Bartolus of Sassoferrato and the emergence of territorial sovereignty

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Bartolus (c.1314-c.1357) produced an enormous volume of work, including detailed commentaries on the Roman law of Justinian and other laws, and a number of shorter works on a range of different subjects including insignia, witnesses, rivers, tyranny, the government of cities and rival factions in Italian politics. He is of special interest because of the way he tied the extent of law, jurisdiction, to a notion of territuriun. He takes the notion of land, or land belonging to an entity, as the thing to which jurisdiction applies, thus providing the extent of rule. Territuriun is not simply a property of a ruler, but the object of rule itself.

Bartolus can be understood as trying to reconcile the universalist rule of the Holy Roman Empire with the particularist rule of the individual rulers within and outside the Empire. In his argument the key to understanding the relation was not imperial permission, that is the granting or delegation of powers, but rather the question of jurisdiction. Maiolo contends that "Bartolus paved the way for the modern conception of territorial sovereignty". This requires some care that modern notions are not read back into the text. Bartolus is drawing a distinction between rightful and effective jurisdiction. On the former side there is the Empire, the imperium romanum, a political organisation that can, in theory, extend across the world. On the other hand there are the independent political units that actually exist within and beyond that imperium.

When it came to the relation between the Pope and the Emperor, their power should not simply be understood as different jurisdictions, but as operating in separate territories: the land of the Church (terrae ecclesiae) and those of the Empire (terrae imperii). The Pope therefore has spiritual jurisdiction generally, and temporal jurisdiction in the lands of the Church; the Emperor has temporal jurisdiction only in the lands of the Empire. Bartolus therefore recognised the specific temporal jurisdiction of the papacy, rather than its universal aspirations. This distinction extends to the remit of the law: civil law applies in the territory of the Empire; canon law applies in the territory of the Church, but also extends to the Empire for spiritual issues. The Pope has universal spiritual lordship, but the Emperor does not have universal temporal lordship. Canon law therefore applies in the lands of the church in temporal matters and universally in spiritual matters; but civil law only applies in the lands of the Empire. Civil law then, crucially, is entirely limited in its spatial extent; whereas canon law is only limited when it pertains to temporal matters. Rather than universal and territorial conceptions of power—the former belonging to the Pope and the latter to the Emperor—we have a distinction between iuris, with canon law claiming universality and civil law territorially bound.

Bartolus also made a distinction between cities that acknowledged a higher power, and those "cities which recognise no superior". Those that did owed their allegiance to the Roman Empire, and most Italian cities tended to be dependent in this way on an Imperial overlord. Those cities that do not recognise the Emperor as their superior were independent, a situation Bartolus describes as civitas sibi princeps: the city constitutes a prince [or Emperor] unto itself. This legal power is territorially restricted. Yet the most important development is that the territorium becomes not simply a possession of power, nor incidentally the extent of that power, but the very object of political rule in itself, and, as a consequence, that rule is over the things that take place within it. The civitas sibi princeps is a question of object as much as extent and hierarchy. While cities are de iure
subject to the Empire, they are *de facto* independent for day to day tasks. Internally they recognise no superior, but externally relations are still subject to the Empire. The key is the description of the object of their rule as a *territorium*, which gives both the object and scope of jurisdiction.

While on holiday in 1355 Bartolus was walking along the banks of the river Tiber and became interested in some of the property issues in land that would arise if a river changed direction. How should alluvial deposits be divided between the land owners of the banks of a river? How should an island that emerged in a river be apportioned? And who owned the rights to a dried up riverbed? This text is the treatise on rivers or the Tiber, the *Tractatus de fluminibus seu Tyberiadis*. The remarkable feature of this work is its mix of legal reasoning and Euclidean geometry to demonstrate how the principles could be put into practice. Several figures accompany the text, to demonstrate the use of parallel and non-parallel lines, types of angles, and ways of bisecting angles and dividing areas, such as alluvial deposits. Cavallar has described it as “the first tract devoted to legal geography”. What is significant is that for the understanding of property rights over land—an economic question—Bartolus shows the importance not just of the law but also techniques.

For Bartolus, possibly for the first time, *territorium* becomes a term that can translated as ‘territory’. He predates articulations of the state or sovereignty, but he is nonetheless a key step in the development of territory as an object of political rule.

Notes

1. *Opera quae nunc extant omnia*, Basileae, 11 Volumes, 1588-89.
7. Bartolus, to *Digest*, XLVII.1.7.
8. Bartolus, to *Digest*, IV.4.3.