DANTE AS A JURIST

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THE germ of this little work appeared in an article in the 'Law Magazine and Review' for February, 1897. Since then the writer has studied the subject more thoroughly, and the present essay is the result. Its size is perhaps hardly commensurate with the labour bestowed on its compilation. Most authorities are named, but not all. It would be useless to cite, unless in exceptional cases, the works of Dr. Moore and Dr. Toynbee and the concordance of Messrs. Sheldon and White, as they have been used continually, and are of course indispensable to every English student of Dante. Latin and Italian names have been used perhaps somewhat indiscriminately, but it was found difficult to be consistent. For instance, few would recognise Bartolus under his Italian name or Cino under his Latin one.

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ABBREVIATIONS.

Cod., Code of Justinian.
Co. Litt., Coke upon Littleton.
Conv., Convivio.
Dig., Digest of Justinian.
D.C., Divina Commedia.
Mon., De Monarchia.
V.E., De Vulgari Eloquentia.

Others in the text will explain themselves.

DANTE AS A JURIST.

THE title of this work is of course not meant to imply that Dante was actually a lawyer by training or profession, like Ariosto or Tasso,

'Who penned a stanza when he should engross,'

but that, like some other great poets [1], he did not disdain the aid of law as an adjunct to poetry. In at least one of his prose works legal argument assumed a prominent place. This side of his character is one especially

[1] A conspicuous instance of this is Lucretius' magnificent line:

Vitaque mancipio nulli datur, omnibus usu.

Compare Horace's,

Quaedam si credis consultis mancipat usus,

and Shakespeare's,

'When to the sessions of sweet silent thought
I summon up remembrance of things past.'

Many other instances will readily suggest themselves to the students of poetry. As the Portuguese poet says:

Não fasem damno ás musas os doutores,
Antes ajuda a suas letras dão.

interesting to lawyers and has not been much developed. He was a master of all the learning of his time—*il gran maestro di color che sanno*—to use his own words of Aristotle—one of the *semipoetae* of the time, as Filippo Villani phrases it, and law had not escaped him. In fact, we shall find that he has sufficient daring to attempt to define law. None of his biographers name law among the subjects of his study, but Boccaccio tells us that he became wonderfully skilled in the liberal arts. In Italy in the thirteenth and fourteenth centuries law was pre-eminently a liberal art[1]. It was the prince of the humanising studies. His opportunities of knowledge were undoubted. His father and his friend Brunetto Latini were notaries. He spent some time at Bologna, the *alma studiorum mater*, the chosen home of jurisprudence in Western Europe, and he was intimate with Cino da Pistoia. He must have breathed for some time a legal atmosphere. The effect of this is that he knows the Digest[2], and that he refers to the Mosaic law[3] and in at least one case to Greek law[4]. The Corpus Juris Canonici in its present form was nearly complete

[1] Had he been able to do so, Dante might have compared the division into higher and lower arts at Florence with the division of London crafts in the reign of Edward II into *officia mercatoria* and *manuoperalia*, Munimenta Gildhalle, i, 495.

[2] What text he used one cannot say; the citations are insufficient to determine whether it were the *lectio Pisana* or the *lectio vulgata*.

[3] Mon., i, 13, 65, and other places.

[4] *Atene e Lacedemona che fenno*
L'antiche leggi.—Purg., vi, 139.

at the time of Dante's death, but it is not cited or named by him. He was not always on the best terms with the profession. In Mon. ii, 11, 71, the *juristae praesumptuosi* are told that they are very far below the mirror of reason.

Dante's knowledge of law shows itself in two main directions, in phraseology and in argument. At the same time he was more than a poet with something of the legal flavour of the Roman poets. Like all noble natures he was as strong a lover of justice—perhaps the greatest and rarest of the cardinal virtues—as von Jhering himself, and would probably have agreed with the latter that *der Kampf ums Recht ist die Poesie des Charakters*[1]. The sense of justice is one of the most conspicuous features in his writings[2]. It is justice the eternal and divine, that justice which even its enemies love[3], not the love of justice which on the lower view of La Rochefoucauld is merely the fear of suffering injustice. The relation of man to justice is the allegorical subject of the D.C.[4] An attempt at definition is made in Par. xix, 88[5]. The last book of the *Convivio* (never written) was to have had justice for its theme. Other

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[1] *Der Kampf ums Recht*, p. 41.

[2] It is especially insisted on by, *inter alios*, Dr. Moore, Dante and his early Biographers, p. 256.

[3] Conv. i, 12, 76. [4] Ep. x, 8.

[5] *Cotanto è giusto quanto a lei consuona*, the *lei* being *la prima Volontà*. This enthusiasm for justice is quite sufficient to set Dante above the sarcastic Italian proverb, *Bonus jurista malus Christa.*

noticeable allusions, with comparisons of Roman and English law, will be found in the note [1].

The subject of Dante as a jurist seems not to have been touched—unless quite incidentally—in any English book known to the writer, though the assiduity of Continental scholars has done to a limited extent (as will appear later), what has been done more fully in the case of Shakespeare in England, Germany, and

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[1] *Divina giustizia* is the cause of earthly, Par. xviii, 116. Justice is *sempiterna*, Par. xix, 58, and *viva*, ib. 68, also Par. vi, 88 and 121. The Creator of the gates of hell was moved by it, Inf. iii, 4; it inspired Justinian, Par. vi, 88; and in the orb of Jupiter the spirits of the blessed arrange themselves so as to form the introductory verse of the Book of Wisdom, *Diligite justitiam qui judicatis terram.* The Saracen in possession of the Holy Land *usurpa giustizia*, Par. xv, 143. Just kings are in one of the highest places of honour in the eye of the mystic eagle in Par. xx, and in the same canto

Ripheus justissimus unus
Qui fuit in Troja.—Æn. ii, 426,

is the only pagan in Paradise, xx, 68. Virgil no doubt would have agreed with all this, for with him justice was a contempt of heaven.

Discite justitiam moniti et non temnere Divos.

See on the whole subject Carmelo Grassi, *La Giustizia e la Libertà nel Concetto di Dante* (Rome, 1903).

The texts of Roman law in some instances support Dante's views. Thus the first title of the Digest asserts that *jus* is derived etymologically from *justitia*, and immediately afterwards says that one would rightly call us priests (the *nos* being apparently those engaged in the profession of the law), *justitiam namque colimus.* In i, 1, 10, comes the famous definition of Ulpian, *justitia est constans et perpetua voluntas jus suum cuique tribuendi.* It will be noticed that Ulpian and Dante both bring *voluntas* into their definition, but in quite different senses.

There are many judicial dicta of English judges on the subject which remind one of Dante. 'My opinion is that all general rules touching the administration of justice must be so understood as to be

Italy[1]. If the writer have been forestalled in England or America, he can only plead in Dante's own words, *questo intendo, non come buon fabbricatore ma come seguitatore di quello, fare in questa parte*[2]. It is noticeable that some of the commentators and translators of Dante have belonged to the legal profession. The names will suggest themselves of Alberigo da Rosada, Doctor of Laws of Bologna, who translated into Latin the commentary of Jacopo della Lana, of Carlo Fea, of Dr. F. Scolari, of C. Vecchioni, Vice-President of the Supreme Court of Justice at Naples[3], and of Carmelo

made consistent with the fundamental principles of justice;' Sir M. Foster in *Wedderburn's Case* (1746), Foster's Crown Cases, 38. 'Humanity is the second virtue of Courts, but undoubtedly the first is justice;' Lord Stowell in *Evans* v. *Evans* (1790), 1 Haggard's Reports, 36. 'The law is, or ought to be, the handmaid of justice, and inflexibility, which is the most becoming robe of the latter, often serves to render the former grotesque;' Lord Penzance in *Combe* v. *Edwards*, (1878), 3 Probate Division, 142.

One thing neither Dante nor the Roman jurists ever did, *viz.*, to use the word 'justice' in the strange English concrete sense, as 'justice of the peace,' 'Mr. Justice X.' Other instances of concretising Roman abstract terms are 'contract,' 'obligation,' 'will,' which in England may all mean an actual physical document.

[1] Rushton, Shakespeare as a Lawyer (1858); Lord Campbell, Shakespeare's Legal Acquirements (1859); Forlani, *La Lotta per il Diritto; Variazioni filosofico-giuridiche sopra il Mercatante di Venezia e altri drammi* (Turin, 1874); Kohler, *Shakespeare vor der Forum der Jurisprudenz* (Würzburg, 1883). Cervantes has recently been treated in the same way by Señor Carreras, *La Filosofia del Derecho en la Quijote* (Madrid, 1905).

[2] Conv. iv, 30, 21.

[3] His work, now pretty well forgotten, is entitled *Della Intelligenza della Divina Commedia* (Naples, 1832).

Grassi, an advocate (see above). In England Sir W. F. Pollock, Mr. Warburton Pike, Mr. C. H. Bromby, Mr. E. Wilberforce, a Master of the Supreme Court, and Dr. C. L. Shadwell, Provost of Oriel College, have occupied themselves with more or less success in translation.

It will be convenient to divide the subject dealing at first mainly with the D.C., leaving the other works for subsequent consideration. It might *prima facie* be expected that one of the heads would be similes, but it is remarkable that not one simile is taken from the practice of the courts, and there are only six which in the most remote way connect themselves with the present subject[1].

I. DIVINA COMMEDIA.

(1) Bologna.

In the days of Dante, Bologna was the centre of the legal learning of the Western world. The stream of the juristic commentaries of the great glossators[2], post-glossators, and *scribentes* had not yet ceased to flow.

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[1] These are Inf. xix, 60 (those who stand at a loss for a reply), Par. xxiv, 45 (the bachelor who is ready, but does not speak until the master proposes the question), and Par. xxv, 64 (the pupil who follows his master). These may possibly be reminiscences of Bologna disputations. The other three are Inf. xix, 49 (the friar shriving for murder), Purg. xxxiii, 47 (Themis), and Par. xvii, 103 (one who asks for counsel).

[2] The words *chiosa* and *chiosar* are familiar to Dante (Inf. xv, 89; Purg. xi, 141, xx, 99; Par. xviii, 94).

Among the jurists of the time who wrote or taught in the Archiginnasio of Bologna or in neighbouring cities were Accursius the younger (died 1294[1]) and Guittoncino Sinibuldi, better known as Cino da Pistoia (died 1336). Bartolus was seven years old at the time of Dante's death. Less well known, but eminent in their way, were Dinus (died 1303), Lovato or Lupatus[2] (died 1309), Joannes Andreae, the eminent canonist, who drafted the statutes of the University of Bologna in 1317 (died 1348[3]), Francesco da Barberino, the first jurist to receive the degree of Doctor of Laws at Florence, and Landulfus de Colonna, whose *De Translatione Imperii* was written between 1310 and 1320. At the same time Thomas de Pisan, the father of Christine de Pisan, and a famous astrologer, would no doubt have been as a boy or very young man resident at Bologna of which he was a native. The monumental work of

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[1] The elder Accursius, the compiler of the *Glossa Magna*, died before the birth of Dante. The Accursii are buried in the restored Church of San Francesco at Bologna, and on their tomb is an inscription in rimed Latin verse beginning:—

Hic jacet Accursus qui legum dogmate cursus
Detexit cunctis studiorum munere junctis, &c.

[2] For him see Wicksteed and Gardner, Dante and Giovanni del Virgilio (1901), pp. 36, 302. As a friend of Giovanni's he may well have met Dante. It is of Lovato that Petrarca says, that had he not mingled the Twelve Tables with the Nine Muses he would have been greater than any other poet of his own, or the preceding age.

[3] He is cited as an authority by the English canonist Lyndwood. He defended the legality of Boniface VIII's election in his *Lectura in Regulas Libri Sexti Decretalium*. A similar defence was made by Pietro dalla Palude in his *De Causa immediata ecclesticæ Potestatis*.

Dr. Gierke[1] will provide numerous less-known names of jurists, and for the names of the principal notaries of Bologna of the time the work of E. Durando may be consulted[2]. In France the poet-lawyer Beaumanoir, (died 1300), was a contemporary.

Among the jurists by far the most interesting is Cino or Cinus[3], whose *Lectura super Codicem* and commentary on the Statutes of Pistoia won for him a rank among jurists no lower than did his sonnet praise of Selvaggia among poets. He is not named in the D.C., but his name occurs frequently in the V.E., and there was a correspondence in sonnets between him and Dante, not in any way touching on legal matters[4]. In his sonnets not addressed to Dante he however often combines very happily his poetical and legal powers. Take for instance two sonnets, one on the Court of Reason and one to Rome[5].

THE COURT OF REASON.

A thousand doubts and pleadings in a day
Are filed in Empress Reason's court supreme

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[1] *Das deutsche Genossenschaftsrecht.*

[2] *Il Tabellionato o Notoriato* (Turin, 1897).

[3] Surnamed *Pistoriensis* or *de Pistorio.*

[4] Petrarca in his sonnet on Cino's death does not refer to him as a jurist, nor does he in the sonnet in which he names Dante and Cino together (*In Morte di M. Laura*, xix). In the *Trionfo d' Amore*, iv. 31, Dante and Cino are again coupled, with the addition of Beatrice and Selvaggia.

[5] The translations are my own.

By ireful Love—his eyes with anger gleam,
'Which of us Twain hath been more faithful, say.
'Tis all through me that Cino can display
The sail of fame on life's unhappy stream.'
'Thee,' quoth I, 'root of all my woe I deem,
I found what gall beneath thy sweetness lay.'
Then he: 'Ah, traitorous and truant slave!
Are these the thanks thou renderest, ingrate,
For giving thee a maid without a peer?'
'Thy left,' cried I, 'slew what thy right hand gave.'
'Not so,' said he. The judge: 'Your wrath abate,
I must have time to give sound judgment here[1].'

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[1] This sonnet was imitated by Petrarca at the conclusion of the canzone, *Quell 'antico mio dolce empio signore*. It is an example of the poetry based on legal procedure, a style of verse very common both before and after Dante's day. The sonnet of Petrarca, *Dodici donne onestamente lasse* (*In Vita di M. Laura*, clxx), is by some supposed to be an allusion to the Provençal Court of Love. Whether such a court existed or not, it is certain that Dante does not refer to any such tribunal in any of his works. Other instances of procedure are the court scenes in 'Reynard the Fox,' and in 'Piers Plowman.' The *tenso* and *jeu parti* of Provençal literature were mainly of this class. Dante has an example in Canzoniere iv, sonnet 30, *Due donne in cima della mente mia*. But Italian literature is not as fruitful in procedure-poetry as most other European literatures. The whole question is treated in detail by the present writer in the 'Law Magazine and Review,' vol. xxii, No. 305, p. 224 (August, 1897). The origin of this class of verse is possibly to be found in the fact that most of it appears in the court-poetry, which circulated among a class in which the traditions of the Roman law were never wholly lost. The maxim, *audi alteram partem*, cited in 'Reynard the Fox,' would be familiar to the court-poet as a rule of the tribunals, even though he might not know that it is neither a civilian nor a canonist text. Perhaps the nearest authority is *Ea quæ altera parte absente decernunter vim rerum judicatarum non obtinent*, Paulus, *Sententiæ*, v, 5A, 6.

To Rome.

Tell me, proud Rome, why dost these edicts read,
These endless laws by prince or people made,
Or answers by the prudent duly weighed,
When now thou canst the world no longer lead?
Thou hearest, sad one, of each ancient deed
Where thy unconquered sons their might displayed,
Afric and Egypt at thy feet were laid,
But slavery not rule is now thy meed.
What boots it that thou wast of old a queen
And over foreign nations heldest rein
If thou and all thy fame no more exist?
Forgive me, God, if all my days have been
Devoted to man's laws, unjust and vain
Unless Thy law within the heart be fixed![1]

Another interesting name is Giovanni del Virgilio, to whom Dante addresses two eclogues. In the first he alludes to the unpoetic labour of the jurists of Bologna[2]. In the second Bologna is *antrum Cyclopis*[3]. Other persons connected with Bologna and named by Dante are

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[1] Surely this sonnet is echoed in Filicaia's more famous one.

[2] *Montibus Aoniis Mopsus, Melibœe, quotannis*
Dum satagunt alii causarum jura doceri
Se dedit. Ecl. i, 28.

In his commentary on these lines Guiseppe Albini, *Dantis Eclogæ*, p. 33 (Florence, 1903), says somewhat sarcastically *jura; la pratica del giure in contrapposto a studi più alti e liberali.*

[3] Ecl. ii, 47; possibly because a zealous advocate is apt to approach his case with one eye shut.

Gratian[1], Onesto de Boncima[2], Guido delle Colonne[3], Accursius[4], and Pier delle Vigne[5]. Unconnected with law are Oderisi[6], Venetico dei Caccianemici[7], and Franco Bolognese, the illuminator[8]. The geography of Bologna was well-known to Dante, as might be expected when it is probable that he resided there at two periods of his life[9], though he declined to receive the laurel crown there. Bologna is frequently referred to in the D.C. and in other works, sometimes by name[10], sometimes by implication. Dante knows the leaning tower Carisenda, to which he compares Antaeus[11], but does not name its twin tower Asinelli, though both had been built in the twelfth century. He also knows the Salsa, a valley near Bologna—according to one interpretation—where the bodies of suicides were left unburied[12], and the *frati*

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[1] Par. x, 104.

[2] V.E., i, 15, 42 (*Honestus*). He was a Doctor of Laws, and one of Cino's objections to the D.C. is that Dante does not name him therein.

[3] The *judex de Columnis de Messina* of V.E. ii, 5, 43. He may also possibly be alluded to in Purg. xi, 97. *Judex* may only mean one skilled in the law.

[4] Inf. xv, 110.

[5] Inf. xiii, 58.

[6] Purg. xi, 79.

[7] Inf. xviii, 50, where the name is *Caccianimico* for metrical reasons.

[8] Purg. xi, 83.

[9] Scartazzini places the second visit between 1304 and 1306. See also Ricci, *Dante allo Studio di Bologna*, Nuova Antologia, series III, vol. xxxii, p. 297.

[10] In the D.C., *Bologna*, Inf. xxiii, 145, Purg. xiv, 100; *Bolognese*, Inf. xviii, 58, xxiii, 103.

[11] Inf. xxxi, 136.

[12] Inf. xviii, 51.

godenti[1], called from Bologna in 1266 to rule Florence; the institution of the *arti* is attributed to them by G. Villani. The word *sipa*[2] also shows an intimate acquaintance with the Bolognese dialect, as does the discussion of the dialect in the V.E.[3]

Other University cities visited by Dante were Padua, Siena, Paris and possibly Perugia, and in all these a faculty of law, more or less flourishing, existed[4]. The University of Pisa was not founded till 1346, a quarter of a century after his death, and the *litera Pisana* of the Digest was not transferred to Florence until 1406. The principal contemporary name connected with the early legal history of Perugia is Bartolus[5]. His life just overlapped Dante's—he was born in 1314—and he was a pupil of Cino's. It is therefore possible that he may have seen Dante when he was quite a child. Marsiglio

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[1] Inf. xxxiii, 103.

[2] Inf. xviii, 61. This was a peculiar local use of the affirmative, no longer current. It is said to be connected with *sia* and not *si*. Ferrari in his *Vocabolario Bolognese* says that Bologna ought rather to be called *la città del brisa*, a form of the negative particle equivalent to the more usual *punto*, the French *point*.

[3] i, 15.

[4] See the various itineraries, such as Enrico Croce's, and monographs such as A. Gloria, *Dante e Padova* (Padua, 1865); B. Acquarone, *Dante in Siena* (Siena, 1865); C. E. Tyrer, Dante and the Scaligers (Manchester, 1898); C. Hare, Dante the Wayfarer (London, 1905); A. Counson, *Dante en France* (Erlangen, 1906).

[5] He was not technically a glossator, in spite of the well-known German student song, *Der Bartolus Glossator*. Dante would probably have agreed with his strange work, *Processus Sathanae contra Divam Virginem coram Judice Jesu* (Hanover, 1611).

of Padua's *Defensor Pacis* appeared in 1324, three years after Dante's death.

(2) Lawyers.

The number of those connected with the study of the law, whom Dante names in the D.C., is considerable. The earliest and the greatest is Justinian, the hero of one of the noblest cantos in the poem[1], the more immediately legal part of which may be Englished thus :—

Since Constantine turned back the eagle's flight
Against the course of heaven, the which of old
It followed from Lavinia won by might,
Two hundred years and years beside have rolled;
On Europe's limit paused the bird divine
Nigh to the hills that still its birthplace hold;
The shadow of its wings did it incline
Throughout the world until, from hand to hand
Succeeding, at the last it came to mine.
Caesar I was, and now Justinian stand,
And primal love so urged me that to clear
The laws of bale and bulk I gave command[2];

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[1] Par. vi; he is also named in Purg. vi, 89, and in Canzone xviii, 37. Dante would have agreed with the epithet given him by the anonymous writer in T. Wright, Political Songs, 210,

Sat Galienis opes et sancti Justiniani.

[2] The whole of the introductory titles to the Code are a commentary on this, especially the words *resecatis tam supervacuis* in *De Novo Codice Faciendo*, § 2, and *omne jus antiquum supervacua prolixitate liberum atque enucleatum* in *De Emendatione Codicis Justinianie*, § 1. See also the title *De Vetere Jure enucleando*, i, 17.

When first the mighty work I thought to rear,
One nature in the Christ I deemed—no more—
In that belief contented and sincere.
But blessed Agapetus with his lore
(Chief Shepherd he) to faith more excellent
Converted me from all the sin of yore[1].
Him I believed and that his argument
Now see I clearly, just as thou dost see
Falsehood and truth in contradiction blent.
Then soon as with the Church I bowed the knee,
I was inspired, for so it pleased God's grace,
With that high talk whereto I girded me.
In arms to Belisarius gave I place,
'Twas sign that I must rest what time I marked
Heaven grasping his right hand in close embrace.

Next in interest is Brunetto Latini or Latino (died 1294). Like Dante's father he was a notary[2], and his pride in his profession is illustrated by the story that when he had prepared a document held to be invalid for want of form, he preferred to be thought wanting in honesty rather than in skill. He is thrice named in the D.C.[3], and appears as Brunetus Florentinus in the V.E.[4] In two of the three passages in the D.C. he has the epithet of *Ser*, the title of a jurist.

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[1] Justinian is said to have been originally a Eutychian. When he changed his opinions he promulgated severe penalties against the heresy which he had at one time supported. In Cod. i, 5, 8, he calls their doctrine *profana perversitas* and *funesta dogmata*.

[2] A notarial act of his was recently discovered in the archives of the Dean and Chapter of Westminster, 'Athenæum,' 6 Nov., 1897.

[3] All in Inf. xv. [4] i, 13, 10.

The *Trésor*, his French prose work, contains some discussions of legal interest, *e.g.*, the election of emperors and kings, local government, the King and his council, the honours due to ambassadors, the trial of prisoners. In the *Tesoretto*, his Italian work in verse, he especially condemns the crime for which he suffered in the Inferno[1]. The simile with which Dante parts from him is one of the most beautiful in the poem[2]. As a lawyer Brunetto uses the legal phrase:

Serbolo a chiosar con altro testo[3].

and there may be a reminiscence of lectures in

Bene ascolta chi la nota[4].

There are many other names more or less famous in the history of law. The foremost is Moses, the *legista* par excellence[5]; next to him is St. Thomas Aquinas, whose definition of law, as will be seen later, was accepted by Dante, though the argument of his *De Regimine Principum*[6] was not. He is alluded to very

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[1] *Ma tra questi peccati*
Son vie più condannati
Quei che son soddomiti.
Deh! come son periti
Quei che contra natura
Brigan cotal lussura!

[2] Inf. xv, 121. [3] *id.*, 89.

[4] *id.*, 99. He also uses the technical Roman *arra* in *id.*, 94, though in a non-legal sense. [5] Inf. iv, 57.

[6] This treatise, according to the best authorities, was partly the work of St. Thomas, partly that of his pupil Fra Bartolomeo da Lucca. Books with a similar title were written by Engelbert of Volkersdorf (died 1311), and Egidio Colonna or Ægidius Romanus (died 1315).

frequently, and it is not too much to say that a great part of the argument of the Paradiso is little more than a versification of one or other of St. Thomas' enormous works. The principal civilian is Franciscus Accursius or Francesco d' Accorso[1], the son of the eminent jurist already named, and interesting to Englishmen from his having been one of the *Secretarii Regis* of Edward I[2]. Canonists are represented by Isidore of Seville[3] and Gratian, the monk of Bologna and compiler of the *Decretum*[4]. Among jurists of smaller note are Petrus de Vinea, or Pier delle Vigne[5], the Chancellor of Frederic II[6], Lapo Salterelli[7], Taddeo[8],

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[1] Inf. xv, 110. He came to England in 1273, and had free quarters in the Beaumont Palace at Oxford. The King's writ assigning him *manerium Oxoniense ad inhabitandum* is set out in Selden, *ad Fletam*, c. viii.

[2] This King was perhaps the only living monarch of whom Dante spoke well. See Purg. vii, 132. There were points in common between the poet and 'the English Justinian.'

[3] Par. x, 131.

[4] Par. x, 104.

[5] Inf. xiii, 158.

[6] Frederic was himself, like Edward I, a great legislator. A few of his constitutions appear in some editions of the *Corpus Juris*. He is named four times in the D.C.

[7] Par. xv, 128. He is not to be confounded with the more famous Lapo Gianni named in V.E. i, 13, 36, and in the sonnet to Guido Cavalcanti. He was the object of Boniface VIII's peculiar aversion owing to his denying the right of the Holy See to interfere in the internal affairs of Florence.

[8] Par. xii, 83. Taddeo may have been a jurist or he may have been a physician. If the latter he was probably Taddeo d' Alderotto, the translator of Aristotle's Ethics (Conv. i, 10, 70). If he was a jurist he was either Taddeo Pepoli or Taddeo da Segro, the compiler

and Bonagiunta [1]. Oriental law is represented by Averroes [2] and his first translator, Michael Scott [3]. In addition to these there are others alluded to, but not expressly named. They are hinted at under the legal titles of *notaio* [4], *avvocato* [5], *Giudice Nin gentil* [6], and the geographical titles of *Aretino* [7] and *Ostiense* [8]. If true

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with Pier delle Vigne and Roffredo of the *Constitutiones Augustales* of Frederic II.

[1] Purg. xxiv, 19; V.E., i, 13, where he is mentioned with some contempt. Possibly his law and not his style was his strong point.

[2] Inf. iv, 144. The legal treatises written by Averroes (Ibn Rasch) are enumerated by Renan, Averroes (2nd ed. 1861, p. 73). The main one was an abridgement of Al Ghazzali's *Al-Mustasfa*. The etymology of Averroes from *a* and *veritas* (*quasi senza verità*), will hardly hold water, although it is the invention of as good a Dante scholar as Benvenuto da Imola.

[3] Inf. xx, 116. Like Pier delle Vigne he was one of the court of Frederic II.

[4] The poet-lawyer Jacopo da Lentino, Purg. xxiv, 56.

[5] *L'avvocato de' tempi cristiani*, Par. ix, 119, may be either Orosius, the author of *Historia adversus Paganos*, or St. Ambrose, the reputed author of *Mosaicarum et Romanorum Legum Collatio*.

[6] Purg. viii, 53. The allusion is to Nino de' Visconti, the nephew of Ugolino, the governor of the Pisan colony of Gallura in Sardinia. Gallura is named in Inf. xxii, 82, Purg. viii, 81. Gallura was one of the four divisions of the island. It is remarkable that two of the governors of other divisions, Fra Gomita and Michel Zanche, are punished for bribery in Inf. xxii, 81, 88. It pleased Dante well in the passage in the Purg. to find Nino in better company.

[7] Benincasa da Arezzo, Purg. vi, 13.

[8] Par. xii, 83. This is Enrico da Susa or Segusia, Cardinal of Ostia (died 1271), a commentator on the Canon law, known as *Lumen Juris*. Students of that law were said *Ostiensem sequi*. See Ep. viii, 7, *Ostiensem declamant*. His chief work was the *Summa Aurea super Titulis Decretalium*. He spent some time in England

genius be assimilation rather than invention, Dante has assimilated from all these sources a good deal of law, and most of it will bear the test of critical examination by lawyers.

(3) Legal Terms.

This is rather a difficult subject to arrange, as many terms, in strictness legal in their meaning, are, as in English, often applied in a general sense; for example, *arra* (in the sense of prediction), *chiosa*, *cognazione* (equivalent to *famiglia*), *collegio*, *debito*, *diritto*[1], *digesto*, *disilligarsi*, *disfrancare*, *editto*, *eterna legge*, *gesta*, *infamia*, *indizio*[2], *litigio*, *masnada*[3], *prefetto nel foro divino*, *reda*, *retaggio*, *reo*, *rio*, *testamento* (of the O. and N. T.), *testimonio*. Among technical words of law calling for no special notice are *arra*[4], *bando*, *cancellare*, *chiosa*, *colpa*, *comento*, *concistoro*[5], *consistoro*, *contumacia*, *con-*

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which he quitted, says he in the *Summa*, owing to the jealousy of the English for foreigners. Dr. T. A. Walker, History of the Law of Nations, i, 210, gives an abstract of the *Summa* as far as regards truces.

[1] This seems to be used always as an adjective.

[2] As a term of the law of evidence the word is generally in the plural, but in the two places where it occurs in the D.C. (Purg. vii, 37, xxvi. 8), it is used in the singular.

[3] Almost equivalent to the old English law word *manupast*, those who ate at a man's table, but used in the D.C. as meaning simply a group of persons, Inf. xv, 41; Purg. ii, 130.

[4] Translated by Cary 'pledge and earnest,' but to a lawyer pledge and earnest are different things.

[5] Figurative in Conv. iv, 5, 20, *concistoro divino della Trinità*. 'Consistorie' is similarly used in a figurative sense in Langland's 'Vision of the Last Judgment.'

venenza, *convegno*, *corte*, *costume*, *danno*[1], *dannato*, *decreto*, *decretali*, *divieto*, *dispensare*, *dote*, *dritto*, *drittura*, *duolo*[2], *editto*, *fellonia*, *fio*, *foro*[3], *frode*, *furto*, *giudicare*, *guidizio*[4], *giudice*, *giuggiare*, *giura*[5], *giurare*, *interdetto*, *ingiura*, *ingiuria*, *legge*, *legista*, *lite*, *norma*, *patto*, *pattegiare*, *perdono*, *perdonanza*, *posseditore*, *privilegio*, *registrare*, *reo*, *rio*, *sentenza*, *simonia*[6], *statuto*, *testamento*, *testare*, *torto*[7], *tolletto*[8], *usurpare*. Worthy of special notice is the great variety of words used for torture, the *probatio probatissima* of medieval practice. *Questione*, the usual legal term, is not used in that sense, and *tortura* occurs only once, Purg. xxv, 109, where it may mean only a tortuous way. Among the words used are *ambascia*, *briga*, *dolore*, *croce*, *martire*, *martirio*, *noia*, *soffriri*, *tormento*, *travaglia*, and the verbs *affaticare*, *assannare*, *compungere*, *porre in croce*, *scipare*. Torture was in full vigour as a means both of obtaining evidence and of punishment in early Italian

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[1] Note that the elements of actionability (*damnum*, *culpa*, *injuria*) under the Lex Aquilia often occur in the D.C.

[2] In Inf. xxi, 32, it appears to be used as equivalent to *dolus*.

[3] *L'uno e l'altro foro*, Par. x, 104; *i.e.*, civil and canon law.

[4] This word has the double meaning of *judicium* in Roman law; (1) a judgment, the general use, (2) a tribunal or court of justice, Inf. v, 14.

[5] Or *jura*, Par. xi, 4.

[6] Also expressed by a periphrasis in Par. 51,

Là dove Cristo tutto di si merca.

[7] *Delitto* is not used.

[8] In the sense of *bona vi possessa*, Par. v, 33.

law, and Dante was no doubt well acquainted with the leading rules of its application. Cino and Bartolus dealt with it in their works. In statute law, such as the *Constitutiones Augustales* and Giano della Bella's *Ordinamenti di Giustizia* (1293), the subject fills a considerable space[1]. It had not by then, however, attained the refinement to be found in the period of Farinaccius and Damhouder.

The words which follow have an interest of their own. Caorsa[2] is grouped with Sodom, for usury was a terrible sin in the fourteenth century, and the inhabitants of Cahors were famous usurers. *Caorsino* was, like *Lombardo*[3], a common name for a usurer. This is not the place to enter on the great question of the treatment of usury in Italy in Dante's time, but it may be noted that in his general treatment he reflects the opinion of his day[4]. Usury and fraud seem to be com-

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[1] See the article 'Torture' by the present writer in Encyclopædia Britannica (9th ed.).

[2] Inf. xi, 50.

[3] Whence perhaps *il semplice Lombardo*, Purg. xvi, 126, may mean the honest usurer.

[4] See as to *usuaria pravitas* in Dante's time, E. Nys, *Recherches sur l'Histoire de l'Economie Politique* (Brussels, 1898), p. 111, and other works on economic history, such as Prof. W. J. Ashley's. As to the university usurers at Bologna and Florence, Rashdall, History of the Universities, vol. i, p. 192. The texts of the Corpus Juris Civilis and Corpus Juris Canonici are too numerous for citation in this place. A good deal of the law will be found in Decretum ii, 14, and in Decretals ii, 24, 6. Most of the Corpus Juris Canonici was in being in Dante's lifetime.

bined as inseparable in Inf. xi. In the D.C. *usura*[1] occurs twice, *usuriare*[2] once. The usurer is placed among the violent, probably from a misunderstanding of Aristotle[3]. Virgil explains that usury is offensive to divine goodness because it is contrary to nature, probably from a feeling that the usurer *contra naturam* produces money from money, 'a breed of barren metal.' The words *scranna* and *vivagni* are curious. The former appears to be etymologically the English 'screen,' and *sedere a scranna* would mean sitting at screen, very much like sitting in Chancery, if that word be derived from the low Latin *cancellus*, a screen or grating[4]. *Vivagni* means the borders of anything, but in one passage[5] is used to signify the margins of treatises on Canon law, with their closely printed glosses or *summae*, *brocarda*, or *brocardica*. One of the numerous conjectures as to the meaning of the famous line

Pape Satan Pape Satan Aleppe[6]

is that of Benvenuto Cellini that it is a corrupt form of *Paix, paix, Satan, allez paix*, the cry of an usher in a

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[1] Inf. xi, 95; Par. xxii, 79. In the former passage usury *offende la divina bontade*, in the latter it is *contra 'l piacer di Dio*.

[2] Inf. xi, 109.

[3] Ethics i, 5, 8.

[4] Par. xix, 81.

[5] Par. ix, 135. The allusion is probably to the thumb-marks on the margins caused by continual study. Compare the metaphorical use of *postille* in Par. iii, 13.

[6] Inf. vii, 1.

court of justice at Paris. The well-known phrase *il gran rifiuto*[1] touches a question of Canon Law on which much has been written. It is commonly understood of the resignation of the Papacy by Celestine V (Pietro Murrone). On the 13th of December, 1294, he read a bull pronouncing his abdication on the ground of age, infirmity, and incapacity. As to the validity of this course taken by the Pope opinions have differed from that time to this. Thus Petrarco makes him perform an act of wonderful and lofty humility. The words are *Quis ulla aetate tam mirabili et excelso animo contempsit quam Celestinus iste*[2]*?* Others, with Scartazzini, regard it as a cowardly abjuration of his high office and an abjuration rather than a resignation, for by the Canon Law[3] a resignation can only be made

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[1] Inf. iii, 60. This has been sometimes wrongly applied to Esau.

[2] *De Vita Solitaria*, ii, 3, 18. It is said that Cardinal Egidio Colonna —already mentioned—owed his elevation to the Sacred College to his defence of the validity of the resignation of Celestine and the consequent validity of the election of Boniface VIII in his treatise *De Renuntiatione Papae*. Colonna did not confine himself to these grave studies. He was the author of *L'Esposizione sopra la Canzone d'Amore di Guido Cavalcanti Fiorentino* (Siena, 1602). At one time he was read in England. Hoccleve translated him as Gyles of Regement of Princes,' and Sir John Fortescue, On the Governance of England, p. 1, cites him simply as 'Giles'.

[3] The main text is Decretals i, 9, which seems to be in favour of Scartazzini's view. See also article by G. Cimbali in *Rivista Politica e Letteraria*, vol. iv, p. 120 (1898). There are numerous other articles on the subject in Italian periodical literature. Decretals i, 9, was considered by the House of Lords in *Reichel v. Bishop of Oxford* (1889), 14 App. Cas. 259. Some early authorities will be found in F. L. Ferraris, *Prompta Bibliotheca*, vi, 30 (The Hague, 1783).

to a superior, and a Pope has no human superior. The apostolic succession was broken; Boniface VIII was a usurper; the chair of St. Peter was vacant[1].

In several instances English lawyers are reminded of familiar phrases. *Bobolca*[2] *and tollette dannose*[3] recall *bovata* and maletolts. *Per conservar sua pace*[4] reminds of conservators of the peace. *Primizie*[5] is the same word as *primitiae*, or first fruits, important in the legal history of the Church of England. *Corte* has a double meaning like *curia* or court in England, *viz.*, the King's entourage and a tribunal. In V. E. the phrase *curia regis* occurs[6], and the *aula regia* is paralleled by

Nell' aula più segreta co' suoi conti[7].

Like the English arrest of judgment is the line

Se corso di giudizio non s'arresta[8].

The old English misdemeanor of common barratry—the last reported case is at the end of the seventeenth century—is illustrated by the frequent use of the corres-

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[1] This is the reason of St. Peter's strong assertion, three times repeated, of the usurpation of his place, *il loco mio, il loco mio, il loco mio*, Par. xxvii, 22.

[2] Par. xxiii, 132 (if Tassoni's view be adopted).

[3] Inf. xi, 36. *Mal tolletto* is used in Par. v, 33.

[4] Inf. xxiii, 107. [5] Purg. xxix, 31.

[6] i, 18, 47. The word *curialitas* (ib., 25) means courtliness, not the tenancy by the curtesy of England, for which see any work on real property.

[7] Par. xxv, 42. [8] Purg. viii, 139.

ponding Italian words, *baratta*[1], *baratteria*[2], *barattiere*[3], *baratto*[4]. The interesting thing about the crime is that Dante and the four sentenced with him in 1302 were condemned *tanquam falsarii et barattarii.* The Latin word *baratteria* or *barataria*, the etymology of which appears very uncertain, suggests Sancho Panza's island. It was in very common use in medieval law, to judge by the space occupied by the crime in Du Cange. He says that *baraterii* was equivalent to *ribaldi.* This is confirmed by Dante's putting together *baratti* and *ruffiani* in Inf. xi., 60. Compare Littleton's[5] coupling of barretors with extortioners. Coke defines a barretor as 'a common mover and exciter or maintainer of suits, quarrels, or parts, either in the courts or elsewhere in the country[6].' In modern times the word is confined to policies of marine insurance, where 'barratry of the master and mariners' is one of the excepted perils. The latest judicial interpretation of a barratrous act in a policy seems to have been by the House of Lords in 1883[7]. The words *non per far ma per non fare*[8] are very like the English distinction into misfeasance and nonfeasance. *Sine causa*[9] is possibly

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[1] Inf. xxi, 63. [2] Inf. xxiii, 107. [3] Inf. xxi, 41, xxii, 87, 136.

[4] Inf. xi, 60. [5] s. 701.

[6] Co. Litt., 368 a. He derives it from *barret*, a wrangling suit. But this does not help much.

[7] *Cory v. Burr*, 8 App. Cas. 393. [8] Purg. xxv, 25.

[9] Par. xxxii, 59. It is a phrase of the Corpus Juris, *e.g.*, Dig. xii, 7, 4.

intentionally used as a legal phrase. It may be noticed that Dante himself has been regarded as guilty of such defamation as would in modern practice have made him liable in a court of justice. This liability rests in part on his own words [1].

(4) Legal Arguments.

In several passages there seem to be allusions to procedure, chiefly in the ecclesiastical courts. Their inquisitorial—as distinguished from accusatorial—process is perhaps hinted at in

E dolcemente sì che parli acco' lo [2].

In the Inferno the trial before Minos is entirely in accordance with the practice of the medieval Italian courts for the purpose of obtaining evidence [3]. The line

Che vendetta di Dio non teme suppa [4]

probably refers to the ordeal by consecrated bread, though as a mode of trial the ordeal had been abolished by the Council of Lateran in 1215. A reference to the penalty of excommunication may perhaps be found in Par. xviii., 129 and 136. At the end of Inf. viii. is a curious piece of procedure. The fallen angels bar the

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[1] Par. xvii, 127–135. See an article by Prof. Bernardino Alimena in *La Giustizia Penale*, 1905, p. 843,

[2] Purg. xiv, 6.

[3] Inf. v, 7. See Farinaccius, *passim*. 'Good judges and justices,' says Coke, 'abhor these practices,' 2 Inst. 33.

[4] Purg. xxxiii, 36.

progress of Virgil and Dante. Virgil holds an 'imparlance'[1] with them and they go within the gates to try the right of entry (*a pruova si ricorse*). In Canto ix. comes an angel and summarily decides the question at issue. The division of courts is implied in the passage regarding the marriage of St. Francis and Poverty[2]. The marriage of St. Dominic and Faith is *per sponsalitia* and the *dos* is *mutua salute*[3]. In the former of these passages there may possibly also be an allusion to specific performance of marriage decreed by the Court Christian and enforced *per censuram ad matrimonium contrahendum* on the ground that such courts had jurisdiction wherever they had been *laesio fidei*[4]. The argument of Cicero, *aut vi aut frauda fiat injuria*[5], seems to be the basis of the argument in the Inferno that injury works either by force or by fraud, but fraud is the more displeasing to God, because it is a peculiarly human failing (*proprio male*), therefore, the fraudulent are more severely punished than the violent[6]. In the same Canto there is an attempt at a division of fraud, according as it is practised on one who trusts the

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[1] Chiefly used in old English practice up to 1833 for the fictitious verbal arrangement supposed to be made between the demandant and vouchee in a common recovery. See 1 Stephen's Comm., bk. ii, pt. i, c. xix.

[2] Par. xi, 61. [3] Par. xii, 61.

[4] The last instance of such a decree in England was *Baxtar* v. *Buckley* (1752), 1 Lee, 42. The procedure was finally abolished by Lord Hardwicke's Act in the following year, 26 Geo. II, c. 33.

[5] *De Off.*, i, 13. [6] Inf. xi, 23.

fraudulent person or on one who does not. The former is the graver offence and is punishable as treason[1]. In the Purgatorio is the famous comparison of Florence to a sick woman who can find no rest in her bed. Florence is similarly unsettled, for she is continually changing

Legge, moneta, offizio, e costuma[2].

Later in the Purgatorio the poet says that law should be a curb (*freno*); laws there are, but who obeys them? The reason is that what made Rome great, the two suns, the Pope and the Emperor, no longer shine, for one has extinguished the light of the other[3]. The lines

in nostra corte
Rivolge sè contra il taglio la rota[4]

probably mean that in the court of Heaven confession and repentance blunt the sword of justice. The justice of Heaven seems unjust to man, says Beatrice[5], but that ought to be an incentive to faith rather than to heresy. Twice the theory of a *patto* between God and man appears; the vow is such a compact, made by mutual consent of God and man, and so bilateral; it is offered

[1] Inf. xi, 53. Another example of this constructive treason extant in Dante's time was heresy, which was punished as *laesa majestas divina*. The phrase is used in the *Constitutiones contra Haereticos* of Frederic II in 1232 and 1239. It was extended to blasphemy by Suarez de Paz, *Praxis Ecclesiastica et Saecularis* (Salamanca, 1583).

[2] Purg. vi, 146. Compare Inf. xxiv, 144.

[3] Purg. xvi, 107. For the two lights and the two swords see Appendix A.

[4] Purg. xxxi, 41.

[5] Par. iv, 67.

by man's free will and is the victim in the sacrifice[1]. From such a compact the Church may dispense in case of substitution of matter[2]. The other *patto* is that with Noah, suggested by the double rainbow, also bilateral[3]. The Latin line

Non decimas quae sunt pauperum Dei[4]

is the statement of part of a legal truth, but into the vexed question of a tripartite or quadripartite division of tithe at its origin Dante does not enter[5]. As to sumptuary laws Dante's attack on the dress of the women of Florence and on the luxury of his age may be illustrated by municipal legislation, especially by the *Ordinamenti Suntuari* of Bologna (1289)[6]. These contained, *inter alia*, the strange regulation that bride and bridegroom might ask only twenty guests each to the wedding.

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[1] Par. v, 28.

[2] Par, v, 35. The grounds of dispensation (*irritatio*) and the vows, oaths, and agreements which may be dispensed or relaxed fill much space in the canonist writings. The safe-conduct granted to John Huss is a famous historical instance. Much of the law will be found in Decretum i, 13 and 14, Decretals ii, 24 and 34.

[3] Par. xii, 17.

[4] Par. xii, 93. The phrase in Decretals iii, 30, 1, *erant autem et aliae decimae quas pauperibus recondebant* is perhaps remembered. See also Decretum ii, 16, 65–68.

[5] See the well-known works on tithe by Selden and the Earl of Selborne, especially Selden, vi, 7.

[6] These will be found in L. Frati, *La Vita Privata di Bologna* (Bologna, 1900), p. 267.

(5) Penology.

Dante does not fully distinguish crime from sin. A crime with him is a crime because it is a breach of the law of God. That it is also a breach of the law of the State is merely a coincidence. For instance, in one passage he groups crimes and moral offences together as deserving the same punishment[2]. His treatment of crimes and punishments is instructive as a guide to the sentiment of the period. It is useless to classify the crimes exhaustively, as almost every possible variety of crime is mentioned[3]. Some of the more interesting are the following: *Affaturare*[4], *arti*[5], *magiche frode*[6], *malie*[7], *indovina*[8]. The importance attached to these shows that Dante was no more in advance of his age in the matter of witchcraft than was Sir Matthew Hale nearly four centuries later[9]. Witchcraft as a possible crime did not become obsolete in England until 1736[10].

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[1] This is quite in accordance with the stage of law described by Sir H. Maine, in which the distinction between sin, delict, and crime has not yet been drawn, Ancient Law, c. x.

[2] Inf. xi, 58.

[3] *E pela penalidade que melhor se caracterisa o direito de um povo*, T. Braga, *Poesia do Direito* (Oporto, 1865), p. 145.

[4] Inf. xi, 58. [5] Inf. xx, 86. [6] *Id.*, 117.

[7] *Id.*, 123. [8] *Id.*, 122.

[9] See the case of the *Suffolk Witches* (1665), 6 State Trials, 647.

[10] By 9 Geo. II, c. 5. The statute makes pretended witchcraft a misdemeanor. One of the phrases used in it, 'crafty science,' reminds one very much of *magiche frode*.

Alchimia is regarded as a crime probably because by it a coiner was enabled to transmute metals and so defraud the State[1]. It thus became practically equivalent in heinousness to debasement of metal, the crime for which Adamo of Brescia suffered, when he struck

fiorini
Che avean tre carati di mondiglia[2].

Falsità seems to have been as common an offence as coining, and *falsatori* suffered a punishment of their own[3]. *Falsitá* was of several kinds. Like *alchimia* it embraced coining and the making of a false die (*conio*)[4], or alloy (*lega*)[5]. It also embraced the making of false weights and measures, when the *doga* was not safe[6], and there were some who blushed at the word *staio*[7]. False entries in a register (*quaderno*) fell within *falsità*[8], so did the double fraud of Gianni Schicchi, who first of all personated Simon Donati, and then forged a will in the name of the latter and duly executed it (*dando al testamento norma*), all for the miserable bribe

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[1] Inf. xxix, 119, 137. Possibly the idea of transmutation of metals colours the phrase in the seventh sonnet of the V.N.,

Ond' io mi cangio in figura d'altrui.

[2] Inf. xxx, 90.

[3] Inf. xxix, 57. The coiner is called *monetiere* in Inf. xxx, 124.

[4] Inf. xxx, 115; Par. xix, 141, from which it appears that even royalty could commit the offence. The word is a favourite one with Dante. The verb *coniare* occurs in Inf. xxx, 11. *Moneta sansa conio* comes in the attack on Boniface VIII in Par. xxix, 127.

[5] Inf. xxx, 74. [6] Purg. xii, 105. [7] Par. xvi, 105.

[8] Purg. xii, 105.

of the lady of the herd (*la donna della torma*)[1]. It is worth noticing that *falsità* was not at Florence regarded as treason, as was coining in England by the Statute of Treasons[2].

Omicidio[3] is grouped with malicious murder (*che mal fiere*), and with plunder and robbery, and the offenders are placed in the first circle[4]. The distinction made between homicide and murder is familiar to the historical student of English law, but the technical distinction made by Bracton and the Icelandic jurists between *homicidium* and *murdrum*[5] was unknown to the Italian jurists. *Omicidio* no doubt implies the slaying of a human being where there was some *culpa* present, though not necessarily malice. As to malice, *malizia* and *malizioso* are both used, but apparently only in a general sense. In one passage *malizia* and *ingiuria* are connected[6]. In England such connexion

[1] Inf. xxx, 40.

[2] 25 Edw. III, st. 5, c. 2 (1351). This part of the statute was repealed by 2 & 3 Will. IV, c. 34, s. 1. The strong view taken by the medieval state in respect to coining is shown by the fact that in the liberal government of Aragon it was the only offence on a charge of which torture could be inflicted. Keller, *Fuero Aragonés*, p. 79.

[3] The abstract term is not used, only the concrete plural, *omicide*, Inf. xi, 37.

[4] *Id.*, 39.

[5] Bracton, 134 b. 'The word murder is never used to differentiate two degrees of homicidal guilt, it merely means that the slayer has not been caught, and that Englishry has not been presented,' Maitland, Pleas of the Crown for the County of Gloucester, 5 Hen. III, p. xxx. For presentment of Irishry under similar circumstances in Ireland, see Sir J. Davis, Discovery of the State of Ireland, p. 109.

[6] Inf. xi, 22.

is undoubted in crime, but in delict it is a very fine question how far *malizia* is an element in an action for *ingiuria*[1]. It is beyond the limits of this sketch to do more than mention it.

Tradimento is used in two senses; (1) breach of trust, (2) treason against either the temporal or the spiritual head of the commonwealth[2]. It is the worst crime of all, for in it alone the soul quits the guilty body at once, as in Branca D'Oria's case[3]. Judas Iscariot and Brutus and Cassius are punished in the same way[4], for their crime was the same, *laesa majestas divina* being but a form of treason[5]. Treason against the Emperor is the highest of all treason, for it is in the nature of sacrilege; it is the daring which in Dante's words

Si muove contra il sacrosanto segno[6].

Punishment in the period of the D.C. was in what Bentham would have considered an eminently unreformed stage, and was inflicted partly by the State, partly as a matter of private vengeance[7], as in the starving of Ugolino and his sons in the Tower of

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[1] See *Allen* v. *Flood*, [1898], App. Cas. 1; *Quinn* v. *Leathem*, [1901], App. Cas. 495, and other modern cases.

[2] In Par. xvi, 95, *fellonia* perhaps means treason.

[3] Inf. xxxiii, 145. [4] Inf. xxxiv, 61–67. [5] See p. 27.

[6] Par. vi, 32.

[7] *Vendetta* as meaning private vengeance occurs several times, *e.g.*, Inf. vii, 11; Purg. x, 83; Par. vi, 91. In Purg. xx, 94, and other places it signifies Divine vengeance.

Famine at Pisa. Even when inflicted by the State it was retributive and not corrective or reformative, as is shown by the line

Così s' osserva in me lo contrapasso[1].

It is inflicted because the individual sets up his will against the general will. Hegel would have approved

Contra miglior voler voler mal pugna[2].

Punishment inflicted as private vengeance is not punishment at all, it must be inflicted by one having jurisdiction. Hence it was left for Pilate, and not for Caiaphas or Herod, to inflict punishment on Christ[3]. Private vengeance was so common in the days of Dante that the statute law of the period was full of prohibitions of it, but the executive was seldom powerful enough to prevent it until a later period[4].

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[1] Inf. xxviii, 142. *Contrapasso* is the ἀντιπεπονθός of Ethics, v, 8, and the *contrapassum* of Aquinas, Summa, ii, 61, 4. Dante would no doubt have regarded as false sentiment the phrase in the Corpus Juris, *correctionis medicina*, Cod. ix, 15, 1.

[2] Purg. xx, 1. Compare Par. vi, 100:

L'uno al pubblico segno i gigli gialli
Oppone.

It might also be regarded as a breach of the *proportio*, which is an essential element in law according to Dante's view in Mon. See p. 41.

[3] Mon. ii, 13, 38.

[4] The *Statuta Populi et Communis Florentiae publica auctoritate collecta castigata et praeposita anno Salutis MCCCCXV* (Freiburg, 1778–1783), vol. i, 115, forbade imprisonment *in privato loco*. So did the *Statuta Criminalia Communis Bononiae* (Bologna, 1525). Both

In one or two places Dante shows himself in advance of his age. He deprecates the exhumation of Manfred's corpse as an act of useless vengeance, as barbarous as the Roman procedure in the trial and condemnation for *majestas* after death, introduced in the most suspicious period of the Empire[1]. He holds that punishment should be proportioned to the crime,

Perchè sia colpa e duol d' una misura[2].

Accordingly he admits in some cases what Bentham calls characteristic or exemplary punishments[3]. An

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these codes were much later than Dante, so one may assume that matters were worse in his day. In England, in spite of the provisions of Magna Carta, it was found necessary to legislate against arbitrary imprisonment as late as the Petition of Right (1628) and the Habeas Corpus Act (1679). One cannot say on the existing evidence whether any procedure like the English writ of habeas corpus or the action for false imprisonment was competent in Italy in the time of Dante. Probably not. In Aragon the nobility had certain rights of private imprisonment, Du Cange, s.v. *Fame Necare*, and in France there was *la haute* and *la basse justice*.

[1] Cod. ix, 8, 6. The same terrible procedure was competent in Scotland. See *Francis Mowbray's Case* (1603), Arnot's Criminal Trials, 65.

[2] Purg. xxx, 108.

[3] See Bentham, Principles of the Penal Code, pt. iii, c. vii; Principles of Morals and Legislation, c. xv; Braga, *op. cit.*, p. 113; Ortolan, *Les Pénalités de l'Enfer de Dante* (Paris, 1873), p. 111. The last writer makes a special point of *l'idée d'analogie* in Dante's punishments, such as is also found in the *Constitutiones Augustales* of Frederic II (1231), and the *Carolina* of Charles V (1532). Rivarol, in his *Étude sur Dante*, takes the same view. *Chaque supplice*, says he, *est pris dans la nature du crime qu'il punit.*

example is Bertram or Beltramo dal Bornio[1], who carries his head separated from his body *a guisa di lanterna* because he parted father and son by his mischievous counsel. Another instance is Caiaphas crucified, condign punishment for the advice given to the Pharisees[2]. Dante was not in advance of his age on the problem of slavery. He no doubt agreed with Aristotle (Pol. i, 5), that it was a matter of course and fixed by nature for certain races[3].

Canonical and secular punishments are distinguished in

O spiritali o altre discipline[4].

The most important spiritual offence in Dante's time was no doubt simony. It is the subject of Inf. xix, where it includes even the sin of Jason[5], who could hardly have been guilty of simony in the proper sense at a period before the Christian era. His conduct, however, as described in 2 Maccabees iv, 7, amounted undoubtedly to the purchase of the post of high priest. In England simony, though not an offence punishable by the criminal courts, is so far recognised as detrimental to the State that by 31 Eliz., c. 5, certain penalties are inflicted on the giver and receiver, and

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[1] Inf. xxviii, 122. The exemplary character of the punishment is dwelt on by R. de Boysson, *Études de Bertrand de Born* (Paris, 1902).

[2] Inf. xxiii, 118.

[3] See F. Zamboni, *Gli Ezzelini Dante e gli Schiavi; Roma e la Schiavitù personale domestica* (Florence, 1902).

[4] Purg. xxiii, 125. [5] *Id.*, 85.

half such penalties may be sued for in the temporal courts [1].

Among other punishments named by Dante are beheading [2]; burning alive, to which Dante himself was actually condemned, and which Griffolino of Arezzo suffered for alchemy [3] and Adamo of Brescia for coining [4]; and wrapping in lead and casting into a furnace, the penalty inflicted for treason under Frederic II [5]. These instances are sufficient to show that the D.C. was not entirely the *felicis vitae speculum* that Filippo Villani called it [6]. The 'cruel and unusual punishments,' forbidden in England by the Bill of Rights, existed in full vigour in the Italy of 1300 [7].

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[1] The main authority for Canon law is Decretals, v, 3. By that law it is a mortal sin and renders the offender, if in holy orders, liable to deprivation *ab officio et beneficio.*

[2] Inf. xxxii, 65. [3] Inf. xxix, 110. [4] Inf. xxx, 75.

[5] Inf. xxiii, 66.

[6] The *Inferno* at least is in Dante's own words *lo mondo senza fine amaro.*

[7] In the *Ordinamenti* and *Statuta Populi* (see above), the main punishments are beheading, amputation, and confiscation of property. For neighbouring cities, see F. Matarazzo, Chronicles of the City of Perugia, tr. by E. S. Morgan (1905); *Statuta Patavina ab anno 1236 ad annum 1675* (Padua, 1682); Prof. L. Zdekauer, *Costituto del Comune di Siena dell' anno 1262* (Milan, 1897); *Statuti Senesi* (Bologna, 1863–1877). Wrapping in lead and burning alive must have been devised for unusually flagrant cases.

II. PROSE WORKS.

The subject-matter of the V.N. and the *Quaestio de Aqua et Terra* does not afford much scope for the lawyer, there being no legal allusion in the latter and only one in the former[1]. The Conv., V.E., and Epistles contain scattered allusions, but the Mon.[2] is permeated with law. It is a treatise on political philosophy by a constitutional lawyer, the object being to prove, chiefly by deductive reasoning, that *jus soli* and *jus poli* are distinct[3]. Such being the case, it is difficult to make extracts, as the whole work might be cited in illustration of Dante's legal learning. As far as can be done, some of the more interesting and important passages of the work will be summarised, and afterwards the same course will be attempted for the interesting, if less important, phrases from the other prose works.

De Monarchia.

A monarch of some kind is necessary. As the *primum mobile* is the source of all motion in the physical universe, so is the monarch, *primus motor*, the source

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[1] *Si trova una rubrica la quale dice Incipit*, § 1.

[2] The three great doctrines of the Mon., the necessity of the Empire, its acquisition of power by right, and its dependence on God, directly and not as His vicar or minister, appear in embryo in Par. xviii.

[3] 'His reasoning is throughout closely syllogistic; he is alternately the jurist, the theologian, the scholastic metaphysician,' Bryce, Holy Roman Empire, c. xv.

of the motion of the body politic (i, 9)[1]. The necessity of a supreme judge is argued in i, 10. Wherever there is a suit there must be a judgment. The judge must be superior in jurisdiction to the litigants[2] and must be a monarch or not. If the latter, there must still be some one superior to him, and so on *ad infinitum*. Accordingly the supreme judge must be in the last resort a monarch or emperor. This is why monarchy is necessary to the world[3], which is ordered best when justice is para-

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[1] 'We that do sit here move in a sphere, and should be like *primum mobile* according to whom all others are to steer their way,' Finch C.J. in *John Hampden's Case* (1637), 3 St. Tr. 1217.

[2] 'Justice can be peaceably and effectively administered there only where there is recognised authority and adequate power,' Lord Langdale in *Duke of Brunswick* v. *King of Hanover* (1844), 6 Beavan's Rep., 49.

[3] This view has legal authority. *Et forte si quis diceret dominum imperatorem non esse dominum et monarcham totius orbis esset haereticus, quia diceret contra determinationem ecclesiae et textum sancti evangelii dum dicit, 'Exivit edictum a Caesare Augusto ut describetur universus orbis,'* Bartolus on Dig. xlviii, 1, 24. The Canonists of course excepted the Pope. *Ubi enim principatus sacerdotum et Christianae religionis caput ab Imperatore Caelesti constitutum est, justum non est ut illic imperator terrenus habeat potestatem*, Decretum, i, 14. Compare the forlorn hope of Petrarca, *nulla prorsus apud nos dubitatio relinquitur monarchiam esse optimam religendis reparandisque viribus Italis*, Epist. Fam., ii, 7. Grotius combats the view as to the necessity of empire. *Neque est quod quemquam moveant Dantis argumenta, quibus probare nititur Imperatori jus tale competere quid id humano generi expediat. Nam commoda quae adfert suis compensatur incommodis. Ut enim navis aliqua ad eam magnitudinem pervenire potest quae regi nequeat, sic et hominum numerus et locorum distantia tanta esse, ut unum regimen non ferat*, De Jure Belli et Pacis, ii, 22, 13, 1.

mount. Of justice the monarch is the purest embodiment. He is so because there is nothing for him to covet, therefore the opposition between covetousness and justice[1] insisted on by Aristotle[2] cannot affect him (i, 11). Laws are made to suit the State, not the State to suit the laws; the legislature is ordained for law-abiding citizens, not they for it (i, 12)[3]. Municipal laws must be supplemented where deficient by ἐπιείκεια (i, 13)[4]. Different states must be regulated by different laws. Law (*lex*) is the directory rule of life—*est enim lex regula directiva vitae*[5]. Such a rule must be imposed in the last resort by one person, and the government of one is more advantageous to the human race and therefore more acceptable to God than the government of many (i, 14)[6].

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[1] Covetousness is the corrupter and hinderer of justice, i, 13.

[2] Eth. v, 1, 8. [3] Pol. iii, 16, 17.

[4] Eth. v, 10. It is the *epicheia* of St. Thomas, with which Dante was of course conversant. English courts have often expressed similar views. A good instance is a dictum of Lord Kenyon in 1796. 'A court of equity can mould interests differently from a court of law, and can give relief in cases where a court of law cannot,' *Clayton* v. *Adams*, 6 Term Reports, 605.

[5] This is a paraphrase of St. Thomas, *lex aeterna nihil aliud est quam summa ratio divinae sapientiae, secundum quod est directiva omnium actuum et motionum*, Summa, i, 2, 93, 1: Compare Hooker, 'A law generally taken is a directive rule unto goodness of operation,' Eccl. Pol. i, 7. Compare also the English distinction into imperative and directory laws. A good example is afforded by *Julius* v. *Bishop of Oxford* (1880), 5 App. Cas. 214.

[6] This is a prose expansion of Par. xvi, 71:

E molte volte taglia
Più e meglio una che le cinque spade.

The second of the three disputed points in i, 2 is whether the Romans acquired empire *de jure* or not[1]. The whole of book ii is occupied with the proof of the affirmative. All law, as far as it is good, exists first in the mind of God and is willed by God[2]. Therefore law (*jus*) in the world is the likeness of the Divine will —*jus in rebus nihil est quam similitudo divinae voluntatis*—and whether a thing exists *de jure* or not depends on its consonance or dissonance with the Divine will (ii, 2). The fifth chapter is full of law, Dante begins with the axiom that the end of law is the good of the state[3], a thoroughly Benthamite view[4]. Law (*jus*) is defined as the real and personal proportion of man to

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[1] St. Augustin, *De Civ. Dei*, *passim*, and especially c. xviii, had asserted that the Romans ruled by legitimate divine right. The writers of the *De Monarchia* and of the *De Regimine Principum* equally admit this; they differ in their views as to the legitimate successors of the Romans.

[2] Coke in *Calvin's Case* (1608), 4 Rep. 21, speaks in similar language of the law of nature 'By this law, written by the finger of God in the heart of man, were the people of God a long time governed, before the law was written by Moses, who was the first reporter or writer of law in the world.'

[3] For this Marsiglio of Padua would substitute the will of the people, the *universitas civium*—very like the *Gesammtwille* of Savigny, though arising in a different way. With Marsiglio its source was Divine revelation, with Savigny unconscious habit. Lord Kenyon in *Vint's Case* (1799), 27 St. Tr. 640, agrees with Marsiglio. 'All governments rest mainly on public opinion . . . the opinion of his subjects will force a sovereign to do his duty.'

[4] 'The public good ought to be the object of the legislator,' are the opening words of Bentham's Theory of Legislation.

man which if preserved preserves society, if corrupt corrupts it—*jus est realis et personalis hominis ad hominem proportio quae servata hominum servat societatem et corrupta corrumpit*[1]. The Digest does not define, it only describes law[2]. Every law must intend the common good. This is in accordance with Cicero's *semper ad utilitatem reipublicae leges interpretandae sunt*[3]. Seneca too says that law is the bond of society[4]. The Romans intended the good of the State, therefore they intended the end of law. The sixth chapter still further develops the argument by a syllogism in this form. Every one who intends the end of law proceeds legally; the Roman people in subduing the world intends the end of law; therefore the Roman people in subduing the world proceeds legally. Consequently it attains *de jure* the imperial dignity (ii, 6). In forming a corporation the power of exercising corporate functions is considered, for law does not

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[1] This definition has been accepted and criticised by modern Italian jurists, for instance, by Carmignani, *La Monarchia di Dante* (Pisa, 1867), and A. Taddei, *Istituzioni di Diritto Civile Italiano* (Florence, 1897). No doubt the theory of law as a proportion is based in the last resort on Aristotle, as was that of law as a directive rule on Aquinas.

[2] He probably alludes to the text in Dig. i, 1, pr., adopted by Ulpian from Celsus, *jus est ars boni et aequi.*

[3] *De Invent.*, i, 38.

[4] The citation is not from Seneca, *Liber de Quatuor Virtutibus Cardinalibus*, as supposed by Dante, but is from Martinus Dumiensis, Bishop of Braga (d. 580). See Dr. Moore, Studies in Dante, Series i, p. 290.

extend beyond possibility[1]. Natural order cannot be preserved without law, for the foundation of law is inseparably annexed to order. Order must therefore be preserved *de jure*. The Roman people was by nature ordained to rule, therefore came to empire *de jure* (ii, 7)[2]. Chapters viii–xi deal with the argument from the trial by battle, one kind of divine judgment (*judicium Dei*)[3], an argument to a modern lawyer the most curious and unconvincing part of the work. The argument put concisely runs thus. The divine judg-

[1] Probably the *impossibilium nulla obligatio est* of Dig. I, 17, 185. The English maxim *lex non cogit ad impossibilia* is not classical. It is frequently used in English decisions, *e.g.*, *Auriol* v. *Mills* (1780), 4 Term Rep., 94.

[2] *Imperium sine fine dedi*, said Virgil more than thirteen centuries before Dante.

[3] The *campioni* in the trial are perhaps intended in the simile in Inf. xvi, 22. *Judicium* also signified the ordeal. In the statutes attributed to William the Conquerer, § 6, it is contrasted with the trial by battle, *aut judicio ferri aut duello*. The form of wager of battle in England is given in several places, among others in the Year Book, 17 Edw. III, No. 6. For its history, see H. C. Lea, Superstition and Force, and G. Neilson, Trial by Combat (1890). The *judicium Dei* was probably Teutonic or Scandinavian in origin; among the Northmen it was the *holmgang*, of which a full description will be found in Kormak's Saga. In Roman law the phrase occurs, but not in any technical sense, *e.g.*, *ut non Dei judicium condemnatur*, Nov. cxxxiv, 11. Dante may have drawn the idea from the *Psychomachia* of Prudentius, *21 et seq.*, where the soul of man is the battle ground of the duel between Christianity and Paganism. But the idea was not uncommon in medieval poetry. Thus in Huon de Meri's *Tournoyement de l'Antichrist* (circ. 1235), the virtues under Christ engage and defeat the vices under Antichrist. Just before Dante, Frederic II attempted to limit the combat by forbidding it without leave of the Court, Const., ii, 32.

ment is sometimes manifest, sometimes secret. Among other modes in which a secret judgment may be given are the lot (*sors*) and the combat (*certamen*)[1]. The latter is of two kinds, the combat proper (*duellum*) and the contest of athletes (contentio), such as a race (ii, 8). The people which prevailed when all were competitors for the empire of the world prevailed by divine judgment. The Roman people was the only one which attained the goal (ii, 9)[2]. What is acquired by the *duellum* is acquired *de jure*, provided that the combat be undertaken, not from interested motives, but only from zeal for justice (ii, 10). The Roman people acquired empire by combat, therefore *de jure* (ii, 11). That being so, the Roman people had the right of issuing edicts (*juste edicere*)[3], and from that follows jurisdiction (ii, 12). The thirteenth chapter is interesting as containing Dante's theory of punishment. It is not simply a penalty inflicted on the person committing an injury, but a penalty inflicted by one who has jurisdiction to punish[4]. Hence unless the punish-

[1] He strengthens his argument by deriving *certamen* from *certum facere.*

[2] Cf., *Romanis spatium est urbis et orbis idem*, Ovid, Fasti, ii, 683.

[3] A Roman law term, but used in a broader sense. In Roman law only certain judicial officers had the *jus edicendi*, never the *populus Romanus.* It might, however, be argued that the *jus* attached to the judges as delegates of the *populus.*

[4] *Punitio non est simpliciter poena injuriam inferentis sed poena inflicta injuriam inferenti ab habente jurisdictionem puniendi.* Compare Grotius' definition of punishment, *malum passionis quod infligitur ob malum actionis*, De Jure Belli et Pacis, ii, 20, 1.

ment be inflicted by an ordinary judge[1], it is not a punishment but rather an injury[2]. If therefore Christ did not suffer under an ordinary judge, He was not punished, and the judge could not have been an ordinary judge unless he had been vested with jurisdiction over the whole human race, for Christ bore in His person the sorrows of the race which was punished in Him. Tiberius and his deputy Pilate[3] would have had no jurisdiction unless the empire had existed *de jure*.

The third book is less directly legal in argument than the preceding books. The writer has reached the

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[1] The phrase *judex ordinarius* occurs in the Theodosian Code (viii, 4, 16, 1 and 12, 3), but not in the *Corpus Juris*. It and *jurisdictio ordinaria* also occur in the *Statuta Populi* (see above). The *judex ordinarius* of ecclesiastical law was no doubt derived from the Roman law with its marked division of *cognitio* into *ordinaria* and *extra ordinem*. The 'ordinary' still survives in English ecclesiastical terminology. The Pope is universal ordinary in modern Canon law. Dante's argument depends on the canonist view that the ordinary has by virtue of his office authority to judge. See Decretals, i. 31. Coke says he is so called *quia habet ordinariam jurisdictionem in jure proprio et non per deputationem*, Co. Litt., 96 a.

[2] This is the case in Roman law, Dig. ii, 1, 20, and in English law, where absence of jurisdiction cannot be rectified even by consent of the parties. There are many authorities for this statement. *Farquharson* v. *Morgan*, [1894], 1 Q. B. D. 552, seems the latest. The only exception appears to be where jurisdiction by consent is given by statute, as in the County Courts Act, 1888, ss. 61 and 64.

[3] Jurisdiction may be delegated by one who possesses it in his own right (*suo jure*) and not by the gift of another (*alieno beneficio*), Dig. ii, 1, 5. Pilate had jurisdiction because it was delegated by the Emperor *suo jure*. For the Canon law see Decretals, i, 29.

summit of his reasoning[1], that the office of Emperor is held directly of God, and not of the successor of Peter, the vicar or minister of God (iii, 1). Three kinds of persons strive against the truth by *litigium*[2], the Pope and other pastors of the Church, false sons of the Church, and decretalists, by their decretals derogating from the empire (iii, 3)[3]. A *vicarius* is one to whom jurisdiction is committed *cum lege vel cum arbitrio*[4] and within the limits of his jurisdiction he can act with respect to *lex* or *arbitrium* in matters of which his principal is ignorant[5]. This a *nuntius*[6] cannot do, but he can act at the sole will of the person who sends him[7], and therefore by special commission may have

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[1] It is hardly fanciful to regard the third book as the *Paradiso* of the *De Monarchia*. The triple division of the great poem and the great prose work was probably not accidental.

[2] This word is probably used here in a general and not a technical sense. It denotes any kind of contentiousness. *Litigio* in Par. v, 15, probably means remorse.

[3] See Par. ix, 133. Numerous examples of this occur in the texts of Canon law, *e.g.*, Sext. ii, 14, 2. See Appendix A.

[4] *Arbitrium* is used in a less technical sense than in Roman law, where it usually means judgment in a *bonae fidei* action.

[5] So Gaius, treating *mandatum*, says that the mandatory is discharged by *justa et probabilis ignorantia*, iii, 160.

[6] Both *nuntius* or *internuncius* and *vicarius* are Roman law terms. *Nuntius* occurs in the Florentine law of 6 August, 1289 (set out in Villari, Hist. of Florence, p. 304). *Vicarius* is used either of a judicial substitute—in which sense Dante employs it—or of the slave of a slave. Dante was himself nominated a *nuntius* in 1306. See Eleventh Report of American Dante Society, p. 14 (1892).

[7] There seems to be no text of Roman law directly in point, but it is in accordance with principle.

more extensive powers than a *vicarius*. Anything that cannot be done by a *nuntius* cannot *a fortiori* be done by a *vicarius* (iii, 6). The successor of Peter can loose or bind, but this does not mean that he can loose or bind imperial decrees or laws (iii, 8). The donation of Constantine to Sylvester[1] was invalid because the Pope had no authority to accept. Or if he do accept, it is not as *possessor* but as *dispensator* of the profits to Christ's poor. No one can act in contravention of an office deputed to him[2]; for the Emperor to do this would be to part (*scindere*) the Empire, and so the

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[1] Inf. xix, 115. It is scarcely necessary to say that this alleged donation has been the subject of a considerable literature, even in poetry, as in the well-known passage of Ariosto. Dante, following the Decretum, evidently treated it as a historic fact. Cusanus and Valla had not yet proved it to be a historical fallacy. The words of Decretum i, 14, are, *ubi enim principatus sacerdotum et Christianae religionis caput ab Imperatore Caelesti constitutum est, justum non est ut illic Imperator terrenus habeat potestatem.* The papal writers said that the donation was a gift to God and therefore an exceptional case, or that it was the restitution of what before the donation had been the Pope's *jure divino*, the assent of the Senate and people being presumed. An English translation of the document will be found in E. F. Henderson, Select Historical Documents of the Middle Ages, p. 319. For date and authorities, see T. Hodgkin, Italy and her Invaders, vol. vii, p. 135 (1899); Maitland's Gierke, p. 182.

[2] This is a well known principle of Canon law. See, for instance, Decretals v, 31 and 33, Ayliffe, *Parergon*, 161, 163. In Roman law the nearest text seems to be *a judice judex delegatus judicis dandi potestatem non habet*, Cod. iii, 1, 5. The English form is *delegatus non potest delegare*, for which see the case of *De Bussche* v. *Alt* (1878), 8 Ch. D. 310. The same rule applies in misrepresentation of authority by an agent. The latest case is *Starkey* v. *Bank of England*, [1903], App. Cas. 14.

seamless robe (*tunica inconsutilis*)[1] would be rent. The foundation of the empire is human law, and it is not permissible for it to act contrary to human law. It is contrary to human law to destroy the empire. Every jurisdiction is prior in time to the judge who acts under it, for the judge is ordained to the jurisdiction and not the converse. But the empire is a jurisdiction comprehending in its compass all temporal jurisdiction; it is therefore prior to its judge, the Emperor. Therefore the Emperor cannot diminish the jurisdiction of the empire (iii, 10). Usurpation of law does not make law (iii, 11). If the Church have the power of authorising the Roman Emperor, such power must be given by God, or by itself, or by some Emperor, or by common assent of mankind, or at least by some superior. But if the power be given by God, it must be so given either by divine or by natural law, and it is proved that it cannot be given by either (iii, 14). The *Romanus Princeps* is *curator orbis*[2]. Let Cæsar show such

[1] The phrase, used by Berengarius in his *Apologeticus*, was adopted by Boniface VIII in the bull *Unam Sanctam* (1299). With the latter source at least Dante was no doubt familiar. The phrase was a commonplace. Other instances of its use are in the edict of Frederic II (1232), in *Monumenta Germaniae Historica* (Leges), ii, 327, and in the *definitio* of Oxford University against the opinions of Wycliff (1381), in Lyndwood, p. 59 (Oxford, 1679), where the words are curious, *molientes tunicam Domini similiterque Sanctae Mariae ecclesiae scindere unitatem.*

[2] *Curator* is never used in this sense in the texts of Roman law. The nearest approach to it is the *cura* of the affairs of the Empire on which Justinian prides himself in the introductions to the Code and the Novels.

reverence to Peter as a first-born son ought to show to his father (iii, 16).

Convivio.

Though this work never reaches the discussion of justice which was to be the subject of the concluding book[1], it still contains much of interest to a lawyer, even the dictum in iii, 11, 102, that a lawyer, like a physician and most of the professed in religion, cannot be a true philosopher when he loves wisdom not for herself but for gain or position. The theory of interpretation in ii, 1, is Dante's own, but is probably based on legal authorities. It appears again with some modification in Epist. x, 7. One is reminded in iv, 4, of the argument of Mon., the Emperor is universal ruler and what he says is law to all[2]. In iv, 4, he also uses the phrase *decreto di convento*, which would probably have been impossible to a Roman jurist. Law is

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[1] iv, 27. In fact justice appears to be named only four times. In i, 12, 76, he says that even its enemies love it. In ii, 15, 127, he cites Aristotle as teaching (Eth. v, 2) that legal justice requires the sciences to be taught in order that they may not be abandoned. The other references are in iv, 11 and 27.

[2] Compare Ulpian's statement, *quod principi placuit, legis habet vigorem* (Dig. i, 4, 1), followed by Beaumanoir in his *qui lui plait à faire doit être tenu pour loi* and by Baldus in his *princeps major populo*. This view of the irresponsibility of the monarch has been strongly combated by English jurists from Bracton downwards. Even the Roman Emperors admitted their submission to the law as a worthy thing, *Digna vox est majestate regnantis legibus alligatum se principem profiteri* (Cod. i, 14, 15).

written reason[1] and is necessary because men do not know or obey equity (*equità*)[2]. Whence it is written at the beginning of the *Digestum Vetus*[3] that written reason is the art of good and equity (iv, 9)[4]. The allotment of riches does not depend on distributive justice, for they come by pure fortune or by fortune aided by reason, as by testament or mutual succession, or by fortune the helper of reason. It is to the bad rather than to the good that inheritance falls by *legatum* or *caducum* (iv, 11)[5]. The object of both canon and civil reason is to rectify the avarice which grows with

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[1] *Ragione* often means law or a body of law in the *Convivio*, *e.g.*, in *canonica* and *civile regione* below, and in i, 10, 14–19, iv, 19, 24. In this meaning it is probably based on St. Thomas' definition (see p. 39). *Ratio* is the keynote of the Aquinian philosophy of law. Compare Coke's famous saying, 'The common law itself is nothing but reason,' Co. Litt., 97 b.

[2] This is not unlike the statement of Wilmot, C.J., in the leading case of *Collins* v. *Blantern*, 'Courts of equity have arisen by the judges not properly applying the principles of the common law, being too narrowly governed by old cases and maxims, which have too much prevented the public from having the benefit of the common law,' (1767), 2 Wilson's Rep., 341.

[3] In Dante's time and up to the seventeenth century the division of the Digest into *Vetus*, *Infortiatum*, (in French *enforçade*), and *Novum* was the accepted one. *Vetus* was from i to xxiv, 2, *infortiatum* xxiv, 3 to xxxviii, *novum* from xxxv to the end. Besides this reference and the one to the *infortiatum* in § 15 there is one in Mon. ii, 5, 6, to the *Digesta* in the plural (see p. 41). Dante does not use the synonym *Pandectae*.

[4] A free rendering of Celsus' *ars boni et aequi*, Dig. i, 1, pr.

[5] The difference between these is that *legatum* was acquired by direct gift of the testator, *caducum* by lapse contrary to his intention.

accumulation of wealth. This is manifest from the beginning of their writings (iv, 12)[1]. The mind may be infirm, of this infirmity the law speaks when it states in the *infortiatum* that in him who makes a testament soundness of mind and not soundness of body is required at the date of making the testament (iv, 15)[2]. It is written in reason, and by a rule of reason it is held, that in those things which are manifest of themselves there is no need of proof (iv, 19)[3]. Reason wills that before the age of twenty-five a man cannot do certain things without a *curator* of full age[4]. The law commands that the person of the father should always appear to his sons sacred and honourable, and that they should render him obedience[5]. If the father die the son ought to be guided by his father's testament, if the father die intestate the son ought to be guided by him

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[1] Probably an allusion to Ulpian's rule, *juris praecepta sunt haec, honeste vivere, alterum non laedere, suum cuique tribuere*, Dig. i, 1, 10, 1. Gregory IX follows this in the proem to the Decretals, *ideoque lex proditur . . . ut honeste vivat, alterum non laedat, jus suum unicuique tribuat.*

[2] A free translation of Labeo in Dig. xxviii, 1, 2, *in eo qui testatur ejus temporis quo testamentum facit integritas mentis non corporis sanitas exigenda est.*

[3] No such principle appears *totidem verbis* in the Corpus Juris, but some texts approach it, *e.g.*, Dig. xxxvi, 3, 14, 1; xl, 12, 27, 1. The Decretals, v, 1, 9, have *evidentia patrati sceleris non indiget clamore accusatoris.*

[4] Dig. iv, 4, 1, unless the minor obtained *venia aetatis.*

[5] *Obsequium*—the *obbedienza* of the text—to parents was enjoined by Dig. i, 16, 9, 3.

to whom the law commits authority (iv. 24)[1]. Loyalty is the following of the law, and the young man ought to obey the law and take delight in such obedience. Long continued usage is law (iv, 26)[2]. In iv, 27, a remarkable distinction—not very easy to observe in practice—is drawn between the advice for which a lawyer may charge and that for which he may not charge. *Messer lo legista* is warned that he ought only to charge for advice which has reference to his art, not for that which proceeds solely from good sense or prudence. The whole gain he may not keep, even when he is entitled to charge, for he must give up one-tenth to God, that is, the poor. In the same chapter Dante claims justice as the peculiar virtue of age. It is right for an old man to be just, in order that his judgments and authority may be a light and a law to others. The allusion in iv, 29, to Manfredi da Vico, 'who is now called prætor and prefect' serves to remind the reader of the continuity and persistence of Roman names of offices and institutions. The tribunate of Rienzi is an obvious example. Consuls passed from the

[1] Such as the praetor at Rome, the Probate Divorce and Admiralty Division in England. It would be difficult to say who was the authority at Florence in the thirteenth and fourteenth centuries.

[2] *Diuturna consuetudo pro jure et lege in his quae non scripta descendunt observari solet*, Dig. i, 3, 33. Not forgetting the differences between *consuetudo* and custom or usage, the English lawyer will find a similar principle in the authorities, *e.g.*, 'Rights of every kind which stand upon the footing of usage gradually receive new strength in point of light and evidence from the continuance of that usage,' *Broadfoot's Case* (1742), Foster's Rep., 179.

exarchate into the Frankish empire and are now known all over the world in a sense considerably different from that which the word originally bore. *Albo pretorio* is still the technical name of a panel of jurors, and the *gridario* of the provincial governor was no doubt an imitation of the edict of the *praeses*. Decurions survived as local magistrates until the nineteenth century.

De Vulgari Eloquentia.

There is little opportunity for displaying knowledge of law in a work on philology, though one or two passages of some legal interest occur[1]. The phrases *curia regis* and *curialitas* in i, 18, remind the English lawyer of the King's Bench and tenancy by the curtesy[2], but it is scarcely necessary to say that Dante does not use them in their English senses, but to signify the King's Court in its social aspect and the courtliness or *cortesia* presumably to be found there. The only direct allusion to law seems to be in i, 16, 33, *legem secundum quam dicitur civis bonus et malus*. Cino da Pistoia is alluded to several times, but as the poet and not as the lawyer. Lines of his are cited in ii, 2, 90; 5, 47; 6, 70.

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[1] As they do also in the work of Dante's imitator, Alunno, *Le Richezze della Lingua Volgare*, (Venice, 1543).

[2] In England a tenant by the curtesy is generally said in Latin to hold *per legem Angliae*, but in Scotland the term *curialitas Scotiae* is used, Co. Litt., 30a.

EPISTLES.

The fourth is addressed to Cino, *exulanti Pistoriensi Florentinus exul immeritus*, but contains nothing of legal interest. In the other epistles are to be found one or two legal phrases rather than legal arguments, *e.g.*, *qui civilia jura temeraria voluptate truncaverunt* (i, 2), *civium profana litigia* (*ib.*,)[1], *vos instituit in heredes* (ii, 2)[2], *vinculo legis* (v, 7)[3], *legum sanctiones* (vi, 2)[4], *nescio quid speculum*[5] (viii, 7, 118), *Innocen-*

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[1] Probably used only in a general sense, as in Mon. iii, 3.

[2] The preposition is not usual in the classical jurists, in whom *heredes instituere* is the common form.

[3] *Juris vinculum* and *obligationis vinculum* occur in the texts of Roman law, but not *legis vinculum*.

[4] Used in Dig. xlviii, 19, 41.

[5] The allusion is to the *Speculum Juris* or *Judiciale* of Gulielmus Durantis or Durandus, Bishop of Mende (d. 1296); from this work the writer was known as *Speculator*. He also bore the nickname of *Pater Practicae*. The work was one of a numerous series of *specula* which were a commonplace in medieval literature, as in fact was the whole idea. See, for instance, the *De Imitatione Christi*, ii, 4, 1, and iii, 48, 1, while the *Speculum Humanae Salvationis* was one of the most popular works existing before the invention of printing, and the perennial *Eulenspiegel* is still read. Dante generally uses *specchio* and *speglio* in a literal sense, but in Par. ix, 61, he says

Su sono specchi voi dicete troni,
Onde rifulge a noi Dio giudicante,

a kind of forerunner of the later connexion of justice and the mirror. Compare Par. xiii, 59 (*specchiato*), perhaps suggested by St. Thomas' suggestion that the Word is the *speculum* of God. In Conv. iii, 15, 54, *specchio* is a translation of the ἔσοπτρον of Wisdom, vii, 26, the image of the majesty of God. The form *speculi*, the plural of *speculo*, occurs only once, in Par. xxix, 144. In Mon. ii, 11, 73, presumptuous jurists

tium[1], *et Ostiensem*[2] *declamant* (viii, 7). The only approach to a legal argument is in vi, 2, that public rights are not affected by prescription—*publica jura cum sola temporis terminatione finiri et nullius proescriptionis calculo fore obnoxia.* English lawyers will be reminded of the common law maxim *Nullum tempus occurrit regi*[3].

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are warned to consider how far they are below the *specula rationis unde humana mens haec principia speculatur.* In i, 1, 28, *speculari* is used of philosophical speculation.

Canonists other than Durantis who wrote *specula* were among others Joannes Andreae (see p. 7), the author of *Speculum de Treuga et Pace*, the younger Peter of Blois (*Speculum Juris Canonici*, about 1200), and Hieronymus de Cevallos (*Speculum Aureum Opinionum communium contra communes*, Strassburg, 1614). Among non-canonical legal *specula* are the *Sachsenspiegel*, *Schwabenspiegel*, *Klagspiegel*, and *Deutschenspiegel*, the *Espejo de Todos los Derechos* of Alfonso el Sabio, and in England the 'Mirror of Justices,' published in 1642 as *La Somme appellé Miroir des Justices vel Speculum Justitiariorum.* The 'Mirror for Magistrates' (1584), can hardly be called a legal work, in spite of its name. The whole question of *specula* and their relation to the law has been treated by the present writer in an article in the Law Magazine and Review, vol. xxvi, p. 157 (1901).

[1] Probably the *Compilatio Tertia* of Innocent III, much of it incorporated by Gregory IX in the Decretals. Or it may have been the Commentaries of Innocent IV.

[2] Enrico da Susa. See p. 17.

[3] Just as the English maxim is too wide for the modern law since the Crown Suits Acts, 1769 and 1861, so the law as laid down in the text must be read as subject to certain exceptions. For instance, in Roman law there could be no *usucapio* against the *fiscus* and no prescription against taxes, Cod. vii, 39, 6. Nor could this rule be altered by any private arrangement, *jus publicum privatorum pactis mutari non potest*, Dig. ii, 14, 38. Compare the English case of *Nixon* v. *Albion Marine Insurance Co.* (1866), Law Rep. 2 Ex. 338.

Imperfect and incomplete as is this story of a neglected side of Dante's character, it may have some value as the first of the kind in England. Dante is not a Bentham and the *Divina Commedia* is not a penal code. But Dante's writings have legal value, as I hope to have proved. I may perhaps have paved the way for a more complete and exhaustive study on the same lines. To use Dante's own words in Purg. xxii, 67,

> *Facesti come quei che va da notte,*
> *Che porta il lume retro, e sè non giova,*
> *Ma dopo sè fa le persone dotte.*

APPENDIX A.

THE *due Soli* of Purg. xvi, 107, are also known as the *duo luminaria* and *duo gladii*. Dante uses the *luminaria* in Mon. iii, 4, 11. The one leads to eternal life, the other to temporal happiness, Mon. iii, 16, 77. He probably adopted the phrase from the rescript of Innocent III in Decretals i, 33, 6, 4, where some striking phrases are used, among others, *illa quae praeest diebus, id est spiritualibus, major est, quae vero noctibus, id est carnalibus, minor, ut quanta est inter solem et lunam, tanta inter pontifices et reges differentia cognoscatur.* The *gladii* occur in Mon. iii, 9, 3, with a reference to St. Luke, xxii, 38[1], but Dante is careful to say that they do not represent, as some like Ægidius Romanus held, the temporal and spiritual jurisdiction of the Pope. The basis of Dante's view of the dual authority of Pope and Emperor is perhaps to be found in the Leah and Rachel of Purg. xxvii. Dante's own views on the subject are

[1] It is amazing to see what results have followed from a few words of Scripture. It reminds one of the growth of the legend of Dionysius the Areopagite. See Par. xxviii, 130.

clear, and perhaps cannot be better expressed than in the language of Purg. xvi, 109,

ed e giunta la spada
Col pastorale, e l'un l'altro insieme
Per viva forza mal convien che vada.

The earliest use of the swords in an allegorical sense seems to have been by Goffredus Abbas Vindocinensis before 1132. See Maitland's Gierke, p. 113. Then for centuries imperial lawyers exalted the sword of the Emperor and canonists that of the Pope, the Emperor being according to them *Minister Papae*, and only exercising temporal power by delegation. Still originally both swords were one. This seems to be the view of Petrus de Marca, Archbishop of Paris, in his *De Concordia Sacerdotii et Imperii* (Paris, 1641), a view which Dante would probably not have shared. It is also brought forward as a point by Professor W. M. Ramsay (St. Paul, 1895), where it is pointed out at p. 134 that the early Christian administration was based on the imperial, the Emperor as Supreme Pontiff being imitated by the Pope. The provincial administration into dioceses was the basis of the ecclesiastical administration. The ecclesiastical unit bore even the same name as the civil unit. See, *e.g.*, Theodosian Code, vii, 10, 1, pr. This is not unlike Hobbes' saying that the papacy is the ghost of the old Roman empire sitting enthroned on the grave thereof.

Some of the opinions on the question may be cited. Only a few of the more interesting are extracted from

the vast mass of literature bearing on it directly or indirectly. The opening words of the first book of the *Sachsenspiegel* are *Twei suert let Got in ertrike to beschermende de christenheit. Dem Pauese is gesat dat geistlike. Deme Keysere dat wertlike.* In the Bull *Unam Sanctam* of Boniface VIII (1299), forming part of the Corpus Juris Canonici as i, 8, 1, of the *Extravagantes Communes* occur these words: *Oportet autem gladium esse sub gladio et temporalem auctoritatem spirituali subjici potestati.* Grotius takes a quite different view. In *De Jure Belli ac Pacis*, i, 3, 3, he follows St. Ambrose in regarding the two swords as equity in law and truth in the Gospel. The *Siete Partidas* in Castile discussed the two swords in the proem to the second *partida*, and the words were adopted as part of his argument by Diego Saavedra Fajardo in his *Idea de Un Principe Politico Christiano* (Munich, 1640). *Onde conviene*, says he, *que estos dos poderes sean siempre acordados, asique cada uno dellos ayude de sa parte al otro*, &c.[1] With the whole of this subject Carlo Fea has dealt in his *Nuove Osservazioni sopra la D.C. di Dante, specialmente su quanto ha scritto riguardo all' Impero Romano* (Rome, 1830). For more modern works see J. Bryce, Holy Roman Empire; F. W. Maitland, translation and edition of O. Gierke, Political Theories of the Middle Age (Cambridge, 1900); Sir R. Phillimore, International Law,

[1] This is quite contrary to the earlier view of the Spanish jurist Torquemada, who claims *utrumque gladium* for the Pope, *Summa de Ecclesia*, c. 114 (Venice, 1561).

ii, 375, who points out the inconsistency of the Papal claims with the principles of international law.

Connected with the two swords theory is that of the *translatio imperii*, which Dante does not actually name, though it seems to be implied in some of the passages in Mon. already abridged. It was as wielders of both swords that the Popes claimed to make the *translatio* from the Greeks to the Germans; the fact of the heterodoxy of the Emperors of the East provided a satisfactory ground. See Decretals i, 6, 34. It was also as possessing, if not both swords, at least the superior weapon, that Innocent IV asserted the papal authority to depose the Emperor *ex legitimis causis*, Sext. ii, 14, 2. There appear to be at least two works directly dealing with the matter in addition to the numerous ones, where it appears as part of a more general treatise. These are Landulfus de Colonna and Marsiglio, who each wrote a *De Translatione Imperii*, and at dates not far removed from one another, the date of the former being placed by Dr. Gierke at 1310–1320, of the latter 1325 or 1326. Dante may have known the former.

English authorities are grouped at the end of this Appendix for purposes of convenience. They are not numerous, but are interesting as showing that the echo of a great Continental controversy had reached a realm little affected by it practically. With John of Salisbury the Church has both swords, *sed gladio sanguinis . . . utitur per manum principis*, Polycraticus, iv, 3, the *princeps* being *divinae majestatis imago*, v, 25. Bracton's

language is coloured by the practice of the King's Court. *Sicut Dominus Papa in spiritualibus super omnibus habeat ordinariam jurisdictionem, ita habet rex in regno suo ordinariam in temporalibus et pares non habet neque superiores*, fol. 412 a. Again, a little lower in the same folio, *si judex ecclesiasticus falcem ponens in messem alienam aliquid praesumpserit contra coronam et dignitatem regiam*, he is liable to a prohibition issuing from the King's court. As to the English view of Bracton's day Professor Maitland says, 'We make a mistake if we suppose that all men or all theorists saw the temporal order culminating in the Emperor in the same manner as that in which the spiritual order culminated in the Pope. This, for example, was not the opinion of strong papalists who pictured the successor of St. Peter entrusting one of the two swords to various kings and princes, each of whom would use it in his own dominions,' Bracton and Azo, Selden Society, 1895, p. xxxii. Sir John Fortescue does not believe in the delegation of one of the swords to the Emperor. With him Christ has placed in the hands of his Vicar both swords, constituting him both *rex* and *sacerdos*, Declaration upon Writings, ed. by Lord Clermont, p. 535. It is worth notice that Hobbes uses the idea of the two swords, but in a different sense. They are the swords of war and justice as borne by the Leviathan, Works, Molesworth's Edition, ii. 76. The English provincial and legatine constitutions, collected by Lyndwood, have nothing on the subject. But

Archbishop Simon Mepham, in a constitution of 1328, at p. 41 of the Appendix to Lyndwood, is careful to claim only *gladius spiritus* (Oxford, 1679). Thus, in England at least, the spirit of the Statutes of Provisors was in accordance with the text-books and the maxim *Roma locuta est, causa finita est* was only accepted with large modification.

APPENDIX B.

THE literature on the legal side of Dante's writings is not copious, and what there is deals largely with philosophical generalities—Lombroso style before Lombroso—while much of it lies hidden in obscure monographs or back numbers of periodicals. The principal books directly bearing on the subject seem to be three in number. The well-known historian of Roman law, Ortolan, in his work already named (p. 34), devotes considerable attention to the proportion between crimes and punishments, but only treats the D.C. G. de Marinis de Raffaele[1] is affected by the influence of Beccaria[2] and his school. In what has been said on the question of punishment the present writer is much indebted to him. But at times his instances are anything but convincing, and he suffers from the not unusual failing of attributing to Dante views of which he was probably entirely innocent. Briefly put, his

[1] *Dante Alighieri Autore d'una Teoria della Pena Superiore ai Tempi che apparve* (Bari, 1884).

[2] Did he belong to the same family as the *Beccheria* or *Beccaria* of Inf. xxxii, 119?

theory is that according to Dante punishment to be justified must fulfil certain conditions. It must be (1) analogous and proportionate, (2) confined to the offender, (3) reformative, (4) deterrent, (5) equal, (6) reparable, (7) prompt, (8) legal. These are no doubt excellent conditions thoroughly in accord with Beccaria and Bentham. But is it not a strong measure to attribute them to a Florentine, however enlightened, writing at the beginning of the fourteenth century? Gino Arias[1] thinks that Dante never really studied law and had a certain contempt for its professors and practitioners, notwithstanding his enthusiastic praise of Justinian. Among periodical articles may be mentioned two written in 1872, one by V. Lomonaco[2], one by N. Tommaseo[3]. Monographs more or less connected with the subject will be found recorded in Ferrazzi, *Manuale Dantesco*, i, 52, ii, 292, iv. 126. They are by F. Carrara, G. Zoppi, J. F. H. Abegg, and others. The Vicomte Colomb de Batines gives only two references; (1) a note in F. Scolari's *Raggionamento*[4]; (2) *Atti dell' Accademia italiana*, i. 208[5]. He also mentions (without acknowledging that the information occurs in Scolari's note) that the portrait of Dante is put among *Illustrium*

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[1] *Le Istituzioni giuridiche medievali nella D.C.* (Florence, 1901).

[2] *Dante Giureconsulto* in *Atti dell' Accademia di Scienze morali e politiche*, vol. vii.

[3] *Dante ed il Diritto*, in *Gazzetta dei Tribunali* (Naples), 13 May, 1872.

[4] Padua, 1823. [5] p. 568.

Jurisconsultorum Imagines[1]. Biagi in his continuation of Colomb de Batines alludes under the head of *Dante Giureconsulto*[2] to a controversy which appears to have arisen on the subject, beginning with a work by Niccolini[3]. Some discussion of the position of Dante with respect to public law will be found in a recent work by A. C. Caldi-Scalcini[4]. A complete bibliography of books and articles on the legal aspect of Dante's works still remains to be compiled.

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[1] Rome, 1566.

[2] *Giunti e Correzioni*, p. 198 (Florence, 1888).

[3] *Trattato del Tentativo* (Naples, 1837).

[4] *La Poesia civile nella Commedia di Dante* (Turin, 1897).

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