperscript{10} et de hoc non poterit conscribi, [nam] propter magnam distantiam utriusque domicilii, ille non poterat\textsuperscript{11} pretendere lesionem aliquam. Quandoque potest contingere quod alterius nullum interest, puta si homo edis pleum et impariter capitibus assumit insignia hominis pacifici et quici, cete illius interest, et poterit\textsuperscript{12} facere prohiberi, ne propter unitatem insigniorum alius\textsuperscript{13} pro alio occidatur et hoc per officium indicis, ad quem spectat quies popularum, ut l. i, § quies, f. de officio prefecti urbis (Dig. 1. 12. 1. 5). Quandoque potest contingere quod nullorum de populo

interest. Ponamus exemplum in aliis insigniis. Pone quendam faborum ductissimum, qui in gladiis et aliis certis operibus facit\textsuperscript{14} certa signa, ex quibus opus ipsius magistris esse dignoscitur, et ex hoc tales mercis melius venduntur et avidibus enuntur; et tune dico\textsuperscript{15} quod si aliquis faceret tale signum [posset] prohiberi, quia ex hoc populus decipetur, areperet enim /rol. 281ра/ opus [unius] pro operae alterius, ar. d. l. i, de Latina libertate tollenda, et in dicto c. in nomnulis. Et eadem ratione dico in signis quibus utuntur\textsuperscript{16} notarii, ut C. de assessoribus, l. nemo (Cod. 1. 51. 14. 2). Ideam in signis quibus utuntur mercatores vel hospitatores. Et hoc\textsuperscript{17} de ista questione.

\textsuperscript{5} pontare V.
\textsuperscript{6} imputare V.
\textsuperscript{7} facit hoc E.
\textsuperscript{8} antecedat V et E.
\textsuperscript{9} situtum E.
\textsuperscript{10} Thetumici V.
\textsuperscript{11} poterit E.
\textsuperscript{12} poterit illam E.
\textsuperscript{13} diit V.
\textsuperscript{14} facit V.
\textsuperscript{15} dico et avidius enuntur et tune dico V.
\textsuperscript{16} utuntur quibus V.
\textsuperscript{17} have E.
Appendix 4. Pietro degli Ubaldi
Tractatus de duobus fratribus

Part II, question 11

Quae: divisa societate apud quem insignia debent remanere. Respondeo: quidam sunt insignia unius dominus seu agnationis, ut sunt insignia que portantur ex concessione principis, velut insignia que concessi genitori meo et ceteris de agnatione sua serenissimus principcis Sigismundus, cum ad serenitatem suam Constantinopolitanorum concilii et electionis sanctissimi domini, domini Martini pape quarti, ipsa meus genitor pro domino Brachio de Forte Brachius legatus exitit; et demum post coronationem papi serenissimi principis, factum per sanctissimum dominum, dominum Eugenium pape quartum, idem privilegium insigniorum concessiones et confirmationes, cum Perusium adventaret, mihi fratrique meo cum pendenti bulla restituit. In quo sua concedit serenitas nobis et ceteris de agnatione nostra hec insignia ex mea arma, videlicet: scutum aurem cum duabus karissimis nigris in medio per transversum et galeam cum capite cuirrusdum Ethiopis usque ad huncum et alia aurata aurea involuta quoddam sudario aureo involuto capiti dicti Ethiopis et cum quaedam alia argentea per medium capitis pretendentis a facie ad spatulas dicte galeae. Que arma praebuit Sigismundus, divina laudente clementia Romanorum imperator semper Augustus ac Ungarie, Bohemiae, Dalmatie, Croacie, etc., rex, nobis et ceteris de agnatione nostra confirmavit et in quantum opus esset de novo concessit et

---

4 We produced this excerpt of De duobus fratribus to illustrate Pietro's reliance on Bartolo's tract. The text is based on a collation of three printed editions: the text of the Parisian edition of 1500, s. 1 (A); was collated with that of the Venetian edition of 1500, s. 1 (V) and with that published in 1767, vol. 6, fol. 167v-168r, nos. 68-77 (T). None of the three editions we have consulted reproduces the figures to which Pietro degli Ubaldi often refers in his text and which, in imitation of Bartolo's De humanibus, adorned the original manuscript.

1 constante A.
2 sharris V.
3 hunece A V.
4 alia A V.
5 alia A T.
6 (et V) talis A V.
erat notum, nec etiam ipsi socii distrahentes societatem possunt\textsuperscript{27} ledi, satis videtur bona distinctio Bartoli. Si autem possent solum ledi ipsi socii, tunc omnia consensientibus videtur uni posses sigillum remanere, ut supra dixit Baldus, quod mercatorum inchoatio relicitur invidet, ut. I. somel. C. de re militari (Cod. 12. 35[36]. 6), libro x. et I. i, de ventre inspiciendo (Dig. 25. 4. 1), c. significasti, de domicilio (X. 5. 12. 16), cum simulibus.

Mihili salva ventori determinazione videtur posse imaginari et dici. Aut loquimur de signo artificii, ut edificii cartarum, aut de signo peritie, ut signum gladiorum [et] spadarium, aut de signo fiducie et credibilitas sive opinum peritie, ut in signis mercatorum, camporum et simulium, que signa ponuntur in ballis et sigillis, ut signa demonstrat\textsuperscript{28} signata, id est eunus societatis sint illa halle signate, I. dos data, C. de donationibus ante nuptias (Cod. 5. 3. 20 in e.), per Baldum. Primo casu, signum remanet ei cui renemant edificium, ut supra locutus fuit Bartoli.\textsuperscript{29} Secundo et tertio casu, de signo peritie, ut sunt signa gladiorum, et de signo fiducie, ut sunt signa mercatorum, aut umus solus societati remunecavit, et tunc eunus disseminit non possit dissolvit societatis; quia, ex quo communi consensu est contracata societas, debet communi dissensus dissolvit, quia nihil est tam naturalis quam eo vinculo dissolvit quo quis ligatus est, ff. de diversis regulis iuris, i. nihil tam naturale (Dig. 50. 17. 35), I. sicent. C. de actionibus et obligationibus (Cod. 4. 10. 5), I. ab emptione, ff. de pactis (Dig. 2. 14. 58), ff. de solutionibus, l. prout (Dig. 46. 3. 80).

Una ergo dissensus non dissolvit, quia quidem\textsuperscript{30} qui dissensus ait a se liberat, ipse autem non liberatur ab eis, ff. pro socio, I. actione, § diximus, et § item qui societatem (Dig. 17. 2. 65. 3. 6), secondum Redfordum, in rubrica Sic aliqui societatem faciunt, § Si in quibus quare societatis, etc., videtur clare dicendum signum apud ceteros durare quodam durat societas; quia cum signum sit societate accessorium, ut supra dictum est, sapit naturam societatis, cum accessorium sequatur\textsuperscript{31} naturam sui principalis, ut in regula accessoriu

\textit{rimum, de regulis iuris, l. VI (VI. 5. 13. 42), l. lecta, § diximus, [de rebus creditis] si certum potestur (Dig. 12. 1. 40, in c.). Ergo idem est de signo quod quod de societate, ex maxime quia remunecat tendit solum in preideum remunecantur et favorem ceterorum, l. sed et socius, § finali, ff. pro socio (Dig. 17. 2. 17. 2), et d. § diximus, et § item qui societatem (Dig. 17. 2. 65. 3. 6).

Ant consensum omnium dissoluta est societas vel aliter fluita est quo ad omnes, ut plene dictum fuit supra in unica parte principali. Et tunc aut a principio conveniunt est, apud quem signum diximus debet remanere, et conventioni stetit, l. si non fuerint, § ita coiri, et § si vero placuerit, ff. pro socio (Dig. 17. 2. 29. 1pr.), et in I. cum duobus\textsuperscript{32} § item ex facto (Dig. 17. 2. 52. 7). Aut a principio non est conveniunt, apud quem siiignum debet remanere, sed hoc collatam est arbitrio unius, vel plurium sociorum, vel tertiae personae. Et tunc conveniunt servanda est, et intelligitur quod eaque debet arbitrarire, l. si societatem mecum coeteris, et l. si coit sit societas, cum quinquque sequentibus, ff. pro socio (Dig. 17. 2. 75. 6-11). Aut a principio nihil conveniunt est; et tunc aut signum, quod commune corporis societatis omnium consentia assumptum, erat unius sociorum. Exemplum: contracta est societas inter plures mercatores. Unus ex istis sociis erat prins mercator, et signum autem erat mens cum erat supra montem, ut patet ex signo hic figurato. Et\textsuperscript{33} nunc contrahit societatem cum alius mercatoribus, et totum corpus societatis facit idem signum, videlicet montem cum erat supra montem; vel factum locum signi arma minus ex sociis proprie eius dignitate, ut in armis nostris, videlicet sanctum cum duobus barris\textsuperscript{34} uigis per transversum, ut hic\textsuperscript{35} appareet figura. Vel est unus faber, qui facit gladios vel culhellos, et signum eius est illium, ut hic figuratum est.\textsuperscript{36} Nunc autem contrahit societatem cum alius fabrica ad faciendum gladios, vel culhellos, vel alia arma, et facit idem signum, videlicet illium, supra figuratum. Vel sunt plures mercatores, qui contraerunt societatem, et ante quam contraexerunt societatem, duo ex eis.

\textsuperscript{27} possent om. V. possent T.
\textsuperscript{28} demonstrant A.
\textsuperscript{29} Baldus T.
\textsuperscript{30} quidem om. T.
\textsuperscript{31} sequitur T.
\textsuperscript{32} in = duobus: en. I. A V.
\textsuperscript{33} aut V. T.
\textsuperscript{34} abarris T.
\textsuperscript{35} hic om. A.
\textsuperscript{36} ut = est: supra figuratum T.

Modo dissoluta est societas inter istos mercatores, vel inter istos fabros, habitatur apud quem signum debet remanere. Aut est distraeta societas illorum qui assumperunt simplex signum, quod ante contractam societatem erat unus ex illis sociis, ut supra fuit dictum in monte cum cruce supra montem, et in lili, et in annis unus ex sociis; quo loco signi proprii suam dignitatem pro communi societate assumpta fuerunt, et tunc tale signum ad eum revertatur, qui erat ante contractam societatem, superadium, et si in coeunda (Dig. 17. 2. 52. 2 in c.), et in cadem l., § item ex facio (Dig. 17. 2. 52. 7), ubi socius deducit primo, quod in commune corpus posuit, demum dividunt enduluenta, facit in codem [titula] l. item si in commune rivum, et § si quis ex sociis (Dig. 17. 2. 52. 15), et infra, codem [titula] l. si unus ex sociis, § si quid unus (Dig. 17. 2. 67. 2). Sed hic socius in commune corpus societatis posuit signum proprium, videlicet montem cum cruce supra montem, vel lilium, vel arma sua. Ergo ante omnia predictum signum distraeta societate deducet, et sic ei signum remanet, eius primo erat, licet societati communicaverit. Aut loquimur in signum compositum, ut quando societas facit unum signum compositum ex duobus signis sociorum, ut supra paret in circulo cum monte in medio, et in cruce supra montem, et in lili coronato. Et tunc distraeta societate videtur signum dividi debere, ut eique reddatur quod ante contractam societatem suum erat, per illa superius allegata. Et sic multis cum cruce remanent illi socii, cuibus erat tales signa ante contractam societatem; et circulus remanet illi, cuibus signum ante contractam societatem solus circulus erat. Et idem in lillo coronato, quia illi debet distraeta societate remanere illi, cuibus simplex lilia erat; et corona debet remanere illi socii, cuibus signum erat corona, cum facili sit separatio tales signi compositi, arg. l. si frumentum, in principio (Dig. 6. 1. 5. 1), et § sed si plumbum cum argentu, ff. de rei vindicatione (D. 6. 1. 5. 1 in c.), et Inst., de rerum divisione, § si duorum, et § quod si frumentum (Inst. 2. 1. 27. 23).

In contrarium facit, quia ex quo tale signum compositum mutavit formam a simplici signo, ut paret in eius signo, et de communi consensu factum sit, commune esse debeat, ut d. l. si frumentum § quod si voluntate eorum commissa sunt (Dig. 6. 1. 5pr.), tamquam si aliud signum a simplicibus signis ex quibus compositum est, quia ipsi socii, cuibus erat signum simplex, nihil dictur obesse. G sum signum compositum dicatur divisum, ergo et remanere non debeat, quia tunc percipieret plus debito, quod esset contra naturam societatis que partes equeales tribuit, l. si non fuerint, in principio, ff. pro sociis (Dig. 17. 2. 29), et instar fratrum status obtinet, l. verum, in principio, ff. pro sociis (Dig. 17. 2. 63).

Tamen cogit, quia cum compositum saepi naturam eorum, ex quibus compositum facta est, ut no in d. l. § si duorum (Inst. 2. 1. 27), et in l. ii, de verorum obligationibus (Dig. 45. 1. 2), videtur quod distraeta societate tale signum compositum inde debeat ad suam naturam, ad quam res de facili reversitur. L. si unus, § pactus ne petere, ver. quod [vi] in specie dotis, ff. de pactis (Dig. 2. 14. 27. 2 in c.), nisi dicas, quod hoc verum, quando ex composito quidem signorum ipsius sociis, quorum erant simplicia signa, ex quibus factum est...
rubrica de modo tenendo in signalibus, ubi consultus ex est castro Fabriani, cui mortuo testatore signum, quod ipse faciebat in curtis, debeat remanere, concludit quod dictum signum debet dividitur inter filios et nepotes eius heredes, non quo ad usum signi, ut quilibet heredum possit illo signo uti. C. ut nemo privatus titulos predios suis vel alienis imponat (Cod. 2. 16[17]), in rubrica, et in l. ii (Cod. 2. 16[17]. 2). Sed quod apud annum remaneant signum et fiat extimatio commoditatis, et aliis cui non remanet attributum, ex quo commoditas ex valore signi percipere potest, quod iudices arbitrio extimabunt, attenda commoditate signi, quod remanet apud illum cui assignatur, secundum eum.

Quarto facit quia, ut dicit Bartolus in dicto tractatu, de insigniis et armis, signum est accessorium ad societatem, ergo sequitur quod est sapientia et sequatur naturam alterum rerum societatis, ut in dicto regulari accessorium (VI. 5. 13. 42). Et sicut principale sortiti debet, ut dixit Baldus in massaritis supplectibusque et alius accessorii societatis, in l. i, C. pro medio (Cod. 4. 37. 1), allegando l. quemadmodum, C. de agricolis censitis (Cod. 11. 48[47]. 7), libro x, et l. sed addes, § si quis muliere, ff. locatii (Dig. 19. 2. 19. 7).

Ex his ergo videtur quod, cum dictum signum, ut supra patet, continetur lucrum et commodum et extinuatione recipiat, dividii debeat inter dictus socios equalitate proportionis, ne alius sequatur absurdim, ut unus plus alter minus ex societate percipiat, quod esset contra naturam societatis. Sed quia signum est ergo indivisibilis, fit extimatio valoris dicti signi respectu commoditatis et luceri arbitrio boni viri, ut supra dixit dominus Dionisius. Et uni assignatur signum, aliis vero extimatio ipsius, l. item quamvis, § si unus, ff. communi dividendo (Dig. 10. 3. 10. 1), l. ad officium, C. communi dividendo (Cod. 3. 37. 3), quia, quotiens divisio communi fieri non posset, aut res indivisibilis est, devenir ad extinuendam, l. non amplius, § cum honorum, de legatis i (Dig. 30. 26. 2), l. ii. C. quando et quibus debetur quarta pars (Cod. 10. 35[34]. 2), libro x, l. cum Sicium, ff. de solutionibus (Dig. 46. 3. 29), et notatur in l. in conventionalibus, in principio et in fine, de verborum obligationibus (Dig. 45. 1. 52), ne alius divisio corrumparet substantiam, et partem inutili redderet, inxta no. in l. stipulationum, § ex his, de verborum obligationibus (Dig. 45. 1. 2. 2), cum similibus. Vel divisio fiat iudicio sortis, C. quando et quibus debetur quarta pars, l. i (Cod. 10. 35[34]. 1), libro x, ff. de iudiciis, l. sed cum ambo (Dig. 5. 1. 14), l. si duobus, in principio, C. communia de legatis (Cod. 6. 43. 3), l. si quidem cautiones, in fine, ff. familia eriscundae (Dig. 10. 2. 5), et per Bartholoum in tractatu predicto, de insigniis et armis, quia ille, in quem sors ecceorit, dicitur communis consensu sociorun recipi, ex quo omnes consenserent ut illi, in quem sors ecceorit, remanent signum.

Si vero nullus vult quod iudicio sortis dirimatur, tune cum impediret se per concurrentum signum dissolvit, l. quotiens, de usum fructu (Dig. 7. 2. 1), l. ii. § finali, quibus modo usus fructus annullatur (Dig. 7. 4. 2), l. illicere, de servitutibus prediorum rustorum (Dig. 8. 3. 28), l. in suo modo, § finali, de legatis (Dig. 30. 34. 13), per Bartholoum. Facit quod dixit Baldus, C. in d. l. finali, seu in rubrica, C. pro medio (Cod. 4. 37. 7), dixit dixit, nisi procedat de omnium consensu, non debet signum vel sigillum remanere integrum societate non integra, ne falsa representatio fiat, ff. de [lege Corneliae] falsis (Dig. 48. 10. 31), et facta glossa in d. c. dilecta, de excessibus praedorum (X. 5. 31. 14).

Non obstat quod voluit Bartolus in dicto tractatu, de insigniis et armis, dicens quod debet remanere apud capitamentum et principalem, seu magistrum societatis, arg. l. finali, de fide instrumentorum (Dig. 22. 4. 6), et l. peculium, § i, de legatis ii (Dig. 31. 65. 1), quia hic inae non protulit, nec d. l. i. si quidem cautiones, familia eriscundae (Dig. 10. 2. 3), nec in d. l. peculium, § i (Dig. 31. 65. 1), dicitur quod debet remanere apud principalem, in quo potius ibi dicitur, extincto quadraginta, id est principali, eque extinguatur totum tale legatum, unde non facit contra, in quo potius facit, quod extineta ipsa societate extinguatur etiam signum ut accessorium. Tamen illa ex vere, ut dixit, non facit ad propositum.
nostrium, similiter et d. l. finali, et d. l. si que sunt cautiones (Dig. 10. 2. 5), hoc non probat cun loquentur₆⁹ in alio casu, loquentur₇⁰ enim eo casu quo aliquid de ipsa societate remaneat apud unum, nihilominus praestat commodum aliis sociis, cum ille apud quem remaneat tale instrumentum testamenti debeat aliquis exhibere, et d. l. si que sunt cautiones (Dig. 10. 2. 5), et ibi glossa, quod similiter locum habere in aliis cantoibus communibus. Unde quomodo cumque remanet apud unum talia instrumenta, nihilominus praestat commodum aliis, quod non esset in ipso signo, quod alius commodum non praestaret, immo potius damnum et diminutionem, ut supra dictum est. Unde non est conveniens quod apud unum remanet. Eodem modo respondet ad id quod dixit Balduin₂⁴ in c. su duo fratres, de fratibus de novo beneficioc investigitis (L. F. 2. 12. 1), in ultimis verbis, dum dixit, quod claves portarum castrorum et sigillum remanent₂⁵ apud promogenitum.

Ultimo sciemus est quod, si inter duos fabros vel inter duos mercatores est contentio de signo, ille qui agit non potest uti pendente lite illo signo, secundum Balduin₂⁶ in l. 1. c. ut nemini liceat sine indicis autoritate signum imponere (Cod. 2. 16[17]. 1).

---

₆⁹ loquentur V, loquantur T.
₇⁰ loquentur T.
₂⁴ Balduin in L.F. 2. 12. 1.
₂⁵ remanent A V.
₂⁶ Balduin in Cod. 2. 16[17]. 1.

Appendix 5. Lorenzo Valla’s Letter to Pier Candido Decembrio

Lorenzo Valla to the most illustrious and eloquent Candido Decembrio, greetings.

Candido, don’t you think it is unworthy and disturbing that so many unlearned and poorly written books not only are not thrown into a fire set up in a public place according to the customs of the ancients, but these books have found many who love and praise them and who are not ashamed to compare, or even prefer, them to the great authors? Virtually the same thing happens in all liberal arts and fields, but let’s leave the rest for another occasion. Now I’m resolved to discuss with you for a little while the topic of authors concerned with civil law. I thought that I should choose you as my interlocutor in this matter because—to speak my mind—I do not know of anyone more scrupulous in judging or more prolific and accomplished in doctrine than you.

Among those I refer to as persons skilled in law, there is almost no one who does not seem to be simply despicable and ridiculous. They are bereft of all the learning one expects to find in a free person, especially of the eloquence that was studied diligently by all the ancient jurisprudents, and without such eloquence one cannot understand their books. They have shallow, stultifying minds and no talent, so that I feel sad for civil law, because it does not feel the want of those interpreters which it has now. It is preferable to avoid writing than to have animals as readers: the latter either do not understand what you have wisely elaborated (for they are animals) or they badly explain it to others.

* Our translation of Valla’s letter is based on the text published in his Opera omnia (Basel, 1540; repr. Turin, 1962), pp. 633–43. We are grateful to Professor Marialigia Regoloosi for sending us the proofs of her edition of Valla’s letter, which will appear as “L’ Epistola contra Bartolom del Valla,” in a forthcoming volume of Medioevo e Umanesimo dedicated to Gianvito Resta. We have relied on her edition to emend some manifest errors in the Basel edition of 1540. Fragments of Valla’s letter have been translated by L. Bartorzi and R. Subbiondo, Studi sul Pomerania e sul Valla (Florence, 1891), pp. 179–84. M. Baxandall (p. 4, n. 14 above) has translated into English part of Valla’s discussion of colors.
Because of this I cannot restrain myself from cursing that man who is at fault. Accordingly, may the gods curse you, most unjust Justinian, who abused the power of the Roman Empire to the detriment of the Romans, good and outstanding citizens. For what could be more unjust than you, if through envy you saw to the destruction of those very distinguished jurisprudents, wishing that we (the Romans) would not eclipse Constantinople, where the seat of our empire had been transferred, even by the abundance of our books and the authority of our authors; or what could be more foolish than you, if you hoped that the future would be spared a flood of commentaries? Accordingly, look at what you have done, and wherever you are, acknowledge that you have acted badly and inconsiderately, unless you rejoice in our misfortunes. In place of Sulpitius, Secvola, Paulus, Ulpian, and the other swans barbarously snatched away by your imperial eagle, to put it mildly, we have geese like Bartolo, Baldo, Accursio, Cino, and all the others of the same feather, who do not speak with a Roman but with a barbarous tongue, and, lacking certain urban and civil customs, display rustic and untamed savagery. In short, they are geese, not swans—not the geese who watched over the palace and the Capitolium for thieves at night, as was done in ancient times, but the geese who in the streets and squares honk in the face of every passerby, and squawk, and disturb entire cities and villages, thinking (oh horrid thought!) that they have the voice and song of swans. How bitter it is for us who, knowing the voice of the swan, are made deaf because of the clamor of these geese. Who would believe it? The geese even try to bite, stretching their necks and threatening who knows what with their croaking voices while they pursue and peck at the legs of passersby. Shouldn’t these dull-witted birds be scared away? Not with your hands but your feet. Likewise, in order that they might not dare to go forth again to offend people, I would like to see them silenced—namely, that they might be killed, for they taste much better than they sing. However, we cannot do this, for there are those who forbid us; instead let’s do what’s possible, so that they will no longer try to peck at our legs—the legs of us orators, I mean.

But you Lorenzo, one might object, have you ever been bitten by one of these geese that you became angry at them to such a degree? Can an upright person be moved to action only by a private matter, not by a public one? If they offend others, they offend me as well. One who does violence to a single citizen does injury to all the citizens, and all upright persons suffer the same injury inflicted upon another upright person. However, if you wish me to be prompted to action more by personal than by public considerations, listen to the personal grounds for my outrage.

Yesterday some big shot among the jurists—if anything great can exist in a science of little value—whose name I do not mention for he would be enraged at me, unless he himself is willing to come forward to admit his faults, had the effrontery to insult me by placing Bartolo before Cicero in doctrine, saying many other unthinking things and in particular recklessly affirming that none of the works of Marcus Tullius could be compared even to Bartolo’s shortest tract, De insignis et armis. Knowing that this man was otherwise held in no small esteem and authority, it was as if he had punched my face, and I started to burn. But restraining myself and suppressing my wrath, so that I might reserve my revenge for another occasion and inflict a wound that he could not even imagine, I said smilingly: Please, show me this booklet you just mentioned, that I may learn this doctrine worthy of adoration or give you my opinion. I have seen some of the works of this Bartolo, but not too many. He replied: You can see this book wherever you wish shining like the sun. I said: If you have a copy, you’ll lend it to me. He replied: I don’t have a copy, but I usually borrow one from Catone Sacco, whom you love because of his eloquence and skillfulness in many other fields, and whom I respect because of his admirable and unique knowledge of civil law. I said: It’s a strange story indeed that you tell. The sun of Bartolino can be seen everywhere, according to you, but it can be rarely seen in your house. You have a longer night in your house than those who are said (I don’t know in which part of the globe) to have an entire year divided in one night and one day. I will go to Catone, where you say I can find this sun. But you would act more appropriately and speak more truly if you called Catone, and not Bartolo, the sun, since his eloquence makes his knowledge of jurisprudence shine forth as though with beams of light. But, I said, please tell me once again the exact title of the book, so that I might not err, for I did not understand it clearly. De insignis et armis, he replied. This must be a new and unexplored subject. I said, one that
has a new title. Yes indeed, he replied, it is a new subject discovered and fully treated by Bartolo, but it is not an obscure and new title. Well, I replied, I am not totally unfamiliar with the meaning of words, but I do not understand what this title means. I do understand the term *de armis*, but not *de insignis*. He replied: If you know what *armis* means, all the more you should know the meaning of *insignia*. Well, given what you are saying, I replied, I am more uncertain than before. When you want to explain the meaning of one word, you fail to explain the word itself and obscure a second. I know what *armis* and *insignia* are, but I don’t know the meaning of *armis* and *insignia*. I am afraid that you have deceived me and brought to my attention a Sibylline book, not one of Bartolo, which I, an uneducated fellow, cannot understand. If I am not even able to understand the title of a book without somebody giving me an explanation, what will happen when the author immerses himself in subtle and profound questions? Those who speak of the dimension of the sky and write on the path of the stars, topics extremely difficult and remote, nevertheless write their books so that—notwithstanding the subject matter—they might be understood. As a result, this booklet of yours frightens me more than all the books on astrology. If you indeed prefer Bartolo to Cicero precisely because he (Bartolo) speaks more obscurely, there is no reason for having a dispute; I am ready to give the palm of victory to this book. For to what end did Cicero take more pains than to insure that he would be bested by others in obscurity of speech, from which he steered clear as if it were the sand bank of the Gulf of Sydria or Charybdis? Cicero says somewhere that “it is better to be mute than to say something that nobody will understand.” Still, you understand what Bartolo says, which I certainly find amazing, since you are not much more learned than I—unless it’s the case that it takes a stammerer to understand another stammerer. You’re teasing me, he replied, and toying with me. It is not the task of the jurists to be concerned with words but with meanings, not with the foliage of trees but with their fruits, not like you orators who chase words and neglect the power and utility of meanings and are always occupied with ridiculous and inane matters, just as you are now, when you know full well the meaning of *insignia* but still ask me about it. Since you don’t have substantial and vigorous arguments to put forth, you resort to foolish trivialities as if you had no other resources. However, I must attend to more important matters than this useless squabbling. Having said this, he went away. I remained.

I was at the point of changing my mind, and doubted whether or not I should ask for the book. For what sort of pilot could I expect that book to be in mid-ocean, seeing that it founders immediately upon exiting port? Or when one does not know what to say at the beginning of a discussion, what do you think he will do when the discussion becomes heated? Accordingly, I thought it embarrassing to engage a barbarian on a matter of letters, to attack an ignoramus on a matter of wisdom, and to lift an unarmored man lying on the ground while I am standing, armed. But lest the barbarians—ignorant, unprovisioned, and unarmored—should seem to challenge us and, what is worse, rout us, and lest that jurist should have insulted me with impunity, and finally, lest geeze persuade themselves that they are swans, I decided to read Bartolo’s booklet and point out the errors (which, I had no doubt, were many), not with shouts but with elegance that will last forever and fly to and fro over the entire earth.

Without indulging in details and coming straight to the point, Candido, that evening I sent word to Catone, who lent me Bartolo’s booklet, which, though small, I read with effort. Immortal gods! in this booklet there are so many things without dignity, weight, and wit that you would imagine that an ass rather than a person is speaking. So far from thinking well of Bartolo and comparing him to Cicero, I am ready to swear that if Tiro, the freedman of Marcus Tullius, had Bartolo as a slave, he never would have freed him. To begin to show his lack of skill and his stupidity, I would like first to summarize reprothe him. Beyond what pertains to a certain common understanding, and the laws mention, namely, that signs should not be made to injure others; the rest of what is said in that booklet is useless and full of despicable and perverse attention to details, just as we are all the tombs of our jurists, which are so oversized that they have to be carried not by men but by asses.

Let us now speak of those things that properly can be called insignia. Bartolo says that every animal depicted on a banner should have its face directed toward the staff, since it is natural for the face to

---

1 Cicero, *Philippicae* 3.22.8.
precede the rest of the body. I have never seen anyone to whom the
maxim of Terentius could be better applied: Facitumne intelligendo ut
nihil intelligant—that is, the more they want to appear knowledgeable,
the less they appear to know. I ask you this question, Bartolo: do you
want to paint figures on one or both sides of the banner? For I simply
don’t understand you. Are you blind, you will respond, on one side!
So I understand your words. I will discuss later why this is
unbecoming. Now, which side do you wish to paint? The right side,
you reply. Quite so—but you have no idea which one is the right side,
and you take it for the left side. In fact, the side that verges toward
the left of the person carrying the insignia you take as the right, although
you surround everything with the obscurity of your speech, as if those
who are on that side might not be said to be in the left wing of the
army. And so the part of the sign facing that wing must be called the
left side; but let’s not consider this as a fault, since he speaks not of
the sides but of the front of the signs. Fine, let’s forgive him—and let’s
awaken the snoozing man who claims to serve as a watchman for other
sleepers, not with a rebuke, but with a gentle and subdued voice.

He says that the face of things should look toward the staff, so that
whenever the staff is carried the face would seem to move in the same
direction. Are you sure of what you are saying, Bartolo? Is this a
strong reason? Is it natural that the staff should come first? Tell me,
please, whether the signs are subordinate to the staff or the staff to the
signs? Tell me, again, whether the signs were devised for the staff, or
the opposite. Did you ever sail or look at sailors from the shore? Do
their signs precede the staff or follow it? Indeed they precede, and in
whatever direction the sail and boat are carried, the signs unfurl in the
same direction. Now, with regard to your law, if the front of the figures
must face the staff, because, as you say, the staff must precede, then
the figures should not face the staff, for instance, on a sailing ship,
where the staff does not precede. Do you think that it is of little
importance that on all the seas your law is either not respected or
repudiated? Or are there many more banners carried on land than on

the sea? not to mention other bodies of water.

Come on, Bartolo, what could be more worthy and distinguished
on land than the signs of our popes and priests—that is, of God against
the devil? Aren’t those signs carried so that the staff not only does not
precede but is even concealed? But you didn’t think of this, Bartolo;
instead you looked only at military signs, as if you had never seen
military encampments. What about those signs where the staff is
inclined slightly forward (which, in my opinion, is the proper way to
carry the sign) rather than backward, and what about those signs
painted on cloths hanging from palaces or temples? Here the faces of
the animals will indeed face the staff, but they will show their backs
to the enemies, which is contrary to your law. What happens when the
origin and the source of signs begin at the staff, and the signs seem to
flow in the opposite direction? Why shouldn’t the animals be painted
as if descending from the staff and move toward the opposite
direction? especially lest they impinge on the staff, where they are not
able to go because of lack of space. What of the fact that the signs,
whether standing still or moving, can never be carried and unfurled
backward, as you wish, unless stirred by the wind, like cargo ships
unable to sail without wind? But indeed, as I already said, as the signs
are inclined slightly forward, they do not need the help of the wind.
What about the absurdity of noble signs being carried against the wind,
causing them to flutter backward? Is there a worse way to go to battle?
Indeed, the sun in our eyes is usually not feared and avoided as much
as a head wind; for while the sun gravely harms us, the wind actually
aids our enemies. What happens when signs are pushed from the back
by the wind as if they were sails? Are they not carried from the staff in
the opposite direction? From this it follows that the painted animals
ought to proceed not in the direction that the staff is carried, but in the
direction that the signs themselves, which contain the animals, are
carried, unfurled by the wind.

With this in mind it is clear that there is no need for the animals to
dice the staff, as if the staff were the forward element. Let’s also add
that, even if the staff precedes, it is sometimes unbecoming for the
animals to face the staff. Pay attention now, Bartolo. Raise your eyes a
little and be vigilant: your king of Bohemia and emperor (Charles IV)
has consulted you! He just recently read in Virgil that on the shield of

1 Terence, Andria 17: “facitumne intelligendo ut nihil intelligant” (by pretending to be knowledgeable, the critics of Terence reveal their lack of understanding).
King Turnus there was “father Inachus pouring water from a well-wrought jar.” Imagine now that the emperor wishes to bear the effigy of Inachus on a banner, not on a shield, for he does not use one. Teach me, you who are such a great jurist and counselor of the emperor, how this effigy has to be depicted. Barely raising your eyes, Bartolo, you say: Caesar, civil law, geometry, mathematics, and philosophy command that every gesture should be directed toward the staff, and it is not permitted to depart from this law. You will place the god (Inachus) in the inferior and hanging part of the banner, almost flat on his back, pouring water upward from an inclined jar. If the king hears this, wouldn’t he say, are you sleeping, Bartolo? or are you drunk? Why should the god be represented in this manner rather than placing him in the better and superior part of the banner, pouring water downward, so that the water will then seem to flow into the sea in a long stream? What if I want to bear the sun as a sign, which was used by the powerful kings? Should I not depict it as shining down from above, as if despising the earth? Here, tottering and murmuring, and in a state of sleep and drunkenness, you say: Why is it necessary, great king, to look for foreign models, for your insignia are magnificent and should not be modified. Instead of the river Inachus, you, king of Bohemia, have a lion; instead of the sun, you, emperor, have an eagle; and these two animals should face the direction toward which they are carried. Then the king will reply: Your law applies to only the lion and eagle. I am not asking about these animals. But since you did mention the eagle (I will take up the lion later), what comes to my mind is my Roman people from whom I received the eagle. The Roman people have four letters as their sign: S. P. Q. R. Where would you wish them to begin? Will you write them as if moving toward the staff? But this is like writing Hebrew, not Latin, and no one is able to understand it except you, who know how to read backward. Or the order of the letters is reversed: R. Q. P. S. On the contrary, you will reply, one must begin from the staff. But this contradicts your law. No, you reply, the letters constitute an exception. Surely you know that your argument is foolish, since you resort to exceptions: why don’t you exempt the sun? why not Inachus? why not many other things? Because, you reply, I speak of animals, such as the lion and the eagle. Why, then, do you exempt letters from this rule? Are letters animals?

Since you are so fond of animals, to the point of scorning the god and the sun more than the lion and eagle, let’s speak about these two animals. If I bear a lion made of purple threads on the breast, in a roaring stance, as if charging my enemies [coming] from the opposite side, and you don’t disapprove of this usage, why do you disapprove of another lion in the same stance placed on the back, not facing my shoulders, so that it does not appear to be assaulting me, but turned away from the direction to which it is carried? Or is what is not improper on the robe of a king improper on a banner? If we ponder this well, it seems to me that your lion is not facing the enemy, but, as it were, is fearful and hides and conceals itself under a tree, so that it will not be discovered by its enemies, or is about to go elsewhere rather than face the enemy, not showing his face but his side, practically fleeing.

Indeed one may say that not even the eagle is represented in conformity to your laws. Beside the fact that the eagle is hidden beneath the staff, it is not carried on the breast but on the side—as if birds could gather the impetus to fly by moving sideways. Bartolo, what you forbid me, namely, that the face of the animals should look toward the right or left side, seems to me on certain occasions magnificent, for instance, that the lion is seated with the face turned sideways, and so too “the seated she-wolf with its smooth neck turned backward,” as the poet says. If the she-wolf is recumbent, how can she be seen to go forward, since she is resting? Nevertheless, her face should be turned toward the direction in which she is being carried. But it is much better for the she-wolf to face the little boys (Romulus and Remus), whom she is stroking one at a time. The breast, you reply, certainly commands the front position. If your laws do not apply to the face, how much less to the breast. But, as I said, you reply to me, that this (i.e., the animals facing the staff) is the best way. You make this

---

3 Virgil, Aeneid 7.792.
demand of me in the case of the she-wolf, when the Venetians, whom you know are a great people, keep their faces turned away from the direction in which they are carried in their small, fast boats. And the same holds for Greeks, in the seals of their books, as you might have seen recently when the legates of Constantinople came to me.⁵ The Jews, however, concerning the direction of writing, do the opposite of what our custom demands; and almost everything is varied among all nations, ...⁶ See that you not appear to speak the truth as you behave—inmodesty.

Finally, in order that you may understand how valid your reasons are, I will give you an example which is suitable everywhere. Former Roman consuls and emperors carried signs, as one can see from sculptures representing battle scenes, not as if the signs were fluttering or almost turning backward, as we do now, and tossed around by the wind, but in an open and visible manner, so that they could be seen and feared in a truly intimidating manner, and be seen from every side, unaffected by the wind—just as, in keeping with ancient customs, our clerics do on feast days. But now, returning to you, Bartolo, let’s dismiss the king, lest we are accused of introducing too worthy a person: give me an answer to what you had promised to tell me. Is it improper and inconvenient that a picture may be seen from one side only? Banners are placed in the middle so that they may be recognized by those on the left side and those on right side, and so that the soldiers who have gone forward can return to their own centurion. But you, Bartolo, defraud half the army of their due share (of honor and benefits) while you damage others by withholding from them honor and benefits. But a lion or an eagle, you reply, can be recognized from both sides of a banner, meaning that the figure must be painted on both sides, not on one. Oh you attentive and considerate doctor of law, what happens if some letters are used on the banners, as it was customary among the ancients? Who will read them from the opposite side? What if letters are inscribed on a wooden banner, which not even the sharp eyes of a lynx are sufficient to read? But you, Bartolo, will escape from my traps and glow with anger at me and cry out that you did not say that the figure should be painted just on one side—certainly you would not deny that the banners should be painted on both sides, so that the animals should face the staff. How shall I reply to you, Bartolo, who speak like the mathematicians, so that we do not understand whether you are asserting or negating, and you seem to say everything and nothing. If you speak obscurely and in a puzzling manner, on purpose and intentionally as the mathematicians do, you deserve to be hated. If you do so because of a lack of prudence and knowledge, you should be forgiven, provided that you correct your book and not make it public for all to read in this form. Let’s forgive this boy despite his stubbornness. Do you wish to have the banner painted on both sides, so that the stance of the animals, as I said, should face the staff? On this point we have sufficiently revealed your inconsistencies when we discussed painting on one side of the banner. In this context, I shall raise only those objections that will show that you have sinned twice and were not able to conceive properly both sides of the banner.

I had a maternal uncle, Melchior, in every respect praiseworthy, and especially because, after he studied civil law for a few years, he devoted himself totally to the study of rhetoric. He was the secretary of Pope Martin V and died recently during the plague, though he did not deserve to die, for he was still young and in his prime, and was an outstanding and delightful presence in the Roman Curia. We have to decide how to adorn his tomb. And we decided to affix to the tomb of such an illustrious person signs to alleviate the grief of his close kin, as is the custom. Enlighten us, Bartolo, as to how we should go about this. The sign is the right hand with the upper arm in the act of writing,⁷ as if he were the offspring of the Scribani clan.⁸ In any case, you require that the countenance of the writer should face the staff. I see no other solution than that, on the other side of the tomb, the right side should turn into the left. Yet writing with the left hand is contrary

---

⁵ Presumably, the legates of the Greek emperor sent to the Council of Basel; on this episode, see G. Marcelli, Vita di Lorenzo Valla (Florence, 1891), p. 76.
⁶ The expression “quid duidicare velles” does not make sense, since at least a finite verb, and perhaps other material, is missing.
⁷ “Scribana manus” (a writing hand) was used as the insignia of Valla’s maternal forebears, on whom see L. Barozzi and R. Sabbadini, Studi sul Pautarmo e sul Valla (Florence, 1891), p. 183.
⁸ Here Valla is playing again with the family name of his maternal uncle “Scribani.”
to nature, or should I show the external instead of the internal part of the hand? I believe that you, who enjoy a reputation for justice and prudence, will recommend that, independent of the nature of a thing, the movement of the hand should be directed toward the staff, unless there is a cogent reason for doing otherwise—for instance, that the signs should face the ground in which one is buried rather than the staff, which appears to be oriented in the opposite direction, just as you have prescribed for insignia hanging from a trumpet.

While we are still on this topic, it is necessary to distinguish between left and right, but you hold fast to your position, opposing the introduction of this distinction, fighting, as they say, to the last. What if I want to add to this sign a ring on his thumb? According to my law it is possible, yet can this ring be recognized when only the exterior part of the hand is visible? for it is useless to wear a ring if it cannot be seen. Now the hand of the writer that you wanted to turn around lays you low and stabs you, and it guides through your tract the very pen and quill that it holds, deleting all your absurdities. The same can be said when the right hand holding a sword is used in insignia, as some have done, and to this hand we may well add rings. The same can be said when the blessing hand of our Savior hanging from a cross is represented, when a pelican opens his chest with his beak, and in many other instances. So frequently does one side differ from the other when these animals are depicted, which (I'm vastly surprised to note) are the only things mentioned by Bartolo. Of other common things Bartolo said nothing—for instance, sheathed and unsheathed swords, flowers, rings, as well as other things of which I have said plenty. All such omissions are an act of carelessness and negligence, for you have promised to speak about all these examples, which have their own particular rules for depiction and which cannot be found in the prescriptions and formulae given by Bartolo.

We have said enough against the positioning of signs, in which Bartolo babbles and makes a fool of himself, if he ever had any sense to begin with. Look at the following examples. If one bears a lion, he says, let it bite; if a horse, let it run; if a bull, let its horns threaten; and, of course, if an ass, let it roll in the dust! You demand that everything be represented in its "natural" form, and simultaneously you ask those who produce signs in the future to obey your law. Is anyone so self-despising that he does not prefer to be wrong with the whole world rather than to be correct with Bartolo? If, however, you wish to reform and correct signs that already exist, and this seems to be your intention, oh you are a fellow bereft of intelligence and understanding, whose brains should be cleansed with hellebore! Are you a new Triptolemus, giving wheat to humankind accustomed to fill up on acorns? Do you dare to correct the signs of ancient kings, whose antiquity deserves to be venerated? Blame the foolishness of your king of Bohemia, who bears a red lion with two tails standing on two feet. You should admit that such a sign is utterly stupid—you who boast to have received a sign of something that does not exist in nature and carry it against the rules you have laid down! Blame the king of France for bearing the lilies and the king of England for bearing golden panthers. Reproach the duke of Milan, whose serpent—crowned, and not crested like a dragon—we see everywhere, walking on its tail rather than crawling on its belly, although it is not truly a snake. And yet, neither is the color of the man whom the dragon eats proper, nor can you say that the serpent walks rather than stands upright and in the same movement grasps a person. This is how I imagine the sarcophagus was carried to heaven, taken by his feet, not by his head, by a leaping snake. If these things indeed could be corrected, I would think the would-be corrector highly insolent.

I believe that Bartolo is discussing property lines, extortion, inheritance, and homicide, situations in which a person cannot act in an unreserved manner with respect to another. But I am unable to discern the reason for not giving preference to, and not finding meaning in, those things that depart from the order of nature, things that our forebears found agreeable, like the centaur, chimera, sphinx, Minotaur, and, as we find in Plautus, the rising sun riding a chariot pulled by a four-horsed team, as well as winged people in early coins and reliefs. If, Bartolo, you wish to discard, with bitterness and censoriousness, all these signs, why don’t you change customary speech, correct the code

---

9 The text has pharia, on which see Isidore, Etymologiae 12.4.27: “Paria serpens que semper in cauda ambulat et salutem facere videtur. De quo idem Lucanus (9.721) Quo contentus iter caudis sitarte paria.”

10 See Dig. 10. 1; Cod. 3. 39; Cod. 9. 27; Dig. 48. 11.

11 Plautus, Amphitruo 442.
of dress, and change letters? Indeed, you can find many things to improve if you search for them diligently. I cannot do this, you say. What? Can you improve on signs? Bartolo, see if you can find one person in all the world who adheres to your laws; then you win. Though—good gods—is there anything that won’t be flawed if represented in conformity with the law established by Bartolo? He says that the head of a ram and a bull should always face toward the sky, as if they were the signs of the zodiac that have the same name. Although he admits that the lion should always be red, always roaring, always rising, and tearing something apart, he does not provide the lion with prey on which it can display its ferocity; at least he could have the lion facing toward the sky, so that we may think it displays its ferocity against the Nemean lion. The horse should be always running, but Bartolo forgets to place a rider on the horse, someone who presses the horse to run. The right leg of the horse precedes, as if wild animals have a certain dignity in their right leg, just as we have with respect to our hands. Aren’t these fooletries verging on madness? He who does not observe in practice what he professes and does not know which hand should move first requires from horses the style of orators! Why are you cajoling about horses, you ass! "Flags," "quarters," "bands," "arms," "nails," and "hindquarters"—aren’t those the words of an ignorant ass? Why didn’t you include clubs with which we could hit your back and beat your entire body to the point of death? And you even wanted to learn Hebrew—as if you had gained even a very superficial knowledge of Latin. Oh what times, Oh what customs, we have someone who thinks he will be equal in our eyes to Servius Sulpitius. Servius had a remarkable, incredible, almost divine sense of justice in interpreting and knowledge in explaining the law, but here we have incredible unfairness and injustice. Servius preferred to resolve rather than to provoke controversies, but here we have someone who finds difficulties where none exist. Servius always reduced to equity and simplicity what came from custom and civil law, but here Bartolo complicates everything and creates injustice. Servius was not so much a jurisprudent but justice personified; here we have not justice but law—that is, to use Bartolo’s own words, *brudi consultus.* Tell me, my fine non-Sulpitius, haven’t you filled up yourself with soup and broth? so that you are unable to lift up and keep open your eyes heavy with sleep? Don’t you see that the right foot cannot always precede, because, as often happens, on one side the right precedes, on the other the left, as in the case of your eagle and lion?

Let’s proceed to your arguments on colors, where you invested all the hope of your desperate case in (so to say) triangles. Listen, listen to the jurisprudent who, philosophizing in wondrous wise, sets forth a new and unheard of discipline, which is supposed to save the entire world from error; and if the world cannot indeed be rescued, because of long-standing custom that has become inveterate, at least let him share with us how it should have been done. The color gold, he says, is the noblest color, for through it light is represented. If one wishes to represent the beams of the sun, which is the most luminous body, one cannot do so more appropriately than with golden beams, and it is commonly accepted that there is nothing nobler than light. Take notice of this marvelously obtuse idea and of the dulness of this brute. If he regards as a “golden color” only that color which is represented by gold, one can say that the sun is not golden, strictly speaking. But if we take “golden” as a deep yellow, or reddish yellow, or even saffron—was ever so blind and boisterously drunk as to call the sun saffronish, unless someone like Bartolo? You ass, lift up your eyes a little, for asses are accustomed, especially when baring their teeth, to raise their heads. You, too, when you are speaking, raise your face, so that greed for gold, which is found on earth and not in heaven, might not blind you excessively, and see if the sun is silver or golden. “Heliotrope” alone among bright precious stones receives its name from the sun. And with regard to the glowing wedding torches and the funeral pyre, we say “to glow,” but if one is moved by wrath or indignation, we say “inflamed,” for a flame, which contains no humor and no earthly element, is dazzling bright and comparable to the sun.

What next? What color does Bartolo put next? What color do you

but also broth and soup.

12 Valla is playing with the term “ius,” which means right, justice, and duty.

13 The two terms “suppu” and “brodius”—words that do not exist in Latin and that Valla may have created after the vernacular “suppa” and “brodo”—allow Valla to continue the wordplay he began when he referred to the twofold meaning of “ius” (law/broth).
think he puts next, that nonentity, so as to be always true to himself, so that he not only says whatever comes to his mouth but even strives to say nothing that is true or correct. Blue, he asserts, is the next color. And since he is accustomed to converse more with women than men, he uses the barbarous term azurius. And he says that this color signifies air. Don’t you (Candido) have the impression that Bartolo is making some sort of meaningful statement, since he is following the order of the elements? Of course! Yet I wonder why he neglected the moon; perhaps the moon was not in the sky at that moment, or was eclipsed. Since you put the sun first, you should have considered the moon next, which is above the air and has more of its own color than the air; and since you call the sun golden, it was proper to call the moon silvery, and to place it immediately after the sun, just as silver is placed after gold, unless you believe that the moon, too, is golden because you are drunk on golden wine, or you dislike the moon because you are a lunatic. If you wanted to place Phoebe, the sister of Phoebus, next to her brother, as the matter itself and order demand, the place following gold should be occupied by silver, which is dazzling white; all the more indeed should this be so because subsequently you somehow treat this very color as either first or second, seeing that it is especially close to the color of light. Bartolo, aren’t you contradicting yourself? Aren’t you speaking in your sleep? You place sapphire-color in second place, captivated, as I said, by the order of the elements. You didn’t think it worthwhile to derive your examples from metals, precious stones, herbs, and flowers: though they are more appropriate examples, you thought them degraded and humble—you, Bartolo, who are made of more sun and air. If you intend to follow the series of elements, while you speak of two, you are completely silent about the other two, and consequently you deceive, because we were expecting an elevated and trustworthy explanation. If the first color is of fire and the next is of air, the third will be of water, and the fourth of earth. Or didn’t you find this order suitable?

But let’s move on to the rest. A little later he says that white is the noblest of colors, black is the lowest, and that the remaining colors are good as they approach white and inferior as they approach black. Of all these things, which should I reproach first? That he did not recall that there are many varieties of golden color, as if fearing my rebuke? That he placed white above all colors? That he gave black the lowest position? That—and this is the stupidest mistake of all—he spoke of the other colors with a vagueness worthy of the oracles of Apollo! With the result that we are left ignorant of what especially should have been explained besides his vague mention of white and black, one of which (as I said) he thinks the best, the other the worst—why, I don’t know, unless he has eyes as enfeebled and corrupted as his judgment. Indeed who ever thought that the color of the rose is inferior to the color of the flower that is commonly called the white rose? Who does not like the color of a red topaz stone or of emerald, sapphire, topaz, and many others more than the color of pearls and crystals and the stone called beryllium. Why do we dye silk purple and white wool red unless we think that red is more pleasing than white? If indeed white is the plainest and purest color, it does not follow that white is the foremost color. Indeed, with regard to attractiveness and dignity, emerald, which is a composite metal, surpasses plain, pure, white silver.

What should I say concerning the color black? I don’t find it unfavorably compared to white, for both the raven and the swan are sacred to Apollo; and Horace calls attractive someone with black eyes and hair. Do you, Bartolo, think your eyes, which I think resemble those of an ass, are more beautiful than the black eyes acclaimed by Horace? Or do you think the hair of an ass more beautiful than the black hair of a horse, so elegantly described by Virgil, “... whom a dappled Thracian steed conveys”?! In my opinion, the people of Ethiopia are more beautiful than the people of India, for the very reason that they are blacker. But why do I adduce the evidence of human beings, whom that ethereal creature (Bartolo) regards as of little account? Did the parents and maker of all things—to look no further afield for examples—commit a sin by placing black in the middle of the eye, surrounded by white rather than red, yellow, or sapphire? And to confute openly your position, this black color, which you compared to darkness rather than placing both those colors that you compared to light, is the one that illuminates the entire body. Therefore, the eyes are aptly and customarily called “lights.” What could be a more

14 Horace, Ars poética 37.
15 Virgil, Aeneid 9.50.
appropriate or valid argument than that God—the maker of all things—made the eye, which is the sole arbiter in matters of color, black or close to black (and here I'm speaking of the pupil of the eye, which is often black), rather than white or another color. And to speak of other examples, why should I enumerate all the things that stand in highest esteem though they are found to be black in their natural state? So Virgil says that "violets are black and black are whortleberries; the white flowers of the privet fail to neglect, blackberries get picket."  

And in my garden, white violets, which cannot be compared to black violets, grow; and, if we accept popular belief, white violets presently turn into black, thus becoming better and more beautiful. But if the maker of all things did not make any distinctions of value among created colors, why will such distinctions be made by ourselves, insignificant beings? Will we pretend to know more than God? Will we blush when we have to imitate and follow God?  

Good and holy Jesus! Granted that Bartolo did not think of precious stones, herbs, flowers, and many other things when he discussed clothing and coverings, how could he omit the garb of birds?—cocks, peacocks, woodpeckers, magpies, pheasants, and the rest? And since we are on the subject of clothing, in order to show his foolishness and ignorance, do Aaron's clothes—better than which none can be imagined—obey the hierarchy of colors set forth by Bartolo? I pass over the celestial Jerusalem described as made of twelve kinds of precious stones. But if Bartolo had read this passage, he surely would have spoken differently.  

But let's proceed and listen to him departing from divine and human things. Let's impose a law on the girls of Pavia—for spring is approaching—that they should not weave garlands except in the manner prescribed by Bartolo. And let's not permit them to weave garlands in accord with their own taste and wishes. For as the satirist says, "Each has his own desires, nor do we all pray for the same lives." Let us be incensed at that man who tries to snatch this freedom away from us, no less than if he wished to claim us as slaves. For the moment, this should be sufficient. It is extremely foolish to legislate on the relative merit of colors. Let’s go on to the next topic.  

Bartolo discusses the cloak and military garb, which he calls an overcoat, and here he reveals his true character: always unjust, always imprudent, and always drunk. At times, he says, one must look at the right side of the person who wears the colored garment; at other times one must adopt the viewer's perspective. If you want us to look at the right side of the person wearing the garment, and if that is taken to mean the whole shoulder, how will we be able to adopt the perspective of someone looking from the rear? Though the side that is the right when seen from the front becomes the left when seen from the back, still the right shoulder will never become the left. I shall not mention that it is unjust and unworthy to bind us with these regulations, since we do not carry a two-sided military garb, much less a four-sided one. But we are obliged to follow Bartolo, if not because of his authority, which is zero, then at least because of the reasons he advances in a subtle and solemn way, so that no one will dare to open his mouth in opposition and say that there is another way of depicting arms.  

He tells the tale of the defeated Jew giving us the reasons he ad-duced to defeat him. I hardly believe that this Jew, admittedly stubborn as all his kind is, would have accepted Bartolo's arguments and not have raised counterarguments. In debating with this Jew, Bartolo does not use legal arguments, which would have had some weight, but resorts to venal philosophical arguments (as if the Jews esteemed our philosophers!) to the effect that color acts on the eyes while the eyes themselves are passive. I don't want to enter into a legal debate with Bartolo, nor to investigate or dispute this point, for even Lactantius says that the eyes are active, not passive. But let it be as he wishes, namely that colors act on sight. Why is it that colors either act on one eye first, then on the other eye, rather than on both eyes simultaneously, or act on the left eye before the right one? Do herbs, flowers, trees, and the colors themselves have a right and left side, where, as you say, motion begins, as if they have a heart, liver, and other vital organs? Colors don’t care about the side from which they act.
are seen, for they lack even a body.

You blockhead and head-for-brains, fashioned (as Cicero says) from mud and clay,\footnote{Cicero, In Pisonem 59 (of Epicurus).} can't you understand that it is one thing to look at letters, namely, the ink, another to consider the very shape of the letters themselves, which is called reading? When letters act on the eyes, it is the color of the ink that acts, but when I'm reading I use my intellect, not my eyes. Similarly, even your asses can distinguish the letters, for they have the power to see; they cannot read, for they are deprived of understanding. Since we are speaking of reading and the order of representation, it is pointless to mention colors, which act on the eyes, not on the mind. Many write at night in darkness, many write on wax tablets that are black, as is the very color of the letter, while many use a certain colorless and invisible ink that does not act on the eyes.

It is consequently evident that in reading the eyes—namely, the soul and intellect—are active rather than passive, and that we are able to begin reading and writing equally from either direction; such being the case, we may begin to read from the direction of the right eye, to write from the direction of the left hand. I'm not saying this so as to be mislead by my zeal for tearing Bartolo down and commit a falsehood. What is the purpose of disproving an idiot and insignificant man, unless I wish to use these tricks and appear to despise the great merits of Latin and Greek in which I am proficient? Nay, rather, as in other matters Bartolo reveals himself to be unjust and fatuous, so on this topic he reveals himself to be wicked and impious, inasmuch as he condemned the direction of writing (from right to left) that the son of God used not only in reading, but also when he wrote with his finger on the ground. This is the contemptuous way in which many of our jurisprudents treat human and divine matters. But let's leave this for the moment. Now we clearly understand that Bartolo's entire argument on left and right is feeble and weak, indeed dead.

But let's consider the remaining section of the tract. Concerning the back of a person, he says that the noblest color should be on the left shoulder, which is the right side from the perspective of the viewer. Stuck in the mud again, he repeats the same error! But look at the argument he alleges in support of his position! Imagine, he says, the same person having another face looking backward: undoubtedly the side that is seen from the front is the left, the side that is seen from the back is the right. Is there anyone as clever and sharp as Bartolo? He wants a person to have a face where a person has none. He does not have in mind that the face should be on the back of his head, as Janus is represented; instead he has in mind a face looking at its own shoulders, as though from the perspective of some other person. And how can this happen? Let him who devised this enigma give the solution!

But if he wanted us to consider the color of garments seen from the perspective of the eyes of the person wearing them rather than as seen by others, then to conceive of a face on the back of the head would have been plausible, and this is what he should have done. Is there anything more absurd than to arrange my garments so that I—the one who wears them—cannot see them correctly while others can? The same objections can be raised against what he says about depicting oblong and round shields and caparisons. For if some figures have to be painted, I consider it utterly foolish that one would disfigure his own insignia by following Bartolo's law; or if the colors have to be changed, I consider it utterly foolish that one would want to adhere to the rules prescribed by Bartolo. What if some animals must be depicted on horse trappings? Should they not be depicted as moving in the same direction as the horse? Even with you as witness I deny this. If you paint something on the front of the animal, then on the hind the animal can be represented crosswise. You reply it is one thing to be able to carry something crosswise, as I hold, another backward. Does this matter? Both are contrary to the natural order, and I don't know which part is more at fault. As I have shown above, it is not improper for a lion embroidered on the back of a king to move backward; moreover, it is proper for the same lion on a banner to turn in the opposite direction, and for the she-wolf to turn her head away from the staff. Tell me, what about triumphal arches that are semicircular? What about the tombs of illustrious persons? Many things are represented on these: do they all fall under your law? Shouldn't they be treated in a different fashion, so that we make some concession to the dignity of things, to circumstance, to the charm of the story being represented, as
well as to free will? When we build a house, for example, there is neither a singular rule nor precept but much diversity and many choices—otherwise all houses would be of the same kind. Finally, let's do as we wish, but with knowledge and prudence; let this principle be removed far away, that our insignia should not be changed in even the least degree. Let's acknowledge that Bartolo dealt with only a few topics within this wide field, that he did so ineptly and unwise, and that he insulted those whom he thought should be taught and corrected.

Candido, accept my pamphlet: two nights ago I thought of what I was going to write to you, tonight I revised the style of what I wrote, but now I'm tired, and a good part of the night has flown away. Let's take care of our health, especially so as not to give the impression that we spent an entire night assailing a sand castle, against which I can raise a thousand other objections: in some places of his tract, Bartolo, ignorant of Latin, misinterprets the law; in other places, he disfigures the law with perverse interpretations; elsewhere he alleges the laws without understanding them properly—for instance, when he says that in doubtful subjects there is room for conjecture, *lex Continuus § Quam in fin, fls. de verborum obligatimbus* 23 as if there is room for conjecture when painting colors. But what am I doing? confusing him again? Shouldn't I go back to sleep and rest? Take care, Candido, and while I'm sleeping during the day, you can read this letter. Again, take care of yourself and love me.

I'll see you tomorrow. Good-bye.

---

23 Dig. 45. 1. 137. 2.