

AN ANNOTATED TRANSLATION OF BARTOLUS'
TRACTATUS DE FLUMINIBUS SEU TYBERIADIS
(BOOK 1)

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POTCHEFSTROOM

Reproduction on copper of Bartolus' funeral mask from a sixteenth-century collection in possession of Marcus Mantua (Van de Kamp, 1936:248).



“I have as much rage as you have
I have as much pain as you do
I’ve lived as much hell as you have
And I’ve kept mine bubbling under for you”

Alanis Morissette, Sympathetic Character.

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ABSTRACT

AN ANNOTATED TRANSLATION OF BARTOLUS OF SAXOFERRATO'S *TRACTATUS DE FLUMINIBUS SEU TYBERIADIS* (BOOK 1)

South African common law represents a European *ius commune* based upon Roman law and Roman-Dutch law of the seventeenth century. Included within South African common law is a large volume of medieval commentaries on Roman law, rarely touched upon by legal historians. The number of South African legal practitioners with a working knowledge of Latin has rapidly declined since the abolition of Latin as a compulsory subject for the LL.B degree in 1996. This state of affairs has led to the marginalisation of untranslated common law sources, as fewer legal practitioners are able to read and understand Latin. Although many Roman legal sources have already been translated into modern Romance languages, medieval commentaries on Roman law are still largely untranslated and therefore of little value to most legal practitioners. The idiosyncrasies and peculiar language of medieval legal Latin has further contributed to the untranslatability thereof, and even jurists with a working knowledge of classical Latin find it difficult to translate. This study aims to provide access through translation and historical annotation to an important untranslated medieval legal text, the *Tractatus de fluminibus seu Tyberiadis* by the medieval Italian jurist, Bartolus of Saxoferrato (1313 – 1357). The text is concerned with alluvion, an original mode of acquisition of ownership, which is still relevant in contemporary South African law and has recently been perpetuated in section 33 of the Land Survey Act 8 of 1997.

Keywords

Bartolus, Bartolo, Saxoferrato, Sassoferrato, riparian rights, medieval Roman law, alluvion, *Tractatus, fluminibus, Tyberiadis, alluvio.*

OPSOMMING

‘n GEANNOTEEERDE VERTALING VAN DIE *TRACTATUS DE FLUMINIBUS SEU TYBERIADIS* (BOEK 1) VAN BARTOLUS VAN SAXOFERRATO

Suid-Afrikaanse gemenerereg verteenwoordig ‘n Europese *ius commune* gebaseer op Romeinse reg en sewentiende-eeuse Romeins-Hollandse reg. Hoewel middeleeuse kommentare op Romeinse reg ‘n groot gedeelte van Suid-Afrikaanse gemenerereg verteenwoordig, word dit weinig deur regshistorici aangeraak. Die aantal Suid-Afrikaanse regspraktisyns met ‘n basiese werkskennis van Latyn het drasties verminder sedert die afskaffing van Latyn as verpligte vak vir die LL.B graad in 1996. Dit het verder aanleiding gegee tot die marginalisering van onvertaalde gemeenregtelike regsbronne, aangesien minder regspraktisyns in staat is om Latyn te lees en te vertaal. Die meeste Romeinsregtelike regsbronne is reeds in moderne Europese tale vertaal, maar middeleeuse kommentare op Romeinse reg is steeds grootliks onvertaald. Die moeilikheidsgraad en eiesoortige taalgebruik van middeleeuse regslatyn dra verder by tot die onvertaalbaarheid daarvan en selfs juriste met ‘n diepgaande kennis van klassieke Latyn vind dit moeilik om te vertaal. Die oogmerk van hierdie studie is om toegang tot ‘n belangrike onvertaalde middeleeuse regstek, die *Tractatus de fluminibus seu Tyberiadis* van die beroemde middeleeuse Italiaanse juris, Bartolus van Saxoferrato (1313 – 1357) deur middel van vertaling en historiese annotasie te bied. Die teks handel oor alluvium, ‘n oorspronklike wyse van eiendomsverkryging wat steeds in moderne Suid-Afrikaanse reg relevant is en onlangs in artikel 33 van die Grondopmetingswet 8 van 1997 opgeneem is.

Sleutelterme

Bartolus, Bartolo, Saxoferrato, Sassoferato, oewerregte, middeleeuse Romeinse reg, alluvium, *Tractatus, fluminibus, Tyberiadis, alluvio.*

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<i>Tractatus de Fluminibus seu Tyberiadis</i> (Bologna, 1576)	

ABBREVIATIONS

Ad leg.	Ad legem
BT	Bologna edition (1576)
C	Codex Iustiniani
CGIC	Corpus Glossatorum Iuris Civilis
CIC	Corpus Iuris Civilis
D	Digesta Iustiniani
De Rebus	De Rebus Procuratoriis
Def.	Definitio
Inst.	Institutiones Iustiniani
Indices	Indices Corporis Iuris Civilis
J.	Justice
JA.	Justice of Appeal
LS	Lyon edition (1515 – 1517)
LL	Lyon edition (1581)
Nov.	Novellae Iustiniani
pr.	principium
Prop.	Propositio
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse reg
Tract.de flum.	Tractatus de fluminibus seu Tyberiadis
VP	Venice edition (1590)