

INFERNAL RETAINERS: DANTE AND THE JURIDICAL TRADITION

by

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ABSTRACT OF THE DISSERTATION

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This dissertation examines the doctrinal relationship between Dante and contemporary legal scholars, particularly Cino da Pistoia. The study positions Dante's work within ongoing debates between French (Orleanese) and Italian (Bolognese) jurists at the turn of the fourteenth century, arguing that Dante's representations of positive law and its practitioners arise out of his longstanding engagement with the Justinian *Corpus*.

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Introduction

At least as far back as the Middle Ages, there has been a constant effort on the part of Western philosophers and jurists to determine if the authority of a law is merely the extension of that of its enforcer, or if it has to satisfy certain ethical criteria before it can be regarded as legitimate. The thirteenth century presents a critical time in this debate because of the intervention of St. Thomas Aquinas, who provided the first concise definition of a law using Aristotelian logic. Question 92 of the *Summa Theologiae* defines a law as “nothing more than a dictate of reason made by him who has care of the community, made for the good of the community, and promulgated.”¹ If any of these requirements are missing, the law’s validity is compromised and cannot carry the full weight of law. As prescriptive as this formula is, however, it also sets forward guidelines for our idea of law by providing a bare minimum for what we can consider as such.

Placing Dante’s conceptualization of law against the backdrop of the evolution of the Western legal system proves especially fruitful for understanding his reaction to both the extraordinary changes in the role of jurists and their relationship to the written laws in Europe in the 13th and 14th centuries. Indeed, by offering a simple definition, St. Thomas had determined the essential properties of a law itself and provided legal professionals with the tools of dialectical analysis necessary to investigate and redefine the proper role of the law. While by no means unanimous in doctrine, jurists in the generations after St.

¹ *ST I-II; QQ. 90.4*

Thomas had to contend with the idea that a written law had to pass a philosophical litmus test to be considered as such. While Dante does not disagree that a law must be made for the good of the community, issued by that community's recognized legitimate ruler, and must be promulgated, these requirements do not fit neatly with his own place for Roman law in his works. This discrepancy between the two doctrines thus presents the perspective necessary to open the poet's texts and examining his writing in a new light. This is the question that the present dissertation investigates.

Before looking at these contrasting perspectives on law and its legitimacy, one must first start with Dante's own writing on the matter. Chapter 1 addresses Dante's relationship with legal professionals and the texts associated with them. The proper place and function of human intellect is one of the main themes of the *Convivio* and Dante casts jurists as a negative exemplum that opposes this point. He begins his treatise by citing from Aristotle that it is the essential property of human beings to seek to comprehend the truth,² thus making the fulfillment of that predisposition the most appropriate activity for them. Put in a more straightforward way, if rationality - the ability to comprehend things as they really are - is that trait which distinguishes human beings from every other living thing, then the use of reason in the pursuit of the truth is what makes a human the best human possible (i.e. the most virtuous, in the classical sense of the word).

Chapter 1 further investigates Dante's familiarity with the body of text most central to the civil legal profession, Justinian's *Corpus Iuris Civilis*. The use of this

² *Convivio* 1.1

collection of legislation and legal literature as the primary source of authority when arguing was that trait which defined jurists as such, differentiating them from moralists and philosophers. Dante, too, recognized the authority of these texts and used their contents in his most ambitious philosophical arguments. Chapter one therefore investigates the relationship between the *Corpus* and both Dante and professional jurists, exploring what it represented to the poet and 13th and 14th century society in general. While scholarship is hesitant to generalize about the nature of Dante's knowledge of Roman law, there are enough studies available to conclude that he did have first hand knowledge of the actual legal texts even before composing the *Commedia*. Accordingly, chapter one of my dissertation provides key citations of the *Novellae* and the *Digest* found in the *Vita Nuova* and the *Convivio*. These serve to demonstrate that Dante knew the legal texts first hand, but interpreted them in ways that were profoundly inconsistent with the practices of professional jurists of his time. Furthermore, we can deduce from his citations that Dante referenced editions of the *Digest* that contained professional juridical glosses – the *Glossa Accursiana* - added in the 13th century. What emerges is the image of Dante not as a legal expert, but as an autodidact of Roman law, one possessed of an idiosyncratic notion of the philosophical role that Roman laws played not only in human society, but also in the divine ordering of the cosmos.

In order to portray the significance of these glosses for shaping Dante's conception of the *Digest*, chapter one traces the evolution of medieval Roman

law, from its rediscovery by the West in the late 11th century. Specifically, I investigate the ways in which legal experts at Bologna conceived of the law as an institution whose authority was derived from its being a text composed under Justinian's own authority. After all, as the Byzantine emperor himself wrote in the preamble of the *Corpus*, its contents were perfected by the grace of God, and were not to be further altered or reinterpreted. As such, the question of hermeneutic latitude produced a constant anxiety for the medieval jurists, who found themselves in a world much changed and with exigencies far different from the one in which Justinian had edited the *Corpus*. Much like today, their analysis reflected the tension between preserving the authenticity of the laws and adapting them to modern life. By the fourth decade of the 13th century, the collective textual analyses of five generations of jurists crystallized in one standardized edition - the very *Glossa Accursiana* that Dante had at his disposal as he studied the *Corpus*.

Chapter 2 investigates ways in which Dante incorporates judicial theory and conventions into the narration of the *Inferno*, where they play a critical role in two key episodes. Specifically, in cantos 13 and 32, Dante dramatizes the conventions of torture, confession, the oath, and *infamia*. As the highest form of proof in a medieval criminal trial, confession enjoyed status as the ultimate means of gaining unarguable certitude in Dante's world. Indeed, confession is a critical part of the *Inferno*, appearing in canto after canto as the means by which the pilgrim and Virgil gain information about the souls they encounter there.

Confession takes its most procedural form in canto 5, where Virgil explains that all souls must confess their sins to Minos, who then sentences them to a specific place in hell based on that confession. In this way, the author imagines it in its judicial role; confession is not a sacrament that produces absolution, but the means by which the transgressions of the soul are made known to all, before their sentencing.

All of these conventions are fundamental to canto 13. Pier delle Vigne is unique in the economy of the *Inferno* because the author presents him so explicitly as simultaneously both innocent and guilty, exploiting this conflicting duality to create the dramatic tension of the canto. All four legal conventions come into play in this scene. Pier wants desperately to have his reputation cleared of the charge of treason that ultimately led to him to commit suicide. That is, he suffers, unjustly, under the burden of *infamia*, the social and legal stigma resulting from the political charges laid against him. Pier confesses his guilt of suicide by swearing an oath, insisting that he was always faithful to Frederick II. Dante establishes torture as the means by which he is able to speak; it is only through mutilation of his limbs that Pier that finds the outlet for his words. Just as torture was a means to producing a confession, so too is the pilgrim's violence against Pier the ultimate method of generating his admission of guilt.

Dante again deploys *infamia*, confession, and torture in much the same way in the plot of canto 32. The pilgrim's encounter with Bocca degli Abati there makes use of these same conventions as canto 13, but in the service of

demonstrating the harmful effects of fraudulent language on society. Specifically, Bocca refuses to confess, even when the pilgrim once again resorts to violence; despite his acts of mutilation, Bocca produces only gibberish, not speech.

Chapter 3 examines the broader question of legal and literary interpretation by analyzing the relationship between Dante and Cino da Pistoia through the lens of their individual conceptions of Roman law. Few figures of the Italian middle ages offer us as a complex relationship as do Cino and Dante. Of all the *Stilnovistic* poets, these two were perhaps closest in their philosophical treatment of love, yet their individual conceptualizations of ancient and medieval legal doctrine can hardly be in more direct conflict with one another. Studies of the relationship between the two men usually have limited their scope to their love poetry, nearly always proceeding from the premise that influence emanated solely from Dante and was entirely absorbed by Cino. One need only examine the scope of Cino's legal bibliography, however, to see how central his identity as a jurist was to his fame. His influence on legal doctrine of the fourteenth century was considerable, and we find Dante engaging similar questions throughout his career. Put another way, I wish to redefine the relationship between Dante and Cino by taking into account the totality of the latter's reputation during his life, beyond his identity as a poet.

Comprehending Cino's fame as a jurist and why it mattered to Dante requires, at the very least, understanding the changing status of Roman law in fourteenth-century Italian culture. Much of Cino's impact stemmed from the

novelty with which he interpreted Justinian's *Corpus Iuris Civilis*, deploying Aristotelian dialectical analysis in ways that broke with longstanding Bolognese legal traditions established by Irnerius and the Glossators in the twelfth and thirteenth centuries. Tracking this rift in legal hermeneutics, my dissertation argues that Dante's representations of the law and its practitioners arises out of his own idiosyncratic engagement with Justinian's *Corpus*, which functions as his *ratio scripta*, that highest embodiment of legal thought and the supreme authority of the Holy Roman emperor.

This dissertation, by taking into account all of the aforementioned topics, argues that, despite his claims to the contrary, Dante tacitly recognized the validity of the judicial process as a means of producing truth by modeling key moments of his narrative in the *Divine Comedy* on it. For the poet, however, the question of legal interpretation proceeded along the contours of that of the *auctoritas*; by conceptualizing the *Corpus Iuris Civilis* as a sacred document, Dante could not accept that its contents should be reinterpreted to fit the needs of a changing society. This type of activity, however, is precisely the business of jurists in general, and of Cino da Pistoia specifically.

Chapter 1. *Dante and the Jurists*

These men have taught their tongues to speak lies.
They are fluent against justice. They are schooled in falsehood...
Cut out their lying tongues and shut their deceitful mouths.
(St. Bernard of Clairvaux, *De consideratione, Opera*)

We all know here that the law is the most powerful of schools
for the imagination. No poet ever interpreted nature
as freely as a lawyer interprets the truth.
(Jean Giraudoux, *The Trojan War Will Not Take Place*)

Dante's knowledge of Roman law is the focus of study of many scholars, yet there is still no consensus view of the depth or origin of his juridical culture.³ We are certain that he knew Roman law first hand, particularly the Justinian *Digest*, as he makes references to it in numerous places throughout his corpus. But a fact that has misled more than one scholar seeking to ascertain Dante's knowledge of law is the poet's strikingly negative statements about its practitioners.⁴ While disdain for lawyers was commonplace in Europe, even in the early 14th century, Dante's contempt for them is especially intense and qualitatively different from that of his contemporaries. Indeed, the philosophical reasons Dante offers for this venom distinguish him from the larger mass of poets and theologians simultaneously making sharp rebukes of the legal class. Rather than focusing on the jurists' reputed unscrupulous and greedy nature, he includes them in a much broader discourse that takes into account theology, ethics, and

³ Richard Kay, "Roman Law in Dante's *Monarchia*," In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 260.

⁴ Dante Alighieri, *Monarchia*, ed. G. Vinay (Florence, 1950), 176-7, ad *Mon.* 2.9 (10).20. In Kay, R. "Roman Law in Dante's *Monarchia*," In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 260.

the proper political organization of the world necessary for securing mankind's eternal salvation.

This chapter investigates Dante's relationship with jurists of civil law by analyzing the place he fashions for them in his philosophical discussion of humanity's essence. Like many critical of jurists during the Middle Ages, Dante focuses his invective to lawyers themselves, targeting them as people, rather than extending his assessment to include the law more generally. But Dante's criticisms prove idiomatic because holds the foundational text of that profession, Justinian's *Corpus Iuris Civilis*, as something divinely ordained as a part of God's plan to bring peace to the world.⁵ In his formulation, Roman law was intended to be a tool in the hands of the emperor, as he makes clear in *Purgatory* 6 when he figures it as a bridle on the untamed beast of Europe, upon which the emperor ought to ride in rule. The move is typical of Dante, leaving intact the integrity of the institution while eviscerating those who constitute it. Tactically speaking, this same move allows Dante to establish himself as an authority on law, allowing him to praise Justinian's *Corpus* while simultaneously condemning the very professional class responsible for its revival and return to prominence in medieval society.

The relationship between medieval jurists and the written Roman law was intimate; they studied all the parts of the *Corpus Iuris Civilis* together, as though the individual components formed an organic work. In reality, however, this body of law was a collection of diverse juridical writings compiled under the direction of

⁵ *Purgatory* 6, vv. 88,89.

the Emperor Justinian. Though he did issue his own laws, Justinian fashioned his *Corpus* as, for the most part, a collection and reorganization of the previous Roman legal tradition. In 528, Justinian nominated a commission of 10 members, charged with the compilation of a new volume of legislation consisting of constitutions taken from the Gregorian, Ermogenian, and Theodosian codes, as well as the latest imperial constitutions.⁶ Known as the *Codex Iustinianus* (henceforth referred to as the *Code* in this work), the completed work was published on 7 April, 529.⁷

Whereas the *Code* consisted primarily of the actual laws and legislation, the next component in the *Corpus* was more philosophical in nature. Justinian issued the constitution *Deo auctor* on 15 December, 530, ordering the creation of The *Digest*, or *Pandectae* (henceforth referred to as the *Digest* in this work). This volume consisted of selections from the works of 18 classical Roman jurists, organized so as to address common questions of law. Apart from ordering them to correspond to the same issue, Justinian and his editors intentionally left these selections in no particular order so that the opinion of none was privileged over the others. Furthermore, the commission carefully chose selections so as to avoid contradictions among them, and compiled them into 50 books, divided into

⁶ Del Giudice, Federico. *Istituzioni di diritto romano e cenni di diritti dell'antichità*. Naples: Simone, 2007, 15.

⁷ Immediately following this publication, a second, more complete edition was published under the name *Codex repetitae praelectionis*.

titles, following the ordering of the *Code*. The *Digest* was published on 16 December, 533.⁸

As the *Digest* was being compiled, Justinian ordered composed an elementary treatise on law, entitled *Institutes Iustinian Augusti* (henceforth referred to as the *Institutes* in this work). Consisting of four books, the *Institutes* were to serve as a textbook for students of law. They were published on 21 November, 533.⁹

Dante refers to juridical works nearly thirty times in the *Commedia* and the minor works; yet, he directly accosts legal professionals in but three places.¹⁰

The first reference is in the *Convivio* (written c. 1304-1307),

Nè si dee chiamare vero filosofo colui che è amico di sapienza per utilidade, sì come sono li legisti, [li] medici e quasi tutti li religiosi, che non per sapere studiano, ma per acquistare moneta o dignitade; e chi desse loro quello che acquistare intendono, non sovrastarebbero a lo studio.
(*Conv. 3.11, 10*)

“Nor should we give the name of true philosopher to anyone who is a friend of wisdom for the sake of utility, as are jurists, physicians, and almost all those belonging to religious orders, who study not in order to

⁸ Del Giudice, Federico. *Istituzioni di diritto romano e cenni di diritti dell'antichità*. Naples: Simone, 2007, 16.

⁹ Del Giudice, Federico. *Istituzioni di diritto romano e cenni di diritti dell'antichità*. Naples: Simone, 2007, 16, 17.

¹⁰ Dante addresses decretalists, or experts in canon law, in much the same way as he does practitioners of Civil law in *Mon. 3.3.9*, condemning them for their ignorance of logic and excessive sense of their own authority, while he simultaneously exalts the Decretals themselves:

quos decretalistas vocant -- qui, theologie ac phylosophie cuiuslibet inscii et expertes, suis decretalibus -- quas profecto venerandas existimo - - tota intentione innixi, de illarum prevalencia - - credo -- sperantes, Imperio derogant.

called decretalists - ignorant and lacking in any philosophical or theological training - who argue their case exclusively with reference to their decretals (which I certainly think worthy of veneration); trusting in their authoritativeness, I believe, they disparage the empire.

gain knowledge but to secure financial rewards or high office; and if anyone were to give them what they seek to gain, they would not persevere in their study."

His second address of jurists is again in the *Convivio*, where he constructs a hypothetical argument between himself and a legal professional. He argues that the man possessed of wisdom is obligated to share it freely with others:

sì come la rosa, che non pur a quelli che va a lei per lo suo odore rende quello, ma eziandio [a] qualunque apresso lei va. Potrebbe qui dire alcuno medico o legista: "Dunque porterò io lo mio consiglio e darollo eziandio che non mi sia chesto, e della mia arte non averò frutto?" Rispondo, sì come dice nostro Signore: «A grado riceveste, a grado date». Dico dunque, messere lo legista, che quelli consigli che non hanno rispetto alla tua arte e che procedono solo da quel buono senno che Dio ti diede (che è prudenza, della quale si parla), tu non li déi vendere alli figli di Colui che 'l t'ha dato. Quelli che hanno rispetto all'arte la quale hai comperata, vendere puoi; ma non sì che non si convegna alcuna volta decimare e dare a Dio, cioè a quelli miseri a cui solo lo grado divino è rimasto.

(*Conv.* 4.27, 7-9)

just as a rose offers its fragrance not only to one who approaches it for this reason but also to whoever passes near to it. Here some doctor or lawyer might say: "Am I then to carry my counsel and offer it even though it has not been asked for, and make no profit from my art?" I reply as our Lord has said: "Freely have you received, freely give." I say, therefore, my dear lawyer, that those counsels which are unrelated to your art and which proceed only from the common sense which God has given to you (and this is that prudence of which we are now speaking) you should not sell to the children of him who gave it to you: those that are related to your art, which you have purchased, you may sell, but not such that it is not fitting at times to pay a tithe and make an offering to God (that is, to those unfortunates to whom nothing is left but the gratitude of God).

As we will see, the context is within Dante's argument that professionals who pursue knowledge for profit cannot be considered proper philosophers because they do not seek the truth for its own sake.

Dante's final direct reference to legal professionals is in the second book of the *Monarchia* (c. 1318-1321):

Videant nunc iuriste presumptuosi quantum infra sint ab illa specula
rationis unde humana mens hec principia speculatur, et sileant secundum
sensum legis consilium et iudicium exhibere contenti.
(*Mon.* II, 9)

*Now let the presumptuous jurists see just how far they are below that
watch-tower of reason from which the human mind contemplates these
principles, and let them be silent and be satisfied to give counsel and
judgment in accordance with the sense of the law.*

In the relatively brief period between the addresses in the *Convivio* and the final one in the *Monarchia*, the juridical profession in Italy underwent deep changes in both its methodology and the way it treated the law. All three of Dante's direct addresses to the jurists are criticisms of the professional class as a whole, but comparing the latter comment with the previous two, however, exposes the degree to which his understanding of developments in juridical science had deepened in the intervening decade. While decidedly aggressive and polemical, the comments in the *Convivio* stop short of calling the jurists incompetent, while the second not only questions their ability to interpret the law correctly, but also suggests that their methodology is suspect.

Central to Dante's argument is the jurists' changing relationship to the *Corpus iuris civilis*. Displaying a surprising depth of knowledge about the jurists, Dante makes use of this familiarity in his arguments against them. He engages with jurists on a professional level, attacking them for recent developments in

their methodology that only an individual with more than a passing interest in contemporary juridical science could grasp.

As a matter of preliminary precision, we must make clear that a medieval professional was only considered a ‘jurist’ when he argued and reasoned by making use of the Justinian’s laws.¹¹ Dante’s use of this professional title in the *Convivio* therefore makes his target specific, and the distinction makes an appreciation of the *Corpus* fundamental to any discussion of jurists in medieval Western Europe; the relationship between the two was the only trait that distinguished a jurist from a philosopher, theologian, or moralist.¹² Scholars have demonstrated Dante’s appreciation of the *Digest* as a source of authority, noting that in the *Convivio* he referred to it and the accompanying glosses no less than 18 times.¹³

Dante’s reaction to jurists as a distinct group was one part of a society’s coming to terms with what was a new form of intellectual that had no direct predecessor in Western European culture prior to the late 11th century.¹⁴ Jurists came to constitute a discrete professional class only after the rediscovery and reintroduction of the Justinian *Corpus*, which had been largely ignored in the legal development of the former Western Roman Empire until the final quarter of

¹¹ Manlio Bellomo, *Medioevo edito e inedito*, v. 2 (Rome: Il Cigno Galileo Galilei, 1997), 14.

¹² During the earliest period of juridical science, from the late 11th century until the middle of the following, the jurists kept very close to the text, memorizing portions to cite during arguments. As the study progressed over the next two centuries, they began to distance themselves from the literal interpretation of the text. Nevertheless, Justinian’s laws remained the *sine qua non* of the legal profession.

¹³ Richard Kay, “Roman Law in Dante’s Monarchia,” In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 260.

¹⁴ Manlio Bellomo, *Medioevo edito e inedito*, v. 2 (Rome: Il Cigno Galileo Galilei, 1997). 6.

the 11th century. Indeed, despite the exceptional achievement, Justinian's *libri legales* was nearly inconsequential, possessing almost no authority anywhere in the Eastern empire. As Manlio Bellomo so elegantly put it, Justinian had succeeded at creating legislative texts that were "like a jewel case guarding precious gems and removing them from use."¹⁵ The work remained virtually unknown in the West, reaching Italy only 554. It then fell rapidly into obscurity amidst the tumult of the Lombard invasions of 568. It was only six centuries later that scholars at the *studium* at Bologna, first among them Pepo and Irnerius, began to study the *Digest*, both for its legal content and its use of rhetoric. It is thus appropriate that we regard Dante's disdain for the legal class within the framework of a medieval anti-juridical tradition, motivated by contemporary political and ethical anxieties, chief among them the proper spheres of influence of empire and church.

Be they honored or reviled, jurists enjoyed a strong presence in the society in which Dante lived,¹⁶ and the poet was not alone in his strong feelings toward them. The literature of the Middle Ages provides many examples of men and women who both lauded and derided the legal professionals. Jurists had a reputation of being individuals of intellect; they were highly skilled figures,

¹⁵ Bellomo, Manlio. *Common legal past of Europe, 1000-1800*. Washington, D.C: Catholic University of America, 1995, 39.

¹⁶ There were three main types of legal professionals in Dante's time: the notary, the proctor, and the advocate. The first generally lacked extensive academic training and concerned himself primarily with the drafting of legal documents, such as contracts and testaments. The proctor acted on behalf of his client, representing him in court and in business transactions. The advocate was the most expert, providing his clients with legal counsel and the highest level of forensic representation in court. Medieval poets directed their animosity most consistently toward the advocate. See: Brundage, James A. *The Medieval Advocate's Profession*. *Law and Historical Review* vol. 6, no. 2 (1988): 444.

respected with honorific titles, like pleader of cases (*causidicus*), the man in robes (*togatus*), the speaker (*narrator*), pleader (*placitator*), and witness of the law (*testis iuris*). Yet, this same society also harbored a wide mistrust and contempt for them, bestowing a wide range of disparaging titles on them, such as *tongue-renter*,¹⁷ *father of error*,¹⁸ *greed-bag*,¹⁹ and *robed vulture*.²⁰ This variability of esteem and hostility suggests just how engaged Dante's Italy as a whole was with recognizing jurists as a professional class unto themselves.²¹

As varied as such slurs were, the critics tended to focus on similar aspects. The part most often satirized was the pecuniary motives of jurists;²² this critique focused on the ways in which jurists' preoccupation with profit conflicted with their clients' best interests. Duplicity and betrayal were common charges against lawyers as a whole, with invectives against them composed in the basest of terms, often involving vulgar characterizations of the jurist's body. The lawyer's tongue was frequently satirized²³ (e.g. '*tongue-renter*') so as to degrade him by using terminology that dealt with the human body, a subject matter considered in

¹⁷ "Le dit des mais," in *Nouveau recueil de contes, dits, fabliaux, et autres pieces inèdites des XIIIe, XIve, et XVe siècles*, ed. Achille Junibal, 2 vols. [Paris, 1839-42], 1:190; cf. "Les lamentations de Matheolus," quoted by Yunck, "The Venal Tongue," 260.

¹⁸ Luigi Chiappelli, *Vita e opere giuridiche di Cino da Pistoia con molti documenti inediti* [Pistoia, 1881], 144. Quoted by Brundage, James A. *The Medieval Advocate's Profession*. *Law and Historical Review* vol. 6, no. 2 (1988): 444.

¹⁹ *Occultus erfordensis*, quoted by Brundage, James A. "The Medieval Advocate's Profession." *Law and Historical Review* vol. 6, no. 2 (1988): 444.

²⁰ Henriot, *Moeurs juridiques*, 3: 182. Quoted by Brundage, James A. "The Medieval Advocate's Profession." *Law and Historical Review* vol. 6, no. 2 (1988): 444.

²¹ James A. Brundage, *The Medieval Advocate's Profession*. *Law and History Review*, Vol. 6, No. 2 (Autumn, 1988), 439.

²² Brundage, James A. *The Medieval Origins of the Legal Profession Canonists, Civilians, and Courts*. New York: University Of Chicago P, 2008, 477.

²³ James A. Brundage, *Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Literature*. *Roman Legal Tradition* vol. 1, (2002), 69.

the Middle Ages to be suited to base discourse.²⁴ Furthermore, the tongue, as the appendage used for speech, also served as a focal point for condemnations of the lawyers' indiscriminate use of language for profit, often at the expense of others.

An anonymous medieval poet graphically illustrated this point:

*Advocates do a lot of harm
Whereby they put their souls at risk;
Their tongues are full of venom:
Whereby inheritances are lost,
They have poisoned many a good marriage,
And done evil just for a jar of wine.*

They fraternize with the mesnie Hellekin

*To work their foul designs,
Latin or French? No problem,
They'll sell their words either way.²⁵*

In this citation, the tongue is modified by the adjective 'venomous', thus likening the lawyer to the most infamous of beasts, the snake. In addition to being physically the lowest creature (i.e. lacking legs), the snake or serpent carries

²⁴ Following Cassiodorus (Senator, Cassiodorus. *Variae of Magnus Aurelius Cassiodorus Senator ... being documents of the Kingdom of the Ostrogoths in Italy ...* Liverpool: Liverpool UP, 1992, p. 4.) medieval authors calibrated their rhetoric to suite the subject they were treating. During the Middle Ages, the convention of the *Rota Vergilii* (Virgil's Wheel) held that the subject matter being treated ought to dictate the level of rhetoric employed, as demonstrated by the ancient Roman poet's own works. The lowest style is exemplified by Virgil's *Bucolics*, which deal with matters of shepherds, such as sheep and fields. The *Georgics* were didactic poetry, which required a medium level of rhetoric, most often treating such content as stock and agriculture. The most serious and weighty rhetoric ought to be used for epic poetry, such as was found in the Aeneid, i.e. warriors, gods, and arms. The *Rota Vergilii* was not, of course, an ironclad formula, but it did establish a decorum that was not lightly violated (the *sermo humilis* of the religious poets is a notable exception). Guglielmino, Salvatore, and Hermann Grosser. *Il sistema letterario: Guida alla storia letteraria e all'analisi testuale*. Vol. 1. Milano: G. Principato S.p.A., 1992. *De vulgari eloquentia* (II, iv, 1-8).

²⁵ "C'est li mariages des filles au diable," in Jubinal, *Nouveau recueil*, pp. 284-85: "Avocat portent grant damage / Pourquoi metent lor âme en gage; Lor langue est pleine de venin: / Par aus sont perdu heritage, / Et deffait maint bon mariage, / Et mal fait pour .i. pot de vin. / C'est la mesnie Hellekin;/..... Quand viennent à lor pute fin / Ne sevent romans ne latins, / Car il vendirent lor language." (in Brundage, 2008)

spiritual connotations for a Judeo-Christian culture, necessarily evoking the beast that used its reason and linguistic abilities to beguile Adam and Eve into tasting the fruit forbidden to them by God. Where the tongue becomes the source of Original Sin in Christian doctrine, we see in the case of these serpent metaphors how the otherwise honorific titles like *pleader of cases* and *speaker* can take on decidedly sinister overtones while still retaining recognition of rhetorical ability.

It would be difficult to invent a more damning comparison for lawyers than that of the serpent responsible for Original Sin and humanity's expulsion from the Garden of Eden, but medieval writers nevertheless managed to do so. One such successful way of doing so resulted from the addition a whore to the equation of lawyer as serpent, as both professions were thought to sell their bodies for ignoble purposes. The literature from the period is rich in the use of this trope, exemplified by the abbot Adam of Perisegne (ca. 1145-1221) who likened lawyers to prostitutes, and argued that both would serve any paying client no matter how unjust the cause,²⁶ and by Matheolus (fl. ca. 1290) who, writing two generations later, said:

*What can I tell you about a lawyer?
He ought to be called something like a filthy whore;
Really, he's even nastier: a whore just rents out her ass,
But he sells his tongue, which is even more demeaning,
Because the tongue is a member more exquisite than
the ass.*²⁷

²⁶ Adam of Perisegne, *Epist.* 24, PL. 211:667: "Omnes, si dederint, etiam in inuistis causis multos advocatos inveniunt: solus Christus, licet dator omnium, cum sit causa ejus justissima, habere aliquem non meretur." in James Brundage, *Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Culture*. *Roman Legal Traditions*, vol. 1, 2002, 70.

²⁷ Les Lamentations de Matheolus et la livre de leesce, ll. 4579-4584, ed. Van Hamel, 1:283: "Quid de causidico possum tibi dicere? dici / Debet enim similis vel par vili meretrici, / Immo vilior est, quia, si meretrix locat anum, / Hic vendit linguam, quod plus reor est prophanum, / Cum sit

By throwing a prostitute into the mix, Matheolus manages not only to denigrate the lawyer through simple proximity such a disparaged figure, but also to exaggerate the mercenary nature of his intellectual activity. This intense and recurring satirizing of the lawyer's tongue, moreover, demonstrates just how central language was to his identity, since the tongue represented the most formidable and thus fearsome feature of the jurist, his linguistic prowess.²⁸

Let us consider Dante's early treatment of the jurists in the historical context of what was, as we have seen, a popular topic for poets and theologians in the Middle Ages. Dante joins the diatribe in condemning the jurists for their avarice, echoing contemporary rebukes of them for their desire to study in order to gain wealth. The poet's criticism analyzes the ramifications that this greed has

enim lingua membrum preciosius ano." in James Brundage, Vultures, Whores, and Hypocrites: Images of Lawyers in Medieval Culture. *Roman Legal Traditions*, vol. 1, 2002, 70.

²⁸ This practice of using the tongue to lambast lawyers has carried through to the present day, as has the technique of accusing them of indecency and cunning. During the run-up to the 2004 United States of America Presidential Election, the Democratic vice-presidential nominee, John Edwards, was often referred to as 'the silver-tongued lawyer from Tennessee,' especially when questioning his practice of law prior to his career in politics.

On July 11, 2004, the Pittsburgh Tribune-Review ran a column by Ann Coulter, entitled, 'Edwards: The candidate some dead babies speak through.' In it, the author wrote:

"Despite the overwrought claims of Edwards' dazzling legal skills, winning jury verdicts in personal injury cases has nothing to do with legal talent and everything to do with getting the right cases -- unless "talent" is taken to mean "having absolutely no shame." Edwards specialized in babies with cerebral palsy whom he claimed would have been spared the affliction if only the doctors had immediately performed Caesarean sections... As a result of such lawsuits, there are now more than four times as many Caesarean sections as there were in 1970. But curiously, there has been no change in the rate of babies born with cerebral palsy. As The New York Times reported: "Studies indicate that in most cases, the disorder is caused by fetal brain injury long before labor begins." All those Caesareans have, however, increased the mother's risk of death, hemorrhage, infection, pulmonary embolism and Mendelson's syndrome. In one of Edwards' silver-tongued arguments to the jury on behalf of a girl born with cerebral palsy, he claimed he was channeling the unborn baby girl, Jennifer Campbell, who was speaking to the jurors through him:

"She said at 3, 'I'm fine.' She said at 4, 'I'm having a little trouble, but I'm doing OK.' Five, she said, 'I'm having problems.' At 5:30, she said, 'I need out.'"

She's saying, "My lawyer needs a new Jaguar ... " (italics added by Coulter)

http://www.pittsburghlive.com/x/pittsburghtrib/s_202515.html

for both individuals and societies. Noting how greed and desire for material wealth lead jurists to the study of the law, Dante nevertheless does not simply condemn lawyers for their vices. Instead he demonstrates a deep concern for the social impact of these vices. First, he disapproves of such pecuniary motivations on philosophical and political grounds, opposing the desire for wealth to the desire for truth, a necessary prerequisite for justice. It is no accident that coinciding with this argument is Dante's first specific mention of jurists as a professional group. According to Dante, to be called a true philosopher one must pursue philosophical truth²⁹ without having ulterior motives. Jurists do not qualify as lovers of truth, then, because of their desire for material compensation, which in turn makes them enemies of real justice. Where philosophy is treated merely as a means to riches or power, truth cannot be valued in and of itself. This indictment carries with it ethical implications that go beyond a mere attack on the legal profession; the condemnation of jurists in the *Convivio* is, in reality, a critical part of a larger analysis of desire, the accumulation of wealth, and the spiritual hazard to which these will lead.

For Dante, greed, or desire directed to material wealth, is the primary obstacle to an individual's goal of contentedness, or perfection. Specifically addressing the vice of avarice in the fourth book of the *Convivio*, Dante argues that only knowledge, the goal of a true philosopher, can lead men to completion

²⁹ For this discussion of truth, I am following Thomas Aquinas who argued that when the relationship between a concept and a thing is proportional, it can be said to be true - *Veritas est adequatio rei et intellectus* (*Summa Theologiae*, 1:21:2).

by fulfilling their essential properties.³⁰ The perils for those seeking to satisfy their desires by accumulating wealth, on the other hand, are multiple. The first danger comes from the tendency of physical possessions to make a person less complete, always leaving them with a greater desire for more. By Dante's reasoning, no matter how much humans accumulate, wealth obtained always makes them crave more:

Promettono le false traditrici, se bene si guarda, di t rre ogni sete e ogni mancanza, e a portare ogni saziamento e bastanza; e questo fanno nel principio a ciascuno uomo, questa promessa in certa quantit  di loro acrescimento affermando; e poi che quivi sono adunate, in loco di saziamento e di refrigerio danno e recano sete di casso febricante intollerabile; e in loco di bastanza recano nuovo termine, cio  maggiore quantitate a[!] desiderio, e con questa, paura grande [e] sollicitudine sopra l'acquisto... (*Convivio*, 4.12.5)

The false traitresses, if one looks closely, promise to take away all thirst and feeling of want and to supply complete satiety and a feeling of sufficiency. This is what they do at first for every man, by guaranteeing the fulfillment of this promise when they have increased to a certain amount; and then when they have been accumulated to this point, instead of satiety and refreshment they produce and instill an intolerable and burning thirst in the breast; and in place of sufficiency they set up a new goal: that is, a greater quantity to be desired, and once this has been realized, they instill a great fear and concern for what has been acquired.

Dante assigns to riches this role of traitor, because, as he fashions it, they perpetrate a fraud on those who seek them, offering the promise of satisfaction, but really only creating more desire; the man who seeks wealth will never be content, no matter how much he gains. He will, in fact, find himself seeking increasingly larger sums to satiate his desires. This characterization of wealth's impact on the men who seek it forces us to reevaluate Dante's remarks about

³⁰ *Convivio*, 4.12

jurists, because shortly before this he defines them as a group who studies “*per acquistare moneta o dignitate*”. We are therefore presented with lawyers as learned professionals whose studies are not only propelled by greed, but men who are also led on by the false promise of satisfaction that this wealth offers.

To be clear, this desire for wealth is not specific to jurists, or to any one professional class. On the contrary, Dante says that this perpetual hunger for more possessions is inherent to the human condition, exhibiting itself from the earliest moments of childhood. Listing the successive desires of mankind in *Convivio* 4.12,³¹ the poet presents a careful progression from the relatively innocent desires of childhood to the desires of cold, dead wealth.³²

Onde vediamo li parvuli desiderare massimamente un pomo; e poi, più procedendo, desiderare uno augellino; e poi lo cavallo; e poi una donna; e poi ricchezza non grande, e poi grande, e poi più.

(*Convivio*, 4.12.16)

Thus we see little children setting their desire first of all on an apple, and then growing older desiring to possess a little bird, and then still later desiring to possess fine clothes, then a horse, and then a woman, and then modest wealth, then greater riches, and then still more.

By means of this list, Dante demonstrates how the soul continually moves from one desire to the next, ceaselessly seeking a fleeting wholeness or perfection. It is a sequence of materialistic goals that theoretically extends *ad infinitum* because the human yearning for the soul’s completion cannot be obtained through any amount of material wealth gained. Later in this passage, in a clever

³¹ Teodolinda Barolini even goes so far as to call this passage of the *Convivio* a ‘virtual blueprint for the *Commedia*.’ Teodolinda Barolini, *The Undivine Comedy*, (Princeton University Press, 1992), 100.

³² Teodolinda Barolini, *Dante and The Origins of Italian Literary Culture*, (New York: Fordham University Press, 2006), 55.

geometric argumentation, Dante asks us to imagine a pyramid, at whose apex is the starting point of human desires, those first objects a youth seeks. At the theoretical base of Dante's pyramid, therefore, must be the ultimate object of our desire, God or completion. And so the youth moves down the pyramid acquiring objects of desire only to desire continually new ones, ever larger and larger, each promising the sense of completion he craves, if only momentarily.³³ It is a marvelous anticipation of modern critiques of consumer culture, where desire for an object can never be satisfied by possession of the object itself. Of course, in Dante's formulation this pyramid theoretically extends to infinity, continually growing to more massive proportions but never offering more than brief satisfaction. For Dante the point is as forceful as it is simple: God and perfection (that is, the fulfillment of mankind's essential property, the desire to understand) cannot be reached by following such a path, and those who try will eventually find themselves troubled by gargantuan (and unsatisfied) appetites.

Such criticisms, moreover, do not remain merely in the domain of ethics. Dante carries this argument against the accumulation of material wealth beyond its impact on individuals and into the political realm, where he views it as the primary enemy of peace and justice:

E che altro cotidianamente pericola e uccide le cittadi, le contrade, le
 singolari persone, tanto quanto lo nuovo raunamento d'averre appo
 alcuno? Lo quale raunamento nuovi desiderrii discuopre, a lo fine de li
 quali senza inguiria d'alcuno venire non si può.

(*Convivio* 4.12.4)

³³ *Convivio*, 4.12

And what imperils and destroys cities, territories, and individuals day by day more than the accumulation of wealth by some new person? Such an accumulation cannot be satiated without causing injury to someone.

The effects of wealth are clear: men seeking wealth will continually try to satisfy new desires until those desires involve seizing the property of others, and from there the results must be sin and violation of the law. Law and the accumulation of wealth, in fact, must necessarily oppose one another, as Dante argues in *Convivio 4.12*, since both Canon Law and Civil Law were created to curb the corrosive effects of greed brought about by the amassing of wealth:

E che altro intende di medicare l'una e l'altra Ragione, Canonica dico e Civile, tanto quanto a riparare alla cupiditate che, raunando ricchezze, cresce? Certo assai lo manifesta e l'una e l'altra Ragione, se li loro cominciamenti, dico de la loro scrittura, si leggono.

(*Convivio. 4.12.9,10*)

What else were the two categories of Law, namely Canon Law and Civil Law, intended to curb if not the surge of greed brought about by the amassing of wealth? Certainly both categories of Law make this quite evident if we read their beginnings (that is, the beginnings of their written record).

Within such a formulation, the irony in Dante's argument is that jurists choose a career in law precisely in order to make themselves wealthy and powerful. His concern about the jurists' position as interpreters of laws and their financial motives, moreover, must be seen in a distinctly *political* context because in the nearly two and a half centuries since the rediscovery of Justinian's *Digest* and the subsequent formation of a juridical professional class, experts in Roman civil law had come to dominate many of the governing regimes in Italy.

The most outstanding example of this trend comes from the Kingdom of Sicily when under the rule of Frederick II (1198-1250). Considered by many modern historians as governor of the first modern state in Europe, Frederick was nevertheless also seen by Dante and his contemporaries as heir to the ancient Roman Emperors³⁴ (despite the inconvenient fact that the most direct descendents were actually the Byzantine emperors). Frederick's court was based in Sicily, though his empire consisted of territories in Southern Italy, Germany, and even Jerusalem. As such, Frederick was, until Henry of Luxembourg's coronation in 1312, the last man to hold the office that Dante considered critical to the salvation of mankind, the ruler whose sovereignty would tame men's greed and lead them to a new age of justice and peace.³⁵

Already in the first decade of the *Duecento*, Frederick's administration in the Kingdom of Sicily was heavily dependent on the professional legal class. This choice was not without reason; his political struggles against the temporal influence of the papacy made a lay administration Frederick's best choice for security. Juridical clerks provided the Emperor with a safe, secular source of technocrats upon which to draw to run his government of Sicily. Recognizing the vital importance of this profession to his regime, Frederick even went so far as to establish a law school at Naples in the spring of 1224, allowing him access to a steady supply of jurists. These lawyers were educated away from Bologna and thus outside of the influence of the Papacy and the Northern Italian Communes,

³⁴ *Convivio*. 4.3.6

³⁵ *Purgatory*, 6, vv. 88, 89

placing them directly under imperial protection.³⁶ The charter contained the emperor's wish that all men have access to 'wisdom' without having to go abroad to find it. To prevent his subjects from entertaining illusions about their say in the matter, as well as to help the nascent institution get started, Frederick ordained that no Sicilian subject study elsewhere, and those already at other institutions were to transfer their studies to Naples immediately.³⁷

Frederick's administration was organized into a rigidly hierarchical structure at the top of which he sat in absolute authority. Jurists were present in positions of responsibility at virtually every administrative level of Frederick's government. Already during the reign of Frederick's predecessors, the whole Kingdom of Sicily was divided into zones called *justitiae* (jurisdictional regions), each with its own officer trained in law. Relying upon these men to solidify his control, Frederick maintained a highly centralized secular government.³⁸ Forming the base of the hierarchical pyramid were the *Provincial Justiciars*, each one responsible for administering a particular *justitia*. Even on this relatively low office the emperor's influence was strong and focused on preventing the undue accumulation of power outside the imperial court. These men were appointed for relatively short terms, and were heavily regulated to prevent them from using their positions for profiteering. They were forbidden from owning property in their *justitia*, from marrying, from becoming betrothed while in office.

³⁶ Kantorowicz, Ernst H. *Frederick the Second 1194-1250*. New York: Frederick Ungar Publishing Co. 1957, 133.

³⁷ Kantorowicz, Ernst H. *Frederick the Second 1194-1250*. New York: Frederick Ungar Publishing Co. 1957, 134.

³⁸ Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. Oxford University Press, 1972, 256.

Moving up the pyramid of authority, the next office was that of the *Master Justiciar*, of which only two existed in the kingdom at any time. Each governed one of the two main subdivisions of the Kingdom of Sicily. Their day-to-day responsibilities consisted of making known imperial decrees throughout the provinces, holding court on regularly assigned days, and taking cognizance of all serious offences involving persons of rank, such as barons and counts. They held appellate jurisdiction over the *Provincial Justiciars*, and represented the Emperor in all matters other than treason.³⁹ Finally, sitting above the *Master Justiciars*, and just below the Emperor himself, was the High Court judge of the Imperial Court (*judex magnae curiae*). The position, previously a mobile office, became fixed at the *Curia Regis* in 1239. Pier della Vigna, himself a jurist who had studied at the University/Studium of Bologna, held this post from 1225-1247.

Investigating Dante's knowledge of jurists beyond the stereotypes common in his era necessarily raises the question of how familiar he actually was with their activities beyond their negative reputation. In addition, we must also address the manner in which Dante knew the law, since he almost certainly was not a professional lawyer.⁴⁰ He does, however, demonstrate a familiarity with juridical studies at numerous points in his various works, citing and paraphrasing passages from the juridical texts in use by contemporary law students and practitioners; despite this familiarity, he probably did not study the law formally.

³⁹ Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. (Oxford University Press, 1972), 256.

⁴⁰ Edward Peters, "The Frowning Pages: Scythians, Garamantes, Florentines, and the Two Laws," in *The "Divine Comedy" and the Encyclopedia of Arts and Sciences*. Ed. by Di Scipio, G. and Scaglione, A. (Amsterdam and Philadelphia: John Benjamins Publishing Company 1988), 285-314.

As Edward Peters has shown, his perspectives on legal theory often ring amateurish and idiosyncratic and do not always reflect mainstream thinking of professional lawyers.⁴¹

Richard Kay's masterful essay, "Roman Law in Dante's *Monarchia*," shows that Dante did indeed know the *Digest*, as is evidenced by key passages where he cites it competently.⁴² Furthermore, these citations show that Dante had access to editions with the *Glossa Accursiana*, the interpretation recognized as the standard by jurists after c. 1220, as he cited its language and not that of the *Digest* itself on at least one occasion. Kay also provides five key pieces of evidence for Dante's familiarity with the *Corpus Iuris Civilis*. Most of these come in the form of specific references to that work in the *Convivio*. In the next paragraphs, I examine the most pertinent of the instances in detail, since my aim is to show not just (as Kay does) familiarity, but to argue that these references form part of a developing critique of jurists begun by Dante in the first decade of the Trecento and culminating in the caustic comments found in the *Monarchia*.

In book four of the *Convivio*, Dante writes, "the *Infortiatum*⁴³ says, 'Soundness of mind, not of body, is required of one who makes a will at the time

⁴¹ Richard Kay, "Roman Law in Dante's *Monarchia*," In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 268.

⁴² Richard Kay, "Roman Law in Dante's *Monarchia*," In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 269.

⁴³ The fifty books of the *Digest* were divided into three parts: the *Digestum vetus*, containing the first 24 books; the *Digestum infortiatum*, containing books 25-38; and the *Digestum novum*, containing books 39-50.

that the will is made.”⁴⁴ Kay points out that this citation is taken from an obscure passage in Roman law, a passage so deeply buried in the dense collection of laws that modern scholars still have trouble locating it, even with citation.⁴⁵ Dante translates the passage accurately. He cites the passage to provide authority for his assertion that a witness must be of sound mind, if not of sound body. As to why Dante would choose to use Roman law – especially a selection so obscure – to support such a reasonable statement, Kay offers no hypothesis, merely that his use suggests that Dante had the law ready at hand for citation. Nevertheless, for our purposes, Dante’s decision to use such an obscure passage indicates that his knowledge of the *Digest* was both intimate and extensive.

Even in the critical question of language, Dante again resorts to citation of the *Corpus*. In the first book of the *Convivio*, he addresses the important issue of why he has chosen to write his philosophical treatise in the vernacular Tuscan, rather than Latin. To support his own reasoning, Dante again cites the *Digest*:

Però si mosse la Ragione a comandare che l’uomo avesse diligente riguardo ad entrare nel nuovo cammino, dicendo che ‘ne lo statuire le nuove cose evidente ragione dee essere quella che partire ne faccia da quello che lungamente è usato.’⁴⁶

(*Conv.* 1.10.3)

Therefore Reason was moved to command that a man should pay diligent attention when entering on a new road, saying that ‘in establishing new

⁴⁴ *Conv.* 4.15.17: “Lo Inforzato dice: ‘In colui che fa testamento, di quel tempo nel quale lo testamento fa, sanitate di mente, non di corpo, e’ domandare.’” *Dig.* 28.1.2: “In eo qui testatur eius temporis, quo testamentum facit, integritas mentis, non corporis sanitas exigenda est.”

⁴⁵ Richard Kay, “Roman Law in Dante’s Monarchia,” In *Law in Medieval Life and Thought*. Ed. by Edward B. King and Susan J. Ridyard, Sewanee, Tennessee: The Press of the University of the South (Sewanee Mediaeval Studies, Volume 5), 261.

⁴⁶ *Dig.* 1.4.2: “In rebus nouis constituendis euidens esse utilitas debet, ut recedatur ab eo iure, quo diu aequum uisum est.”

things, there ought to be an evident reason that causes one to depart from that which has long been the custom.'

Dante's point is as evident as it is appropriate, but he nevertheless feels it necessary to shore it up with a pertinent citation from the *Digest*. This passage is remarkable because Dante is essentially demonstrating the legitimacy of his linguistic strategy in large part through reference to a precept of Roman law.

The final example that I will reproduce here is particular because it had been overlooked by scholarship for a long time due to an error in editing. When writing about the relationship between a father and his children, Dante says:

“dice e comanda la Legge, che a ciò provvede, che la persona del padre sempre santa e onesta dee apparere a li suoi figli.”

(*Conv.* 4.24.15)

“the law [la legge] that provides for this says and commands that ‘the person of the father ought always to appear sacred and honorable to his sons.’”⁴⁷

The confusion derives from Dante's use of the term 'legge'. In this passage, it reflects an individual precept from the *Digest*, not 'Roman Law' in the general sense, which he generally refers to as 'Ratio scripta' or 'Ragione.' Elsewhere, when Dante discusses more than one law, he uses the plural 'leggi.'⁴⁸ Therefore,

⁴⁷ *Dig.* 37.15.9: “Liberto et filio semper honesta et sancta persona patris ac patroni uideri debet.”

⁴⁸ *Conv.* 4.24.14, referring to *Dig.* 1.3.33 and 35. Cited by Richard Kay.

Dante is not talking generally about the whole *Corpus* when he speaks of the 'law,' rather he is specifically citing one of the precepts.⁴⁹

What these three examples tell us about Dante's relation to the law in the *Convivio* is that already at this early stage of his writing, he regarded Justinian's Digest not just as a legal document, but especially as an authoritative text to be respected. His attitude toward the written Roman laws has surpassed mere admiration, and he cites them as an *auctoritas* much like he does other religious or philosophical texts. Dante's use of legal texts in the way one would use a religious text, would be interesting on its own because of the moral and ethical direction he finds there; however, in the context of his treatment of jurists, it is especially remarkable because he is essentially appropriating its authority out from underneath them. That is, he uses it as a component in his rebuke of the very professionals whose expertise reintroduced the Roman law back into Italy in the 12th century, and whose assiduous glossing of that text gave him the means by which to study it.

Moving further back in time, we see that Dante was treating the *Corpus* as an *auctoritas* even during the earliest phase of his writing. Historians speculate that Dante cited the *Institutes* as early as during his composition of the *Vita Nuova*. Bruno Nardi argues convincingly that Dante was familiar with the Justinian legal texts early on in his poetic activities. In the *Vita Nuova* 13, when discussing the name of *Amor*, Dante writes,

⁴⁹ Cancelli, *Enc. dant.*, II, 476.

...lo nome d'Amore è sì dolce a udire, che impossibile mi pare che la sua propria operazione sia ne le più cose altro che dolce, con ciò sia cosa che li nomi sèguitino le nominate cose, sì come è scritto: *Nomina sunt consequentia rerum.*

(*Vita Nuova*, 13, 4)

...the name of Love is so sweet to hear that it seems impossible to me that the effect itself should be in most things other than sweet, since, as it is written, names are the consequences of the things they name: *Nomina sunt consequentia rerum.*

Nardi points out that Dante cites the Latin phrase, saying, “as is written,” implying an authoritative source. The phrase is found repeatedly in the law books of the time, suggesting that Dante likely saw it there.⁵⁰ Nardi traces the likely source of this citation to the *Institutes*, II, 7, where it is written,

Sed tamen nomen inconueniens remanebat, cum ante nuptias autem tale accipiebat incrementum. Sed nos plenissimo fini tradere sanctiones cupientes, et consequentia nomina rebus esse...

(*Instit.* II, 7.)

The name [gift before marriage] was, however, still retained, though now inappropriate, because the increase was made to it after the marriage. We, however, in our desire to perfect the law, and to make names suit the things which they are used to denote...

Dante’s use of a phrase so standard in the legal literature of the *Corpus* further demonstrates Dante’s knowledge of it.⁵¹

⁵⁰ Nardi, Bruno. *Dante e la cultura medievale*. Bari: Giuseppe Laterza & Figli, 1949, 223.

⁵¹ The phrase was still a staple of the legal profession in the 14th century. Cino da Pistoia used it in his *Lectura Super Codice* (c. 1312): *No. quod nomina debent esse consequentia rebus.* *Lectura V. tit. 3, lex fol. 291, col. 2, n.2*

As the above examples show, Dante was intimately knowledgeable of Roman law, despite his lack of professional training. Still, his approach to law via the *Corpus* and the *Glossa* meant that he engaged with the same textual authorities in a manner similar to that of the jurists, at least superficially. Just as Dante came to know the law through the Justinian *Corpus*, all jurists during his time studied it in their formation. In fact, central to the development of juridical science is their relationship to one part of the *Corpus* in particular, the *Digest* of Justinian, a document containing legal writings amassed by the Roman emperor in the sixth century. The *Digest* gave a sense of a true *renovatio* to the jurists who studied it because it was an integral, whole text that taught students, as James Brundage writes, “to frame sophisticated arguments, how to manipulate legal categories, how to analyze problems, and how to find solutions to them.”⁵² But the *Digest*’s importance to medieval Italian culture was even greater than this. During the 11th and 12th centuries, it proved to be the key text for the legal revolution:

The *Digest* was the *only* book in which medieval students could obtain a knowledge of Roman Law *at its best*. The *Institutes* were a slight textbook. The *Code* is made up of detached ordinances. The *Novels* are not merely detached ordinances, but penned in a pompous, verbose style, likely to do as much harm as good. It seems to me that but for the *Digest* Roman law could never have conquered the world... Men would never have become enthusiastic students of the other books.⁵³

⁵² Brundage, James A. *The Medieval Origins of the Legal Profession Canonists, Civilians, and Courts*. New York: University Of Chicago P, 2008. p. 78

⁵³ Letter to Hastings Rashdall, 5 June 1892, in Letters of Frederic William Maitland 2:37. But cf. Brundage, *The Medieval Origins of the Legal Profession*, 78.

Few specific details from the earliest period are available to us and theories about the origin of the recovered law books origin vary, though one anecdote centers on an 11th century instructor at the *studium* of Bologna called Irnerius. Details of Irnerius's life are sparse and difficult to confirm, though historians estimate his lifespan to have been between c. 1055 and c. 1130. We do not know the extent of Irnerius's involvement in the founding of juridical studies at Bologna,⁵⁴ but the historical version has it that he was already present at the university as a teacher of liberal arts when he began to specialize in the rhetoric of juridical texts. Legal texts made up a significant part of his curriculum, and Irnerius grew fascinated by their language and rhetoric. It follows that he came upon a partial copy of Justinian's *Digest*, was captivated by it, and began commenting on it through short glosses bearing his initials. Though he left no single coherent work, Irnerius's glosses reveal a figure with a thorough command of the Justinian *Digest*, boasting *similia*, and *contraria* that connect the glossed passages and span nearly the entire work.⁵⁵ These glosses were most likely intended for use in his lectures, where Irnerius established a dedicated following of students who eagerly adopted his techniques of textual analysis.

Irnerius's four most famous pupils, the so-called *Four Doctors* - Bulgarus de Bulgarinis, Martinus Gosia, Hugo da Porta Ravennate, and Jacobus - are the earliest systematic teachers of law at Bologna about whose teaching we have

⁵⁴ James A. Brundage reminds us that there are but a handful of medieval sources to attest to the traditional version of Irnerius's career. Furthermore, none of these was written until more than a century after the events allegedly transpired. The chief source of this version of Irnerius's involvement with the legal revival comes from Odofredus's (d. 1265) *Lectura*.

⁵⁵ Excluding the *Tres Libri*.

firm information from contemporary sources.⁵⁶ The Four Doctors became internationally known as authoritative teachers of Roman law during the 1130s and 1140s, and all went on to found their own schools after studying with Irnerius. The fame and success of these scholars soon solidified juridical studies' place at the studium, attracting to Bologna students from all of Europe seeking a legal education.⁵⁷

Irnerius and his followers formed the first recognizable school of medieval jurists, the Glossators, so-named for their technique of making notes in the Justinian texts. Borrowed from the practice of medical and theological scholars, glosses were clarifications that jurists assigned to the text in order to facilitate readings by substituting a term or phrase with another more familiar word or construction. The master could insert them either between the lines of the text (*interlinear*) or in the margins (*marginal*) of the page, depending on his needs.

The practice of glossing was widespread in all disciplines that involved the study of texts. The Glossators were studying a text, moreover, that had been written with the understanding that it would be glossed. Contained within the earliest pages of the *Digest* is a message from Justinian himself, forbidding large alterations of the text or additions to it by those studying it,

Nostram autem consummationem, quae a vobis deo adnuente componetur, digestorum vel pandectarum nomen habere sancimus, nullis iuris peritis in posterum audentibus commentarios illi adplicare et verbositate sua supra dicti codicis compendium confundere:

⁵⁶ Brundage, James A. *The Medieval Origins of the Legal Profession*. The University of Chicago Press, 2008, 86.

⁵⁷ James A. Brundage cites as an example William of Tyre (b. ca. 1130, d. 1186), who travelled to the West from the Crusader States in the mid 1140's to study law at Bologna. (Brundage, 85)

quemadmodum et in antiquioribus temporibus factum est, cum per contrarias interpretantium sententias totum ius paene conturbatum est sed sufficiat per indices tantummodo et titulorum subtilitatem quae paratitla nuncupantur quaedam admonitoria eius facere, nullo ex interpretatione eorum vitio oriundo.”⁵⁸

Constitutio Deo Auctore de Conceptione Digestorum, 12

We command that our complete work, which is to be composed by you with God's approval, is to bear the name of Digest or Encyclopaedia. No skilled lawyers are to presume in the future to supply commentaries thereon and confuse with their own verbosity the brevity of the aforesaid work, in the way that was done in former times, by when the conflicting opinions of expositors the whole of the law was virtually thrown into confusion. Let it suffice to make some reminders by indexes alone and simple headings, in such a way that no offense arises through interpretation.

In a later passage, the emperor gives some ground and writes that a legal scholar may write brief explanatory notes, known as ‘paratitla.’ But even in this pronouncement, Justinian is concerned not to let subsequent interpretation of his laws go too far,

Hoc autem quod et ab initio nobis visum est, cum hoc opus fieri deo adnuente mandabamus, tempestivum nobis videtur et in praesenti sancire, ut nemo neque eorum, qui in praesenti iuris peritiam habent, nec qui postea fuerint audeat commentarios isdem legibus adnectere: nisi tantum si velit eas in Graecam vocem transformare sub eodem ordine eaque consequentia, sub qua voces Romanae positae sunt (hoc quod Graeci *kata poda* dicunt), et si qui forsitan per titulorum subtilitatem adnotare maluerint et ea quae paratitla nuncupantur componere. Alias autem legum interpretationes, immo magis perversiones eos iactare non concedimus, ne verboritas eorum aliquid legibus nostris adferat ex confusione dedecus.

Constitutio Tanta de Confirmatione Digestorum, 21

Now there is one thing which we decided from the outset, when with divine approval we commissioned the execution of this work, and it seems opportune to us to ordain it now also: that no one, of those who are skilled in the law at the present day or shall be hereafter, may dare to append any commentary to these laws, save only insofar as he may wish to

⁵⁸. *The Digest of Justinian*. Philadelphia: University of Pennsylvania Press, 1985, lx.

translate them into the Greek language in the same order and sequence as those in which the Roman words are written (kata poda, as the Greeks call it); and if perhaps he prefers to make notes on difficulties in certain passages, he may also compose what are called paratitla.”⁵⁹ But we do not permit them to put forward other interpretations – or rather, perversions – of the laws, for fear lest their verbosity may cause such confusion in our legislation as to bring some discredit upon it.

Thus the Glossators were presented with specific instructions and the limited permission necessary for them to add their own notation to the *Digest*. The boundaries of this interpretative latitude became a matter of doctrinal conflict in the centuries after Irnerius.

Central to the practice of glossing was the *lectura*, the pedagogic method whereby an instructor and his class read passages from the *Digest* together. As such, the glosses were intended for use in the classroom, both by the instructor and by his students, a fact that helps us understand key customs associated with them.⁶⁰ The first reading involved an explanation of key terms, with the professor interpreting for his students both professional lexicon, as well as other difficult Latin phrases.⁶¹ Next the master situated the passage being studied into the larger context of the work, referring to other passages that either confirmed it, or seemed to contradict it.⁶² The master used particular glosses, called *similia* and *contraria*, to direct himself to these passages. Students also made use of glosses, copying those of the master as well as their own into the text book to

⁵⁹ . *The Digest of Justinian*. Philadelphia: University of Pennsylvania Press, 1985, lxi.

⁶⁰ Calasso, Francesco. *Medio evo del diritto*. Vol. 1. Varese: Multa Paucis, 1954, 528.

⁶¹ The language of the *Digest*, a 6th century Latin, could present difficulty for 11th and 12th century students who not only had to contend with the interceding developments of the language, but also lived in cultural and political circumstances substantially different from those in which the authors of the works had composed them.

⁶² Ascheri, M. *I diritti del medioevo italiano*. Rome: Carocchi editore, 2000, 209-210.

help them with difficult passages. The master's name was added at the end of the gloss as attribution (i.e. "secundum Martinum"). Glosses made by the master himself were marked with his initials, and called a *glossa redacta*.

The Glossators regularly worked with forms other than the gloss, though it remained their primary exegetical tool. I list below those most pertinent to this study. My aim in doing so is to show that the medieval legal profession grew out of its interaction with the written law. While Dante's early portrayal of the jurists (that is, in the *Convivio*) fails to take into account their relationship with the law, attacking them instead primarily for what he perceives as their unethical use of intellect, many judicial theoreticians involved themselves with serious philosophical study of the law, and always with the *Corpus* as their foundation.

As with most fields of study, certain conventions became accepted as standard practice for jurists as the years passed. These often grew out of the resolutions of disputes. Legal scholars by no means always agreed with one another about how to interpret the juridical principles contained in the *Corpus*. In the case of a *disputatio*, arguments were made along the standard norms of rhetoric: *ab auctoritate*, *a contrario*, *a simili*, *ab absurdo*, etc. The results of these disputes were formally recognized as the *regula* in the profession, and were either inserted into the margins of the concluding section of the *Digest*, appropriately entitled *De regulis iuris*, or were assembled and put into collections called *Brocarda*.⁶³ The latter's use in juridical education became widespread by the end of the 12th century, and they were regarded as demonstrating a highly

⁶³ Ascheri, M. *I diritti del medioevo italiano*. Rome: Carocchi editore, 2000, 217-8.

sophisticated argumentation; at least one highly prominent juridical master of the 13th century, Pillio da Medicina (1169-1207), even used them as primary teaching materials, in place of the glosses.⁶⁴

Looking to the methodologies of theologians and philosophers, the Glossators adopted the genre of the *summa*. As in other disciplines, the juridical *summae* were systematic and thorough treatments of their subject matter, in this case, Justinian's *Codex*. The composition of a *summa* was recognized as requiring an extraordinary level of mastery of the subject, and nearly all of the masters wrote one.⁶⁵ Of the various *summae* written by the Glossators, one in particular, Azo's *Summa codicis* of the early 13th century, achieved an enormous degree of success, and soon overshadowed all others in authority and use.⁶⁶

But still, the glosses remained the most frequently employed and most widely recognized tool of the Glossators. In addition to clarifying the language of the text, the glosses were a tool that permitted the jurists to proceed with their studies via syllogisms, arguments, and, occasionally, through the use of philosophical reasoning.⁶⁷ The ultimate objective of these studies had much to do with the particular way that the jurists of the 12th and 13th centuries perceived the Justinian *Corpus*. Indeed, two particular types of glosses, called *similia* and *contraria* were fundamental to the jurists' efforts to reorganize the contents in the *Digest* into a singular, unified expression. Without actually having to reorder the

⁶⁴ Ascheri, M. *I diritti del medioevo italiano*. Rome: Carocchi editore, 2000, 21.

⁶⁵ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 538.

⁶⁶ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 536.

⁶⁷ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 534.

pagination (which had, after all, been decided by no less an authority than Justinian himself), these textual markers directed the reader to other portions of the text that were pertinent to the topic in the passage being glossed. Though *similia* indicated arguments affirming that being studied, it does not follow that *contraria* pointed to contradictions; to the mind of the Glossator, there were no contradictions within the *Digest*. Indeed, the Glossator's vision of the Roman legal texts is striking because for them, it was a single body of knowledge that constituted a unified *Corpus*,⁶⁸ despite being divided into multiple works.

Modern scholars know that even the historical *Digest*, as it existed before the restructuring efforts of the Glossators, is imperfect and lacking in organization. It is a mosaic full of contradictions, riddled with repetitive statements and redundancies.⁶⁹ Justinian's work was, after all, a compilation of the work of 39 different authors. The medieval jurists, however, focused much of their work on the smoothing out and reconciliation of the inconsistencies in the *Digest*. Their reverence for the written laws was such that by the first half of the 13th century they had formed a sort of cult centered on the compilation of the Justinian *Corpus*. Bordering on fetishism, they considered the writings as "eterno, sacro, intangibile e autorevole," in the words of Manlio Bellomo.⁷⁰

⁶⁸ Bellomo, M. *Medioevo edito e inedito. v.II: Scienza del diritto e società medievale*. Il cigno Galileo Galilei. (Rome: 1993), 39.

⁶⁹ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 531.

⁷⁰ Bellomo, M. *Medioevo edito e inedito v.II: Scienza del diritto e società medievale*. Il cigno Galileo Galilei. (Rome: 1993), 39.

Yet, the Glossator's faith in the *Digest's* unity of message is understandable; after all, Justinian himself had insisted on this type of vision when he wrote in the *Confirmation* at the early part of the work,

As for any contradiction occurring in this book, none such has found a place for itself, and none will be discovered by anyone who reflects acutely upon modes of diversity. On the contrary, something will be found, even if obscurely expressed, which removes the objection of inconsistency, gives the matter a different aspect, and passes outside the limits of discrepancy.⁷¹

With thousands of them interwoven throughout the text, these glosses ultimately served as a superimposed exoskeleton that conformed to the unifying vision of the *Digest* held by the medieval scholars who studied it. The result of this was an interlinked text that the jurists then studied as a whole in an attempt to find a single philosophical theory of justice.⁷²

Still, a certain willingness to suspend criticism is required for any student of the *Digest* to overlook certain glaring contradictions. Both civil jurists and Dante were forced to read selectively, for example, when it came to the question of the source of the emperor's authority: the overall tone of the *Digest* favors a monarchical form of government, but includes conflicting statements. As the compiled work of dozens of jurists writing between the second and the sixth centuries C.E., the *Digest* contained both imperial laws and laws whose principles were ultimately derived from Rome's republican era (even though the Republic had ended around 40 BCE).⁷³ Justinian's insistence that all laws be

⁷¹ *The Digest of Justinian*. Philadelphia: University of Pennsylvania Press, 1985, lix.

⁷² Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 531.

⁷³ Canning, Joseph. *History of medieval political thought, 300-1450*. London: Routledge, 1996, 6.

granted equal weight meant that the *Digest* could often be used to argue both sides of a dispute. Such was the case with the question of whether the emperor's authority came directly from God, or if it originated with the people. Weakening Justinian's (and Dante's) insistence that Imperial power came from the Godhead are two key passages in the *Digest*, and one in the *Institutes*.

Thus, in D. 1.2.2, Pomponius offers a sketch of the Republic period, how the Roman people came to establish their own laws, an example notable for its lack of mention of the emperor. More explicitly, Pomponius's definition of civil law depicts ways in which laws can be enacted without the necessary participation of the emperor:

lus autem civile est, quod ex legibus, plebis scitis, senatus consultis, decretis principum, auctoritate prudentium venit. (D.1.1.7)

The civil law is the law which is derived from statutes, plebiscites, decrees of the senate, enactments of the emperors, or the authority of those learned in the law.

Proponents of papal authority, understandably, seized upon such discrepancies. The Glossators sought to harmonize them as a way of preserving the law's ultimate authority as a coherent restrainer of human excesses and desires.

Despite their dedication to understanding the *Digest*, even the Glossators had their excesses. In the first decades of the Duecento, they faced their first real crisis of methodology: an excess of glosses that threatened to obscure the text of

the Justinian *Corpus* itself. The accumulated glosses of more than two centuries of intense study by jurists were steadily replacing the *Digest* as the source of authority for the students, the recorded interpretations of the masters assuming an authority that surpassed that of the *Digest* itself. Not only did this lead to a stifling of innovative interpretations, but it also discouraged the students of law from meaningful engagement with the classical text itself.⁷⁴

In this crisis, too, texts played a critical role, in terms of the very real, material codices by which the juridical masters interacted with the written laws. To understand the origin of the crisis in Glossator methodology, we must look at the economic reality of the masters at the university of Bologna - those jurists most actively engaged with the interpretation of the Justinian *Corpus*, as well as most responsible for the education and formation of Western Europe's future juridical class.

The legal texts in which the glosses were accumulating tended to remain in circulation for generations after their creation because the demand for them was consistently high and the cost of producing a new text was considerable.⁷⁵ The expense of law books impacted the jurist from the moment his studies began. At the university, acquiring these texts posed a serious financial hardship for any but the wealthiest of students attending courses, and promoted the creation of a market of second and third-hand textbooks. Records show that from 1265-1350 a juridical textbook cost on average thirty-five Bolognese *lire*, while

⁷⁴ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 536.

⁷⁵ Bellomo, Manlio. *Saggio sull'universtita nell'eta del diritto comune*. Catania: Giannotta, 1979, 117.

during the same period a house in the city could be purchased for as little as 30 *lire*. To successfully complete their coursework, students were required to have eight or nine of these volumes, resulting in a truly staggering cost that drastically increased the expense of a legal education. The prices were so exaggerated that only very wealthy students could purchase whole law books. Less well-off students copied (or paid a scribe to copy) the textbooks, renting from stationers several sheets at a time, called *peciae*. It took roughly a year of steady copying to produce all of the required texts.

Lecturers at the studium also relied heavily on second-hand codices, and in this way the glosses of each successive owner remained in circulation physically as well as intellectually. Each new owner added his glosses, marking his comments with his initials to denote his original content. The accumulation of generations of glosses spread to fill all free space on the page, often dwarfing the original Justinian text by comparison. Furthermore, the continuous presence of these glosses induced each new master into digressions so as not to repeat what his predecessors had said. Of course, use by several generations, the volume of glosses in any given copy of the *Digest* was staggering, and the pressure to come up with innovative interpretations of the source material resulted in continually novel readings, often of dubious quality. By the beginning of the 13th century, masters were leading their students far from the original text of the

Digest,⁷⁶ and their excursions further isolated that text's authority in favor of the glosses.

The problem of the obfuscation of the text was not unknown to the later Glossators. In fact, two of the most prominent masters of the early 13th century, Azo and Accursius, specifically addressed the issue in their works. Azo of Bologna noted this problem in the introduction to his *Summa codicis*:⁷⁷

*quia saepe accidere consuevit quod per glossas textus notitia obtenebretur: et dum glossa ad glossum vel ad textus transmittitur... studiosus auditor desiderabili privatur effectu: et cum ad erudiendum super dubitabilibus patrocinium glossarum requirit, lumen reperit a tergo: unde in erroris cadit saepissime labyrinthum.*⁷⁸

Because it happened often that the text was obscured by the glosses: and while from gloss to gloss or text is transmitted, the studious pupil deprived of the desirable effect; and since the teacher needs the origin of the glosses, he sometimes scratches it off: from which he falls very often into a labyrinth of errors.

He hoped to remedy this problem with his work:

*quoniam omnes principales, et secundariae... particulae de iuris corpore processerunt,*⁷⁹

seeing that all principals, and second-rate... little bits of the body of law may proceed.

The solution to this glut of glosses came from Azo's pupil, Francesco Accursius, who created an accepted singular, authoritative gloss for the Justinian *Digest*,

⁷⁶ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 536.

⁷⁷ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 536.

⁷⁸ Azo *Summa Cod.*, proem n. 2.

⁷⁹ Azo *Summa Cod.*, proem n. 2.

called the *Glossa Accursiana* or the *Glossa Ordinaria*. Having a standardized set of glosses reduced the pressure on the masters to add their own original marginalia, and thereby alleviated the problem,⁸⁰ and effectively solved the Glossators' methodological crisis. Accursius's undertaking was a recognized masterpiece of juridical writing that dominated Roman law for centuries after its publication. It was almost immediately accepted as the authoritative, singular expression of juridical interpretation of the *Digest*, and came to be known in most texts composed after its publication simply as "The Gloss."

The *Glossa Accursiana* also appears to be one of the primary means by which Dante knew the Justinian *Corpus*. In the fourth book of the *Convivio*, he cites a specific precept:

E quivi si vuole sapere che, sì come scritto è in Ragione e per regola di Ragione si tiene, quelle cose che per sè sono manifeste non [han] mestiere di pruova... (*Conv.* 4.19.4)

And here one needs to know that those things that are manifest by themselves have no need of proof, just as is written in Reason and is manifested by a rule of Reason.

Dante writes that this maxim appears in the *Digest*, but the form he records is not the original; it is taken from the Accursian gloss that accompanies the passage.⁸¹

⁸⁰ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 543.

⁸¹ *Dig.* 2.8.5.1, gl. ad verbum "eidentissime." "Notatur quod quae manifesta sunt, idest notoria, probatione non indigent." Richard Kay notes that "Variants of this gloss occur at *Dig.* 19.1.11.12

Moreover, Dante's method of citation of another law suggests that he had referenced a copy of the *Digest* accompanied by Accursian gloss. Citing Celsus's definition of law, Dante writes:

“è scritto nel principio del *Vecchio Digesto*: “la ragione scritta e' arte di bene e d'equitate',” (*Conv.* 4.9.8)

“at the beginning of the *Old Digest* it is written, ‘law [*la ragione scritta*] is the art of goodness and fairness’,”

Dante took and translated the passage from the very first book of the *Digest*,⁸² which he refers to as “*Vecchio Digesto*”, a term used to designate the first of three volumes in which any copy of the *Digest* accompanied by an ordinary gloss would have been divided. Called the *Digestum vetus*, *Infortiatum*, and *Digestum novum*, respectively, Dante's citation of the first by name is telling in two ways. First, it suggests that Dante had little or no formal training as a jurist because professional jurists almost never used these three terms when citing the *Digest*.⁸³ Second, it tells us that Dante was referencing a copy of the *Digest* that was accompanied by an ordinary gloss.⁸⁴

ad v. “quia manifestum fuit,” at *Dig.* 33.4.1.8 ad v. “demonstratae,” and at *Cod.* 7.62.11 ad vv. “si sub iusta nominatione.”

⁸² *Dig.* 1.1.1.pr.: “ius est ars boni et aequi.”

⁸³ Hermann Kantorowicz stated that the threefold division of the *Digest* was used in juristic citations “nur ganz ausnahmsweise”: “Die Allegationen im spätern Mittelalter,” *Archiv für Urkundenforschung* 13 (1933) 13-29, at 19. Cf. M. Reulos, *Comment transcrire et interpreter les References juridiques*, *Etudes de philologie et d'histoire* 40 (Geneva, 1985), 18-19.

⁸⁴ Richard Kay, *Roman Law in Dante's Monarchia*, in King, Edward B. *Law in Medieval Life and Thought (Law in Medieval Life & Thought)*. New York: University of the South, 1990, 262, 263.

Assuming that Dante did indeed have at his disposal an edition of the *Digest* with the Accursian *Gloss*, he could also reference the very finest glosses of the whole of the Glossator tradition. Far more than a simple matter of accumulating material, Accursius's project had required him to sift through thousands of glosses, eventually selecting 96,000 of the best of them for insertion into his text. The creation of the *Glossa ordinaria* was a project of mammoth proportions that demanded the skills of a jurist thoroughly familiar with both the original Justinian *Corpus*, as well as the whole of the Glossator tradition. It also ironically helped speed the twilight of the Glossator school, capping more than two⁸⁵ centuries of feverish creative interpretation of the Justinian *Digest*. With a single, standardized set of glosses in hand, the masters at the studium were far less inclined to further gloss the text. Innovations in juridical science would continue, to be sure, but would have to come in a new form of analysis.

Known to historians as the *post-accursians*, legal scholars in the decades following Accursius generally produced works of practical use for legal professionals.⁸⁶ An important example is worth noting.

When Dante next addresses jurists by name, in the *Monarchia*, his criticism has changed character from the earlier *Convivio*. There, his attacks had

⁸⁵ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 545.

⁸⁶ The jurist Rolandinus de Passageriis (1234-1300) completed a new formulary for by reordering and ordering the templates used in the notary profession. It was a much-needed innovation; despite the development of the juridical science taking place all around it, the profession of the notary had seen relatively little innovation in its practice or theory. By the late 13th century the formularies used by notaries still remained largely unaltered from their ancient forms, employing a language and reflecting a reasoning that predated even Irnerius. Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 545.

questioned the purity of their motives for studying the law. Now, his approach is qualitatively different: he reprimands them for their misinterpretation of the laws,

Videant nunc iuriste presumptuosi quantum infra sint ab illa specula
rationis unde humana mens hec principia speculatur, et sileant secundum
sensus legis consilium et iudicium exhibere contenti.

Monarchia II, ix

Now let the presumptuous jurists see just how far they are below that watch-tower of reason from which the human mind contemplates these principles, and let them be silent and be satisfied to give counsel and judgment in accordance with the sense of law.

What is most remarkable about Dante's attack is its decidedly contemporary aspect. He is not reprimanding those jurists of the preceding generations, those who provided the glosses he had used when citing the *Digest* in the *Convivio*. His vitriol is instead directed at a new breed of legal professionals, men of alacrity interpreting laws *now*, who appear no longer to be relying on the Accursian *Gloss* as resolutely as they once had.

This change in the nature of Dante's attacks is more than a question of intensity. It shows that Dante's assessment of jurists has shifted in terms between the first decade of the Trecento, when he was writing the *Convivio*, and final years of his life, when he composed the *Monarchia*. Something significant must have occurred in those intervening years to prompt him to such a shift. That something, I believe, was Cino da Pistoia.

Chapter 2. *Language, Legal Language, and Society*

Habemus optimum testem confitentem reum.
(Legal Maxim)

Whoever commits a fraud is guilty not only of the particular injury to him who he deceives, but of the diminution of that confidence which constitutes not only the ease but the existence of society.
(Samuel Johnson, *Rambler* #79)

As we saw in the previous chapter, studies of Dante and the law have most frequently focused (understandably) on specific places in the dantean corpus where either Justinian or his texts are mentioned or cited. In the case of the *Divine Comedy*, however, such an approach ignores the fundamental question of how Dante's narration of souls damned or saved relies upon judicial theory and procedure for its form and content. This chapter, therefore, seeks to explore this very question by analyzing canto 13 of the *Inferno* in light of three critical legal conventions dear to Dante: torture, confession, and *infamia*. Each of these enjoyed an elevated status as a procedure for ascertaining the guilt or innocence of the accused, and each plays a conspicuous, even central role in Dante's interactions with the already guilty and already punished souls he encounters. As such, they take on an institutional validity guaranteed by their central place in the most formal of all procedures to determine the truth, the legal trial.

Dante introduces into the *Commedia* the question of speech and the impact that its corruption has on society when Virgil and the pilgrim encounter Nimrod among the giants in canto 31 of the *Inferno*. As the historical and biblical figure responsible for the shattering of the original, universal language, Nimrod's

presence signals to readers of the *Commedia* that the poem is now confronting a place where the tether between spoken language and reality has become strained, and the result is that communication is broken down. Language and its social function are favorite subjects of Dante's, and he spends considerable time developing his own theoretical model in his minor works. This model becomes central to his crafting of the final cantos of the *Inferno*, for, descending in his journey below Nimrod, Dante foregrounds the very materials from which the *Commedia* is made.

Nowhere is this reliance on judicial conventions clearer than in cantos 13 and 32 of the *Inferno*, where the pilgrim and Virgil encounter Pier delle Vigne and Bocca degli Abati, respectively. I first show how these encounters intentionally mirror one another – how they proceed initially in symmetrical fashion, only to conclude in such a way as to highlight contrasting roles of speech present in each. Specifically, Dante imagines the encounter with Pier in order to provide a positive example of how judicial techniques like torture can produce truthful language and thus justice. The encounter with Bocca, on the other hand, depicts imbalance and injustice, a state resulting from the corrupted language of fraud. Consequently, judicial procedure fails to produce truth in the place farthest removed from God. Taking up these two contrasting scenes, I argue that the unreliability of language Dante depicts in the final four cantos of the *Inferno*, while yet another example of the poet staging a problem in order to present his solution to it, makes the most explicit use of judicial theory in the canticle. The resulting

picture of Dante is as a poet whose relationship with the thinking and practice of contemporary jurists is far more ambivalent than current criticism has been willing to recognize.

Canto 13: A Just Narrative

Canto 13 is ostensibly concerned with portraying the punishment of the suicides, but it also subtly takes up the question of justice and balance through its structure and the course of events that comprise it. Its layout is book-ended by two acts of rectificatory justice; two injurious acts, followed by two acts of reparation that restore the equity lost in the exchange. To achieve this equilibrium, Dante dramatizes Aristotle's concept of justice while simultaneously adopting the use of key elements of the medieval judicial trial, among them the oath, *infamia*, torture, and confession, while presenting the pilgrim and Virgil's exchange with Pier delle Vigne. Having deployed procedural devices approved by the courts of law of the 13th and 14th centuries, Dante makes clear that, at the end of the encounter with Pier, the suicide has received the justice he was denied in life; Pier's *infamia* is lifted by the pilgrim's fulfillment of his promise to convey the fallen *logothete's* self-defense to the world of the living.

In canto 13 of the *Inferno*, we are on the edge of the second sub-circle, about to enter the place of those souls who have turned violent on themselves. Virgil tells the pilgrim that he must observe for himself this place, because it is so fantastic that he could never believe Virgil's description of it without witnessing it

first-hand. The pilgrim looks about and hears terrible cries, but sees no one. Virgil instructs him to break off a little twig from any one of the branches. When the pilgrim does so, the broken stem cries out, asking why he has split him. The branch bleeds and continues to rebuke the pilgrim, who seems afraid. He drops the twig. Virgil intervenes and takes responsibility, explaining that his charge would not have believed him if he had not witnessed the tree's bleeding for himself. Virgil then offers a sort of amends: he tells the bleeding tree that the pilgrim can grant him fame in the living world in exchange for the soul's identity. The tree accepts and identifies itself not by name, but by describing its relationship with the emperor Frederick II, making clear that this is Pier delle Vigne (Petrus de Vineis). Traditional readings of this canto rightly identify the tension that Dante creates between Pier's professed innocence of the political charges he faced in life, and the punishment incurred by the violation of natural and divine law resulting from his suicide.⁸⁷ Dante portrays Pier's suicide, though itself a sinful transgression, as his reaction to the unjust charges leveled at him during his life, and this dense dramatic irony underwrites Pier's role in the *Commedia*.

Rectificatory Justice

Beyond this dramatic tension, the theme of justice exerts a deep influence on the narrative structure of canto 13, and the actions of the principle characters

⁸⁷ Alighieri, D. *The Divine Comedy of Dante Alighieri: Volume 1: Inferno*. Ed. Martinez, R. & Durling, R., Oxford University Press, 1996, 213.

model Aristotelian rectificatory justice. Aristotle outlines two distinct species of justice in the fifth book of the *Nicomachean Ethics*: distributive and rectificatory.⁸⁸ The first has to do with making sure that each person is given his or her due when apportioning any type of goods or reputation. The second is concerned with rectifying injuries inflicted between two or more parties. Justice was a special case for Aristotle, and although included in the *Nicomachean Ethics*, justice is not treated in the same way that the other virtues are. In fact, Aristotle describes it as having a fundamentally different essence.⁸⁹ For Aristotle, the virtue of justice differs from all others because it is *not* an internal state, nor is it a median existing on a plane of degrees between two extreme states of being. One cannot be too little just or too much so; one either is just or is not. In both of its incarnations as distributive and rectificatory, justice instead is a virtue manifested primarily in *actions*, not states of being:

Justice is a mean, not as the other virtues are, but because it is about an intermediate condition, whereas injustice is about extremes. Justice is the virtue in accord with which the just person is said to do what is just in accord with his decision, distributing good things and bad, both between himself and others and between others.

(*NE*, 1134a1-4)

These statements propel a reader to an inevitable conclusion: that justice's singularity rests in the fact that it is manifested in actions between two persons, not just in disposition. That is, it exists as all or nothing, and can be said to exist

⁸⁸ *Nicomachean Ethics*, 1131a10-1132b20

⁸⁹ *Nicomachean Ethics*, 1130a10

primarily in a social setting.⁹⁰ This trait therefore makes it particularly suited to theatrical representations whose characters act it out. In fact, canto 13 immediately presents its readers with a demonstration of an act of rectificatory justice when Virgil has the pilgrim break off one of Pier's branches only to offer him a compensatory award. Put simply, to understand how justice operates in canto 13 we must understand it in Aristotelian terms - in the just *actions* of the pilgrim and his guide, and in the unjust past actions of the damned souls. The interaction with Pier is nothing short of Dante's dramatization of Aristotelian justice in action.

Dante is anxious to establish clearly between whom the justice is being acted out. Keeping with Aristotle's analysis of justice in the *Nicomachean Ethics*, Dante presents Virgil as the protagonist of canto 13, sharply reducing the pilgrim's role and leaving it stripped almost entirely of agency. For Aristotle, motivation is critical for determining whether the person acting is just or unjust,

Again, when a man in violation of the law harms another (otherwise than in retaliation) voluntarily, he acts unjustly, and a voluntary agent is one who knows both the person he is affecting by his action and the instrument he is using...

(NE V, 1138a, 11, 5)

Operating from the same assumptions, Dante has Virgil act in full awareness of the consequences of his actions. As he explains after the fact, Virgil intentionally lured the pilgrim into wounding Pier, knowing full well that the soul within the tree

⁹⁰ Dante breaks with Aristotle, who argues that suicide is only a question of justice with regard to the individual's relationship with the community at large. That is, a person cannot be voluntarily unjust toward himself, and therefore the act of suicide, being the voluntary ending of one's life, is not unjust toward the one committing it. It is, however, an unjust act toward the community, whom it deprives of a functioning member.

would be harmed by the action,⁹¹ thus indisputably making his actions unjust. But Dante is careful to limit this culpability to Virgil. This is, in effect, Virgil's canto; he is made clearly responsible for the course of events about to take place, and thus responsible for making amends to Pier, the injured party. Indeed, the exchange with Pier delle Vigne is almost entirely between him and Virgil. As Giorgio Petrocchi notes, the linguistic contract of the entire canto is between Virgil and Pier,⁹² and critics have long noted that the pilgrim does not speak at all in the canto until verse 82, and then only in that one tercet.

Predicating the pilgrim's action upon the instructions of his master allows Dante to transfer effectively liability to Virgil; the pilgrim does not foresee the result of his action and is therefore not responsible for the injustice. In fact, even before pruning Pier, Dante-narrator signals the pilgrim's lack of understanding of the situation by lapsing into a curious and uncharacteristic subjunctive construction:

Cred'io ch'ei credette ch'io credesse
che tante voci uscisser, tra quei tronchi,
da gente che per noi si nascondesse.
(*Inf. 13, vv. 25-27*)

*My belief is that he believed that I must believe that so many voices,
among those thickets, came forth from people hidden from us.*

⁹¹ *Inf. 13, vv. 50-54*

⁹² *Lectura Dantis: Inferno A Canto-by-Canto Commentary*. New York: University of California, 1999, 179.

The possibility of the pilgrim's complicity in the injurious act that his guide is about to coax him into inflicting on Pier is downplayed by his guess about what Virgil is thinking. Some scholars have commented on this rhetorically twisted tercet, presuming that Dante is here producing a tangled language to mirror the vines in the grove of suicides.⁹³ Others believe it represents the convoluted thinking that the pilgrim is facing as he tries to comprehend the place.⁹⁴ I do not doubt that either of these interpretations contains elements intended by Dante. But Dante's decision to evoke such uncertainty about Virgil and the pilgrim's communication with one another is curious in part because elsewhere in the *Inferno* he makes so many efforts to demonstrate just how in tandem the thinking of the two is.⁹⁵ In this sense, both explanations lack a fundamental component for interpretation: an analysis of the impact of this tercet on how readers perceive the characters. To my reckoning, this uncertainty between the pilgrim and his guide transforms the canto's narrative by redefining their individual responsibility – or lack thereof - for their actions in it. As a result of his actions, Virgil must take responsibility for the wound after Pier cries out. Dante, as the author of the work, is offering us a concise breakdown of the scene, its actors, and their motives. Thus, "Cred'io" casts further doubt on the agency of the pilgrim through the use of subjective words by the narrator. The narrator is, we must remember, acting fundamentally as the pilgrim, though at a point in time after the conclusion of the actions of the poem. Dante, as the author, communicates to his readers that the

⁹³ Cassell, Anthony K. *Dante's fearful art of justice*. Toronto: University of Toronto, 1984, 32.

⁹⁴ Leo Spitzer, "Speech and Language in *Inferno* XIII," *Italica* XIX (1942), 98.

⁹⁵ cfr. *Inf.* 23, vv. 25-30;

pilgrim, even after the event, is uncertain as to his master's motives, and is thus ignorant of the injuries he will shortly inflict.

Returning to the Peripatetic theme of the canto's structure, we see that the wound itself has become the loss in an exchange. By Dante's Aristotelian logic, Virgil thus now owes Pier an amends; as a way of restoring the balance, the Roman poet offers the injured soul restored worldly *fama* via the living pilgrim:

“...ma la cosa incredibile mi fece
indurlo ad ovra ch'a me stesso pesa.
Ma dilli chi tu fosti, sì ch'n vece
d'alcun ammenda tua fama rinfreschi
nel mondo sù, dove tornar li lece.”
(*Inf.* 13, vv. 50-54)

*“...but the incredible thing made me prompt him to a deed that grieves me.
But tell him who you were, so that by way of some amends he may refresh
your fame in the world above, whither it is allowed him to return.”*

For either medieval or modern readers the idea that Virgil might owe Pier this compensation is at best curious. After all, both of them are damned souls beyond atonement or recompense, and, by Virgil's own explanation, those further down in the infernal hierarchy have caused more offense to heaven.⁹⁶ Surely, if there were a cosmological pecking order, Virgil, as a virtuous heathen would be among the least culpable in the *Inferno*. Yet, Dante's depiction in canto 13 instead insists on an Aristotelian definition of rectificatory justice. As the Philosopher writes in the *Nicomachean Ethics* – a work specifically cited by Virgil as authoritative when understanding the logic of Hell's geography⁹⁷ – the type of justice here being

⁹⁶ *Inf.* 11, vv 22-27.

⁹⁷ *Inf.* 11, vv. 80-88.

explored (Rectification) concerns itself only with the nature of the injury, and treats both parties as equals:

Here it does not matter whether the good man steals from the wicked man or the wicked from the good, whether the good or wicked man commits adultery. But the law looks at only the nature of the damage done, and treats parties as equals, if indeed one does an injustice and the other suffers an injustice, if this one injures and that one is injured. Therefore, the judge attempts to reduce to equality the unjust thing which has an inequality. (NE 1131b32-1132a7)⁹⁸

The identities of Pier and Virgil therefore do not matter; a wrong has been committed, a wound inflicted, and it falls to the one who committed it to make it right.

It should not be surprising, then, that the prevailing metaphor of Canto 13 is balance - balance in terms of both content and structure. Dante's portrayal of Pier is nuanced enough to defy facile classification; nevertheless it presents us with a character whose mortal sin is balanced by his political innocence. Still, while the pilgrim models pity to the readers, Pier's final, tragic act in life is not one of moral protest to his unjust predicament. Rather, it is done out of cowardice, for fear of suffering further the unbearable psychological and physical torments that would surely follow his blinding.⁹⁹ Ultimately, Pier's decision to end his life arises not just out of despair but pride. This comes to us, furthermore, through Pier's own words, since he is very clear that he killed himself to escape the disdain from his fallen position:

⁹⁸ Aquinas, T. St. *Commentary on Aristotle's Nicomachean Ethics*. Translated by Litzinger, C.J. Notre Dame: Dumb Ox Books, 1993, 300.

⁹⁹ *Lectura Dantis: Inferno A Canto-by-Canto Commentary*. New York: University of California, 1999, 181.

L'animo mio, per disdegnoso gusto,
credendo col morir fuggir disdegno,
ingiusto fece me contra me giusto.
(*Inf.* 13, vv. 70-72)

*My spirit, at the taste of disdain, believing by death to flee disdain, made
me unjust against my just self.*

Motivation matters greatly here, since this committing suicide to escape shame intensifies Pier's guilt. Two cantos earlier, Virgil had identified this as a place of punishment for those who turn violent against themselves:

Puote omo avere in se' man violenta
e ne' suoi beni; e però nel secondo
giron convien che senza pro si penta
qualunque priva se' del vostro mondo...
(*Inf.* 11, vv. 40-43)

*One can turn a violent hand against oneself or one's own possessions;
therefore in the second subcircle each must uselessly repent whoever
deprives himself of your world...*

Of course, Pier's suicide has only expedited his damnation by sending him to Minos for judgment in the Inferno upon its completion. His death thus brings with it a double irony in which we as readers know, along with the pilgrim and Virgil, that Pier only escaped a bad situation for one much worse in the afterlife - a favorite situation of Dante's.

Thus, despite the context of damnation, Dante's reliance on the Aristotelian concept of justice as equity ensures that the encounter with Pier delle Vigne resolve itself as structurally balanced. Turning to the outcome of Virgil's

offer to Pier, we see that it has produced beneficial results for both parties. Virgil has coaxed him into identifying himself, while Pier has used the wound to communicate to the pilgrim and clear his name of the political charges that lead to his downfall. His confession and protestation of his innocence have followed the pilgrim back among the living. In the economy of the poem, Pier has the final word in the dispute over the charges leveled at him in life; the account has been recorded in the text, and we the living readers have heard his story.

But the encounter does not conclude there.

The pilgrim and Virgil's time in the Grove of the Suicides ends much as it began. The encounter with Pier is abruptly truncated by the arrival of two souls fleeing a pack of wild bitches. The first, immediately identified after as Jacopo da San Andrea, seeks to hide behind the bush of another suicide, but fails. The bitches pounce upon him, rending both his limbs and those of the bush, and carry Jacopo off into the darkness. The wounded bush cries out in language again heavily colored by terms of Aristotelian justice:

“O Jacopo,” dicea, “da San Andrea,
che t'è giovato di me fare schermo?
che colpa ho io de la tua vita rea?”
(*Inf.* 13, vv. 132 – 133)

*“O Jacopo da Santo Andrea,” it cried, “what have you gained by making a
screen of me? What blame have I for your sinful life?”*

The injured soul speaks about justice and the wound done to him in terms of profit and loss, asking the other soul what it had hoped to gain by harming it. That is, Dante figures his wounds as the loss in the exchange, just as he had Pier's,

after the pilgrim maimed him. This time, however, neither the pilgrim nor his guide is culpable, and neither steps forward to take responsibility. Though not involved in the altercation, the pilgrim solemnly gathers up the broken limbs and puts them back near the bush in the first line of the next canto,

Poi che la carità del natio loco
mi strinse, raunai le fronde sparte
e rende'le a colui, ch'era già fioco.
(*Inf.* 14, vv. 1-3)

*Compelled by the love of my birthplace, I gathered together the scattered
leaves and returned them to him, who was already silent.*

The pilgrim is again not responsible for the wound, but follows his guide's lead from the encounter with Pier, and redresses the injury to his countryman as best he can. The wrong is righted, and the bush receives the most complete compensation it can hope for. This second act of rectification serves as the latter bookend of the canto, providing it a symmetry and structural balance, which, in turn, reflect Aristotle's rectificatory justice.

Juridical Conventions in Canto 13

Dante's reliance on judicial theory is especially evident in canto 13 of the *Inferno*; juridical conventions developed for use in legal trial constitute the chief means by which he articulates the pilgrim's encounter with Pier delle Vigne. In this instance, Dante employs at least four conventions critical to the execution of a trial: *infamia*, the oath, torture, and confession. Each of these enjoyed an

elevated status as a procedure for ascertaining the guilt or innocence of the accused. As such, they possessed an institutional validity guaranteed by their central place in the most formal of all procedures to determine the truth, the legal trial. By employing them for the pilgrim and Virgil's encounter with Pier, then, Dante buttresses his own narrative with the versions of authority and legitimacy generally reserved for legal procedure. Of course, Dante does not refer to them by name, but the veil he draws over them is thin enough that their forms are evident. The analysis below is my own juridical reading of the encounter with Pier delle Vigne.

Confession

Oral confessions made by the souls of the *Inferno* constitute one of Dante's key literary devices, and a good portion of the text consists of his use of this technique.¹⁰⁰ The most common sequence of actions has the pilgrim ask Virgil to identify a soul. Virgil then replies that Dante must hear the soul speak for itself. This exchange is followed by a conversation in which the soul confesses its sins to the pilgrim. The vast majority of these interactions (such as those with Francesca da Rimini, Nicholas II, and Vanni Fucci) proceed along similar lines; the encounters with Pier delle Vigne in the Grove of Suicides and with Bocca degli Abati in the *Antenora*, however, depart from the usual structure in

¹⁰⁰ Matthew Senior, *In the grip of Minos: confessional discourse in Dante, Corneille, and Racine*. Columbus: Ohio State UP, 1994, 49.

particularly dramatic ways. They are different because in them Virgil and the pilgrim must resort to physical violence to discover the identity of the souls. In setting up the scenes this way, Dante appropriates for his writing not only the authority of a judge presiding over the confession of the accused, but also that of a judicial torturer, the figure in medieval jurisprudence possessing state sanctioned means for extracting confessions.

Pier's confession of his suicide is particularly significant when we keep in mind that confession was considered the ultimate proof possible in a trial (commonly known as the "Queen of Proofs") in Dante's time.¹⁰¹ Recreating this most reliable of proofs for his encounter, Dante also appropriates its unassailable authority. While he uses this technique many times throughout the *Inferno*, the encounter with Pier stands as distinct because this confession of guilt is intertwined with a plea of innocence, and in this fashion Dante extends the legitimacy and authority of Pier's confession of his suicide to his cries for exoneration of the political charges against him.

Medieval confession and the torture used to elicit it differed significantly from popular images of it today. Highly regulated, they enjoyed a privileged place in 13th and 14th century culture. It also comprised only a small part of a much larger system of judicial proofs. Medieval jurists had at their disposal a sophisticated hierarchy made up of categories of circumstantial evidence, known as *indicia*. The *indicia* were organized according to the weight of certainty they offered in a trial, e.g. a single eyewitness counted as a half proof, a confession or

¹⁰¹ Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 41.

the testimony of two eyewitnesses to the crime constituted a full proof, etc.¹⁰² The judge tallied up the various *indicia* he deemed valid, and guided the trial according to the resulting sum. A full proof supported a verdict of guilty, but to arrive at such was impossible to do by adding up partial proofs alone. That is, no amount of lower *indicia* could support a guilty verdict if at least one of the full proofs – a confession or two eyewitnesses – could not be produced. The presence of a substantial amount of evidence against the accused would lead to an impasse: the court could not convict the accused, nor could it allow him or her¹⁰³ to go free because of the strong probability of guilt. Before the rise of torture in the early 13th century, the only way to resolve such uncertainty was to look to God for justice through the use of the juridical ordeal, the results of which were considered to be His verdict.

Of the two full *indicia*, only confession proved consistently reliable, due to the unlikelihood of finding two eyewitnesses to a crime.¹⁰⁴ Jurists and judges thus came to rely heavily upon the confession of the accused to obtain a conviction as a simple question of practicality. After all, witnesses had to be present at the moment the crime was committed, but a suspect could make a confession at any time afterward.

¹⁰² Langbein, John H. *Torture and the law of proof Europe in the ancien régime*. Chicago: University of Chicago, 2006, 4.

¹⁰³ Both men and women were subjected to this judicial process in the middle ages. Carol Lansing, in her essay entitled “Concubines, Lovers, and Prostitutes: Infamy and Female Identity in Medieval Bologna,” in *Beyond Florence*, analyzes a fascinating case from Bologna in the 13th century, wherein a love triangle consisting of a Bolognese husband and wife, and an Englishman ended up being investigated in court. Among the matters to be resolved was whether or not the wife was to be regarded during the trial as an upright citizen or a prostitute, as this would determine the soundness of her testimony.

¹⁰⁴ Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 46.

Prizing the confession in a judicial trial was a tendency that had always been present in Western law, but it became much more frequent and widespread in the 13th century. Indeed, despite its critical importance to criminal procedure, reliance upon confession was not a juridical innovation; it had spread to the courts from the religious sphere. The church had already laid the groundwork for it in the 13th century with an intensified focus on making the sacrament the focus of medieval life. Confession quickly made itself felt in all areas of society: religious, lay, and especially judicial. Dante was thus working with concepts very familiar to his readers when he made confession one of the chief narrative devices of the *Commedia*.

Despite confession's sacramental origins, Dante treats it primarily in its juridical incarnation. That is, unlike its religious counterpart, confession in the *Inferno* does not produce absolution for the soul making it. Dante portrays it as the souls' final act before being sentenced; he thus fashions for it a critical place in the structure of the *Inferno*, where it is the basis for the punishment of the souls sent there.¹⁰⁵ In numerous places throughout the canticle, Dante evokes the process by which the damned receive their sentence as a result of their confession to Minos upon their arrival in Hell.¹⁰⁶ That is, before being sent to one of the various circles of Hell, each soul passes before that classical figure and, unable to restrain itself, confesses in its own words its sins. Minos wraps his tail around himself a number of times corresponding to the circle to which the soul

¹⁰⁵ Senior, Matthew. *In the grip of Minos confessional discourse in Dante, Corneille, and Racine*. Columbus: Ohio State UP, 1994, 48.

¹⁰⁶ *cfr. Inf. 5, vv. 4-12; Inf. 13, vv. 96; Inf. 20, v. 36; Inf. 27, vv. 124-129; Inf. 29, v. 120.*

will be sent. In Dante's conception of damnation, even though divine justice condemns them, all souls must still articulate their sins in their own words before they can be properly admitted to Hell.¹⁰⁷ As a result of this critical function, judicial confession is ingrained deeply into the narrative, and thus enjoys the utmost legitimacy and authority.

Beyond the souls' encounter with Minos, confession remains at the forefront of many of the portrayals of the damned throughout the *Inferno*. With the notable exception of Bocca degli Abati in canto 32, all souls addressed by the pilgrim are obligated to confess their sins to him or Virgil. While ubiquitous throughout the canticle, Dante emphasizes the souls' inability to refuse to confess in particularly dramatic fashion during the encounter with Vanni Fucci in canto 24, among the thieves. When the pilgrim asks him to articulate his sins, Dante is careful to show that Fucci cannot stop himself from answering the question honestly,

poi disse: "Più mi duol che tu m'hai colto
 ne la miseria dove tu mi vedi,
 che quando fui de l'altra vita tolto.
 Io non posso negar quel che tu chiedi;
 in giù son messo tanto perch'io fui
 ladro a la sagrestia d'i belli arredi,
 e falsamente già fu apposto altrui.
 (*Inf.* 24, vv. 133-139)

then he said: "It pains me more to be caught in the wretchedness where you see me than when I was taken from the other life. I cannot refuse what you ask: I am placed so far down because I stole the beautiful appointments from the sacristy, and it was falsely blamed on another.

¹⁰⁷ Senior, Matthew. *In the grip of Minos confessional discourse in Dante, Corneille, and Racine*. Columbus: Ohio State UP, 1994, 49.

Fucci is not only confessing his guilt to the pilgrim, he is confessing it to the world for the first time ever, having let another person be convicted of his crime during his life. The scene is thus made more dramatic by the revelation of Fucci's guilt, and the certainty that Dante assigns to it, stemming from its form as a confession.

Thus we see that when Dante has Pier confess his own suicide, he is doing it under the veil of the most absolute authority possible in Dante's time. His confession not only removes all doubt about his guilt of suicide, but it allows him to protest his innocence in equally absolute terms. In this respect, Dante is engaged in the same sort of endeavor as the jurists: the search for certitude in determining the guilt or innocence of the accused. It is not surprising, then, that Dante would turn to the tools of jurisprudence - in this case confession - when narrating his tale.

Torture

However regretful Dante chooses to make Virgil appear for having had the pilgrim mutilate Pier, this act remains the means by which the suicide is made to tell his story. In fact, the link between injury and the production of language is made explicit when Pier tells the pilgrim and Virgil that it is via the wounds inflicted by the harpies feeding on the trees that the souls within are provided with the means to express their pain. Aesthetically, the pilgrim's harming of Pier is the

means not only for the soul to speak, but more specifically to confess his sin and make an oath to defend his good name. This process reproduces the dynamics of the medieval practice of juridical torture. Indeed, torture in the early 14th century had a specific role to play in a trial as a means to elicit a confession, when all other means of ascertaining the guilt of the accused had been exhausted. As such, torture was the ultimate means of obtaining certitude, a process aimed at gaining the undisputed truth via the speech of the accused.

Let us examine the role of torture in medieval society.

Dante's portrayal of Pier's injuries appropriates the function of torture; a central tenet of judicial torture in the middle ages was that it could only be used *during* a trial, and only as a means of eliciting a confession from a suspect. Torture was not a punishment. Strictly speaking, a man already condemned could not be 'tortured'.¹⁰⁸ That is, one could injure the guilty after a trial, but, stripped of its investigative function, such an attack would then be more properly called 'assault', not torture. Pier's presence in Hell shows that he is already guilty, but, as we shall see, Pier's culpable status in the *Inferno* is uniquely multifaceted, and it is through the use of violence and injuries that both Dante the author and pilgrim investigate this, ultimately exonerating him of the political charges he faced in life.

The rise of torture in the 13th century was closely tied with the needs of the increasingly inquisitorial criminal process and the diffusion of Roman law.¹⁰⁹ A

¹⁰⁸ That is, unless he is being tried for a different crime.

¹⁰⁹ Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 41.

series of factors contributed to the courts' increasing dependence on torture as a method of obtaining ironclad convictions of the accused. While jurists had long been familiar with torture because of its presence in the *Corpus Iuris Civilis*, it was only with the decline of the judicial ordeal in the 12th and 13th centuries that they turned to it as a part of criminal procedure. Once reintroduced in 1228 in the *Liber Iuris Urbis Veronae* torture enjoyed an increased legitimacy due to its inclusion in Roman law. The Roman jurist Ulpian said of it,

By *quaestio* [torture] we are to understand the torment and suffering of the body in order to elicit the truth. Neither interrogation by itself, nor lightly inspired fear correctly pertains to this edict. Since, therefore, *quaestio* is to be understood as force and torment. These are the things that determine its meaning.¹¹⁰

The 13th century Glossator Azo defined it as, "... the inquiry after truth by means of torment."¹¹¹

Torture undoubtedly filled the gap left by the ordeal, and the two shared many similarities. Like the ordeal, torture was only implemented as a last resort, a technique to which the court could turn when the *indicia* cast suspicion on the accused, but there were not two eyewitnesses to the criminal act. Both were especially useful in cases where witnesses were unlikely to be produced, due to the clandestine nature of the crime, such as heresy and adultery.

But there were also key differences between torture and the ordeal, some of which were particularly suited toward increasing the authority of the accuser.

¹¹⁰ found in: Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 1.

¹¹¹ found in: Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 48.

The act of interrogation while applying torments was inherently suggestive.¹¹² Furthermore, while the result of the ordeal was considered as final, torture could be repeated if it failed the first time. Jurists were aware of the problematic nature of a confession made under torture. A confession alone was not enough to end the trial. Indeed, once the accused had confessed, he or she¹¹³ was removed from the place of torture and given the span of a day to reconsider. The judge then asked him or her to sustain the confession, or to rescind it. If the accused did not stand by the statement made under torture, the judge could order that torture be performed again.¹¹⁴ This time, if the accused confessed and recanted again, he or she was generally considered innocent, unless further evidence was uncovered.¹¹⁵

The actual procedure was simple, and jurists urged judges not to innovate in its execution. By far the most common form of torture was the *strappado*, or *corda*.¹¹⁶ For this, the victim's hands were bound behind his back. A rope was then tied to his or her wrists, thrown over a ceiling beam and raised and lowered. The judge determined the length of time the victim had to endure the torments. The *strappado* was so frequently employed that it became known as the 'queen

¹¹² Langbein, John H. *Torture and the law of proof Europe in the ancien régime*. Chicago: University of Chicago, 2006, 8.

¹¹³ Exemption from torture was generally not automatic for women. Those people most typically spared torture were the elderly, infirm, children, pregnant, and the clergy.

¹¹⁴ Langbein, John H. *Torture and the law of proof Europe in the ancien régime*. Chicago: University of Chicago, 2006, 12.

¹¹⁵ Some courts allowed suspects to be tortured multiple times after the first session.

¹¹⁶ Edward Peters, *Torture*. Philadelphia: University of Pennsylvania, 1996, 67.

of torments.’ Other common forms of torture were the leg brace, sleep deprivation (often 40 hours), and the rack.¹¹⁷

Returning to canto 13, we see that both torture and confession play a critical role in the encounter with Pier delle Vigne. Pier confesses his sin of suicide, portraying it as an unjust act, and the wound he received from the pilgrim creates the figural and literal conduit for Pier’s confession. Speaking through the end of the broken limb, he recounts the events that led to his act of suicide. Indeed, Pier does not deny his own suicide.¹¹⁸ In fact, injury and language appear in tandem throughout the short episode; Pier’s speech and blood are explicitly linked no less than three times, forging an inescapable association between injury and the production of language. The first occasion is immediately after the pilgrim inflicts the initial wound,

Allor porsi la mano un poco avante
e colsi un ramiciel da un gran pruno;
e ‘l tronco suo gridò: “Perchè mi schiante?”
Da che fatto fu poi di sangue bruno.
ricominciò a dir: “Perchè mi scerpi?”
non hai tu spirto di pietade alcuno?
(*Inf.* 13, vv. 31-36)

Then I stretched out my hand a little before me and plucked a small branch from a great thornbush; and its stem cried out: “Why do you split me?” When it had become dark with blood, it began again: “Why do you pluck me? Have you no spirit of pity at all?”

The pilgrim’s unintentionally violent act has created the wound that serves as a mouth with which Pier can speak, but it has also given him the reason to do so.

¹¹⁷ Langbein, John H. *Torture and the law of proof Europe in the ancien régime*. Chicago: University of Chicago, 2006, 12.

¹¹⁸ *Inf.* 13, vv. 70-72

Remarkable for the dramatic suspense it creates, this passage also groups together violence, blood, speech, before, ultimately, Pier's social renewal. Dante here makes the narrative choice not to identify Pier in the straight-forward fashion as he does the other souls, instead extending the encounter; the suicide is made to suffer before the pilgrim and Virgil can identify him; Virgil tells the pilgrim to break a branch from the tree, because he knows that this is the only way to make it speak. They must coax him into identifying himself, and the carrot on the end of the stick reeks of judicial procedure. Despite the profoundly religious context of his infernal suffering, Pier gains the chance to obtain the highest prize a court of law could offer him: social exoneration.

Thus, Pier resumes his speech after Virgil offers to have his *fama* renewed in the world above, and once again, Dante dramatizes the connection between injury and language,

Come d'un stizzo verde ch'arso sia
 da l'un de' capi, che da l'altro geme
 e cigola per vento che va via:
 s'è de la scheggia rotta usciva insieme
 parole e sangue, ond'io lasciai la cima
 cadere, e stetti come l'uom che teme.
 (*Inf.* 13, vv. 40-45)

As when a green log is burnt at one end, from the other it drips and sputters as air escapes: so from the broken stump came forth words and blood together, and I let the tip fall and stood like one afraid.

Pier's words and his blood flow from the wound simultaneously, and together they recreate the events that led to his death. Despite the power of this image,

we must remember that Dante chooses to have the trees bleed in this place; after all, it is not sap or water that exits the wound. This detail becomes all the more significant when one remembers that a broken twig doesn't often produce any noticeable liquid at all. The presence of the blood is Dante's *choice*,¹¹⁹ and it necessarily casts the tree *as a body* that Virgil has just made the pilgrim mutilate in order to force it to speak. The scene thus effectively refashions the restrained and helpless Pier as a torture patient, his words and blood function as his confession.

Despite the singularity of this encounter in the economy of the *Inferno*, Pier is one of many who inhabit the Grove of the Suicides, and this fact again gives Dante the opportunity to emphasize the link between injury and language. When answering Virgil's question of how the souls come to inhabit the trees, Pier says,

Surge in vermena e in pianta silvestra:
l'Arpie, pascendo poi de le sue foglie,
fanno dolore, e al dolor fenestra.
(*Inf.* 13, vv. 100-102)

*It grows unto a shoot, then a woody plant; the Harpies, feeding on its
leaves, give it pain and a window for the pain.*

¹¹⁹ Dante does not create the scene *ex novo*, instead reproducing key elements of *Aeneid* III. 22-48, including the speaking and bleeding plants. Nevertheless, it is still his choice to recreate these aspects of Virgil's scene, emphasizing and deemphasizing those details that serve his narrative.

Thus Dante explains Pier's condition by extending it to all of those in the canto. All souls in this part of the *Inferno* have a special relationship to the violence of their tormentors, relying upon their wounds for speaking. As in a judicial court, here pain produces language – specifically, confession. The next time that the pilgrim mutilates a soul is far below, in the lowest part of Hell, but Dante imagines that encounter with an outcome very different from the one with Pier. There, the soul being tortured even carries the name Bocca (or “Mouth,” in Tuscan) – a clear reference to the production of language – yet, the pilgrim fails to make him speak.

Ordeal

To modern sensibilities, which frequently regard it as something of a barbarous practice, torture is at best controversial; to the medieval mind, however, torture was viewed as a relatively sophisticated technique.¹²⁰ Certainly, it was far more rational than its predecessor, the ordeal. As a solution to a serious procedural problem, torture enjoyed a level of legitimacy largely beyond question. Why this was so consequently requires that we understand the judicial theories that had preceded torture.

While the matter of how to arrive at a degree of certainty sufficient to convict or acquit a suspect in a trial has always been present in Western legal

¹²⁰ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 13.

science, it was especially pressing for jurists of the 13th century. Finding themselves in a historical period in which limited forensic techniques were available to them and faced with a system of *indicia* prone to leaving them unable to convict or acquit a suspect, medieval jurists' final resort had been to appeal to divine justice. In such cases where the circumstantial evidence presented at trial strongly suggested guilt, but the court both lacked sufficient witnesses and failed to obtain a confession, a judge could order that the trial be resolved by divine judgment, by having the accused submit to an ordeal.

Long a mainstay of achieving certitude, the ordeal was the ultimate instrument of judicial proof from circa 800 C.E. – 1200 C.E., offering an indisputable way of determining a suspect's guilt or innocence when all other attempts had been exhausted. Though available in numerous forms, the most common type of ordeal consisted of two principle procedures, trial by fire and trial by water.¹²¹ Despite these variables, the purpose of the ordeal was always to evoke the judgment of God, and as such, invoking it was a very serious matter, one to be used sparingly.¹²² Thus, however indisputable the results of the ordeal

¹²¹ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 25.

¹²² Trial by fire took two main forms. In the first, the accused grasped a super heated piece of iron and carried it for a predetermined period of time that would surely cause burn injuries. The wound was then wrapped and only uncovered after three days' time for inspection. If the accused exhibited scarring, he or she was deemed guilty of the charges leveled at the trial. If, however, there was no sign of the injury, it was held that God had interceded to spare the accused because of his or her innocence. The second form of trial by fire could take was direct exposure of the accused to flames. Medieval men and women had long recognized in fire a purifying quality; fire burned away impurities during metalworking, and relics whose authenticity was in doubt were often cast into bonfires to test their authenticity. Thus the second form consisted of the accused actually submitting his or her body to direct flames, either by walking into a bonfire or placing his or her hand into a fire. Again, the reasoning went that God would intervene to protect an innocent person from the heat, and allow no scars to remain.

were, the procedure itself was not the primary juridical technique; it was always regarded as a technique of last resort in a trial, and it was only implemented after all other ways of finding the truth had been exhausted.¹²³ Indeed, there were several other methods of arriving at a verdict that had to be explored before resorting to the judgment of God.

In the late 12th and 13th centuries a combination of factors led to the rapid demise of the ordeal, and thus the search for a new means of ascertaining guilt or innocence. Principle among these causes were a crisis of confidence in the ordeal's suitability on the part of the clergy, and a shift of criminal procedure from accusatorial to inquisitorial. During the 12th century, the very same theologians who analyzed the sacraments with the unprecedented precision that led to the promotion of the confession in medieval life, also discovered that this created new problems. The newfound centrality that confession enjoyed in all spheres of public life presented a conundrum for both jurists and theologians: if the accused confessed before a trial, would the ordeal still produce reliable results? By logic, it would have to reveal his innocence, since his sin and guilt had already been wiped away by the sacrament.¹²⁴ The increased scrutiny of the ordeal's accuracy

Trial by water was an equally common procedure, and provided a more immediate resolution that was just as spectacular as that of trial by fire. Because of its three-day waiting period, trial by fire was not satisfactory in cases where a speedy verdict was necessary or desired. For these cases, trial by cold water provided a much more immediate resolution for all to see; either the accused floated and was thus guilty, or sank and was therefore innocent. The decision was made then and there for all to witness. To execute trial by water, the accused was lowered by ropes into a body of cold water. The theory went that the cold water would not accept a guilty conscience, therefore, if the accused floated, he or she was deemed guilty.

¹²³ Bartlett, Robert. *Trial by fire and water the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 26.

¹²⁴ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 79.

in determining guilt in a court led to doubts about its effectiveness in a court of law, where it would have to be consistently accurate to be considered an appropriate procedure.¹²⁵

Furthermore, the ordeal created a policy crisis for the church, which had difficulty determining just how to classify it. The increased role of scholasticism in theology in the 12th and 13th centuries had resulted in a clearly delineated division of the natural and the supernatural realms. Since the ordeal by definition was a process in which God worked contrary to nature,¹²⁶ clearly it could not be considered a natural event. But there were problems with classifying the ordeal as supernatural. In this case, theologians had two possibilities: to consider the ordeal as a miracle or as a sacrament. A miracle was a free act of God that no ordained procedure could invoke.¹²⁷ No act, not even the ordeal, could force God to grant a miracle and to be useful in a judicial procedure the ordeal would have to be consistently reliable. The other option was to consider the ordeal as a type of sacrament because as such it would be a procedure that guaranteed a certain result if the proper ritual was followed. The ordeal, however, enjoyed no canonical support as a sacrament. Because of this lack of classification, the legitimacy of the ordeal in the church's eyes was untenable. The Fourth Lateran Council of 1225 proclaimed the ordeal invalid. The validity of such a proclamation extended to every point in Western Europe where the church held influence.

¹²⁵ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 87.

¹²⁶ *Summa Theologiae*, 2.2.95.8

¹²⁷ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 87.

Indeed, the ordeal was soon prohibited in Denmark (1216), England (1219), and as far as Aragon (1247) whose rulers cited the pope's decision in their own.¹²⁸

The loss of the ordeal left jurists and judges with the problem of how to determine reliably a verdict in a trial where the guilt of the accused was not certain. As a matter of practicality, confession rose to the top of the hierarchy as a means to produce reliable language. The lower proofs (*indicia*), such as testimony and written evidence were still valid, of course, but no amount or combination of them could alone lead to a guilty verdict. As before, in the hierarchy of proofs, only two types could fully support a guilty verdict: the presence of at least two eyewitnesses to the crime, or the confession of the accused. Obtaining this confession, therefore, became a central focus of legal procedure, so important that it was given the name 'queen of proofs' by jurists. But the jurists then faced the question of how to elicit a confession from a suspect not inclined to confess, and the answer they came up with was the use of torture.

Fama and Infamia or Virgil's Amends: Pier's Legal Exculpation

Scholars have long been unable to say determinatively whether Dante portrays Pier delle Vigne as innocent or guilty of the charges that led to his fall

¹²⁸ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 100.

from grace.¹²⁹ Many modern commentators believe that he does, and that the pity the pilgrim shows to Pier intentionally contrasts with the gravity of the latter's mortal sin of suicide, thereby creating the tension in the canto. But the episode takes on deeper, judicial significance when we read Pier's self-defense in the context of the medieval doctrine of *infamia*, which plays a central role in the canto.

Virgil's offer to Pier is to make amends for his injury by allowing him to 'refresh' his *fama* in the 'world above.' While this can be taken to mean that Virgil is offering to *renew* Pier's fame, it also has the second meaning of *restoring* his reputation, with *fama* functioning as the antonym of *infamia*. Indeed, when Pier accepts this offer, he does much more than simply inform the pilgrim of his identity; his plea is that the pilgrim may return to the world of the living to clear his name of the charge of treason for which he has been condemned. In this case, *fama*, morphologically identical in Tuscan to its Latin form, functions as both 'fame' and a 'sound reputation.' Via Pier's concern for his reputation, Dante introduces to us the terms and procedure of a legal trial, where the reputations of the accuser and the accused were critically important.

Far beyond simply a social reputation, *fama* and *infamia* were critical to legal procedure, concerning all involved before a trial even began. According to Roman law, *infamia* was primarily a condition that carried with it a number of

¹²⁹ Anthony Cassell, for example argues that Dante was familiar with the details of Pier's embezzling. Robert Hollander, however, maintains that it is far from clear whether or not Dante had access to such information.

severe social and legal disabilities.¹³⁰ The first stage in a civil or criminal trial was the *inquisitio famae*, a formal examination of the character of both the accuser and the accused. Any person deemed an *infamis* was at a severe disadvantage in court; he could not call a witness, testify, or postulate.¹³¹ Moreover, the stigma of *infamia* extended well beyond the court and into society. The *infamis* was unable to make an oath, vow, or contract. He could neither lend, nor borrow money, nor could he become an official in the administration of state. In a medieval society where vassalage and oaths dominated the making of contracts, this was a severe handicap.¹³² Thus, we see that Pier's concern goes beyond simply having the pilgrim 'refresh' his name, and he really wishes to 'restore' it to its previous good standing.

The circumstances of Pier's political and legal troubles surely qualify as the origin of his *infamia*, as such charges were frequently the way one suffered damage to his or her reputation. A person was not born with *infamia*, but he or she could gain it in life, principally through legal means; a person who had experienced a run-in with the legal system could incur *infamia* in several ways. Certain crimes carried *infamia* as a statutory consequence (*infamia ipso iure*), and thus a person found guilty of one or more of them could receive it as part of a

¹³⁰ Edward Peters, "Wounded Names: the Medieval Doctrine of Infamy", in King, Edward B. *Law in Medieval Life and Thought (Law in Medieval Life & Thought)*. New York: University of the South, 1990, 63.

¹³¹ Edward Peters, "Wounded Names: the Medieval Doctrine of Infamy", King, Edward B. *Law in Medieval Life and Thought (Law in Medieval Life & Thought)*. New York: University of the South, 1990, 65.

¹³² Edward Peters, "Wounded Names: the Medieval Doctrine of Infamy", King, Edward B. *Law in Medieval Life and Thought (Law in Medieval Life & Thought)*. New York: University of the South, 1990, 84.

sentence. Furthermore, even if *infamia* was not specifically listed as the penalty for a crime, a judge of his own volition could decide to issue it as a sentence upon conviction (*per sententiam*). Finally, a convict could incur *infamia* without the overt signal of the judicial system, simply by having suffered disgraceful punishment, such as public whipping (*ex genere pene*).¹³³

At the very least, the severity of the accusations that caused Pier's spectacular fall and brutal punishment qualified him for *infamia ex genere pene*, a burden so heavy even in death that he eagerly accepts Virgil's offer to ease it. The details of Pier's downfall were so well known that Dante could and did rely on the notoriety of his demise even almost sixty years after the fact, choosing not even to mention Pier by name. However, for the modern reader - those of us reading the *Inferno* more than seven centuries after its composition, an introduction to the historical Pier delle Vigne is in order.¹³⁴

The arc of Pier's professional and personal lives was extraordinarily dramatic, and stands out even today as unique for an era when rapid upward social mobility was virtually unheard of. Born into humble circumstances c. 1190, in Capua, Pier spent the early part of his life in circumstances starkly different from those of his later life. Though details of his youth are scarce, historians and critics have deduced several certainties about the course of Pier's early life. His

¹³³ Edward Peters, "Wounded Names: the Medieval Doctrine of Infamy", King, Edward B. *Law in Medieval Life and Thought (Law in Medieval Life & Thought)*. New York: University of the South, 1990, 63.

¹³⁴ The Barnes and Noble translation of the *Divine Comedy* (1996) even goes so far as to insert a line – not in the original text - in which Pier introduces himself by name, for the benefit of the modern reader.

family was well respected, but certainly of low means. Toynbee argues that his surname suggests that his father may have been a vinedresser, or some other such profession of low social status.¹³⁵ The elder delle Vigne became a judge by the end of his life.¹³⁶ Pier chose to study law and he went to Bologna to study there at the university. His family's humble circumstances are further demonstrated by documents showing that he obtained financial assistance from the university or the commune in the form of a living stipend.¹³⁷

Law and letters proved to be Pier's ticket out of poverty. The young jurist's entry into politics came via Archbishop Berardo of Palermo, a personal friend of Frederick II, who introduced him to the emperor at Pier's request. In a letter to the Archbishop, Pier had demonstrated his awesome talent in Latin composition, and Frederick immediately appointed him to the imperial chancery. The two men enjoyed a friendly relationship, sharing cultural and intellectual interests. Indeed, rarely have two historical figures been so closely associated with one another.¹³⁸ As a result, Pier rose rapidly within the imperial political structure, becoming High Court Judge (*judex magnae curiae*) in 1225. He moved ever closer to Frederick by becoming his *familiaris*, or privy counselor, a position he held between 1238 and 1247. It was a position of extraordinary political influence. As *familiaris*, all of

¹³⁵ Toynbee, P. *Dante Dictionary*. Oxford: Clarendon Press, 1898, 429.

¹³⁶ Huillard-Bre'holles, J.L.A. *Vie et correspondance de Pierre de la Vigne, ministre de l'empereur Frédéric II, avec une étude sur le mouvement réformiste au XIIIe siècle*. Paris, 1865, 5. Huillard cites some speculation that the elder della Vigna's eventual professional success was due to the political influence of his son.

¹³⁷ Cassell, Anthony K. *Dante's fearful art of justice*. Toronto: University of Toronto Press, 1984, 38.

¹³⁸ Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. Oxford University Press, 1972, 520.

Frederick's private correspondence passed through him, and he held sway over all imperial decisions and all privileges granted. His hand is visible in the highest level edicts and manifestos issued by the emperor in his struggle with the papacy.¹³⁹ Along with this power came incredible opportunities to use it for the accumulation of a personal fortune. Indeed, the impoverished boy who had received financial aid to help him in his studies at Bologna died one of the wealthiest men in the Empire. At the time of his death, Pier's fortune is estimated to have been near 900,000 ducats, or 10,000 lbs in gold *augustales*,¹⁴⁰ an extraordinary sum by any calculation, but especially so when one recalls that Pier amassed the entire sum in the relatively short span of his professional lifetime.¹⁴¹

In May 1247, Pier reached the zenith of his impressive career, becoming *Pronotary of the Imperial Court, Logothete of the Kingdom of Sicily*, and thus one of the most powerful men in Europe. This made him the emperor's spokesman in all matters legal, diplomatic, social, and political. He also became the director of finances for the whole of the empire. In short, he became the primary link between Frederick and his subjects. An office created specifically for him, the position of *Logothete* had no predecessors and imbued Pier with unheard of power and influence in the empire.¹⁴²

¹³⁹ Cassell, Anthony K. *Dante's fearful art of justice*. Toronto: University of Toronto Press, 1984, 38.

¹⁴⁰ Huillard-Bre'holles, J.L.A. *Vie et correspondance de Pierre de la Vigne, ministre de l'empereur Frédéric II, avec une étude sur le mouvement réformiste au XIIIe siècle*. Paris, 1865, 11.

¹⁴¹ Huillard-Bre'holles, J.L.A. *Vie et correspondance de Pierre de la Vigne, ministre de l'empereur Frédéric II, avec une étude sur le mouvement réformiste au XIIIe siècle*. Paris, 1865, 11.

¹⁴² Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. Oxford University Press, 1972, 520.

Pier fell from this professional acme two years after his final promotion, when he was arrested, blinded, and thrown into prison at San Miniato or Pisa (accounts vary). The specific charges behind Pier's arrest were never made clear,¹⁴³ and they likely will never be known. His imprisonment was an object of energetic speculation by his contemporaries. One theory held that he was suspected of having intrigued with the Pope; some even suspected that he had tried to poison Frederick.¹⁴⁴ Giovanni Villani ascribed to the common belief that Pier was innocent and had been the victim of envy and political intrigue at Frederick's court.¹⁴⁵ Pier killed himself shortly after his imprisonment (c. April, 1249) either by dashing his brains out against a wall,¹⁴⁶ or by flinging himself from a window.¹⁴⁷

Given this life history, Pier's behavior in the *Inferno* is interesting for its nuance, particularly as Dante's Pier delle Vigne makes no attempt to hide the disgraceful nature of his final act, his own suicide. Still, he is intent on repairing the damage done to his reputation by what he claims are false charges:

E se di voi alcun nel mondo riede,
conforti la memoria mia, che giace
ancor del colpo che 'nvidia le diede."
(*Inf.* 13, 76-78)

¹⁴³ Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. Oxford University Press, 1972, 521.

¹⁴⁴ Van Cleve, T.C. *The Emperor Frederick II of Hohenstaufen, immutator mundi*. Oxford University Press, 1972, 522.

¹⁴⁵ Villani, Giovanni, Selfe, Rose E., translator. *Villani's Chronicle being selections from the First Nine Books of the Croniche Fiorentine of Giovanni Villani*. London: Archibald Constable & Co. LTD, 1906, 133.

¹⁴⁶ Toynbee, P. *Dante Dictionary*. Oxford: Clarendon Press, 1898, 30.

¹⁴⁷ *Lectura Dantis: Inferno A Canto-by-Canto Commentary*. New York: University of California, 1999, 181.

*And if either of you goes back to the world, strengthen my memory,
languishing still beneath the blow that envy dealt it.”*

Here, he is chiefly concerned not with forgiveness for the mortal sin of taking his own life, but regaining the good reputation damaged by the accusations made of him at Frederick’s court. Attempting to clear his name of this *infamia*, Pier does not limit himself to telling Virgil and the pilgrim who he is; he energetically professes his innocence of the political charges leveled against him in life. According to Pier’s own account to the pilgrim and Virgil, his downfall was due to the sort of political intrigue common at every imperial court, starting with that of Caesar. A victim of his own success, at least in his own perception, he says that envy motivated the other courtiers to turn Frederick against him:

La meretrice che mai da l’ospizio
di Cesare non torse gli occhi putti,
morte comune, de le corti vizio,
infiammò contra me li animi tutti;
e li ‘nfiammati infiammar sì Augusto,
che’ lieti onor tornaro in tristi lutti.
(*Inf.* 13, 64-69)

*The whore who never turns her sluttish eyes away from Caesar’s dwelling,
the common death and vice of courts, inflamed against me all spirits; and
those inflamed inflamed Augustus so that my bright honors turned to sad
mourning.*

By means of this story, Pier attempts to clear himself of *infamia* and to restore to his reputation the integrity that he had lost at the hands of his conniving fellow courtiers. To portray this, Dante incorporates into his narrative a fundamental judicial convention, the oath.

Pier's insistence on his own innocence takes on further legal terms when he makes use of the oath. As another important alternative to the ordeal, the oath held such a central place in the trial that many legal historians have called it the "cornerstone of the medieval judicial procedure".¹⁴⁸ Either written in the form of charters or verbal as oral testimony, the oath was the strongest evidence the accuser or the accused could present, so long as he or she was able (i.e. not deemed an *infamis*).¹⁴⁹ Thus Dante's use of this most fundamental of judicial practices in canto 13 reflects tellingly on Pier's social status because his most solemn protestation of innocence appears as an oath. Pier *swears* to Virgil and the pilgrim that he never betrayed his emperor,

Per le nove radici d'esto legno
vi giuro che già mai non ruppi fede
al mio signor, che fu d'onor sì degno.
(*Inf.* 13, vv. 73-75)

¹⁴⁸ Bartlett, Robert. *Trial by fire and water: the medieval judicial ordeal*. Oxford [Oxfordshire]: Clarendon, Oxford UP, 1986, 30.

¹⁴⁹ This type of testimony enjoys a privileged place in Italian studies because it is through the recorded statement of a witness that we have one of the earliest examples of Italian as distinct from Latin. Known as the *Placitum of Capua*, it is a legal document regarding a dispute in court over ownership of land near Monte Cassino in 960 C.E. Most of the document is in Latin, but the verbal testimony of one witness is preserved in the vulgar:

Sao ke kelle terre per kelle fini que ki contene, trenta anni le possette parte Sancti Benedicti.

I know that these lands within these borders have been held for thirty years by the party of St Benedict.

The verbal accuracy of the testimony was so critical to the trial that the judge taking the oath could not allow it to be translated into Latin for the official record, and thus had the statement in vernacular recorded as the witness made it. Such testimony was critical for both property disputes and criminal charges. Bruno Migliorini, *Storia della lingua italiana*, Firenze, Sansoni, 1966.

By the strange new roots of this wood, I swear to you that I never broke faith with my lord, who was so worthy of honor.

What is arguably most interesting about this passage is that it happens at all, since, as an *infamis*, Pier would be barred from swearing oaths in the first place, were this an actual judicial procedure. Combined with his protestations of innocence, the passage becomes even more suggestive. Dante's decision to make use of what amounts to an oral testimony or oath, implicitly treats Pier as having a restored *fama*. Formerly the disgraced *ex-Logothete* cast out of office by political accusations, Pier now speaks as a one whose good reputation has been restored, and he is behaving as a man whose reputation is intact. The canto thus anticipates Dante's actions once he returns to the world, effectively treating Pier as one already exculpated and restored to *fama*.

The pilgrim and Virgil leave Pier physically wounded, but relieved because it was through his injury that his reputation has been restored. He has finally done what he was never able to do in life; he has pleaded his innocence against the charges of treason leveled at him. His torture at the hands of the pilgrim has ended up providing him with the means to confess his guilt, but, more importantly, to swear, with the utmost gravity, his innocence. All is a little better for one soul in this part of Hell.

The next time the pilgrim lays his hands on a soul, however the encounter will end in a way far less satisfactory for both.

When Words Fail in Hell: Truth, the *Antenora*, and *Bocca degli Abati*

In canto 32 of the *Inferno*, Virgil and the pilgrim arrive at the very lowest plain of their journey through Hell. They have entered the bottommost circle, the place reserved for those who betray those who trust them. In the Ptolemaic universe, this is the point farthest from God, farthest from the truth, farthest from Grace. It is a horrific locale, upon which all other sins of Hell press, in tandem with all matter in the universe. The readers can expect a truly savage experience for the pilgrim and Virgil. Dante, however, signals the linguistic conundrum he now faces when attempting to describe the place,

S'io avessi le rime aspre e chiocce,
 come si converrebbe al tristo buco
 sovra'l qual pontan tutte l'altre rocce,
 io premerei di mio concetto il suco
 più pienamente; ma perch'io non l'abbo,
 non senza tema a dicer mi conduco;
 che' non è impresa da pigliar a gabbo
 discriver fondo a tutto l'universo,
 ne' da lingua che chiami mamma o babbo.
(*Inf.* 32, vv. 1-9)

If I had harsh and clucking rhymes such as befit the dreadful hole toward which all other rocks point their weight, I would press out the juice from my concept more fully; but because I lack them, not without fear do I bring myself to speak; for it is no task to take in jest, that of describing the bottom of the universe, nor one for a tongue that calls mommy and daddy.

Dante signals his anxiety over the fact that he is compelled to describe the bottom of Hell, a place which is so base and terrifying that to do so would require

the most ignoble vocabulary available. However, as a vernacular poet, this is type of language forbidden to him by his own rhetorical guidelines.¹⁵⁰

The very base nature of the lowest point in Hell that presents Dante with the dilemma over what type of language to use also carries with it philosophical and metaphysical implications that erode the reliability of language to represent the truth. Here Dante squarely explores the ambiguities contained in attempting to describe in rhetorically appropriate language a place where speech is corrupted and used to deceive, not illuminate. It is a complex issue that carries with it social and political ramifications because according to Dante, speech is ultimately what constructs society.¹⁵¹ False speech, by contrast, tears it down. Indeed, in this canto Dante again takes up the issue of language and justice, only this time the failure of the latter is due to the perversion of the former. As it is treated in the *Nicomachean Ethics*, justice manifests primarily in the actions between humans. As such, as he did in canto 13, Dante will attempt to display this social virtue – this time its corruption, that is - in the interactions between the pilgrim and souls he meets. As we will see, the canto structurally and thematically reflects canto 13, taking it as a reference point in its depiction of the corruption of language and truth, and thus offering us a darker conclusion.

Dante drew up his concept of language years before he began the *Inferno*. In the *De Vulgari Eloquentia*, Dante constructs his theory of the origin of language in which there originally was one language for all of mankind, a

¹⁵⁰ *De Vulgari Eloquentia* II, 7, 1-7.

¹⁵¹ *Lectura Dantis: Inferno A Canto-by-Canto Commentary*. New York: University of California, 1999, 413.

language instilled directly by God into Adam. This *lingua universalis* was Hebrew, and the first word uttered in it was, appropriately enough, *El*, the name of God. All humans used this language until the crisis at the Tower of Babel, Dante's linguistic equivalent of the fall from the Garden of Eden. Drawing from the Bible, Dante appropriates for his theoretical model the legend of Nimrod, the ancient king of Babylon, who ordered his people to construct a tower that could reach into the heavens. Such an endeavor, of course, was prideful in the extreme, and God's response to it had political and societal ramifications for all of humanity and its history.

Rather than simply destroy the tower or its builders, God prevented the builders from finishing it by obstructing their ability to communicate with one another. The project was well underway when God punished Nimrod's hubris by making it so that all of the workers spoke and understood different languages. Unable to speak to one another, they left the tower incomplete, and went their separate ways. This event not only created and disseminated new and different languages, but also led to the fracturing of society, as is symbolized in the abandonment of building the tower - the common project. Hebrew, of course, continued to exist, but no longer as the sole language of humanity.

Dante's Nimrod gives us an example of the chaos his hubris has sown when he attempts to speak to Virgil and the pilgrim in the *Inferno*,

*"Raphèl mai amècche zabì almi,"
cominciò a gridar la fiera bocca,
cui non si convenia più dolci salmi.*

(*Inf.* 31, vv. 67-69)

"Raphèl maì amècche zabì almi," *the fierce mouth began to shout, for no gentler psalms befitted it.*

Nimrod's words, however, have no meaning for anyone but himself, effectively making him the ideal example in the *Inferno* of a soul incapable of using speech to communicate.¹⁵² Nimrod clearly desires to talk, and he addresses the pilgrim in earnest, but fails to say anything comprehensible, as Virgil says,

Lasciànlo stare e non parliamo a vòto;
ché così è a lui ciascun linguaggio
come 'l suo ad altrui, ch'a nullo è noto."
(*Inf.* 31, vv. 79-81)

Let us leave him alone and not waste speech, for to him every language is like his to others, unknown.

Reflecting his sin, Dante has made the nature of Nimrod's punishment linguistic; he is isolated by his inability to make himself understood by anyone else. The *contrapasso* that Dante employs here, then, is that just as Nimrod was responsible for destroying the unity of men through his hubris, so he is cut off from communication with all others, his body deformed into a giant mockery of the tower he tried to create, that leaves him ultimately impotent and alone.

From a narrative standpoint, Nimrod's presence at the beginning of Dante's description of the lowest point in Hell serves as an unmistakable and

¹⁵² Even among literary critics, much time has been spent and ink spilled over the possible meaning behind Nimrod's words. See: Alighieri, D. *The Divine Comedy of Dante Alighieri: Volume 1: Inferno*. Ed. Martinez, R. & Durling. R., Oxford University Press, 1996, 493.

very tall signpost that announces that from that point forward, the ambiguity of language is not only a question central to the *Inferno's* plot, but also an obstacle for the author to overcome. Whereas Dante's portrayal of Geryon in canto 16 of the *Inferno* "dramatizes the text's confrontation with its own necessary representational fraud"¹⁵³ as a product of human language, the progress of the narrative past Nimrod reposes the question in terms of false language's impact on society. Language plays a central role in Dante's depiction of the sin of fraud, as once again he employs the Thomistic precept that something can be said to be true when the word and the concept accurately correspond to one another.¹⁵⁴ With the fraud present here in the base of Hell, however, this link between language and ideas is strained even further, and the poet will attempt to portray a language that obstructs the truth and creates falsehood.

The Nimrod of the *Inferno* thus stands as a sort of political Adam and Eve, his transgressions responsible for the ultimate fracturing of human society. This role in Dante's mythology of human history is appropriately colossal, and Dante leaves no ambiguity about Nimrod's significance in the *Commedia*,

Poi disse a me: "Elli stessi s'accusa;
questi è Nembrotto per lo cui mal coto
pur un linguaggio nel mondo non s'usa.
(*Inf.* 31, vv. 76-78)

*Then he said to me: "Himself accuses himself; that is Nimrod, because of
whose evil thought the world no longer speaks one language.*

¹⁵³ Barolini, Teodolinda. *The Undivine Comedy*. Princeton University Press, 1992, 67.

¹⁵⁴ Veritas est adequatio rei et intellectus (*Summa*, I:21:2).

Serving as the source of all corruption of language, as Virgil tells the pilgrim, Nimrod's actions and subsequent punishment from God have affected all of mankind for all time. Post-Eden humanity was thus banished from a worldly ideal state of unity and into a society linguistically (and therefore politically) fractured.

Dante addresses the question of how mankind is to cope with the loss of its *lingua universalis* in the *De Vulgari Eloquentia*, and the solution he constructs is the source of the very limitations on his language that he cites at the beginning of canto 32. As a partial remedy to the loss of the one true language, mankind was given Latin, which Dante simply calls '*gramatica*.' It is artificial, to be sure, but offers humans the structure and eloquence they lost after the tower of Babel. Still, Dante recognizes that Latin is not appropriate in all situations, keeping with the medieval precept that the form of one's writing is determined by both the content and the intended audience. As he states in the *Convivio*, itself written in what he calls the 'illustrious vernacular,' Dante declares that he must write in a language comprehensible to all men, for such is his responsibility as the guardian of culture. Since an understanding of Latin is restricted to the educated classes, it is his responsibility to write in a language that the lower classes will comprehend; in this case, Tuscan vernacular.¹⁵⁵ As this 'illustrious vernacular' is not as developed as Latin, it is therefore incumbent upon the authors who use it to contribute to its development.

¹⁵⁵ *Convivio*, I, 5.

In Dante's vision, one of the most important duties of the vernacular poet is to elevate his or her language toward the level of the original *lingua univeralis*. To help with this, Dante lays down some simple rules. Among them, the vernacular poet is to avoid using language that is childish, rustic, womanish, or urban,¹⁵⁶

In quorum numero, nec puerilia, propter sui simplicitatem, ut *mamma* et *babbo*, mate et pate, nec muliebria, propter sui mollitiem, ut *dolciada* et *placevole*, nec silvestria, propter hausteritatem, ut *greggia* et *cetra*, nec urbana lubrica et reburra, ut *femina* et *corpo*, ullo modo poteris conlocare. Sola etenim pexa irsutaque urbana tibi restare videbis, que nobilissima sunt et membra vulgaris illustris.

De Vulgari Eloquentia II, 7

*And among these you will not be able to make any room at all for infantile words (such as *mamma* [mummy] and *babbo* [daddy], or *mate* [mummy] and *pate* [daddy]), because of their simplicity; or for the womanish (like *dolciada* [sweetened] or *placevole* [pleasant]), because of their yielding quality; or for the rustic (like *greggia* [flock] and *cetra* [lyre]), because of their roughness; or for the urbane, smooth or unkempt, like *femina* [woman] or *corpo* [body]. So you will see that all you have left are urbane words that are combed or shaggy; these are the most noble, and belong to the illustrious vernacular.*

Drawing a straight line from this passage to canto 32 of the *Inferno*, Dante lists the key terms of *mamma* (mommy) and *babbo* (daddy) as examples of the language he is to avoid using to describe this lowest point in Hell. The reference carries with it the argument he was confronting in the *De Vulgari Eloquentia*; the integrity of the illustrious vernacular is now to be tested in the harshest of circumstances, at Lucifer's doorstep, among those sinners whose sins are the subversion of the power and integrity of language. So as not to fall into the same vice, Dante will have to portray the nature of this place by other means – a task

¹⁵⁶ Robert Hollander, *Studies in Dante*, Ravenna: Longo, 1980, 120.

that becomes all the more challenging when we consider the philosophical factors that shape Dante's narration of the lowest point in Hell.

Parallel Structures

The clearest depiction of the failure of language to produce truth in the *Antenora* comes from the pilgrim's farcical encounter with Bocca degli Abati, itself modeled after his encounter with Pier delle Vigne. The connection between these two characters is striking and – as far as I have been able to discover – unnoted in commentaries on the *Commedia*. It comprises the central point in this section; in many ways, the discovery anticipates part of what I will argue in the pages that follow. Both, for example, present scenes of torture. Both also address the question of infamia and confession. But what will be less clear here are the differences, particularly canto 32's focus on failures of language. Here, the pilgrim is not only unable to obtain a confession from the soul, but also signals his linguistic impotence by abandoning his attempts to reason with Bocca via his speech, and opting instead to resort to violence.

When Virgil and the pilgrim first arrive upon the frozen lake an anonymous voice warns the pilgrim to watch where he steps, for protruding from the ice are the heads of the damned souls. As the two proceed, the pilgrim kicks one of the souls harshly in the face. The soul rebukes him for the cruelty of his actions, mentioning the Battle of Montaperti. The pilgrim tells Virgil to wait for him, that he must know the identity of the soul that is yelling at him. He offers the soul 'fama'

in the world above, which it refuses. The pilgrim then adopts another tactic, ripping clumps of the soul's hair from its head. The soul barks like a dog – making bestial noise rather than speech - until one of the others betrays him as Bocca degli Abati. Satisfied, the pilgrim rejoins Virgil, while Bocca proceeds to name the other souls around him so that the pilgrim will also bring news of them back among the living as his revenge.

Step for step, this encounter parodies the earlier encounter with Pier delle Vigne, and their resolutions contrast one another, subtly and unmistakably demonstrating that we are in a place where language, corrupted and used for deceptive ends as it is, fails to offer us the certainty of achieving either justice or balance. The pilgrim, desperately wishing to confirm his suspicions about the identity of the soul he has injured, attempts to duplicate the strategy he has witnessed employed by Virgil in the Grove of the Suicides,

"Vivo son io, e caro esser ti puote,"
fu mia risposta, "se dimandi fama,
ch'io metta il nome tuo tra l'altre note."
(*Inf.* 32, vv. 91-93)

*"I am alive, and it can be precious to you," was my reply, "if you
wish fame, that I place your name among my other notes."*

Just as in canto 13, the pilgrim has once again injured a soul, and he offers to make amends by carrying news of the soul back to the living world. Offering to

right the wrong he has just committed, the pilgrim offers Bocca *fama* as an amends. Bocca, however, wants nothing of the sort, and refuses the offer.

Up until this point, Dante has composed the encounter with Bocca so that it proceeds very much in the same fashion as that with Pier delle Vigne. He even portrays the way in which the pilgrim encounters both Pier and Bocca in similar ways, with chance depicted as playing the dominant role in both cases. In canto 13, when Virgil and the pilgrim reach the Grove of Suicides, Virgil's instructions to break the branch do not specify which branch; that choice is left to the pilgrim to make at random,

Però disse l'maestro: "Se tu tronchi
Qualche fraschetta d'una d'este piante,
li pensier c'hai si faran tutti monchi."
Allor porsi la mano un poco avante
E colsi un ramicel da un gran pruno;
(*Inf.* 13 vv. 28-32)

Therefore the master said, "If you break off a little branch from one of these plants, the thoughts you have will be cut short." Then I stretched out my hand a little forward and plucked a twig from a great thornbush,

The pilgrim reaches out and happens to prune Pier's branch. It is only afterward, upon speaking to him, that they learn the identity of the soul. In fashioning the encounter in this way, Dante emphasizes the fact that the pilgrim chose Pier at random, and creates dramatic tension as the readers wait for the soul to identify itself.

Likewise, in canto 32, Dante explicitly draws attention to the seemingly random nature of Virgil and the pilgrim's encounter with Bocca,

E mentre ch'andavamo inver'lo mezzo
 al quale ogni gravezza si rauna,
 e io tremava ne l'eterno rezzo;
 se voler fu o destino o fortuna,
 non so; ma passeggiando tra le teste,
 forte percossi 'l piè nel viso ad una.
 (*Inf. 32 vv. 73-78*)

*And while we were going toward the center to which all gravity collects,
 and I was shivering in the eternal chill, whether it was will or fate or
 chance I do not know, but, walking among the heads, I struck my foot hard
 in the face of one.*

Thus, as with Pier, we don't know who this soul is immediately, though there is some indication that his identity is in some way linked with the famous Battle of Montaperti (1260). The pilgrim's actions take place under a veil of anticipation; the readers, like the pilgrim, have been tantalized by the unidentified soul's utterance of one of the key battles of the 13th century, and his mysterious culpability.

Likewise, after this initial contact, both Pier and Bocca cry out with questions formulated in identical structures,

"Perchè mi schiante?" (Pier, *Inf. 13, v. 35*)

"Perchè mi peste?" (Bocca, *Inf. 32, v. 79*)

Carrying forward the parallel structures, both wounded souls follow their initial cries with rebukes made up of hypothetical scenarios,

Uomini fummo, e or siam fatti sterpi:
 ben dovrebb' esser la tua man più pia,
 se state fossimo anime di serpi."
 (*Inf. 13, vv. 37-39*)

*We were men, and now we have become plants: truly your hand should
be more merciful had we been the souls of serpents."*

"Or tu chi se' che vai per l'Antenora,
percotendo," rispuose, "altrui le gote,
sì che, se fossi vivo, troppo fora?"
(*Inf.* 32, vv. 88-90)

*"Now who are you, to walk through Antenora striking," he said, "others'
cheeks, so that, if you were alive, it would be too much to bear?"*

Structurally mimicking canto 13, Dante seems to be leading his readers in the same direction in canto 32. But the similarities end abruptly at the point where the pilgrim attempts to duplicate Virgil's offer of justice, and canto 32's course of events departs radically from that of canto 13.

Where Pier delle Vigne had readily accepted Virgil's offer, and eagerly swapped his identity for worldly *fama*, Bocca stands defiant. This time, the pilgrim is not only unsuccessful, with Bocca refusing his offer, but is even insulted for his effort:

Ed elli a me: "Del contrario ho io brama.
Lèvati quinci e non mi dar più lagna,
ché mal sai lusingar per questa lama!"
(*Inf.* 32, vv. 94-96)

*And he to me: "The opposite is what I'm greedy for. Get up from here, and
stop pestering me, for you flatter badly here in this swamp!"*

Bocca intuitively grasps that the pilgrim is offering him nothing, as does a reader; the pilgrim's offer to him differs from Virgil's offer to Pier in that here, guilty of treason as Bocca is, his reputation can only be further harmed by the pilgrim's news of him. The pilgrim thus offers not an amends for the wound he has inflicted on Bocca, he is disingenuously flattering him in order to gain more information.

The Failure of Judicial Conventions

The same elements of a judicial trial that Dante used in the encounter with Pier delle Vigne appear again in canto 32, but here he uses them to establish a contrast between the truthful language they offered in canto 13 and the fraud that characterizes this tightest hole in Hell. Indeed, by reproducing them and portraying their results as entirely different, Dante succeeds in further underscoring the deceitful nature of the *Antenora* without having to address it directly.¹⁵⁷ Where torture produced a confession from Pier delle Vigne, the pilgrim's mutilation of Bocca doesn't produce any language at all. In fact, Bocca merely barks in response to the pilgrim's brutal scalping, making no meaningful signs, only bestial noises. Moreover, the pilgrim's deceitful offer of *fama* is itself false and misleading, just a ploy to fool Bocca into revealing his identity. Unlike Pier delle Vigne, who desperately hoped to clear his name of the false charges that he'd betrayed Frederick II, Bocca actually is guilty of treason.

¹⁵⁷ John Ahern, "Amphion and the Poetics of Retaliation." in *Lectura Dantis: Inferno*. University of California Press, Berkeley, 1998, 416.

Historical records of Bocca degli Abati are limited, though Dante's contemporaries confirm his identity as conforming to the role the poet creates for him in the *Inferno*. Giovanni Villani wrote of Bocca degli Abati as a traitor to Florence, having sabotaged the Florentine army at the battle of Montaperti (1260).¹⁵⁸ During that critical battle, Bocca, positioning himself within the largely Guelph Florentine army, had hacked off the hand of the army's standard-bearer, dashing the flag to the ground and causing widespread confusion among the ranks, thus allowing the Ghibelline Sienese army to route them. He then returned to Florence afterward with the survivors, and continued to pretend to be a Guelph. The betrayal led to decades of political strife within Florence.¹⁵⁹

The pilgrim, who recognizes the significance of Bocca's uttering of 'Montaperti,' is aware that he is dealing with a soul somehow involved in the treachery that cost his political party that battle. His own offer of *fama* is thus intentionally misleading, though Bocca is too clever to fall for his trickery. After his initial offer of *fama*, the pilgrim suffers the humiliation of having Bocca expose his dishonest intentions. What Bocca lays bare in his rebuke is the uncomfortable fact that the pilgrim himself is committing a fraud; his real intention is to satisfy his own curiosity about Bocca's identity, not to clear his name (indeed, the pilgrim is offering only further *infamia*). In reality, he can't restore Bocca's reputation because his treason has justly earned him his *infamia*. The offer is thus not an

¹⁵⁸ Alighieri, D. *The Divine Comedy of Dante Alighieri: Volume 1: Inferno*. Ed. Martinez, R. & Durling, R. Oxford University Press, 1996, 511.

¹⁵⁹ John Ahern, "Amphion and the Poetics of Retaliation." in *Lectura Dantis: Inferno*. University of California Press, Berkeley, 1998, 418.

exchange in any sense because the pilgrim offers more shame in trade for information about the soul's identity. Bocca, however, is too wily to fall for such a false offer.

The pilgrim, unable to use further speech to coax him into identifying himself, resorts to torture, hoping first that the threat of further violence will elicit the confession,

Allor lo presi per la cuticagna
e dissi: "El converrà che tu ti nomi,
o che capel qui sù non ti rimagna."
(*Inf.* 32, vv. 97-99)

*Then I seized him by the scalp and said: "You will have to name yourself
or not a hair will be left up here."*

The pilgrim resorts to the threat of violence, a fact that simultaneously raises the dramatic tension in the canto and underscores the inadequacy of language in this place. Failing to move Bocca with his words, the pilgrim attempts to duplicate Pier's wound, this time tearing pieces from Bocca's head. Bocca does not talk – he barks. He never confesses. Where Virgil's offer to listen to Pier successfully induced him to identify himself, the pilgrim's offer, disingenuous as it is, falls flat. Rather than engage in further reasoning with Bocca, the pilgrim opts to disfigure him.

Still, Dante's depiction of the pilgrim's violence toward Bocca adheres to the historical role of torture. The dramatic value of torture to the text is underscored by the fact that torture is itself inherently dramatic. As with all judicial

torture, the patient is first shown the means by which he or she is to be tormented.¹⁶⁰ In this case, the pilgrim issues an ultimatum to Bocca, telling him first that he will tear his hair from his scalp should he not confess his identity.

Bocca remains defiant, and the pilgrim carries out his threat,

lo avea già i capelli in mano avvolti,
 e tratti glien' avea più d'una ciocca,
 latrando lui con li occhi in giù raccolti,
 quando un altro gridò: "Che hai tu, Bocca?
 non ti basta sonar con le mascelle,
 se tu non latri? qual diavol ti tocca?"
 (*Inf.* 32, vv. 103-108)

I had already wrapped his hair around my hand and had torn out more than one tuft of it, he barking with his eyes kept down, when another shouted: "What's wrong with you, Bocca? isn't it enough to play tunes with your jaws, that you have to bark, too? What devil is tickling you?"

But confession, itself predicated both on contrition and the accuracy of language, does not function here.¹⁶¹ Contrasting with Vanni Fucci, who, despite his continued defiance of God, is forced finally to confess his sin for the first time,¹⁶² Bocca declines to do so, and effectively resists the pilgrim. For all of his efforts, the pilgrim is unsuccessful in his attempt to make Bocca identify himself in the sense that, while he is ultimately able to confirm Bocca's identity, it is not via his confession. Fittingly, Bocca is betrayed by the other damned souls contained in the ice nearby.

¹⁶⁰ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World*. Oxford University Press, p. 1985, 27.

¹⁶¹ Nimrod's inability to communicate via shared signs is remarkable because it introduces gibberish to the *Commedia*, but it also presents the first occasion in which confession abjectly fails. We cannot be certain about what exactly Nimrod hopes to say to the pilgrim, but whatever it is, it remains incomprehensible. Nimrod's failure to confess is Dante's way of dramatizing the effect of the corruption of language.

Bocca, whose name translates from Tuscan literally as “mouth,” is indeed among the most loquacious souls in the *Inferno*. He speaks for 24 lines, but his language is curiously devoid of any information that can be used to identify him or his sins; where Pier delle Vigne narrates his life so fully that we can identify him without even hearing his name, Bocca offers no biographical details about himself. In fact, he not only refuses to confess his sins, he out-wits the pilgrim, effectively using *him* to gain his revenge by manipulating the pilgrim into recording the other souls around him in the ice:

“Va via,” rispuose, “e ciò che tu vuoi conta;
 ma non tacer, se tu di qua entro eschi,
 di quel ch’ebbe or così la lingua pronta.
 (*Inf.* 32, vv. 112-114)

*“Get lost,” he replied, “and tell what you will; but do not be silent, if you
 escape from here, about him whose tongue was so loose just now.*

Further urging the pilgrim to write about the other souls in the *Antenora*, Bocca even goes so far as to recommend a narrative structure:

‘lo vidi,’ potrai dir, ‘quel da Duera
 là dove i peccatori stanno freschi.’
 (*Inf.* 32, vv. 116, 117)

*‘I saw,’ you can say, ‘him from Duera, down there where the sinners keep
 cool.’*

These final words to the pilgrim are yet another act of betrayal, one in which Bocca manipulates the pilgrim into revealing the identity of those around him.

Despite the pilgrim's final command, telling Bocca to be silent, he continues to talk and further makes a farce of the just resolution of the encounter with Pier delle Vigne. Where the pilgrim's act of relaying information about Pier to the living was a source of justice, Bocca has tricked him into helping him commit once again the same sin that landed him in Hell in the first place.

As the final component of irony here, the very muses to whom Dante prays before beginning his narration of canto 32 are those who represent values he portrays the pilgrim as violating. Tellingly, after discussing his linguistic conundrum at the beginning of the canto, Dante prays for aid specifically to those muses who helped Amphion, the son of Zeus, whose singing and lyre-playing moved stones to construct a wall around Thebes.¹⁶³

Ma quelle donne aiutino il mio verso
 ch'aiutaro Anfione a chiuder Tebe,
 sì che dal fatto il dir non sia diverso
 (*Inf.* 32, vv. 10-12)

*But let those ladies aid my verse who helped Amphion enclose Thebes, so
 that the word may not be different from the fact.*

As William M. Wilson reminds us, Horace wrote in the *Ars Poetica* that the effect of Amphion's playing was,

fuit haec sapientia quondam,
 publica privatis discernere, sacra profanis,
 concubitu prohibere vago, dare iura maritis,

¹⁶³ William M. Wilson, "Inferno XXXII", *Lectura Dantis*, Number 6: Supplement, Spring 1990, 413.

oppida moliri, leges incidere ligno.

*To circumscribe men's rights, and part
Public from private, sacred from profane,
Protect just wedlock, vagrant lust restrain,
Build ramparted towers, engrave their laws on wood,
And knit the bands of social brotherhood.*

As a poet, Amphion physically constructed a city with his singing, and then fashioned the society. The muses to which Dante prays, then, are those of Civic Virtue, and it is thus this type of support that he needs most to narrate this part of Hell,¹⁶⁴ as these are the very bonds destroyed by the actions of the souls punished in this place.

In the final tally, the pilgrim, despite his efforts, ultimately meets defeat in this encounter; not once does he succeed, either by words or physical coercion, in making Bocca do as he wishes. And it is in this fact that Dante dramatizes the ultimate failure of language. This encounter with Bocca stands out to us as readers precisely because it is unusual for the barbarity in the pilgrim's actions. Justice, as the Aristotelian virtue exhibited in interactions between two or more people, is utterly lacking here. The pilgrim, for all of his motivation and focus, fails to move Bocca with his words, and abandons reason by resorting to further violence. Compounding his initial violent act of kicking Bocca in the face, the pilgrim behaves far more sadistically by ripping his hair from his scalp.

Truth

¹⁶⁴ William M. Wilson, "Inferno XXXII," *Lectura Dantis*, Number 6: Supplement, Spring 1990, 413.

The arrival of the pilgrim and Virgil at the very center of the geocentric universe carries with it metaphysical concerns that Dante expresses throughout the rest of the narrative. As the point furthest from God and the empyrean, this smallest of infernal circles is also the place most unlike God. The sinners being punished all have in common the fact that they betrayed the trust of another. Fraud, then, is here characterized as the misrepresentation of reality to deceive intentionally those whose trust one holds. In other words, it is the corruption of the truth, the intentional verbal manipulation of appearances so as to mislead others. As such, this place is especially wicked, the point on which all sins above weigh, as Dante writes. The sinners being punished here are far more despicable because their fraud was not perpetrated upon nature alone, but upon the special bonds of human society,

Per l'altro modo quell' amor s'oblia
 che fa natura, e quel ch'è poi aggiunto,
 di che la fede spezial si cria;
 onde nel cerchio minore, ov' è 'l punto
 de l'universo in su che Dite siede,
 qualunque trade in eterno è consunto."
 (*Inf.* 11, vv. 61-66)

The former mode forgets the love that Nature makes and also that which is added to it, from which special trust is created; thus in the smallest circle, at the point of the universe where Dis is enthroned, whoever is a traitor is eternally consumed"

As the final sin punished in Dante's conception of Hell, fraud, or the intentional corruption of truth, carries with it the most serious of implications, as it is the

obstruction of the ultimate end of the universe. In the *Summa Contra Gentiles*, St. Thomas theorizes that to understand the universe's final cause, we must first establish the nature of God. He argues that God, as the First Mover, the First Author, is really an intellect because it is the essential property of such to apprehend things by their essence. Because the function of an intellect is to apprehend things as they really are, its ultimate end is to arrive at the truth. Therefore, since truth is the end of the First Mover, it is also the ultimate end of the universe. Fraud, thus, is the most serious of sins because it is directly aimed at obstructing the essence of God and His work.

Dante signals his belief that nature follows an intellect when he has Virgil explain to the pilgrim,

"Filosofia," mi disse, "a chi la 'ntende,
 nota, non pure in una sola parte,
 come natura lo suo corso prende
 dal divino 'ntelletto e da sua arte;
 (*Inf.* 11, vv. 97-101)

"Philosophy," he said, "to one who understands it, notes, and not merely in one place, how Nature takes its course from the divine intellect and art;

For Dante, as for St. Thomas, nature is determined by an intellect, and thus appropriately acts for the same end, being truth. As Virgil makes clear in canto 11, fraud violates natural law by striking at the essential properties of humans,

Ma perché frode è de l'uom proprio male,
 più spiace a Dio; e però stan di sotto
 li frodolenti, e più dolor li assale.

(*Inf.* 11, vv. 25-27)

*But because fraud is an evil proper to man, it is more displeasing to God;
and therefore the fraudulent have a lower place and greater pain assails
them.*

As Dante reminds us in the very first line of the *Convivio*, it is the nature of every human to desire to know.¹⁶⁵ That is, by their nature, all humans seek to apprehend things as they are. Therefore, the person who commits fraud violates the very essence that makes humans human, and in doing so transgresses natural law.

Raising the stakes even further, fraud also strikes at mankind's salvation by transgressing what St. Thomas calls divine law, or revelation. Carrying his analysis further, St. Thomas argues that truth serves as the end of Divine Law; that is to say, God assumed flesh in the form of Jesus with the express purpose of revealing truth to humans,

“For this I was born, and for this came I into the world, that I should give testimony to the truth.” John: 18:37¹⁶⁶

The truth that St. Thomas describes is a specific kind; it is the truth that rests as the origin of all other philosophical truth. He cites Aristotle's *Metaphysics*, where

¹⁶⁵ *Convivio* 1.1

¹⁶⁶ St. Thomas cites this passage in *Summa Contra Gentiles*, SCG, I, ch. 1, ¶2

it is described as “that truth that belongs to the first principle whereby all things are.”¹⁶⁷ In the Christian context of St. Thomas and Dante, this ‘first principle’ coincides with God, who is the first mover.

Therefore, when Dante narrates the center of the earth, he is portraying a place whose wickedness is almost impossible to describe in words. Here, truth is subverted by deception, God’s grace is rejected, and all trust is betrayed. In doing so, he inevitably addresses the question of false language, as well as its impact upon the human bonds that form society. Deprived of the use of the direct linguistic signs of such an abysmal locus (i.e. the words that most closely correspond to the fraud and corruption at the bottom of Hell), Dante must resort to using the contents of the narrative to convey its base nature.

The end of the *Inferno* uniquely portrays the failure of both language and judicial practice in tandem, forcing us to reevaluate the relationship Dante had with juridical science and praxis. Far from a simple antagonistic relationship in which the poet despised the lawyers, we are here confronted with the fact that when addressing the most complex philosophical question of truth in the final cantos of the *Inferno*, Dante turned in no small measure to the theories and practices developed by those jurists. For the sharpest illustration of the failure of truth and language he necessarily draped his narrative over the structure of legal conventions, drawing not just from the same philosophical and theological sources that informed judicial procedure, but also assuming its distinct interpretation of them. Dante’s portrayal of confession made before Minos

¹⁶⁷ Aristotle, *Metaphysics*, Ia, 1 (993b 30)

produces no absolution in the *Inferno*; it is the full *indicium* presented to a judge before sentencing is passed. The pilgrim's only physical contact with the damned, aside from Virgil, is more than simple infernal torment; it is torture with the purpose of producing truth via confession. Pier delle Vigne craves nothing so much as to remove the *infamia* with which his reputation was burdened in life; Bocca degli Abati tries to avoid incurring it by resisting every attempt made by the pilgrim to identify him.

For all of the cosmological and linguistic complexity that the center of the universe represents for Dante, his ultimate narrative strategy is to look to the lawyers and their procedures and conventions, making of Hell a court of law.

Chapter 3: *The Commentators: Cino's Justinian, Dante's Justinian.*

Between 1313 and 1317 something happened to dislodge the plan for including the Pistoian at the center of the *Paradiso*: Cino's defection from the imperial cause. We can almost be certain that, by the time of Dante's death, Cino's juridical behavior would have astonished and annoyed his former friend.
(Robert Hollander, "Dante and Cino da Pistoia". *Dante Studies*, CX, 1992).

The greatest thing about this man is he's steady. You know where he stands. He believes the same thing Wednesday that he believed on Monday, no matter what happened Tuesday. Events can change; this man's beliefs never will.
(Stephen Colbert, *Speech to White House Correspondent's Dinner, April 30, 2006*)

By the end of the 13th century, the ancient Roman Empire for which the Justinian's *Corpus* was created had become all but a myth for Western Europe. The German Holy Roman Empire, taken by Dante and the medieval jurists to be the continuation of the ancient Roman Empire, vied for international influence with two other super powers, the Papacy and the kingdom of France. The medieval Holy Roman Empire shared the Western European political stage with these two players that could and did oppose its dominance in very real ways. Despite this political reality, the interpretations of law and political theories put forward by the Glossators assumed that the ancient Romans still reigned, or ought to reign, over Europe. The close exegetical readings they based on the text of the *Corpus* presupposed a world very different from that in which the medieval jurists lived. More specifically, the Glossators found ancient laws that Justinian had ordered assembled and edited for the 6th century Eastern Roman empire, a powerful entity whose influence extended to Asia Minor, Western Europe, Eastern Europe, and North Africa. In other words, their understanding of Roman

law's role in society presupposed the continued existence of Justinian's empire, when in reality it had long since vanished as a political entity outside of Asia Minor. Thus, the most complete synthesis of juridical theory, the Accursian *Glossa* offered to Dante a firm, though inaccurate bedrock for his idealistic view of empire as dominant world power.¹⁶⁸

For jurists practicing civil law in the early 14th century, new political realities had become difficult to ignore. While Roman law retained its authority as a legal institution, the needs of the actual world made it necessary to adapt Justinian's *Corpus* to day-to-day praxis. It thus fell to a new school of jurists, those of the 14th century who emerged after the Glossators, to reconcile the world described in the *Corpus* with the political reality of their time. Subsequently called the 'Commentators,' due to their willingness to go beyond the traditional juridical theories based on the exegetical readings of the glosses, these jurists steadily developed doctrines based on a philosophic interpretation of the law. To do so required that they redefine their relationship with the words of Roman law to allow broader readings of the legal precepts, and more systematic study of mechanisms behind the laws. The result of this shift in doctrine was a movement away from the reliance upon the literal meanings of the laws, and toward the exposition of universally valid, general principles.¹⁶⁹ As Walter Ullman put it, the Commentators' greatest achievement was,

¹⁶⁸ Bruno Paradisi, *Studi sul medioevo giuridico*. Rome: Tiferno Grafica, 1987, 968.

¹⁶⁹ Walter Ullmann, *The Medieval Idea of Law*. Methuen & Co. LTD. (London: 1946), 1.

... (the) apprehension of legal problems as a coherent whole, systematization of the huge body of law, conception that the individual jural precept is merely the legal expression and enforceable verification of an idea behind the law.¹⁷⁰

This change was gradual, and, like many paradigmatic shifts in history, it was embraced by some theoreticians, and fiercely resisted by others. In this case, the divide manifested itself more or less along the line of the Alps, with Orleanese jurists adopting a doctrine of dialectical study of Justinian's *Corpus*, while their Bolognese colleagues adhered to the traditional exegetical readings in the *Glossa Ordinaria*.

Cino da Pistoia and Dante Alighieri's treatment of the *Corpus* mirrors this fissure, with Cino actually adopting and importing much of the Orleanese doctrine, and Dante positioning himself with those who insisted on a much more restrictive interpretation of the laws. Thus, this chapter will examine the divergent conceptions of Justinian's *Corpus* in their thinking. I take up this difference because it illuminates the relationship between these two writers in profound and groundbreaking ways. Modern commentators on Dante generally depict his relation with Cino exclusively in terms of their love poetry, as that of a master and his student, and rely entirely on Dante's writings to arrive at their conclusions.¹⁷¹

¹⁷⁰ Walter Ullmann, *The Medieval Idea of Law*. Methuen & Co. LTD. (London: 1946), 1.

¹⁷¹ Elizabetta Graziosi argues that Cino was indeed 'fickle,' as Dante accused him of being, and that Cino's inclination to become enamored with more than one woman necessarily clashed with Dante's own stated fidelity to Beatrice. For Graziosi, Cino's exclusion from the *Commedia* is the final snub by Dante. Teodolinda Barolini argues that Cino did not appear in the *Divine Comedy* because Dante was not influenced by him and therefore had nothing to gain by manipulating his reputation (Teodolinda Barolini, *Dante's Poets*, Princeton, New Jersey: Princeton University Press, 1984). Robert Hollander argues that Dante had originally intended to place Cino in the

When we shift the focus of our critical gaze to philosophical differences over the *Corpus* and over the nature of legal interpretation, however, we discover a more serious, contentious, and fundamental source of disagreement. Dante didn't dismiss the great jurist Cino da Pistoia because he was 'fickle' in love; he did so because Cino represented a fundamental threat to his worldview and philosophical principles. To demonstrate this, I examine the treatment of Roman law in Dante's works specifically, the *Monarchia*, the *Convivio*, the *Commedia*, and Epistles V and VI. I limit myself to Cino's early masterpiece, the *Lectura Super Codice*, as well as the *consiglia* he produced during Henry VII's conflict with Robert of Naples. In both cases, I will sharpen my study by focusing on arguments common to these works and to those of Dante. When compared, the result is two incompatible views of Roman law. On the one hand, Dante insisted on treating Justinian as an *auctor*, permitting only Accursius's *Glossa Ordinaria* as an appropriate interpretation apart from his own. Cino's fierce resistance to the previous legal tradition led him to question, challenge, and reinterpret many of the traditional exegetical interpretations of the *Corpus*. As a jurist, it was his business to adapt the ancient laws to modern needs, and often this meant seeking meaning beyond that contained in Justinian's original text. Taken together, these two men offer us examples of distinct and often clashing relationships to the body of Roman law in the 14th century.

Paradiso, but swapped him out for Cacciaguida because of the Pistoian's defection from the Ghibelline cause.

This comparison of Dante and Cino is especially appropriate because of the prominence both men held as political theoreticians; more important, it addresses gaps in modern treatments of their biographical, artistic, and philosophical relationships. Indeed, it is something of a mainstay of Italian literary criticism to assume that early in their *stilnovistic* careers, Dante and Cino had similar views on the philosophical traits of love, but had a falling out at some point in the early 14th century,¹⁷² resulting in Cino's total exclusion from the *Divine Comedy*. The problem has been studied extensively, but almost exclusively from a perspective that makes two assumptions: first, that Cino committed some unknown transgression of which Dante disapproved,¹⁷³ and, second, that their views expressed on the matters of love and politics played the sole divisive role.¹⁷⁴ This approach, though not utterly inappropriate, ignores their mutual interests in the massive arena of Roman law. In the pages that follow, I examine what Dante says about jurists in general through the prism of the personal and poetic relationship he shared with one of the most prominent and influential legal professionals of his day, paying close attention to the content and nature of his comments.

¹⁷² Robert Hollander, "Dante and Cino da Pistoia". *Dante Studies*, CX, (1992), 218.

¹⁷³ Robert Hollander, "Dante and Cino da Pistoia". *Dante Studies*, CX, (1992), 218.

¹⁷⁴ In her masterful study, *Dante's Poets: Textuality and Truth in the Comedy*, Teodolinda Barolini argues that influence in the relationship between Dante and Cino flowed exclusively from the former to the latter: "Rather than exerting influence, Cino absorbed it, thereby guaranteeing his exclusion from the *Comedy*." Her argument, while no doubt astute, is severely limited in its scope, once again offering to us an example of criticism's tendency to treat Cino exclusively as a poet. Barolini precedes the line above by saying of Cino, "He is not significant enough to be included in the *Comedy's* poetic itinerary, precisely because he is too good a friend; poetically, Cino is Dante's mirror image, an elegiac version of Dante in his sweetest mode." It would be practically unimaginable to speak of the *Commedia* without acknowledging the strong presence of Dante's political and philosophical thinking, and it would likewise be myopic to relegate our study of Cino's presence in Dante's life to the Pistoian's role as a love poet.

Dante may have made harsh criticisms about jurists because he sincerely believed them to be true, but they also served him in other ways. These denunciations helped Dante by casting doubt upon the intellectual abilities of a prominent group of intellectuals who were simultaneously treating the same political issues. In particular, when writing on the question of spheres of temporal and spiritual influence of the Empire and the Papacy, Dante was taking part in an old and fierce debate in which some of the most distinguished thinkers of Europe were engaged, many of whom were jurists. Teodolinda Barolini's observation about Dante's handling of other poets is also valid for the jurists,

One of Dante's key strategies for achieving our narrative assent involves his handling of other poets: he consistently formulates the difference between his poetry and that of his predecessors as the difference between truth and (with various shadings) falsehood.¹⁷⁵

As we shall see, Dante's deft syllogistic argumentation effectively undercuts any rival theories by casting doubt upon the fittingness of their authors to treat the subject. In short, by making the argument that jurists were not suited to finding the truth¹⁷⁶ or were presumptuous to engage in interpretation of Justinian's *Corpus*,¹⁷⁷ Dante is able to dismiss the validity of their positions and opinions on legal matters without even directly engaging with their works.

In the second book of the *Monarchia*, while concluding his demonstration that the ancient Romans had conquered their empire by right through trial by combat, Dante abruptly turns his attention to unspecified jurists and launches into

¹⁷⁵ Barolini, Teodolinda. *Dante and the Origins of Italian Literary Culture*. New York: Fordham UP, 2006, 152.

¹⁷⁶ *Convivio* 3.11, 10

¹⁷⁷ *Monarchia*, 2.9, 20

a brief but vicious invective. It is the only time in the work that he directly addresses them.¹⁷⁸ The remark, though particularly pointed and caustic, seems off-hand, but, when read in the context of his treatment of Roman law, these comments reveal the degree to which Dante was aware of the developing doctrines within the field:

Videant nunc iuriste presumptuosi quantum infra sint ab illa specula
rationis unde humana mens hec principia speculatur, et sileant secundum
sensus legis consilium et iudicium exhibere contenti.

*Now let the presumptuous jurists see just how far they are below that
watch-tower of reason from which the human mind contemplates these
principles, and let them be silent and be satisfied to give counsel and
judgment in accordance with the sense of the law.*

This dismissal is worth studying for a pair of reasons. At first glance, it appears to be a straightforward, withering denunciation of a professional group already the frequent subject of contempt by medieval society. Dante has engaged in this sort of rebuke before, in the *Convivio*; what sets this instance apart from his earlier comments is that here he condemns them not for their greed or dishonesty, rather for their arrogance and ineptitude. Though different in content, the two comments are consistent, as both help the poet establish authority in treating his subject matter by disparaging the abilities of other theoreticians.

¹⁷⁸ and the third and final mention of them by name in the dantean corpus.

The *Monarchia* is a work remarkable for its author's deft use of syllogistic reasoning,¹⁷⁹ and Dante demonstrates this skill particularly well in the third book, where he undermines many of the principle arguments of the decriticalists by adroitly dismantling them with logic. But he is cagier and more general when it comes to his treatment of civil jurists: Dante had previously argued that jurists fit into the category of professionals who sought knowledge solely for the profit it gained them, as did physicians and presumably others, and could therefore not be properly considered philosophers, or seekers of truth.¹⁸⁰ We may view Dante's syllogism as thus:

- a. Professional intellectuals cannot find the truth
- b. Jurists are professional intellectuals
- c. Jurists cannot find the truth

Furthermore, the implication of this argument is that he, Dante, is not a professional intellectual and can therefore be trusted as an honest seeker of truth. He opens the *Monarchia* with an exordium utilizing the same gambit,

Cumque, inter alias veritates occultas et utiles, temporalis Monarchie notitia utilissima sit et maxime latens et, propter non se habere inmediate ad lucrum, ab omnibus intemptata, in proposito est hanc de suis enucleare latibulis, tum ut utiliter mundo pervigilem, tum etiam ut palmam tanti bravii primus in meam gloriam adipiscar.

(*Monarchia*, I, i, 5) Italics mine.

Now, since among other truths which are hidden and useful, a knowledge of temporal monarchy is both extremely useful and most inaccessible, and since no one has attempted to elucidate it (on account of its not leading

¹⁷⁹ Dante, *Monarchy* (Cambridge Texts in the History of Political Thought). New York: Cambridge UP, 1996, xv.

¹⁸⁰ *Convivio* 3.11, 10

directly to material gain), *I propose to draw it forth from where it lies hidden, so that my wakeful nights may be of benefit to the world, and so that I may be the first to win for my own glory the honour of so great a prize.*

It is no accident that Dante declares his present work the first treatment of temporal monarchy (which it certainly was not¹⁸¹), made possible only because of his own lack of desire of material compensation. What is wonderful about this passage is its self-conscious irony, since the greed of authors has prevented them from examining greed as a problem, because there can be no profit in it. Yet, this same act of calling attention to greed becomes a means of figuring the *Monarchia's* author as a man uncorrupted by his subject. Where the greedy man has no motivation to elucidate these matters, the greedless author Dante will share them with us. In this one rhetorical maneuver, Dante would deny from the outset the viability of any other work treating the same argument written by a professional, such as a jurist.

Looking once again at Dante's address of the jurists in Book II of the *Monarchia*, we see that it is composed of language intended to diminish the readers' sense of the legal professionals' worth. The first adjective, 'presumptuous,' immediately undermines the jurists' legitimacy as experts in law, casting them as arrogant and dealing with matters beyond their proper role. But the question remains: to what exactly does Dante refer?

¹⁸¹ One need only think of Bernard of Clairvaux's letter to Pope Eugenius III (c. 1146-1150), which argued for the temporal and spiritual supremacy of the church, thereby establishing the doctrine of the Two Swords. Closer to Dante's time were John of Salisbury's *Policraticus*, Ptolemy of Lucca and St. Thomas Aquinas's joint venture, *De Regimine Principum*, and Giles of Rome's *De Ecclesiastica Potestate*, all of which treat themes of temporal monarchy.

Dante's use of 'presumptuous' always carries with it significant connotations of transgression. Far from a simple matter of arrogance, the term, as Dante uses it, is marked by the connotation of intellectual arrogance. As, Teodolinda Barolini observes, Dante uses the variations of *presumere* in all of his works when dealing with the very question of the appropriate limits of human knowledge.¹⁸² The most dramatic representation of such a transgression, of course, is the figure of Ulysses in the *Inferno*, the same hero whom Dante portrays as having trespassed the columns of Hercules, thereby transgressing the geographical limits established by Zeus. Even before the *Commedia*, however, Dante uses 'presumere' in the same fashion. Referring to Eve in the *De Vulgari Eloquentia*, he calls her '*presuntuosissima Eva*'¹⁸³ for having dared to utter the first human words to the devil in Eden and then taste of the fruit of the tree of knowledge. This transgression of the limits of knowledge resulted in the expulsion of mankind from the Garden of Eden. The word then appears in *De Vulgari Eloquentia* 1.73, in reference to Nimrod, whose hubris is demonstrated in the construction of the Tower of Babel. In attempting to construct a building that would surpass even God, Nimrod was also trying to elevate his art past that of nature, which human art imitates, and past even God, whom nature imitates, going beyond, in other words, the limits of human art. This act of transgression precipitated the second fall of humanity, its political and social fragmentation.

¹⁸² Barolini, Teodolinda. *The Undivine Comedy*. Princeton University Press, 1992, 115.

¹⁸³ *De Vulgari Eloquentia* 1.6. Found in Barolini, *The Undivine Comedy*, 115.

In the *Monarchia*, Dante characterizes the jurists as presumptuous after he argues that the Romans had conquered their empire by right and with the divine blessing of God. As proof, Dante cites the validity of a special type of ordeal known as trial by combat (*duellum*). According to Dante's strained reasoning, the ancient Romans were engaging in a sort of trial by combat when their armies steadily conquered their neighbors and created the empire.¹⁸⁴ As God would not permit the unjust to defeat the righteous, Dante argues, He showed His tacit approval by granting the Romans victory after victory in battle. What Dante is treating here, then, is the question of whether or not their empire was foreordained by God. He addresses this question of destiny in *Paradiso* 21, where the pilgrim asks Peter Damian if he had been predestined to encounter him,

ma questo è quel ch'a cerner mi par forte,
perché predestinata fosti sola
a questo officio tra le tue consorte."
(*Par.* 21, vv. 76-78)

*but it is hard for me to understand why you alone among your peers were
foreordained to act upon this charge.*

Damian replies that it is not the place for men to seek such information,

de l'eterno statuto quel che chiedi,
che da ogne creata vista è scisso.
E al mondo mortal, quando tu riedi,
questo rapporta, sì che non presuma
a tanto segno più mover li piedi.
(*Par.* 21, vv. 94-99)

¹⁸⁴ I refer to his reasoning as strained because trial by combat was always between two individuals, not groups.

for what you ask is hidden in the depths of the abyss of God's eternal law, so that the sight of any being He created is cut off from it. And to the mortal world, when you return, bear this report, so that it shall no more presume to set its step toward such a goal.

Using 'presumptuous' once more, Damian tells the pilgrim to return to the living and tell mankind to cease seeking such knowledge, for it lies beyond our limits.

Calling on the jurists to limit themselves to the 'sense of the law,' Dante leaves their presumptuous activity unnamed, but the logic of the sentence points to that activity lying beyond the mere literal 'sense' of legal language: legal interpretation. And to understand this issue of interpretation in its contemporary context, we must turn to the divergent treatment of the authoritative *Glossa* by Italian and French jurists at the crossroads of the thirteenth and fourteenth centuries.

The first stage of juridical revival started with Irnerius (c. 1050 – c.1125) and his founding of the Glossator tradition. The publication and subsequent widespread adoption of Accursius's *Glossa Ordinaria* signaled the effective end of this period.¹⁸⁵ The authority that this work assumed is difficult to overstate; in Italy, only those parts of the *Corpus Iuris Civilis* covered by the *Glossa* were considered fit to be considered in court, as is expressed by the commonplace maxim, "quidquid non agnoscit glossa non agnoscit curia."¹⁸⁶ In this case, the *Glossa* went beyond the official interpretive lens and determined which parts of Roman law were valid. The irony in this solid dependence on the marginalia is

¹⁸⁵ Donald R. Kelley, "The Civil Science in the Renaissance: Jurisprudence Italian Style". *Historical Journal*, Vol. 22, No. 4 (Dec., 1979), 779.

¹⁸⁶ Charles Homer Haskins, *The Renaissance of the 12th Century*. Meridian Books: New York. 1927, 202.

that Accursius had violated Justinian's explicit command that no interpretations be made of his laws,¹⁸⁷ something apparently missed by the Bolognese jurists. Italian students of law and Dante not only accepted the authority of the *Glossa*, but also elevated its importance almost to equal that of the original text.

On the other side of the Alps, however, the *Glossa's* authority was more mixed, far less absolute, and increasingly challenged by newer doctrines. More specifically, in the closing decades of the Duecento and the open of the Trecento, two jurists, Jacques de Revigny (d. 1296) and Pierre de Belleperche (d. 1308), masters of law at the school at Orléans were beginning to analyze the Justinian *Corpus* using Aristotelian dialectic, showing themselves willing to question the traditional authority of the exegetical glosses of the original text of the *Corpus Iuris Civilis*. In this period, far away from Bologna, the unquestioned dominance of Accursius's *Glossa Ordinaria*, the standard interpretation of Roman law for all jurists since the 1230s, though still formidable, lost ground to a developing doctrine aimed at logical analysis of the legal texts. The goal of this doctrine was to identify philosophical ideals that went beyond the specific written laws.

Orleanese jurists handled their legal texts much more liberally than their Bolognese colleagues, and their willingness to challenge the authority of the *Glossa* went neither unnoticed nor unchallenged by the Italians.¹⁸⁸ In fact, the reception of the *Glossa* marked the principle source of difference between the schools. We can see the prevailing attitude of the French jurists in their frequently

¹⁸⁷ Justinian, constitution of *Omnem*.

¹⁸⁸ Meijers, E. M. *Etudes D'Histoire du Droit. Vol. III. Le Droit Romain au Moyen Age*. Leyde: Universitaire Pers Leiden, 1959, 112.

disparaging comments toward the *Glossa*. Revigny and Belleperche, in particular, spared the text none of their most severe judgments.¹⁸⁹ Their comments ranged from the relatively impartial, such as “glossa multum turpiter contradicit sibi”¹⁹⁰; “ista questio est multum confusa in glossa nostra”¹⁹¹; to the caustic, such as “ista glossa pessima est”; “est glossa diabolica”¹⁹²; “ista glossa fatua est.”¹⁹³ In addition to their divergent treatment of the *Glossa*, the French jurists underwent a formation qualitatively different from that of their Italian colleagues, which resulted in a different approach to the law. The school at Orléans offered a teaching curriculum that differed in key ways from Bologna’s, chief among these differences was the breadth of the Orleanese pedagogical focus. The school granted matriculating students the title of *Magister atrium*, alluding to their broad preparation in law, philosophy, and logic.¹⁹⁴ This divergence of curriculum and its approach to the study of law was due to many factors, including the school’s geographical location and the heavy Dominican theological influence upon it. It produced a fundamentally different approach to legal interpretation.

Jurists in France also found themselves in a political environment very different from that of their counterparts at Bologna due not only to their distance from the influence of its *alma mater* but also to the Orléans school’s close

¹⁸⁹ Meijers, E. M. *Etudes D'Histoire du Droit. Vol. III. Le Droit Romain au Moyen Age*. Leyde: Universitaire Pers Leiden, 1959, 112.

¹⁹⁰ Révigny in [Petri de Bella Perthica] *Lectua Codicis*, ed. 1519, fol. 328 col. 2.

¹⁹¹ Révigny in [Petri de Bella Perthica] *Lectua Codicis*, ed. 1519. fol. 337 col. 4.

¹⁹² Révigny in [Petri de Bella Perthica] *Lectua Codicis*, ed. 1519. fol. 357 col. 1.

¹⁹³ Belleperche on D. 44,2,4.

¹⁹⁴ Cortese, Ennio. *Il rinascimento giuridico medievale*. Rome: Bulzoni Editore, 1996, 85 n.251

proximity to Paris and the theological and political activity taking place there. Legal scholarship at Bologna was founded on the concept of the empire, and thus focused on restoring Justinian's law to its original form.¹⁹⁵ Such an approach assumed that Justinian had reformed the preceding Roman laws as the emperor and perfected them; as a result, the laws and scholarship in the *Corpus* reflected the contours of his system of government. French jurists, in contrast, operated outside of the commune system and were constricted by the unique exigencies of the French monarchy. Bolognese doctrine thus could not be accepted as a whole by the Orléans school because its favoring of the empire failed to suit the interests of the Kingdom of France.¹⁹⁶ If taken literally as it is written in Justinian's *Corpus*, Roman law assumes and sustains the existence of an imperial authority, leaving no room for independent monarchs. This interpretation of the laws, needless to say, could not always be beneficial to the French monarchy.

Because their own approach to legal interpretation differed so markedly from the strictly exegetical textual analysis favored by the Glossators and Commentators, the scholars of Orléans in time produced what amounted to a starkly competing worldview. Instead of pro-empire interpretations of the law, they often had to look past the literal interpretation of the Justinian text in order to reinterpret content perceived to be undermining to the legitimacy of the monarchy. As it so happened, the Orleanese jurists had at their disposal the theoretical tools necessary to do this thanks to the work of theologians.

¹⁹⁵ Paradisi, Bruno. *Studi sul medioevo giuridico*. Rome: Tiferno Grafica, 1987, 968.

¹⁹⁶ Paradisi, Bruno. *Studi sul medioevo giuridico*. Rome: Tiferno Grafica, 1987, 970.

The theological activity of the university at Paris offered the means by which to circumvent the pro-imperial orientation of the Justinian *Corpus*, in the form of Aristotelian dialectic. Thomistic thinking pervaded Orléans because it was essentially a Dominican institution: the students, faculty, and administration of the school were all members of the Dominican clergy, and the institution was even governed by an ecclesiastic official nominated by the bishop. The two most influential legal scholars at Orléans, Jacques da Révigny and Pierre de Belleperche were decidedly influenced by the Thomistic thinking so prevalent in the Dominican order.¹⁹⁷

To appreciate the nature of the impact that Dominican theology/philosophy had on the Orléans legal scholars, we need only look to that order's most influential thinker, St. Thomas Aquinas, who produced his own work on the study of law. St. Thomas's objectives were more philosophical than professional, and were metaphysical in orientation. He viewed law as a theologian; he was not a jurist, and he did not treat law as a legal professional would have.¹⁹⁸ As a result, while he knew the Justinian *Corpus*, citing it a total of six times in the *Summa Theologiae*, St. Thomas also sought to go beyond the words of Roman law, to its nature and basic principles.¹⁹⁹

St. Thomas's *Treatise on Law* composes questions 90-97 of the *Summa Theologiae*. He does not merely study human law by itself, but defines and treats

¹⁹⁷ Cortese, Ennio. *Il rinascimento giuridico medievale*. Rome: Bulzoni Editore, 1996, 84

¹⁹⁸ Thomas Aquinas, . *Saint Thomas Aquinas, the Treatise on law [being Summa theologiae, I-II; QQ. 90 through 97]*. Ed. R. J. Henle. Notre Dame: University of Notre Dame P, 1993.

¹⁹⁹ Thomas Aquinas, . *Saint Thomas Aquinas, the Treatise on law [being Summa theologiae, I-II; QQ. 90 through 97]*. Ed. R. J. Henle. Notre Dame: University of Notre Dame P, 1993, 111.

extensively four types: Eternal, Divine, Natural, and Positive. The final category, Positive law, or the laws made by man, is the point where St. Thomas's work intersects with that of the jurists. St. Thomas's significance for legal studies is multifaceted, but he is best known for his success in providing the first concise definition of a law:

...quae nihil est aliud quam quaedam rationis ordinate ad bonum commune, ab eo qui curam communitatis habet, promulgata.

(ST I-II; QQ. 90.4)

...a law is nothing other than a certain dictate of reason for the Common Good, made by him who has the care of the community and promulgated.

St. Thomas's definition is important not just for how succinct it is, but especially for his methodology. He developed it by using Aristotelian philosophy. Specifically, St. Thomas made use of the Four Causes, all of which are present in the formulation:

...quae nihil est aliud quam quaedam rationis ordinate ad bonum commune, ab eo qui curam communitatis habet, promulgata.

(ST I-II; QQ. 90.4)

...a law is nothing other than a certain dictate of reason (*Formal Cause*) for the Common Good (*Final Cause*), made by him who has the care of the community (*Efficient Cause*) and promulgated.²⁰⁰

This is the definition of a theologian thoroughly familiar with Aristotelian philosophy, seeking the essential intelligibility of the thing: that aspect which it does not share with anything else. Moreover, it is as complete as it is precise because St. Thomas was seeking to define the essence of a law, only those realities (characteristics) which are necessary and sufficient for its existence.²⁰¹ For a law to be considered a law proper (*simpliciter*), it had to meet all four of the requirements. If it failed in any respect, it was considered putative, a law in a partial sense. An example of this might be a ruler (one who has charge of the community) who promulgates a selfish or unfair law (one that does not serve the Common Good).

As brief as it is, St. Thomas's definition of a law reveals a sharp contrast with the approach of a civil jurist using solely the authority of the Justinian *Corpus* to define who can make laws. Most notably, it omits mention of a specific ruler, making it applicable to any figure responsible for any community. While not excluding the Holy Roman Emperor from occupying that post, it reduces him to

²⁰⁰ The Material Cause is the fourth, and consists of the community; the human acts of the people.

²⁰¹ Saint, Thomas Aquinas,. *Saint Thomas Aquinas, the Treatise on law [being Summa theologiae, I-II; QQ. 90 through 97]*. Ed. R. J. Henle. Notre Dame: University of Notre Dame P, 1993, 48.

but one example of a category. Such a view contrasts fundamentally with the *Corpus* since, according to Justinian, the emperor alone was the source of law.²⁰²

While subtle, this difference in attitude toward the source of laws proved a real and enduring divergence between the legal traditions of Orleans and Bologna. It was only in Dante's generation that the two traditions directly confronted one another, and the most explicit example of the resulting combination was in the doctrine of one of his fellow *Stilnovisti*, Cino da Pistoia.

Cino da Pistoia

Cino da Pistoia was among the most prominent jurists of his generation, and was disposed toward crossing the gulf between Orleans and Bologna, importing the French doctrine to Italy via his own work. In his *Lectura Super Codice*, he embraced several of the key points of the doctrine developed by Revigny and Belleperche, thereby introducing the Orleanese doctrine to Bologna in the second decade of the Trecento via his writings and lectures.²⁰³ As one of the most prominent and influential European jurists, Cino da Pistoia represented the state of the juridical art in Italy, though his formation incorporated heavily Orleanese doctrine. His own approach to law was characterized by an intense independence from the previous legal tradition that often manifested itself in that

²⁰² Canning, Joseph. *The Political Thought of Baldus de Ubaldis*. Cambridge: Cambridge UP, 1987, 10.

²⁰³ Cino's own master, Dino da Mugello, was aware of the works of Revigny and Belleperche, but cited them far less than his pupil did.

singular hostility toward the authority of the *Glossa* so common in the French tradition. Thus when treating the superiority of his own interpretation of the laws over the glosses, Cino writes:

“dixerunt doctores et *Glossa*, et idem Roffredus: at quotquot fuerint, etiamsi mille hoc dixissent, omnes erraverunt.”²⁰⁴

...should the doctors and the *Glossa*, and even Roffredus say it: even if there are a thousand of them, they are all wrong.

Moreover, Cino’s lectures and theories, in keeping with the doctrine of the Orléans School, constituted an attempt to reconcile legal science with the political reality,²⁰⁵ and this often meant a liberal interpretation of the Justinian *Corpus*.

Cino da Pistoia (Guittoncino Sighibuldi) was born in 1270, into an illustrious family. The Sighibuldi house was well known for its involvement in high-level politics. A venerable family, it boasted several important political figures in Tuscan society. One of Cino’s uncles had served as Podestà of Bologna in 1248, while another, pursuing a religious vocation, served as bishop of Pistoia in 1303, then of Foligno from 1304. His father was a syndic for Pistoia. His maternal grandfather was a medicus by profession, and a member of the Consiglio del Comune in 1258.

Precise details of Cino’s formal education are murky, though the larger contours of his legal studies are clear enough. We are certain that he was a

²⁰⁴ Cynus, *Lect. super Cod.*, IV, 15 *unde legitimi etc.*

²⁰⁵ Bruno Paradisi, *Studi sul medioevo giuridico*. Rome: Tiferno Grafica, 1987, 968.

student at Bologna from 1297 to 1301.²⁰⁶ He became a *iuris doctor*, after he had taken his public examination in 1314. It was also in this year that he published his magnum opus, the *Lectura Super Codice* on Justinian's *Codex*.²⁰⁷ The work was certainly produced in the classroom, based on Cino's lectures. Modern scholars have struggled to explain how Cino could have given ordinary lectures, because he was not yet a full doctor.²⁰⁸ The most likely explanation is that he qualified to deliver extraordinary lectures as a licentiate.²⁰⁹ To do so, he would have had to have taken eight years of courses, and then passed a private exam. The date of this exam is uncertain, though modern scholars agree that it must have taken place between 1290 and 1304.²¹⁰

A long tradition originating in the 16th century holds that Cino went to France to study with the legal scholars there. Yet, despite his extensive use of the theories of the French masters Jacques de Révigny and Pierre Belleperche, there is no conclusive evidence that he ever traveled to Orléans to study with them. Domenico Maffei reminds us that French scholars regularly passed through Northern Italy on their way to Naples, and Cino would have had ample access to their writings.²¹¹ Meijers dismisses the possibility that Cino traveled to

²⁰⁶ Chiappelli, Luigi. *Cino da Pistoia Giurista: Gli Scritti del 1881 e del 1910-1911*. Vol. 4. Pistoia: Società Pistoiese di Storia Patria, 1999. Print. Biblioteca Storica Pistoiese, 31.

²⁰⁷ Chiappelli, 43.

²⁰⁸ Sistrunk, Timothy, *Law, Custom and Language: Ideas in Practice in the Legal Writings of Cino da Pistoia*, 10.

²⁰⁹ Sistrunk, Timothy, *Law, Custom and Language: Ideas in Practice in the Legal Writings of Cino da Pistoia*, 11.

²¹⁰ Sistrunk, Timothy, *Law, Custom and Language: Ideas in Practice in the Legal Writings of Cino da Pistoia*, 10.

²¹¹ Domenico Maffei, "Il Pensiero di Cino da Pistoia sulla Donazione di Costantino, le sue fonti e il dissenso finale da Dante", *Lecture Classensi* 16 (1987), 121.

France for study as wholly without support, finding no conclusive evidence in Cino's writings or in those of the French jurists.²¹²

Cino was also a famous and well-respected author of some 200 sonnets and canzoni (the presence of numerous works of dubious attribution makes a precise number impossible) who took part in the same circle of poets as Dante. Indeed, it was a common passion for love poetry brought Cino and Dante into contact with one another. Robert Hollander finds three primary periods in their relationship.²¹³ The first is during their first experiments with love poetry. In fact, the earliest recorded contact between the two is when Cino responded to the first sonnet of Dante's *Vita Nuova*, sometime between 1283 and 1291. Cino even wrote Dante a conciliatory poem for the death of Beatrice, entitled "Avegna ched el m'aggia più per tempo." The second period is between 1304 and 1306, during which time both men were recently exiled from their home cities; Dante was traveling throughout Italy, while Cino moved to Florence. This is also the time when both men demonstrated their most intense interest in love poetry, exchanging 10 poems with one another. Dante addressed his third epistle to Cino, calling him *Exulanti Pistoriensi*, and praised his poetry in his linguistic treatise, the *De vulgari eloquentia*. The third period Hollander defines as between 1310 and 1313, when both men supported Henry VII, though there is little evidence that either was aware of the political activities of the other.

²¹² Meijers, E. M. *Etudes D'Histoire du Droit. Vol. III. Le Droit Romain au Moyen Age*. Leyde: Universitaire Pers Leiden, 1959, 120.

²¹³ Robert Hollander, "Dante and Cino da Pistoia". *Dante Studies*, CX, (1992), 201.

After passing his public examination on December 9, 1314, Cino traveled to Siena, where he provided legal council for Bartolino da Sala, the Podestà of that city. He spent the remaining years of his life working as a judge, lecturing law, and providing legal services to various cities in Italy.²¹⁴

Cino's willingness to deal with the present political reality without insisting it be otherwise, coupled with his hostility to the authority of the *Glossa* insured that his work would clash with Dante's own concept of Roman law, and therefore present a challenge to the Florentine's worldview as well. Understanding what Cino's theories represented to Dante requires that we walk through how both men's treatment of Justinian's *Corpus* utilized the previous Glossator tradition.

For Dante, the enforcement of Roman law was necessary for mankind's spiritual salvation. Known to medieval jurists and to Dante as *ratio scripta*, or reason written, Roman law was the pinnacle of human reason and thus the only positive law that could ensure justice. Thus, justice and positive law are intertwined in Dante's model of the cosmos. In fact, while it may seem evident that the two such concepts would be connected, understanding the particulars of Dante's conception of justice is critical to any study of his use of Roman law.²¹⁵ Medieval theologians of the Duecento, chief among them St. Thomas Aquinas, had Christianized Aristotle's discussion of the virtue of justice in the fifth book of the *Nicomachean Ethics* by introducing to it the concept of charity, uniting justice,

²¹⁴ Chiappelli, Luigi. *Cino da Pistoia Giurista: Gli Scritti del 1881 e del 1910-1911*. Vol. 4. Pistoia: Societa Pistoiese di Storia Patria, 1999. Print. Biblioteca Storica Pistoiese, 26.

²¹⁵ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 287.

the highest of the Aristotelian virtues, with *caritas*, the highest theological virtue. This blend of Christian and Aristotelian virtues meant that an examination of justice necessarily took into account the relationship of God with humans (a consideration missing from Aristotle's original work).²¹⁶ As Edward Peters reminds us, the highest expression of Dante's concept of justice identifies it with the will of God:²¹⁷

La prima volontà, ch'è da sé buona,
da sé, ch'è sommo ben, mai non si mosse.
Cotanto è giusto quanto a lei consuona:
nullo creato bene a sé la tira,
ma essa, radiando, lui cagiona."
(Par. 19, 67-90)

The primal Will, which of Itself is good, has never moved from Itself, which is the supreme Good. All is just that accords with It; no created good draws It to itself, but It, raying forth, is the cause of it.

According to the Eagle's speech, an earthly creature is just to the extent that its will and desires match up with primal justice (Par. xix, 88). Participation and revelation²¹⁸ are the two ways for the creature to do this. Following St. Thomas, Dante identifies natural law as the means by which humans can align their actions to primal justice. If natural law is what affords humans this participation, positive law (human law) guides people's behavior toward the natural law. Therefore, the closer to natural law it conforms, the more legitimate positive law is.

²¹⁶ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 287.

²¹⁷ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 287.

²¹⁸ Revelation, or Divine law, is direct intercession by God where human reason alone will not suffice to reach the truth. Baptism is an example of this.

St. Thomas's theory of natural law follows closely the Aristotelian tenet that every thing is composed of dispositional properties (its essence), and acts toward the actualization of these traits.²¹⁹ Being dispositional, these properties are the likelihood²²⁰ that the thing will terminate in a certain form. This is the end, or *telos*, of the thing, and it is determined by that object's essence, not its choice. The point at which dispositional properties in the primary substance reach their full development is the thing's moment of perfection. A good example of this would be a tulip bulb:²²¹ it will most likely develop into a tulip, and not a rose, an elm, or a serving of scrapple. Therefore, anything that helps it achieve the form of a tulip can be deemed good, anything that obstructs it, evil.²²²

Keeping that in mind, we can look to humanity's dispositional properties to determine its *telos*, or the terminal point at which its perfection is achieved (*beatitudo*²²³). St. Thomas identifies three generic dispositional properties that define humans: Living, Sensitive, and Rational. That is, a human is disposed to live, to have sensory apprehensions, to use rational curiosity.²²⁴ Surely, the inclination to live is not particular to humans, and, indeed, is shared by all living things. In fact, it is what allows us to define living beings as such. Living entails

²¹⁹ Lisska, Anthony J. *Aquinas's theory of natural law an analytic reconstruction*. Oxford: Clarendon, Oxford UP, 1996, 99.

²²⁰ Anthony Lisska suggests that today we might use the term "statistical probability" (p.99)

²²¹ Lisska, Anthony J. *Aquinas's theory of natural law an analytic reconstruction*. Oxford: Clarendon, Oxford UP, 1996, 99.

²²² St. Thomas's concept of Natural law is not a utilitarian philosophy. Humans are compelled toward a *telos* not because they choose it, but because it is part of their essence to be disposed toward it. The thing's essence is, by definition, dynamic; only in the act of becoming is the *telos* realized.

²²³ *Beatitudo* is Aquinas's term. Aristotle used *eudaimonia* when talking about the state of self-actualization.

²²⁴ *Summa Theologiae* q. 94 a. 2 in Lisska, 100-1.

continuing to exist and seeking nutrition and growth. According to St. Thomas, all actions, events, or processes by which life is continued fall under natural law.²²⁵

All animals are inclined toward the sensory experience of sexual union and toward the care of offspring (by whatever form this process might take), but only humans possess the third trait, rational curiosity. This property leads humanity to seek to understand, and to live together in social communities.

Dante's view of mankind's nature and the resulting society follows closely that of Aristotle and Aquinas, as his introduction to the *Convivio* shows:

Sì come dice lo Filosofo nel principio della Prima Filosofia, tutti li uomini naturalmente desiderano di sapere. La ragione di che puote essere [ed] è che ciascuna cosa, da providenza di prima natura impinta, è inclinabile alla sua propia perfezione; onde, acciò che la scienza è ultima perfezione della nostra anima, nella quale sta la nostra ultima felicitade, tutti naturalmente al suo desiderio semo subietti. (Conv. I, I, 1)

As the Philosopher says at the beginning of the *First Philosophy*, all men by nature desire to know. The reason for this can be and is that each thing, impelled by a force provided by its own nature, inclines towards its own perfection. Since knowledge is the ultimate perfection of our soul, in which resides our ultimate happiness, we are all therefore by nature subject to a desire for it.

Still adhering to Aquinas, Dante goes on to explain the justification for his work as the desire to help those humans who are denied, whatever the cause may be, the possibility to understand, and therefore, the means by which to achieve perfection and happiness. Moreover, Dante acknowledges that social life is also part of mankind's essence, and that it is therefore his responsibility to help correct this unfortunate state. This is why he writes the *Convivio* not in Latin,

²²⁵ Lisska, Anthony J. *Aquinas's theory of natural law an analytic reconstruction*. Oxford: Clarendon, Oxford UP, 1996, 100.

which was restricted to only the wealthy and educated, but in the Tuscan dialect of his day.

Ma però che ciascuno uomo a ciascuno uomo naturalmente è amico, e ciascuno amico si duole del difetto di colui ch'elli ama, coloro che a così alta mensa sono cibati non senza misericordia sono inver di quelli che in bestiale pastura veggiono erba e ghiande se[n] gire mangiando.

(*Conv.* I, 1, 9)

But since man is by nature a friend of all men, and every friend is grieved by defects found in the one he loves, they who are fed at so lofty a table are not without compassion toward those whom they see grazing about on grass and acorns in animal pastures.

Dante does not include himself in the group that sits at the 'lofty table,' but he has managed to accrue some of their knowledge, and he is going to share it with his readers.

Complicating matters is humanity's free will. Because we must choose how we act, we are free to behave in ways that do not help us achieve *beatitudo*, or even in ways that work against it. For St. Thomas and Dante, this is where positive law comes into play: it is through a society's laws that people are coerced into behaving in a manner consistent with natural law. Positive law provides the contours along which to guide the behavior of the members of a society, helping them to attain harmony with natural law, the realization of their essential qualities, and thus happiness.

Dante's concept of positive law is as an instrument of political order harnessed for a spiritual end: the primary purpose of positive law is as a tool for the emperor to use to create the best earthly conditions possible toward better ensuring humans' salvation. Roman law, as the most perfect example of this type

of law, stands as thus a gift from God to humans,²²⁶ bequeathed to control human desire. Dante illustrates this for his readers in several places throughout his works from the *Convivio* on. Still, he positions it in a place of particular prominence in the *Divine Comedy*, in the very center of the poem. There, in the sixteenth canto of the *Purgatory*, Marco Lombardo delivers a speech to Dante-pilgrim and Virgil in which he explains the relationship between free will, laws, and the emperor. Human nature, Lombardo says, automatically seeks whatever delights it:

Esce di mano a lui che la vagheggia
 prima che sia, a guisa di fanciulla
 che piangendo e ridendo pargoleggia,
 l'anima semplicetta che sa nulla,
 salvo che, mossa da lieto fattore,
 volentier torna a ciò che la trastulla.
 (*Purg.* XVI, vv. 85-90)

From the hand of him who desires it before it exists, like a little girl who weeps and laughs childishly, the simple little soul comes forth, knowing nothing except that, set in motion by a happy Maker, it gladly turns to what amuses it.

This unbounded desire, in the form of delight found in the world around it, characterizes Marco's description of human nature. Such a configuration of humanity's fickle nature necessarily harkens back to Dante's previous discussion of human greed in the *Convivio*. As we have seen in the previous chapter, Dante addresses the vice of avarice in *Convivio* 4.12 by listing a theoretical sequence of ever growing desires, starting from childhood delight. But there is a

²²⁶ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 289.

key difference between that passage and Marco Lombardo's speech because the latter contains a prescribed method for curbing that desire. Dante inserts into Marco Lombardo's speech the fact that both Roman law and a ruler to enforce it are required to control the desire innate to human nature:

Di picciol bene in pria sente sapore;
 quivi s'inganna, e dietro ad esso corre,
 se guida o fren non torce suo amore.
 Onde convenne legge per fren porre;
 convenne rege aver, che discernesse
 de la vera cittade almen la torre.
 (*Purg.* 16, vv. 94-96)

Of some lesser good it first tastes the flavor; there it is deceived and runs after it, if a guide or rein does not turn away its love. Therefore, it was necessary to set the law as a curb; it was necessary to have a king who would discern the tower at least of the true city.

This passage is remarkable because in it, Dante proposes a political solution to an ethical problem. By situating Roman law as a means to rein in the reckless delight inherent in every human soul, he essentially configures it as a tool to be used to shape human nature. In other words, when wielded by the appropriate ruler, Roman law becomes a sort of 'para-sacrament.'²²⁷

Unfortunately for Dante and the rest of humanity, one half of this solution is missing. During his speech, Lombardo laments that there is no one to enforce the laws:

Le leggi son, ma chi pon mano ad esse?
 Nullo, però che 'l pastor che procede

²²⁷ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 291.

rugumar può, non a l'unghie fesse.
(*Purg.* 16, vv. 97-99)

The laws are there, but who lays hands to them? No one, because the shepherd that leads can chew the cud but does not have cloven hoofs.

Again, Dante portrays the lack of an appropriate political order as the primary cause of human sin. In this case, the lack of a single, dominant, secular ruler has left mankind without both an unselfish model for behavior, and an authority to impose Roman law upon it for its own good.

Henry VII in Dante's Political Vision

Reaffirming his assertion that the emperor, the head of a secular regime, occupies a role critical to mankind's spiritual salvation, Dante has Beatrice indicate to the pilgrim the seat in the Empyrean where the Roman Emperor Henry VII will be seated after his death,

E 'n quell gran seggio a che tu li occhi tieni
par la corona che già v'è sù posta,
prima che tu a queste nozze ceni,
sederà l'alma, che fia giù agosta,
de l'alto Arrigo, ch'a drizzare Italia
verrà in prima ch'ella sia disposta.
(*Par.* 30, vv. 133-138)

And in that great chair whereon you fix your eyes because of the crown that already is set above it, before you sup at these nuptials shall sit the

soul, which on earth will be imperial, of the lofty Henry, who will come to set Italy straight before she is ready.

Henry's still vacant seat is the first thing that Dante-pilgrim and the readers see in the Empyrean. But despite Dante's steadfast belief in Henry's God-ordained mission, he has to make a concession; Beatrice's line is still prophetic, but she mentions the unsuccessful conclusion of Henry's adventure. Dante still can't acknowledge that either Henry or his vision has failed. He blames instead Italy, who was 'not ready' to be set straight by the emperor.

The choice to bring up Henry and the current political strife in Italy at this point in the *Paradiso* has puzzled many readers of the *Commedia*. Some critics have disapproved of Dante's decision, arguing that it breaks the thematic structure of the canto that "contemplates things eternal and divine."²²⁸ Their grief stems from the fact that this concern over the political structure in Italy is momentary, and deals with mundane contingencies.²²⁹ Yet, others point out that for Dante, earthly politics and mankind's spiritual salvation are intertwined. Dante's choice to posit Henry in the Empyrean makes sense when we keep in mind the role the Roman emperor occupied in the poet's construction of mankind's salvation.

The impact of Henry's election on Dante and his contemporaries would be hard to overestimate; the seat of the Imperial crown had been left vacant since

²²⁸ Hollander, Robert, and Jean Hollander. *Paradiso*. New York: Doubleday, 2007. n. Par. 30 http://dante.dartmouth.edu/search_view.php?doc=200053301330&cmd=gotoresult&arg1=10

²²⁹ Ibid.

the death of Frederick II in 1250,²³⁰ meaning that except for the extremely aged, very few people alive could even recall a time when the empire had enjoyed true leadership. When the seven Electors of Germany met at a convent at Frankfurt in 1308 and agreed to fill the seat of the Holy Roman Emperor, they were doing something that had not been done since Frederick II's coronation in 1215 – ninety-three years prior. Henry's descent into Italy was hardly a brief glimmer of hope for Dante and Cino. On the contrary, from the day of his election on 27 November 1308 until his death on 24 August 1313, Henry's political ambitions underscored the political reality that the Roman emperor was steadily working to return to power in Italy.

As his choice to place Henry in the Emyrean in canto 30 of the *Paradiso* shows, Dante saw this momentous and unique event as God's plan being put into action. Italy possessed Roman law, but lacked the emperor to enforce it; but all that changed with Henry's election.²³¹

Henry's path to Rome proved to be anything but swift and uneventful, and turned out to be as much a military expedition as a voyage. Lasting for two years, it was laden with conflict and the independent communes in Northern Italy delayed it with their resistance. The expedition began when Henry and his forces

²³⁰ Several of Frederick II's descendents had been appointed to the inferior office of King of the Romans, but none had sought to become Emperor.

²³¹ After his election, Henry's descent to Italy was a foregone conclusion; his imperial coronation at the hands of Pope Clement V would certainly take place in Rome, even though the Pope was residing at Avignon, and a series of factors indicated to Dante and his peers that Henry's presence would likely upset the balance of power on the Italian peninsula and restore imperial control there. In late August, 1310, the emperor-elect himself fanned the political hopes of Italian imperial sympathizers when he announced in the diet of Speyer his military expedition to Italy for later that year, in the hopes of reestablishing the supremacy of the empire.

crossed the Alps at Cenisio, and reached Susa on October 23, 1310. He conquered Cremona in April of 1311. On May 15, he set out to lay siege to Brescia, another city in rebellion. The siege became protracted, and lasted until September 18, when the city finally fell to the imperial forces. Henry then diverted his troops to Genoa, where they remained until mid-February, 1312.²³² Looking next to his impending conflicts in Tuscany, Henry sent his ambassadors to Florence to demand the city's obedience. They reached the city gates on October 25, but were unable to reach any understanding with the Black Guelph government. Relations between the two political entities were so abysmal that Henry's ambassadors were forced to flee the city shortly thereafter.²³³

Dante and Cino involved themselves in Henry's campaign in their own ways and the nature and form these involvements took further demonstrate the distance between the latter's practicality and attention to the actual political trends, and the former's strict adherence idiomatic theoretical orthodoxy prescribing an ideal political order. Dante endeavored to help the campaign through his rhetoric. He wrote no fewer than four letters in support of Henry.²³⁴ He sent one to the Florentines, urging them to cease their rebellion and submit to Henry for their own good. He sent another letter to all rulers of Italy, likewise attempting to convince them that Henry's rule would be in their best interest. After all, wrote Dante, it was through the authority of the emperor's law that each of

²³² Petrocchi, G. *Vita di Dante*. Roma: Editori Laterza, 2004, 147, 148.

²³³ Petrocchi, G. *Vita di Dante*. Roma: Editori Laterza, 2004, 147, 148.

²³⁴ They are collected and labeled as *Epistles V, VI, VII, and VIII*.

them enjoyed their rights and possessions.²³⁵ He also sent a letter to Henry himself, urging him to crush Florence first, as that city, in Dante's estimation, was the source of all the rebellions that were slowing his advance toward Rome.²³⁶ The letter is laced with messianic language, and Dante assures the emperor that he is no less than the "minister of God, the son of the Church, and the furtherer of the glory of Rome."²³⁷ As the descendent of the emperors Augustus and Caesar,²³⁸ Dante urged Henry to make all haste possible in his journey to Rome to claim his office.

The event was a watershed in European political and legal history, and illuminates the cleavage between the positions of Dante and Cino on imperial jurisdiction. Cino entered the conflict directly, aiding Henry directly by lending the imperial delegation his formidable legal skills.²³⁹ Preparations would have to be made in Rome to accommodate Henry and his entourage before they arrived. Cino became personally involved in these activities, joining Louis of Savoy, a Roman Senator and trusted ally of the empire, at the Eternal City in 1310 or 1311. Cino's role was advisory; he served in the council of the Senate, providing his legal expertise.²⁴⁰ It is unknown if he remained to participate at the highest levels of negotiations in 1312 upon the emperor-elect's arrival. What is known,

²³⁵ *Epistle V*, 20

²³⁶ *Epistle VI*, 23

²³⁷ ...*Dei ministrum et Ecclesie filium et Romane glorie promotorem.*

²³⁸ Dante mistakenly believed that Caesar had been a Roman emperor.

²³⁹ Chiappelli, Luigi. *Cino da Pistoia Giurista: Gli Scritti del 1881 e del 1910-1911*. Vol. 4. Pistoia: Societa Pistoiese di Storia Patria, 1999. Print. Biblioteca Storica Pistoiese, 40.

²⁴⁰ Chiappelli, Luigi. *Cino da Pistoia Giurista: Gli Scritti del 1881 e del 1910-1911*. Vol. 4. Pistoia: Societa Pistoiese di Storia Patria, 1999. Print. Biblioteca Storica Pistoiese., 41; Cino, *Com. in Cod. consuetudinis*. Cod. 8, 53.

however, is that Cino provided legal analysis of the conflict between the newly elected Emperor Henry and the King Robert of Naples that followed the coronation ceremony.

The source of the conflict between Henry and Robert was political. Robert was recognized as a Guelph and therefore anti-imperial leader in Northern Italy, and Henry had initially hoped to gain him as an ally and made overtures to the Neapolitan king before beginning his trek to Rome. Robert, however, risked the loss of his Guelph allies if they saw him as too closely allied with the emperor and Ghibelline forces. Nevertheless, he agreed to support the emperor-elect. His actions, however, revealed his duplicity. While Henry was endeavoring to make peace between the warring Guelph and Ghibelline factions in Piedmont and Milan, Robert secretly dispatched a military force, headed by his brother, John of Gravina, to Rome to secure the city and prevent the coronation.²⁴¹

The extent of the emperor's jurisdiction quickly became a question of law that challenged literal interpretations of the *Corpus Iuris Civilis*. Following his calamitous coronation,²⁴² Henry involved the rest of Western Europe in the

²⁴¹ Pennington, Kenneth. *The Prince and the Law*. Berkeley:University of California Press, 1993, 167.

²⁴² Henry arrived at Rome on 7 May, 1312 to a decidedly hostile reception that foreshadowed the intense legal and political struggle that was to ensue. Following tradition, the coronation was to have taken place at St. Peter's Basilica, by the hand of the Pope himself. Henry found neither waiting for him. Clement V had remained at Avignon. Though he'd sent in his stead a legate to perform the ritual, political machinations of anti-imperial forces denied Henry the use of St. Peter's Basilica. With the help of the powerful Orsini family, agents from Robert of Naples had succeeded in seizing control of Castle St. Angelo, and used it to barricade St. Peter's, effectively barring the entrance of the imperial forces. After weeks of negotiations and even armed skirmishes between his forces and those of Robert, Henry finally settled on holding the coronation ceremony in the Basilica of St. John Lateran on 29 June. Despite the compromise, his forces had to escort him, blades drawn, all the way to the steps of the church. Tensions remained high, and his opponents

conflict when he issued an encyclical letter to the heads of state of Europe, announcing his election and declaring that his supremacy over all of them as divinely ordained. The letter and Henry's subsequent efforts amounted to the last time an emperor attempted to assert in practice universal lordship of the empire.

The responses of France and the Papacy were unambiguous and effectively made imperial pretense to world rule look ridiculous. Philip of France replied flatly that France, since the time of Christ, had never been subject to another temporal power, and would not submit now. Clement V likewise refused to recognize imperial supremacy, and insisted on papal arbitration to resolve Henry's dispute with Robert of Naples. Henry declined to recognize the pope's authority and went it alone, setting about to lay the legal groundwork for his condemnation of Robert as a traitor. On September 12, 1312, he accused Robert of treason, and summoned the king to appear before him within three months.²⁴³ Among the charges were that Robert had supported rebels in Northern Italy during Henry's journey to Rome, and that his forces had waged war on the emperor at Rome. To lay the legal groundwork for his prosecution of the Neapolitan King, Henry resorted to Roman law, promulgating a pair of laws known as *Ad reprimendum* and *Quoniam nuper est*. In the first, he declared that he had the right to try in absentia anyone who committed treason against the

disrupted his celebratory banquet by pelting him and his guests with stones. He left the city immediately after. See: *Storia di Roma: Dalla fondazione all'inizio del terzo Millennio*, Newton & Compton editori (Milan), 2003, 843.

²⁴³ Underscoring the emperor's impotence was his method of issuing the proclamation; Henry posted the proclamation on the door of the cathedral of Arezzo because he was certain that any messenger sent to present it to Robert in person would be attacked and killed even before reaching Naples.

Emperor. The second defined specifically who could be called treasonous. Both were promptly incorporated into the *Corpus Iuris Civilis* at the law schools. Robert was condemned in absentia, and condemned to death. He never presented himself for judgment or punishment, and the matter was resolved abruptly when Henry died on 24 August, 1313.

Despite the end of that particular clash between emperor and king, the legal questions it raised continued to fascinate legal scholars for generations to come, and a torrent of legal tracts gushed forth from jurists on all sides of the dispute, including Cino da Pistoia. In a *consilium* held at Siena, Cino offered a nuanced opinion of the nature of the sort of summons issued by Henry. According to Cino, there were two types of legal summons that a ruler or judge could make. The first could not be issued outside of a magistrate's jurisdiction. This type was the very real summons that demanded that the subject appear before the judge. The second one could be issued anywhere, but basically amounted only to a notification, not an actual summons.²⁴⁴

Cino's analysis is peculiarly neutral and starkly contrasts Dante's vision of an all-powerful emperor as world ruler. Despite his reputation as the staunchest of imperial jurists,²⁴⁵ Cino's opinion does not allow for anyone, not even the emperor, to reach beyond his political jurisdiction to prosecute another ruler. His analysis of the emperor's powers essentially limited it to areas already under

²⁴⁴ As a concession, Cino argued that the Rector of Siena could punish a Siennese citizen who had committed a murder in Paris. It was, after all, for the public good that such a crime be punished, but the Rector had no actual jurisdiction in Paris.

²⁴⁵ Walter, Ullmann, . *Jurisprudence in the Middle Ages*. London: Variorum Reprints, 1980, VII, 5.

imperial control. In other words, Cino states that the emperor's will has authority wherever he can manage to enforce it, i.e. within imperial jurisdiction alone. Such an analysis strips the emperor of any special status as *dominus mundi* and reduces his authority to that of any other ruler.

Literary critics like Robert Hollander have commented that Cino's Ghibelline passions seem to have cooled over time,²⁴⁶ and his opinion on the question of summons seems to support that analysis; even rhetorically, Cino is unwilling to endorse the universal rule of the emperor. But our understanding of Cino's political sense is ill served by such a characterization. To call his political reorientation a "cooling of passions" implies a weakening of will or waning of resolve without taking into account the gravity of the impact of Henry's total failure in his attempt to realize imperial rule over the world. The bald reality faced by those who had witnessed Henry's adventure in Italy was that the emperor had worldwide dominance neither militarily, nor legally, nor politically. Rather than insisting on the fiction of a nigh omnipotent emperor, Cino's position recognized the empire's actual limitations. Undoubtedly due to Cino's clarity of vision regarding political reality, his most famous pupil, Bartolo da Sassoferrato (1313 – 1357), produced the first modern theory of sovereignty.²⁴⁷

Dante: promulgating Roman law

²⁴⁶ Robert Hollander, "Dante and Cino da Pistoia". *Dante Studies*, CX, (1992), 218.

²⁴⁷ Walter, Ullmann, . *Jurisprudence in the Middle Ages*. London: Variorum Reprints, 1980. VII, 5.

For Dante, Roman law was the law of the world empire, and thus applicable to all places within its bounds, and this totalizing vision puts him at odds with Cino da Pistoia. Without quite arriving at the extreme position held by Accursius, who held that any people not under Roman law were not humans²⁴⁸ Dante nevertheless insisted that all peoples adopt Roman law and refrain from creating their own laws. This did not mean that he was unwilling to grant that some peoples, by virtue of the exceptional nature of their environment, were justified in adapting the law to suit them. Most notably, he took this stance in the *Monarchia*, where he discusses the unique terrain in which the Scythians and the Garamantes live. These two groups, representing the extreme northern and southern civilizations of Dante's day,²⁴⁹ had to contend climate extreme enough that they could legitimately be permitted to alter Roman law,

Habent nanque nationes, regna et civitates intra se proprietates, quas legibus differentibus regulari oportet: est enim lex regula directiva vite. Aliter quippe regulari oportet Scithas qui, extra septimum clima viventes et magnam dierum et noctium inequalitatem patientes, intolerabili quasi algore frigoris premuntur, et aliter Garamantes qui, sub equinoctiali habitantes et coequatam semper lucem diurnam noctis tenebris habentes, ob estus aeris nimietatem vestimentis operiri non possunt.

(*Mon.* I. xiv, 5,6)

For nations, kingdoms and cities have characteristics of their own, which need to be governed by different laws; for law is a rule which governs life. Thus the Scythians, who live beyond the seventh zone and are exposed to nights and days of very unequal length, and who endure an almost

²⁴⁸ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 298.

²⁴⁹ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 296.

unbearable intensity of cold, need to have one set of laws, while the Garamantes require different laws, since they live in the equatorial zone and always have days and nights of equal length, and because of the excessive heat of the air cannot bear to cover themselves with clothes.

But here Dante is being coy in selecting two exotic peoples so far removed from Europe that anything he could say about them would be essentially inconsequential to the political debate. They serve a primarily rhetorical function,²⁵⁰ enabling a position on Florence legislative practice decidedly more restrictive.

In his letter to the Florentines, Dante sets up the same context as Marco Lombardo's speech about the dynamics between Roman law and the need for the emperor to enforce them. He is quite explicit that it is the Florentines' refusal to follow Roman law that is their first transgression. In a sense, they are victims of the failed political order that has resulted from the lack of a Roman emperor to enforce those laws.

...non leviter tamen veritati applaudit quod, solio augustali vacante, totus orbis exorbitant... et quod Ytalia misera, sola, privatis arbitriis derelecta omnique publico moderamine destituta, quanta ventorum fluentorumve concussionem feratur verba non caperent, sed et vix Ytali infelices lacrimis metiuntur.

(*Epistole VI, 3*)

... yet is it no small confirmation of the truth, that when the throne of Augustus is vacant, the whole world goes out of course... and unhappy Italy, forsaken and abandoned to private control, and bereft of all public guidance, is tossed with such buffeting winds and waves as no words can

²⁵⁰ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 296.

describe, nay even the Italians in their woe can scarce measure with their tears.

The Florentines, like all of Italy, then, are players in a world whose political order is fundamentally out of alignment. The lack of an emperor to rule them has left them to govern themselves, a proposition that cannot succeed and that has caused their greed to go unchecked. As the venal Florentines are in large part responsible for their current situation, Dante urges them to embrace the return of the emperor. To their detriment, however, the Florentines fail to recognize the legitimacy, even their need of Henry VII's regime. Thus, instead of welcoming him as their ruler, they have engaged in rebellion:

Vos autem divina iura et humana transgredientes, quos dira cupiditatis ingluvies paratos in omne nefas illexit, nonne terror secunde mortis exagitat, ex quo, primi et soli iugum libertatis horrentes, in romani Principis, mundi regis et Dei ministri, gloriam fremuistis, atque iure prescriptionis utentes, debite subiectionis officium denegando, in rebellionis vesaniam maluistis insurgere? *Epistole* (VI, 5)

But you, who transgress every law of God and man, and whom the insatiable greed of avarice has urged all too willing into every crime, does the dread of the second death not haunt you, seeing that you first and you alone, shrinking from the yoke of liberty, have murmured against the glory of the Roman Emperor, the king of the earth, and minister of God; and under cover of prescriptive right, refusing the duty of submission due to him, have chosen rather to rise up in the madness of rebellion?

Thus the Florentines resist the one remedy that would, in Dante's mind, save them. By fulfilling his role as emperor, Dante writes, Henry will descend upon them to correct forcibly their lawlessness through benevolent subjugation, thereby restoring the proper ordering of Roman law, enforced by a single ruler.

Though it might seem paradoxical, subjugation to the emperor's rule promises liberty because his law is properly ordered:

ac sacratissimis legibus que iustitie naturalis imitantur ymaginem, parere vetantem; observantia quarum, si leta, si libera, non tantum non servitus esse probatur, quin ymo perspicaciter intuenti liquet ut est ipsa summa libertas. *Epistole* (VI, 22)

... the most sacred laws; those laws made in the likeness of natural justice, the observance whereof, if it be joyous, if it be free, is not only no servitude, but to him who observes with understanding is manifestly in itself the most perfect liberty.

However epistolary in its form and language, such a statement contains a legal manifesto: that positive law, if properly modeled on natural law, provides the best means to shape humans' essence to behave rightly. The Florentines may make the pretence of having respect for the law; but their rebellion against Henry necessarily denies them the benefit of that law. Without the emperor as legal enforcer, then, the recipe is incomplete, since, when mankind's greed is uncurbed, there can be no justice.

Cino was less ardently proscriptive in his writings on the relationship between the emperor and Roman law. An important example of his tendency toward practicality is found in the first pages of his *Lectura*, where Cino dutifully declares the Roman Emperor "Dominus totius mundi" or lord of the whole world, but immediately qualifies this affirmation. Though not the first to use the terms, Cino employs the distinction of "*de iure*" and "*de facto*" when discussing the limits of the emperor's political authority.

... quod imperator totius mundi de iure Dominus est: sed de facto sunt aliqui qui resistant propter quod ponit his istam literam...

... for the emperor is ruler of the whole world de iure: but de facto, there are some who resist by means of these letters

Thus, Cino opens his treatise pragmatically by acknowledging that the Emperor does not, in fact, rule over all monarchs in the world, and this reality must be the starting point for his study of the *Code*. Cino offers a number of reasons why this is, among them that those who do not recognize the supremacy of the emperor's laws demonstrate that they are not *worthy* of having them:

...per duas rationes. Primo ne leges sint apud eos ludibrio, quod esse non debet... Secunda ratio quia non sunt digni (i.e. those who do not obey the Emperor) legem laqueis innodari.

*...for two reasons. First, that laws not be made a mockery among them, for this must not be... The second argument is that they are not worthy of having them.*²⁵¹

The concept is not without precedence: as Cino notes shortly afterward, a legend frequently told among jurists held that the Greeks had not passed on their laws to

²⁵¹ Citation taken from: Cecil Nathan Sidney Woolf, *Bartolus of Sassoferrato: his Position in the History of Medieval Political Thought*. Cambridge University Press, 1913, 41.

the Romans until the latter proved they were worthy of having them.²⁵² This conception of law stands starkly in contrast with Dante's. Dante characterizes Roman law as a gift from God to all of mankind, almost a secular sacrament; Cino treats Roman law as almost a commodity, to be withheld from or bestowed upon those nations as the emperor sees fit.

Later in his commentary, Cino follows Belleperche in presenting another reason why not all peoples are not subject to the emperor's rule: he might decide not to give it to them. More specifically, the emperor must exercise caution not to dilute his power by issuing commands to non compliant nations. In this formulation, avoiding an attempt to rule over all peoples is a tactical decision intended to preserve the dignity of the Empire. There is no divinely ordained political order ensuring that the emperor will rule over the world.

Cino also provided examples of which people were permitted to change laws to suit their needs. And here once more Cino is less philosophical and more practical than Dante. Dante perhaps disingenuously presented the Garamantes and Scythians as the exception to his proscription against altering Roman law. Because they lived in such extreme climates, impractical positive laws could be altered to address their specific needs. Cino, however, took custom as a criterion for determining a particular people's latitude in changing the laws, as in the critically important question of who had the authority to create money:

²⁵² Bellomo, Manlio. *Saggio sull'universtita nell'eta del diritto comune*. Catania: Giannotta, 1979, 15.

Quid faciunt civitates vel Barones qui monetam undicunt sine licentia
Principis, ut videmus per totam Italiam?

(Comm. In Cod. Si quis. Cod. 9,24)

*What do cities or Barons do who make coins without the permission of the
Emperor, as we see in all of Italy?*

Cino responds:

Male faciunt, nisi a consuetudine longissima excusentur.

(Comm. In Cod. Si quis. Cod. 9,24)

They do wrongly, unless by extremely old custom it is excused.

Cino's solution presents custom not only as a means to justify the action, but therefore as an obstacle for the emperor's jurisdiction as well. Applied to other practices, this temporal standard severely restricts the authority of the empire as a political institution. Indeed, in 1313, Philip the Fair claimed that France was outside of imperial rule because it had not been subject to it for centuries. Where Dante argued that only extraordinary natural phenomena could abrogate Roman law, Cino maintained that longstanding traditions of a community enjoyed equal or superior legitimacy.

Dante: Roman laws are perfect as they are

Returning to the *Monarchia*, the last clause of Dante's statement offers a clue to his meaning in the form of his terse commands to the jurists. After telling them to be silent, Dante makes the curious demand that they limit themselves to give council and make judgments 'in accordance with the sense of law.' It is a reasonable command; after all, it is not absurd to expect that a lawyer understand the law correctly. But what specific sense could Dante be talking about? He shows his vision of a unified juridical science, but such a thing never existed. After all, historical jurists had often disagreed with one another about various passages in the Justinian *Corpus*. The answer may be found in the origin myth that Dante creates for Roman law in the *Commedia*.

Looking to the *Commedia*, we find that echoes of Roman law appear in all three cantiche. Virgil's explanation of the ordering of punishments in the Inferno in Canto 11 makes use of it, while the Justinian *Corpus* is explicitly evoked in the canto 6 of both the *Purgatorio* and the *Paradiso*. Looking to the *Inferno*, we find Dante using concepts derived from Roman law in his formulation of the divine punishments of sinners.²⁵³ Virgil explains in Canto 11 that:

D'ogni malizia, ch'odio in cielo acquista,
 ingiuria è 'l fine, ed ogne fin cotale
 o con forza o con frode altrui contrista.
 (*Inf.* 11, vv.22-24)

*Of every malice gaining the hatred of Heaven, injustice is the goal, and
 every such goal injures someone either with force or with fraud.*

²⁵³ Alighieri, D. *Inferno*, ed. Durling, R. and Martinez, R. Oxford, 1996, 178.

While Virgil's description does not distinguish between natural, divine, or positive laws, it is derived from Roman law in a broad understanding.²⁵⁴ More specifically, Dante's use of "malice" fits within the definition accepted by the majority of the medieval glossators, that of Labeo, who defined it as, "*calliditas, fallacia, machinatio ad circumveniendum, fallendum, decipiendum*"²⁵⁵

Dante further uses the authority of Roman law in his political philosophy in the *Commedia*. As has long been noted by dantisti, the sixth canto of each of the cantiche forms a trio of political-themed discourses that grow progressively broader in scope. The first, Canto 6 of the *Inferno*, deals with the politics of Florence. The sixth canto of the *Purgatorio* concerns itself with the politics of Italy, while that of the *Paradiso* discusses the larger implications of imperial politics.

The reforms in Roman law executed by Justinian first appear in *Purgatorio* 6, in the midst of Dante's most vehement political discourse, in which he inveighs against the current independent states in Italy, and their resistance to a single dominant ruler in Italy. Here, the poet presents Justinian's laws as the key to the proper divine ordering of the world. Dante also decries the unwillingness of any King of the Romans since Frederick II (crowned Emperor in 1215, d. 1250) to seek coronation as Holy Roman Emperor, which has allowed Italy to fall into a servile position.

²⁵⁴ Alighieri, D. *Inferno*, ed. Durling, R. and Martinez, R. Oxford, 1996, 178.

²⁵⁵ Forlenza, Francesco. *Il Diritto Penale nella Divina Commedia. Le Radici del 'sorvegliare e punire' nell'Occidente*. Roma: Armando, 2003, 28.

Ahi serva Italia, di dolore ostello,
 nave senza nocchiere in gran tempesta,
 non donna di provincie, ma bordello!
 (*Pur.* 6, vv. 76-77)

Ah, slavish Italy, dwelling of grief, ship without a pilot in a great storm, not a ruler of provinces, but a whore!

Dante precedes this description of Italy's misery by first modeling for his readers a scene of affection between fellow Italians. The outburst by the narrator is part of his reaction to the meeting of Virgil and Sordello, and the affection that they express upon their recognition of one another as fellow Mantuans. Sordello embraces Virgil in joy, after crying out, "*O Mantuano, io son Sordello de la tua terra!*" / "O Mantuan, I am Sordello of your city!"²⁵⁶ Contrasting this courtesy shown by Sordello to Virgil with the conflicts of his modern country, Dante addresses Italy,

Quell' anima gentil fu così presta,
 sol per lo dolce suon de la sua terra,
 di fare al cittadin suo quivi festa;
 e ora in te non stanno senza guerra
 li vivi tuoi, e l'un l'altro si rode
 di quei ch'un muro e una fossa serra
 Cerca, misera, intorno da le prode
 le tue marine, e poi ti guarda in seno,
 s'alcuna parte in te di pace gode.
 (*Purg.* 6, vv. 79-87)

That noble soul was so quick, merely for the sweet sound of his city, to make much of his fellow-citizen there; and now in you the living are not

²⁵⁶ *Purg.* 6, vv.74-75

without war, and of those whom one wall and one moat lock in, each gnaws at the other! Search, wretched one, the waters around your shores, and then look into your bosom, whether any part of you enjoys peace.

The contrast could not be sharper. While Virgil and Sordello find affection for one another in their common origins, Dante's Italy is in such a state of conflict that not even citizens within the same city – surrounded by the same wall and moat - enjoy peace with one another. Italians suffer such mutual hostility needlessly, according to Dante. This chaotic state of affairs is all the more contemptible because Justinian has provided the means by which peace and order might be brought to the peninsula, and even Europe as a whole. Dante, using an equestrian metaphor, compares the continent to a wild horse, a beast that must be tamed by an emperor riding a saddle atop it, keeping its passions in check with the bridle of the reformed Roman law,

Che val perchè ti racconciasse il freno
Iustiniano, se la sella è vuota?
Sanz' esso for a la vergogna meno.
(*Purg.* 6, vv. 88-90)

What does it profit that Justinian fitted you with the bridle, if the saddle is empty? Without the bridle the shame would be less.

Here Dante is keeping with his previous comments in the *Convivio* that the laws were intended to rein in men's greed: the saddle is the place of rule for the emperor, the bridle,²⁵⁷ the Roman laws, the tool for him to keep his subjects'

²⁵⁷ E con ciò sia cosa che in tutte queste volontarie operazioni sia equitade alcuna da conservare e iniquitade da fuggire (la quale equitade per due cagioni si può perdere, o per non sapere quale essa si sia o per non volere quella seguitare), trovata fu la ragione scritta e per mostrarla e per

wonton greed in check. The lack of a firm-handed rider to guide the beast has allowed it to grow undisciplined and untamed.

Ahi gente che dovresti esser devota,
 e lasciar seder Cesare in la sella,
 se bene intendi ciò che Dio ti nota,
 guarda come esta fiera è fatta fella
 per non esser corretta da li sproni,
 poi che ponesti mano alla predella.
 (*Purg.* 6, vv. 91-96)

Ah, people who should be devoted and permit Caesar to sit in the saddle, if you attend to God's words to you, see how this beast has become savage, not being governed by the spurs, ever since you seized the reins.

Again, Dante chastises Italy for refusing imperial rule. Despite their “seizing of the reins,” the Italian states have fallen into chaos without an outside force to discipline them with its “spurs.”

Dante's mention of Justinian in *Purgatory VI* proves to be a foreshadowing of events to come later in the poem, a way for him to condition the readers' reception of Justinian proper in *Paradise VI*. Dante pilgrim first meets him in canto V, before he is aware of the emperor's identity. Despite Dante's discussion in *Purgatory VI* of Justinian's role in the reformation of Roman law, he has the emperor mention that fact once more when he introduces himself,

comandarla. Onde dice Augustino: «Se questa - cioè equidade - li uomini la conoscessero, e conosciuta servassero, la ragione scritta non sarebbe mestiere»; e però è scritto nel principio del Vecchio Digesto: «La ragione scritta è arte di bene e d'equidade».

Since in all of these voluntary activities justice must be preserved and injustice avoided, and this justice may be lost in two ways (either through not knowing what it is, or through not willing to follow it), written Law was invented in order both to establish it and to administer it. So Augustine says, "If men had known it (namely justice) and, when known, had observed it, there would have been no need of written Law." Therefore it is written in the beginning of the Old Digest that "Written law is the art of well-doing and justice." *Convivio* 4.12.4

Cesare fui e son Iustiniano,
che, per voler del primo amor ch'ì sento,
d'entro le leggi trassi il troppo e 'l vano.
(*Par.* 6 vv.10-12)

I was Caesar, and am Justinian, who, by will of the Primal Love which I feel, removed from among the laws what was superfluous and vain.

Justinian introduces himself to the pilgrim as formerly the emperor, Caesar, and presently Justinian, the man whose divinely commanded task was to make Roman law perfect. The revised *Corpus Iuris Civilis* is a divinely ordained work, and Dante is making it clear here that he is introducing us to its author.

Justinian's speech is significant both for its content and for its form. As has long been noted by scholars, canto VI of the *Paradiso* is the only one in the entire poem in which but a single character speaks. No one, neither Beatrice, nor the pilgrim, nor the narrator, interrupts the emperor as he talks for what is also the longest speech of the entire *Commedia*.²⁵⁸ The speech, then, amounts to Dante's most sustained and ambitious piece of ventriloquism – a feat all the more stunning when we consider the awe with which he always speaks of Justinian. After all, in Canto VI of the *Paradiso* it is not Justinian who “really” speaks but Dante. Put another way, this act of great homage and respect is also a singular act of appropriation, one in which Dante seizes a voice of unassailable authority to make pronouncements to his contemporaries. Of course, we must remember that as Dante poet writes Justinian's words, he simultaneously diminishes his

²⁵⁸ Barolini, Teodolinda. *Undivine Comedy: detheologizing Dante*. Princeton, N.J: Princeton UP, 1992, 190.

own role and magnifies the gravitas of his message. This act opens a new perspective for us on his insult against the jurists, prompting us to ask which is more 'presumptuous' and transgressive: jurists who follow Ulysses and go too far beyond the intended meaning of Justinian's written words, or Dante who actually assumes the role of the emperor himself and speaks on his behalf?

Dante portrays his vision of the ideal political order through Justinian's speech, establishing the perfect balance between church and empire. He has Justinian introduce himself as a former heretic, making clear that before he could perform the awesome task of reforming Roman law, his understanding of Christ had to be corrected,

E prima ch'io a l'ovra fossi attento,
una natura in Cristo esser, non più,
credea, e di tal fede era contento;
(*Par* 6, vv. 13-15)

Before I set my whole mind to this work, I held Christ had one nature and not two, and in that faith I was content to rest.

Justinian's error is the monophysite heresy, wherein it was believed that Christ had but one nature, the divine. The person responsible for correcting Justinian was the head of the church at that time, Pope Agapetus (533-536). Justinian, acknowledging that the spiritual correction was necessary to his work, says,

ma 'l benedetto Agapito, che fue
sommo pastore, a la fede sincera

mi dirizzò con le parole sue.
 lo li credetti; e ciò che 'n sua fede era,
 vegg' io or chiaro sì, come tu vedi
 ogne contradizione e falsa e vera.
 Tosto che con la Chiesa mossi i piedi,
 a Dio per grazia piacque di spirarmi
 l'alto lavoro, e tutto 'n lui mi diedi;
 (Par. VI, vv. 16-24)

...but blessed Agapetus, who was then the supreme shepherd, by his warning words directed me back to the one true faith. "I believed him, and what he held on faith I now view quite as clearly as you see how contradictions are both false and true. "So soon as I set my steps with the Church, it pleased God by his grace to inspire in me the high task to which I wholly gave myself.

In Dante's formulation, the harmony that existed briefly between Justinian's empire and Pope Agapetus's church paved the way for the perfection of Roman law.²⁵⁹ This era, as Edward Peters so succinctly puts it, is the benchmark by which all other relationships between church and empire will be assessed in the dantean vision.²⁶⁰ Just as Augustus Caesar's rule provided the peace needed for the birth of Christ,²⁶¹ this harmonious marriage of emperor and pope, rulers of the secular and spiritual spheres, laid the groundwork for the creation of the perfect positive law, Roman law.

²⁵⁹ Robert Hollander reminds us that here Dante is quite creative in the narrative he fashions from the historical events. Specifically, he draws attention to the uncomfortable fact that historically, Agapetus came to Constantinople only after Justinian's editing of Roman law was largely complete. Whether or not Dante does this intentionally is open to debate: "Agapetus came to Constantinople only *after* the books were finished, while Dante's account (vv. 22-24) is quite different. Our poet simply must have a Christian compiler of the laws that were to govern Christian Europe; and so he manages to find ("create" might be the better word) him." (http://dante.dartmouth.edu/search_view.php?doc=200053060130&cmd=gotoresult&arg1=1)

²⁶⁰ Peters, Edward. *Limits of Thought and Power in Medieval Europe* (Variorum Collected Studies Series, 721). Grand Rapids: Ashgate, 2001, 209.

²⁶¹ *Monarchia* I, xvi.

Such an elaborate creation myth surrounding Justinian's reforming of Roman law makes clear what the stakes were for Dante when it came to who could interpret the laws, and how such interpretation should be done. Though Dante certainly allows some interpretation, himself occasionally using the Accursian gloss to formulate his arguments in the *Convivio*, he does not show faith in the abilities of contemporary jurists to do so reliably. Dante's own utilization of Roman law in his argumentation models what he might have considered a relationship to the text acceptable for a scholar. As we have seen, Dante often cites directly from Justinian's words themselves. His comment about the jurists and the sense of law suggests that he had a standardized interpretation of the laws in mind. The few places he does part from that original legal text, he refers to the Accursian gloss—a standard synthesis of the prior Glossator tradition, widely accepted as authoritative by that time. As the gloss accompanying all copies of the Justinian *Corpus* after the first half of the 13th century, the *Glossa Ordinaria* certainly came the closest to an 'authorized' study aid, and Dante's use of it shows that he thought enough of the Glossators' work to use it when formulating his own philosophical views in the *Convivio*.

But the juridical ground was already shifting under Dante's feet, and in the second decade of the Trecento, a different legal tradition took root in Italy in the form of Cino da Pistoia. In 1312-1314, Cino completed his *Lectura Super Codice*, a work that heralded a new method of studying the law for juridical science in

Italy by applying dialectic analysis to the contents of the Justinian *Code*.²⁶² Cino's novel approach had its origins not in Bologna, but beyond the Alps in the school at Orléans. In his *Lectura*, he openly admits as much at the beginning of the work, citing as his model the work Jacques de Révigny and Pierre de Belleperche, two scholars from the French school. In fact, Cino boldly announces his claim to focus his writing upon the 'new works' of those masters in the opening passage of the *Lectura*,

Quia omnia nova placent potissime quae sunt utilitate decora bellissime visum est mihi Cyno Pistoriensi, propter novitates modernorum Doctorum super Codice breviter utilia scribere.²⁶³

Because all new things that are useful are pleasing to me, Cino da Pistoia, I write briefly about the Modern Doctors' useful and new work on the Codex.

Cino is conscious of his work's lack of precedence in Italy, and he directly tells his readers that he will be writing about the recent works of the modern doctors, setting them up as his authorities. This declaration not only announces the addition of a new perspective in the study of law, but a willingness to depart from the accumulated previous juridical tradition. Cino wastes little time in telling his readers of this new approach, referring to the ancient glosses, but immediately afterward naming the French authors,

Incipit Rubrica de summa Trinita. & fide Catho. & ut nemo &c. Haec Rubric. continuatur uno modo secundum gloss. Antiquam, & postea fuerunt additae duae aliae continuations in additione nova. Petrus de

²⁶² Ullman, W. *The Medieval Idea of Law*. Methuen & Co. LTD. (London: 1946), xviii.

²⁶³ Cino da Pistoia, *Lectura Super Codice*, Preface.

Bellapertica ponit antiquà. Iac. de Raven. continuat aliter: ut ecce Imperator dixit suprà de novo Co. Compo...²⁶⁴

Here begins the rubric of the Trinity and Catholic faith. This rubric proceeds in one sense according to the ancient Glossa. Afterward were added two other continuations in new additions. Pier de Belleperche puts the old and Jacques de Ravigny continues in another way: just as the Emperor said about the new Codex...

Despite his use of the legal theory of the modern doctors, Cino's focus remained on the Justinian *Corpus*, and his own ability to interpret it. It was his relationship with the text and his technique for analyzing it that differed from his predecessors.

Cino's treatment of Roman law could hardly have been more different from Dante's. The Florentine fashioned an origin myth around Roman law that essentially looked backward to find its essence. Dante's Justinian was a divine editor; the product of the emperor's revision was perfect, and his interpretation of the laws the pinnacle of reason. Moving in the opposite direction, Cino, however, prized innovation in interpreting the ancient laws. He opens his *Lectura* not only by announcing his intention to rely upon the new doctrines of the modern Doctors, but by stating his reasoning for doing so is that all novelty is pleasing, provided that it is useful. This motto that *omnia nova placent*, though surely hyperbolic, is decidedly forward looking when compared to Dante's vision. As Donald R. Kelly so concisely states, Cino was really saying that "...neither knowledge, nor the process of thought was exhausted, or indeed exhaustible. Justinian's corpus was not the end of legal science, and neither was the

²⁶⁴ Cino da Pistoia, *Lectura Super Codice*, Preface.

Accursian Gloss.” Instead, in order to integrate fully the ancient doctrine, doctors like him had to apply modern analysis and adaptation. As it stood, the civil laws of ancient Rome were ill suited to the particular needs of medieval Italy. It was only through the deduction of the general meaning behind the specific precepts that modern society could benefit from them. Where Dante posits Justinian’s reforms as the process by which Roman law was perfected for all time, Cino maintains that through further study, development, and introduction of modern doctrines, jurists will best make use of the law.

Cino fashioned his own dialectic approach to the law that further underscores his faith in his own reason:

circa cuius lecturam tenebo hunc ordinem: quia primo dividam, secundum ponam casum, tertio colligam, quarto opponam, quinto quaeram²⁶⁵

*Concerning the readings I shall keep this order: first I shall make divisions, second give an account of the case, third offer comparisons, fourth objections, and fifth pose questions*²⁶⁶

Both brief and direct, this declaration is remarkable for its author’s confidence in his own abilities. Authority is conspicuously absent from Cino’s stated

²⁶⁵ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 571

²⁶⁶ Calasso, F. *Medio Evo del Diritto*. Milano: Dott. A. Giuffrè. 1954, 571.

methodology; he holds the final word in interpretation of the law, not the tradition that came before him.²⁶⁷

Cino's use of logic permitted him to do an analytic reading of the text and enabled him to examine its individual parts as they are combined. This technique opened up possibility of comparing the individual components with those of the others laws, and enabled the jurist to seek the ultimate common expression behind the laws. But more significantly than that, it empowers the jurist to interpret the law using his own powers of reason as the ultimate measure of its validity.²⁶⁸

The question remains as to why Cino da Pistoia is absent from Dante's *Commedia*. We must first remember that we are dealing with a work of fiction, and that every character, situation, and word was placed there by its author. Keeping this in mind, the question of how to use Cino in the *Commedia* must have been a difficult one for Dante for a number of reasons. From a biographical point of view, Dante would have been confronted with the inconvenient fact that Cino was still alive both during the setting of the narration (1300), and even while Dante was composing it (Cino outlived Dante by 15 years). For a story set almost entirely in the afterlife, this would make using a living figure like Cino tricky from the outset.

But we do have examples of Dante incorporating living contemporaries into the afterlife, at least those who were still alive in the setting of the poem, the

²⁶⁷ Donald R. Kelly, "Civil Science in the Renaissance: Jurisprudence Italian Style." *The Historical Journal* 22.5 (1979), 781.

²⁶⁸ Marrella, Sergio. *Istituzioni di storia giuridica*. Vol. 2. Edam, 94.

week before Easter in the year 1300. In canto 19, the pilgrim and Virgil encounter the Simonists, past popes guilty of malfeasance in their duties as head of the church. They are not recognizable at first, being buried head-down in the ground, and their punishment consists of having their heels licked by fire. They will be pushed further into the ground upon the death and damnation of a successor. The pilgrim approaches the extended feet of one to learn its identity. The soul, unable to see, mistakes him for Boniface VIII, the Pope living in 1300, whom he has foreseen will arrive to take his place. He addresses the pilgrim as such, much to the latter's surprise. Thus Dante cleverly damns Boniface to Hell before he is even dead.

If Dante proves himself resourceful in forecasting Boniface's damnation, he is downright heretical in his treatment of Brother Alberigo, whom the pilgrim meets in canto 33. Most curious is the fact that Alberigo wasn't dead in 1300. Dante explains his presence in both Hell and among the living by creating a new policy for the afterlife; when a human proves itself so foul that it is beyond salvation, its soul is damned to Hell, while an evil spirit is sent to inhabit its body for the duration of its life. Dante's solution is inventive, to be sure, but borders on the absurd.

While the cases of Boniface and Brother Alberigo offer us examples of how Dante worked around temporal difficulties to present us the living in Hell, his treatment of his rival Stilnovistic poet, Guido Cavalcanti, shows us how he responded to ideas of the dead. Cavalcanti died in August 1300, several months

after the protagonist-Dante made his journey in the *Commedia*. Despite being unable to have Cavalcanti physically manifest for the readers, Dante both mentions him by name in Canto 10 of the *Inferno*, and engages in a protracted debate with his conflicting conception of love that flares up in Canto 5 of that work.²⁶⁹ Canto 5 of the *Inferno* is furthermore the locus of Dante's most intense engagement with Cavalcanti. Here he refutes his older friend's conception of love as a force that kills. For Cavalcanti, love leads us to death by obliterating our capacity to reason; love is a compulsion that replaces our ability to think with overwhelming desire. Dante's conception of love is diametrically opposed to Cavalcanti's. Indeed, the very foundation of the *Commedia* contradicts this negative portrayal of love in the form of Dante's love of Beatrice. Their love is the reason for his salvation; she puts the entire plot into motion by beseeching Virgil to go to her lover's aid in the dark forest. Dante's guiding principle is that love can beatify (hence the name 'Beatrice' – she who makes blessed) and ultimately save the lover's soul.

So the question remains: why did Dante decline to address Cino's poetry in the *Commedia* as he did with Cavalcanti's? Indeed, he makes no direct

²⁶⁹ The damned souls in Canto 5 of the *Inferno* are Dante's negative exemplum, the exemplification of a Cavalcantian love that has led those it afflicts to death. Here, Dante-pilgrim and Virgil encounter Francesca and Paolo, the souls of two lovers damned to the Second Circle of Hell. They are punished among the Lustful, those who could not or did not control their passions while alive. In life, Francesca was married, but betrayed her husband with Paolo while reading about the love between Lancelot and Guinevere. Her husband discovered the betrayal and killed them both. Now she and her lover are tossed about ceaselessly on the winds of the second circle.

mention of Cino.²⁷⁰ In the stilnovistic phase of their poetry, Cino took no position to challenge seriously Dante's conception of love. On the contrary, of all the stilnovistic poets, Cino's treatment of love reflects most closely Dante's.²⁷¹ This is not to say that they had no differences. Cino was more inclined to view the object of love in less exclusive terms; where Dante established a narrative that showed his love for Beatrice persisting even past her death, Cino wondered aloud if a new lover might be found after the first had died. This divergence became a point of mild but significant contention between the two in the later years of their relationship. Yet scholars have not found any direct reference to Cino or to his poetry in the *Commedia*.

We must make a point of precision here. A significant historical difference distinguishes Cavalcanti from Cino: both were alive in 1300, but Cavalcanti died that same year, while Cino lived through the *Commedia*'s completion. In fact, if we assume that Dante began composition of the *Inferno* around 1307,²⁷² this would mean that Cavalcanti had by that time been dead for at least six years and that Dante was thus entering a polemic with the ideas of a man long dead. But Cino was still alive and continued to produce poetry,²⁷³ and this complicated considerably any attempt to summarize his ideas into a completed narrative. In

²⁷⁰ Mark Musa convincingly argues that Bonagiunta da Lucca's use of '*le vostre penne*' in *Purgatorio* 24, v. 58 is the singular honorific address of Dante-protagonist. Had it been plural, it would have been possible to include Cino. Mark Musa, *Dante Alighieri's Divine Comedy, v.4, Purgatory, Commentary*. Indiana University Press (Bloomington), 1996, 247.

²⁷¹ Teodolinda Barolini, *Dante's Poets*, Princeton, New Jersey: Princeton University Press, 1984,

²⁷² *Oxford companion to Italian literature*. New York: Oxford UP, 2002, 193.

²⁷³ Ernest Hatch Wilkins, for example, says of Cino, "[Cino's] verse, however, is, in the main, imitative and pallid. His poetic heart beats rather faintly, and with a repetitive plaintiveness." from *A History Of Italian Literature*. Harvard University Press (1962), 73

other words, Cavalcanti's views of love were static, but Cino presented Dante with a moving target.

The two poets did have a series of lively written exchanges on matters of love, which go a long way toward helping us establish Dante's attitude toward Cino. In all, they exchanged ten sonnets with each other, and Dante wrote Cino a long epistle in Latin, but all of these neglect to discuss the law, at least directly.²⁷⁴ Tellingly, Dante did acknowledge Cino's status as a jurist in one of their final exchanges and he did so to disparage him. The subject of Dante's sonnet is ostensibly to rebuke Cino for falling in love with too many women:

Io mi credea del tutto esser partito
 da queste nostre rime, messer Cino,
 ché si conviene omai altro cammino
 a la mia nave più lungi dal lito:
 ma perch'ì ho di voi più volte udito
 che pigliar vi lasciate a ogni uncino,
 piacemi di prestare un pocolino
 a questa penna lo stancato dito.
 Chi s'innamora sì come voi fate,
 or qua or là, e sé lega e dissolve,
 mostra ch'Amor leggermente il saetti.
 Però, se legghier cor così vi volve,
 priego che con vertù il correggiate,
 sì che s'accordi i fatti a' dolci detti.
 (Rime CXIV)

I thought, messer Cino, that I had quite abandoned this poetry of ours; for now my ship must hold a different course, being further from the shore. But since I have heard more than once that you let yourself be caught on every hook, I feel moved to put my tired fingers briefly to this pen. One who falls in love as you do, now here, now there, and both binds and looses himself, shows that Love wounds him but lightly. So, if a fickle

²⁷⁴ A definitive chronology of the exchanges has yet to be established.

heart thus whirls you around, I beg you to correct it with virtue, so that your deeds accord with your sweet words.

The sonnet amounts to Dante's announcement that he is parting ways with Cino. But Dante also takes a pair of parting shots at his friend. The first is his accusation that Cino is insincere in his treatment of fidelity in love, easily becoming enamored of multiple women (*or qua or là, e sé lega e dissolve*). Dante portrays him as a fickle hypocrite in the final line, accusing him of lacking virtue and restraint, despite his written claims to the contrary. Dante, of course, maintains that he is constant in his love, while Cino is the deviant, and this is his final admonishment to change his behavior.

Further sharpening his castigation of his friend, Dante laces the sonnet with sarcastic and disparaging language that centers on Cino's social and professional status as a jurist. He addresses Cino with the very formal and distant 'voi,' despite their previous exchanges in the informal and intimate 'tu.' To establish immediately Cino's infidelity, he uses the professional title of 'messer,' labeling him from the outset as a lawyer, and thereby evoking all of the negative connotations of insincerity and duplicity that such a profession carried. This is not a piece of friendly advice; it is a rebuke. Dante is addressing Cino the jurist, whom he now characterizes as a compromised poet of love.

Dante also uses this very form of address in the *Convivio* where he once again lambasts lawyers for selling their talents for profit. The attack comes from his belief that wisdom and good judgment are gifts from God, and as such should be given freely, not sold:

Né questo cotale prudente non attende [che altri] li dimandi "Consigliami", ma proveggendo per lui, senza richiesta colui consiglia: sì come la rosa, che non pur a quelli che va a lei per lo suo odore rende quello, ma eziandio [a] qualunque apresso lei va.

(Conv. 4.27.7)

Nor does a prudent man such as this wait until someone summons him with the words "Counsel me," but, making provision for him, without being asked, he counsels him, just as a rose offers its fragrance not only to one who approaches it for this reason but also to whoever passes near to it.

Not content to let his argument stand on its own merit, Dante creates a hypothetical objection in for form of a protest by a doctor or lawyer:

Potrebbe qui dire alcuno medico o legista: "Dunque porterò io lo mio consiglio e darollo eziandio che non mi sia chesto, e della mia arte non averò frutto?" Rispondo, sì come dice nostro Signore: «A grado riceveste, a grado date».

(Conv. 4.27.8)

Here some doctor or lawyer might say: "Am I then to carry my counsel and offer it even though it has not been asked for, and make no profit from my art?" I reply as our Lord has said: "Freely have you received, freely give."²⁷⁵

As before, Dante targets lawyers and doctors, whom he deems professionals who pursue knowledge for the sake of material compensation, not truth. But here he goes on to narrow his attack to lawyers, whom he addresses with the same sarcastic words and tone that he uses when chastising Cino:

Dico dunque, messere lo legista, che quelli consigli che non hanno rispetto alla tua arte e che procedono solo da quel buono senno che Dio ti diede (che è prudenza, della quale si parla), tu non li déi vendere alli figli di Colui che 'l t'ha dato. Quelli che hanno rispetto all'arte la quale hai

²⁷⁵ Matthew 10:8

comperata, vendere puoi; ma non s'è che non si convegna alcuna volta
decimare e dare a Dio, cioè a quelli miseri a cui solo lo grado divino è
rimasto.

(Conv. 4.27.9)

*I say, therefore, my dear lawyer, that those counsels which are unrelated
to your art and which proceed only from the common sense which God
has given to you (and this is that prudence of which we are now speaking)
you should not sell to the children of him who gave it to you: those that are
related to your art, which you have purchased, you may sell, but not such
that it is not fitting at times to pay a tithe and make an offering to God (that
is, to those unfortunates to whom nothing is left but the gratitude of God).*

At the very least, the identical use of the title 'messer' reveals far more than
Dante's disdain of jurists; it strongly suggests that by the time he wrote his
damning sonnet to Cino, he already saw him primarily as a lawyer. His choice to
underline this aspect of Cino's life intentionally casts him in a negative light by
undermining his sincerity and fidelity in all matters, especially philosophy.

Dante was not timid about challenging the vision of poets who enjoyed
prestige greater than his own. His technique was to portray his predecessors'
poetry as flawed, thereby presenting his own poetry as the correction and thus as
the truth. But law and poetry were two very different topics for Dante. At its heart,
the act of composing poetry was a creative process and highly individualistic,
while law was largely a matter of interpretation of already composed dictates of
reason (though there were very clear limits to that interpretation, as we have
seen). Dante is anxious to establish himself as heir to the great line of classical
poets, as is evident in canto 4 of the *Inferno*, where he has Homer, Horace, Ovid,
and Lucan greet Dante pilgrim warmly, and invite him to the sixth of their group

(Virgil is the fifth). Furthermore, Virgil's last action in the poem is to "crown and miter" Dante-pilgrim, showing the Florentine great honor, and establishing him as a successor to the greatest line of poets.

But Dante is not interested in establishing himself as a creator or even interpreter of laws. Truth be told, he can't; his conception of law is as a fixed document whose meaning was self-evident. Dante does not establish a lineage of jurists to parallel his poets because Justinian, as divine editor, had perfected Roman law centuries before. Indeed, the *Commedia* is nearly devoid of jurists, and those who do appear are evoked for different aspects of their historical character.²⁷⁶ If anything, Dante deals with Roman law and its philosophical place in humans' lives. He portrays law as a closed circuit that fits neatly into his totalizing vision of human and history. It is a vision into which contemporary juridical theoreticians - especially Cino da Pistoia - have no place.

²⁷⁶ Pier delle Vigne is with the suicides and Dante presents him as *Logothete* of Frederick II. Francis Accursius, son of the author of the *Glossa*, is among the sodomites.

Conclusion

Judges and literary critics face similar dilemmas in their approach to the written word, despite the seeming disparity between their professions (Often it has been the legal professionals who have been the first to recognize the ambivalence of interpretive language). Both professional groups recognize the concept of a "text" in two broad senses. The first is the understanding that it consists of the words themselves, the text as composed by its author, be it legislation or a poem. This often is the easiest to agree on; nearly all scholars will recognize and acknowledge the text of the *Divine Comedy* as Dante's poem, just attorneys do with the words that comprise the First Amendment of the U.S. Constitution. The second sense is the proper meaning to be inferred from the collection of words. As such, this sense is more problematic because it involves constructing meaning from the first. No matter what sort of text one studies, there will be as many interpretations as there are literary critics or judges, and some of these are bound to clash with others. One need only compare the interminable disputes over the meaning of the Second Amendment (the right to bear arms) to the often intractable difference of opinion among literary scholars who study allegory in canto 30 of the *Purgatorio*. Indeed, having engaged in dialectic legal and literary hermeneutics throughout this dissertation, I marvel at how much the conflicting doctrines of Cino and Dante share with disputes among modern legal philosophers like Ronald Dworkin, H.L.A. Hart, and Lon Fuller.

Cino participated in an early and sustained reckoning with the classical tradition of interpretation. His teachings made an enormous impact on the contemporary legal field and particularly on his illustrious pupil, Bartolus of Sassoferrato. In a similar fashion, Dante's facility in managing how his readers received his writing in turn has conditioned critical interpretations of his work for centuries. Not long after its completion, the title of Dante's masterpiece tellingly shifted from the '*Comedy*' to the '*Divine Comedy*.' I can think of no better barometer for measuring how the poem over the centuries has gained the kind of transcendent and supernatural authority that only a divinely sanctioned work could possess.

As a result, Dante's own doctrine of static interpretation has loomed over his corpus since the 14th century, and nowhere has this phenomenon been more sharply evident than his treatment of Roman law. Unlike Cino and the Commentators -- who sought to adapt Justinian's texts to the needs of a changing society -- Dante, as I have shown in this dissertation, reacted with great vigor to any legal doctrine that created meaning beyond the literal sense of the Justinian's texts. For the poet, the creation of such meaning was an irrevocable error -- one that could only distort the true significance of that authoritative body of work. The remarkable part, of course, is that Dante's subsequent critics and commentators have treated him and the *Divine Comedy* in precisely the way that Dante would have preferred lawyers to treat Justinian and the *Corpus*. While Dante's idiosyncratic political vision recast Justinian the emperor as Justinian the

hallowed editor of a perfect legal document, by a similar process literary *dantisti* have done much the same to Dante himself, eschewing interpretations and readings of the *Divine Comedy* that appear to contradict his own. In this sense, critics often proceed as though there were a 'correct' interpretation – Dante's original intent – and that all others must be, to varying degrees, less valid.

However, all things must change and, like Cino among the shifting doctrines for interpreting the *Corpus Iuris Civilis*, the *dantisti* of the 21st century must navigate between two bodies of established criticism that often oppose one another in their treatment of the authority of the text they study. On the one hand, we must navigate the earlier critical classics that hold much of what Dante himself wrote as the final, not first, word in interpretation of the dantean corpus. And on the other hand, we must confront the constantly shifting relation between Dante the author and Dante the protagonist as it has been traced across the explosion of critical works published in the last three decades. How to negotiate between such fundamentally differing assumptions about authority and interpretation remains a compelling and persistent problem, and my response has been to foreground these issues in my own critical practice.

Such issues remain prevalent today in part because Dante scholars continually seek their own equivalent of Accursius's *Glossa* through an uncritical belief in Dante's pronouncements and self-representations. Privileging Dante's accounts and interpretations above all others, *dantisti* risk merely continuing the process of canonization that comes with such longstanding practices. We see

this trend in the great critical amalgamation projects like the *Enciclopedia Dantesca* and the *Dartmouth Dante Project*, both of which function as authoritative repositories of commentaries on the poet's works. Though collaborative in nature, both purport to create a canonical commentary capable of determining which critical points of view are worthy of acceptance or dismissal.

Logically, any such concentration of criticism tends to re-affirm established perspectives and to reinforce the integrity of the canon at hand. In this sense, the *ED* and the *DDP* both function much as Accursius's *Glossa* did for medieval jurists analyzing the *Digest*. Both contain such a wealth of informed analysis of their subject – be that Dante or the *Digest* - that they serve as the default place to begin research on any given topic. As such, they limit and condition new and emerging arguments before they even become fully developed. For current dantisti, then, the challenge is how to profit from centuries of authoritative commentary without allowing its considerable critical mass to dictate what we can and cannot see.

Cino provides us with one possible means for accomplishing this task. In spite of the literary bent of this dissertation, its unstated point of departure is modeled after the words of that medieval jurist: *Quia omnia nova placent potissime quae sunt utilitate decora bellissime visum est mihi Laurentius Ualtertiae, propter novitates modernorum Grammaticorum super Dantis breviter utilia scribere*. It is in this sense that, keeping both feet firmly planted upon the foundation offered earlier commentators, I nevertheless turn my gaze forward,

interpreting Dante's masterpiece as my own reason and interpretative skills guide me. In this sense, I open Dante's poem to the future.

The present work, I believe, does this.

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