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Public Law Before Public Law

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Guido Rossi

Public Law Before Public Law*

This volume addresses, with notable clarity, a demanding historiographical problem: how to speak of »public law« in a medieval context without either projecting modern categories backwards or dissolving the inquiry into mere historical particularity. Its achievement lies in maintaining that tension. Rather than seeking a fully formed public law *avant la lettre*, the contributions reconstruct a field of legal reflection in which power, jurisdiction, common utility and civic normativity are already treated in juridical terms.

At the outset, Luigi Lacchè's introductory essay provides the conceptual orientation. »Public law« appears here as a necessary but cautious category: necessary to organise inquiry, yet to be handled genealogically rather than dogmatically. The medieval vocabulary – *iurisdictio*, *bonum commune*, *utilitas publica* – is approached neither as identical with later doctrine, nor as wholly unrelated to it, but as historically mobile. In this perspective, legal science *(civilis sapientia)* emerges as a central ordering force within medieval society, and *iurisdictio* as the primary idiom through which power is conceptualised.

Diego Quaglioni develops this approach on historiographical grounds. His essay situates the problem within the broader debate on the origins of public law, building especially on the enduring significance of Francesco Calasso's approach, and reasserts the relevance of the *ius commune* as a field in which questions concerning the political community were already being articulated. Medieval jurists did not elaborate sovereignty as a modern doctrine, but they did address, with precision, the relation between law and power, authority and its limits, common utility and political rule. In this sense, one may speak of a »public law before public law«: not a discipline, but a structured problem-space.

Within this field, Giuseppe Severini's contribution identifies a particularly clear doctrinal development: the emergence and legal qualification of the concept of public interest. His essay spans a long temporal horizon, yet remains anchored to fundamental notions such as Bartolus' distinction between *titulus* and *exercitium potestatis* and the juridical role of *utilitas publica*, in order to show how the exercise of public power became susceptible to legal evaluation. Authority is assessed not solely by its origin, but also by its orientation towards the common good. This move, though still far from a systematic administrative law, marks an important stage in the juridification of public action. If, in the longer term, the modern continental approach to public law was deeply shaped by the French model, Severini's point is that one of its underlying premises had already been developed in the crisis of the medieval *civitas*, and that Bartolus' influence in this respect proved both deep and enduring.

In Mario Ascheri's contribution, the discussion then returns to the civic and political world within which Bartolus operated. Rather than reading Bartolus through later ideological appropriations, Ascheri restores him to the concrete and unstable setting of the Trecento commune, where communal institutions, territorial powers, imperial claims and ecclesiastical realities intersected. The essay is thus less a doctrinal reconstruction in the strict sense than a historical re-situation: it clarifies the environment in which Bartolus' public-law reflections acquired their force and intelligibility.

Particular attention to the relation between Bartolus and later public-law categories, particularly sovereignty, appears in Cesare Pinelli's reflections. His analysis emphasises structural analogies without collapsing historical distinctions. Pinelli is especially attentive to the distinction between defects of title and defects of exercise, and more broadly to the way in which Bartolus' treatment of tyranny shifts attention from mere possession of power to the legal quality of its exercise. The

* Galliano Crinella (a cura di), Bartolo da Sassaferrato e il diritto publico, [Sassoferrato]: Istituto internazionale di Studi Piceni »Bartolo da Sassoferrato« 2024, 114 p., ISBN 979-12-81697-37-9

common good accordingly emerges not as rhetorical ornament, but as a criterion internal to juridical judgement.

Massimo Pagliarini's brief essay examines the juristic method that underlies these developments and is devoted to legal interpretation. Its focus is less on a fully worked-out theory of public law than on Bartolus as interpreter: of authoritative texts, of practical cases, and of the relation between the *Corpus iuris* and the statutory life of the communes. It usefully highlights Bartolus' attention to common usage, rational coherence, and the avoidance of excessively literal readings. In that sense, the essay reminds the reader that the juridical articulation of public power depended not only on substantive categories, but also on habits of interpretation.

The book closes with Ferdinando Treggiari's contribution, analysing civic normativity in Bartolus through the interplay of statute, custom and *consensus populi*. Its central claim is that the *civitas* emerges as a normative subject through a sophisticated reworking of Roman-law materials: statutory law and custom are both traced back, albeit in different ways, to forms of collective consent, and the validity and proof of custom are examined through categories partly borrowed from private law. The essay thus shows how communal life could be juridically structured through the categories by which the city understood itself as capable of making and sustaining law.

Taken together, the essays converge on a coherent picture. Medieval civil lawyers did not produce public law as a distinct discipline, but they did develop a set of conceptual and doctrinal tools through which public power could be articulated, evaluated and limited. Bartolus stands within this process as a central jurist who translated political realities into legal categories – *iurisdictio*, *utilitas publica*, the distinction between title and exercise, the normative force of consensus – thereby contributing to a legal understanding of authority that would remain significant beyond his own age.

The volume's contribution lies precisely in this reconstruction. It shows that the history of public law cannot be written solely from the standpoint of the modern state. One must also recover the earlier juristic frameworks in which law, power and community were thought together in different, yet no less rigorous, terms.

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