

## *Hermeneutical Outlines in and of Dante's Legal Theory*

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**Abstract:** Based upon the concept of Law qualified in Monarchia, II.50, Dante was not only a general philosopher (a lover of knowledge) as well as a political disputant in his times, but also his primary contribution (not always obvious) in legal speculation could be demonstrated. In fact, if his thought reflected the platonic *ordo sapientiae* through a deep intersection between *téchne* and *episteme* (*phronesis*) toward a linguistic *koiné*, could we say the same thing on his concept of justice as a rational *ars boni et aequi*? This essay aims to depict Dante as legal theorist of his times and theorist of Justice beyond them, adopting the hermeneutical point of view, not just as an interest into textual interpretation but referring his use of language as form of life and his works an inexhaustible sources of education for legal philosophy.

**Keywords:** Dante Alighieri; The Divine Comedy; Monarchia; Post-Aristotelian Philosophy; Counterpass; *Synallagma*; Theory of Law; Theory of Punishment; Hermeneutics.

*Table of Contents: Introduction ; 1. Dante and his time; 2. Elements of Dante's legal theory; 3. The holistic feature of Dante's legal theory.*

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## *Introduction*

This essay is structured into three parties, which are strongly interconnected not only in relation to the subject, but also to the method I have chosen to adopt: the hermeneutical<sup>1</sup> (or interpretivist<sup>2</sup>) approach, for which an ecclotic sense in the text – object<sup>3</sup> (and in the reality as well) does not exist, but a vital relation

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<sup>1</sup> “The term *hermeneutics* covers both the first order art and the second order theory of understanding and interpretation of linguistic and non-linguistic expressions. As a theory of interpretation, the hermeneutic tradition stretches all the way back to ancient Greek philosophy. In the course of the Middle Ages and the Renaissance, hermeneutics emerges as a crucial branch of Biblical studies. With the emergence of German romanticism and idealism the status of hermeneutics changes. Hermeneutics turns philosophical. It is no longer conceived as a methodological or didactic aid for other disciplines, but turns to the conditions of possibility for symbolic communication as such. The question ‘How to read?’ is replaced by the question, ‘How do we communicate at all?’ Without such a shift, initiated by Friedrich Schleiermacher, Wilhelm Dilthey, and others, it is impossible to envisage the ontological turn in hermeneutics that, in the mid-1920s, was triggered by Martin Heidegger’s *Sein und Zeit* and carried on by his student Hans-Georg Gadamer. Now hermeneutics is not only about symbolic communication. Its area is even more fundamental: that of human life and existence as such. It is in this form, as an interrogation into the deepest conditions for symbolic interaction and culture in general, that hermeneutics has provided the critical horizon for many of the most intriguing discussions of contemporary philosophy, both within an Anglo-American context (Rorty, McDowell, Davidson) and within a more Continental discourse (Habermas, Apel, Ricoeur, and Derrida).” Ramberg B. – Gjesdal K. , “Hermeneutics”. This method was also reproduced by several scholars in the past: it can be said that, there has been a valid Dante’s hermeneutic in Humanities since Pietro Alighieri’s *Commenti*. However, Johann Conrad Dannhauer was the first to present a systematic textbook on general hermeneutics, the *Idea boni interpretis et malitiosi calumniatoris* (1630) introducing the Latin neologism *hermeneutica* as the title of a general *modus sciendi*;

<sup>2</sup> “The scope of the more recent discussions on interpretation has become broader, often starting with the question whether human actions are to be viewed as physical phenomena or not and how they should be treated. Naturalists since Mill, have contended that actions have to be viewed as phenomena on a continuum with other phenomena in nature, and that they should be studied accordingly. Issues of interpretation hardly emerge if one adopts such a view. Interpretivists like Dilthey, on the contrary, have argued forcefully that human actions cannot be viewed as natural phenomena since their meaningfulness makes them categorically distinct. Unstructured bodily movements, i.e., purely physiological reactions, are not constitutive of a human action—there is a consensus on that. The disagreement concerns the issue as to whether it is constitutive for a human action to have meaning or not. If one adopts the interpretivist view, then issues of interpretation necessarily arise in the space of the mental. Human actions are meaningful, and the outcomes of these actions constitute meaningful material which calls for interpretation.” Mantzavinos, “Hermeneutics”,

<sup>3</sup> This is a pivotal point: hermeneutics activities don’t only deal with the written and oral text but even directs itself to the object of knowledge (*ob-jectum*) that asks to be heard. In fact, it’s resumed the Gadamer’s conception of “priority of the demand” in the speculative structure of experience. “L’interesse principale dell’ermeneutica non si orienta all’accettazione di una prospettiva soggettivistica, ma a conservare ed ampliare l’intersoggettività, poiché il comprendere è interagire che avviene solo nell’intersoggettività ed in essa cerca garanzia.... La dialogicità deve muoversi alla ricerca di una comune misura intersoggettiva di razionalità, che tenga conto delle differenze e delle situazioni particolari. La razionalità...configura un lavoro articolato, che ha bisogno della collaborazione di una pluralità di soggetti...” Viola and Zaccaria, *Diritto Interpretazione*, 193-194;

between “being”<sup>5</sup> and “having to being”, and where the first step of this process begins with the value of the pre-comprehension of the participation of the subject on a common sense horizon.

Starting from this *a-priori* background, it is interesting analyzing the legal speculation in Dante’s thought<sup>6</sup> trying to use the context of social sciences and those principles established by Giddens and Habermas’ doctrines:

- 1) A **mutual interpretative interplay** between social sciences and those sciences whose activities compose its subject matters;
- 2) **All social actors**, it can properly be said, **are social theorists**, who alter their theories in the light of **experience** – and part of this experience is social theory;
- 3) The social sciences deal with a **pre-interpreted** world: they stand in a **subject-subject** relation with their “field of study” which is the pre-interpreted world of social actors. The social actors **uphold** and **develop the symbolic social world**; the social actors’ **symbolic worlds** enter into the **construction**

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<sup>5</sup> Mantzavinos explains that “It is important to distinguish carefully between two levels of analysis, the ontological and the epistemological.... Even when the distinction between the ontological and epistemological level is largely acknowledged, it has been a matter of dispute whether it is indeed fruitful to completely neglect the constitution and structure of the material that one deals with, when one is engaged in the activity of interpretation. In fact, the age-old ‘Verstehen (understanding) vs. Erklären (explanation)’ debate is largely about this question: whether there is a distinct method for the apprehension of meaningful material, employable in the social sciences and the humanities, which deal with such material, i.e., *Verstehen*, or whether the general method employed in the natural sciences is successfully employable in the social sciences and humanities as well, i.e., *Erklären*. Methodological dualists like Dilthey famously pleaded for the autonomy of the social sciences and humanities which must follow the method of *Verstehen*. The neo-Kantian philosophers Wilhelm Windelband and Heinrich Rickert focused on the methods of concept formation and judgment in the different groups of sciences, the *Kulturwissenschaften* and the natural sciences. For Windelband the logic of the *Kulturwissenschaften* is characterized by an *idiographic* interest in singular judgments about the past opposed to the natural sciences’ *nomothetic* interest in formulating laws. For Rickert the *Kulturwissenschaften* are characterized by an individualizing form of concept formation which solved the problem of how the general concepts essential to any scientific representation could capture an individual object, without simply subsuming it under a general law in the fashion of natural scientific concept formation. ...In any case, the ontological and epistemological levels are not consistently segregated in the discussion. This is notably the case with respect to the hermeneutic circle which serves as the dominant argument for all those who raise a claim to the autonomy of the humanities, and to which we turn now.” Mantzavinos *supra* note 2;

<sup>6</sup> “Appreciating hermeneutics as a living tradition is not, in the end, a matter of identifying a theory or a family of theories. It is fundamentally a matter of perceiving a moving horizon, engaging a strand of dialogue that is an on-going re-articulation of the dynamically historical nature of all human thought” *Ibidem*;

and **production** of that world. In this sense, the construction of social theory involves a **double hermeneutic**;

- 4) The social scientists must interpret a social world which **already** exhibits **symbolic** meaning;

(edit: bold are mine)

So, the first part will deal briefly with Dante's background (historical, political, philosophical, poetical<sup>7</sup>) because those conditions and those problems had influenced his *Weltanschauung* and prompted the Florentine to build his conceptual meanings and structures.

The second paragraph will explain his contributions to the late medieval legal speculation, by focusing on the problem between justice and revenge in the *Comedia* (hereinafter *The Comedy*), especially through the Counterpass principle.

Then, in the last paragraph it will be summarized those elements and presented, under a qualitative approach, a personal<sup>8</sup> view of Dante's hermeneutical<sup>9</sup> legal and social theory, with a result of double-hermeneutical theory, as a whole.

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<sup>7</sup> Literally “*fictio rhetorica musicaque poita*”. Alighieri, *De Vulgari Eloquentia* II, IV, 2-3;

<sup>8</sup> Different authors produced different comments on Dante's works and especially on *The Comedy*, departing from Dante's sons Jacopo and Pietro, then Graziolo Bambaglioli, Jacopo della Lana, Guido da Pisa, Giovanni Boccaccio, Benvenuto da Imola, Francesco da Buti, Filippo Villani and our Niccolò Tommaseo, Attilio Momigliano and Tommaso Casini, nevertheless the unknown author of the *Epistola a Cangrande della Scala* (by Dante himself, perhaps): these scholars reflect the different horizons that gave it several innovations and expansion in researching: the times, the traditional nature of culture, its momentary interests. However, Dante's thought remained the departing point of view, logically expressed in *Convivio* and in *Monarchia* and poetically drawn in *The Comedy*: it explained itself by images which embodied spiritual in sensitive and an experimental knowledge which translated itself into action, catching the real man and defining him in relation to his metaphysical root. Another parameters could be found in *The Bible*, St. Thomas, Virgil and Aristotle while the poetical and political genesis of *The Comedy* could be identified in the meeting between *Aeneid* and *The Bible*;

<sup>9</sup> It is renewed that Dante was influenced by Classics, especially Greek and Christian thoughts; so, this is very important to recognize that in an hermeneutical point of view “...it is Augustine who first introduces the universality-claim of hermeneutics. This claim arises from the connection Augustine establishes between language and interpretation, but also from his claim that interpretation of Scripture involves a deeper, existential level of self-understanding. The work of Thomas Aquinas...has also had an impact on the development of modern hermeneutics....Presupposing the relative unity of an author's work, Aquinas questions the authenticity of these texts by comparing them to the existing Aristotelian corpus...” Ramberg B. and Gjesdal K., *supra* note 1;

Thus, as Mantzavinos said “ Hermeneutics as the methodology of interpretation can provide guidance for solving problems of interpretation of human actions, texts and **other meaningful material by offering a toolbox based on solid empirical evidence** – (*edit: bold is mine*) - ... Throughout its historical development hermeneutics has dealt with *specific* problems of interpretation, arising within specific disciplines like jurisprudence, theology and literature...”.: this interpretive<sup>10</sup> methodology,<sup>11</sup> conducted in a reflective but even realistic<sup>12</sup> way<sup>13</sup> (both in a single and combined structure called “double-hermeneutics”), appears

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<sup>10</sup> “Interpretation, whether it be in law or literary domains, is neither a wholly discretionary nor a wholly mechanical activity. It is a dynamic interaction between reader and text, and meaning the product of that interaction. It is an activity that affords a proper recognition of both subjective and objective dimensions of human experience; and for that reason, has emerged in recent decades as an attractive method for studying all social activity.” Brest, “Interpretation and Interest”, *passim*;

<sup>11</sup> An interesting point of view could be offered by Christine Baur when said about Dante’s character in which she found him at the “boundary of reason”: she explained that “...The dialectical relation between text and reader is beautifully embodied in Dante’s Commedia, a text that includes both an account of its subject matter as it develops (in the story of the pilgrim), as well as an account of its own coming-to-be as an interpretive meaningful account (in the narrative of the poet). Thus there is a necessary relation, though not an identity, between the content of Dante’s text (as shown in the journey of the pilgrim) and the meaningful interpretation of the content of Dante’s text (as shown in the rue collective narrative of the poet). The issue of the dialectical relation between interpreter and text is dramatized by the fact that, in his account of the realms of the afterlife, Dante the poet is not merely describing realms that have meaning apart from his own hermeneutic activity. Rather, he is demonstrating that the pilgrim’s journey of interpreting the world within which he finds himself always involves his own self-interpretation, and vice versa. Thus, as the pilgrim/poet’s ability to interpret himself becomes more refined, his very world changes. Dante illustrates this process as a movement through the three realms of the afterlife, from the inferno, through purgatory, to paradise.” O’Connell Baur, “Dante Philosopher Boundary Reason”, 195;

<sup>12</sup> “...realismo come tecnica di rappresentazione. Alla personificazione astratta succede,...il personaggio storicamente concreto, calato nel reale ma insieme assunto, nell’ambito della pur sempre medievale tecnica dell’*exemplum*, a tipologico universale di rappresentazione. Per questo ogni personaggio dantesco, da Virgilio a San Bernardo, dal primo all’ultimo canto del poema, ha sempre ed innanzi tutto una sua individualità e personalità concretamente storica, ed insieme una funzione ontologicamente rilevante e conoscitiva.” Mazzoni, *Commentatori*, 66;

<sup>13</sup> That’s called “self-interpretation”: “...è Dante poeta insomma, che nei suoi personaggi conosce e descrive ai suoi lettori, collocandosi egli stesso nell’esistente, fuori dal tempo materiale e da ogni spazio umanamente determinabile e determinato, descrive l’uomo: l’uomo com’è nella sua realtà e come invece dovrebbe essere in rapporto ai fini per cui Dio l’ha creato”. *Ibidem*, 67. More precisely, “Self-interpretation, is so crucial to the fate of the souls in the afterlife is made manifest as a crucial structuring principle of the Inferno in the segment of the poem that begins with Dante’s entry into the city of Dis. This transition directly involves the reader as interpreter by means of the poem’s explicit addresses to the reader. By his interpretive acts as poet, Dante actually participates in this violence and fraud. He makes himself complicit in what he condemns. He is not merely an observer from on high but descends into his own sinful self through acts that involve the author and, behind him, the reader too as interpreters” Franke, “Dante’s Hermeneutic Complicity”, 5. It seems that there’s an intention that “directly involves the reader as interpreter by means of the poem’s explicit addresses to the reader.” The address comes in the form of a direct meta-narratological intervention that interrupts the narrative, which has reached an impasse (VIII.94–96). This express involvement of the reader throws into focus a whole new field of reference for the realization of the narrative’s meaning. Dante himself is essentially a ‘reader’ as he struggles to interpret the events happening to him). The reader is threatened with remaining fixated upon the literal level of the narrative and consequently failing to penetrate to its deeper doctrinal meaning. Precisely such hermeneutic penetration is expressly enjoined by the address to the reader in Canto IX 61-63:

*“O you who have sound intellects,  
look at the doctrine which hides itself  
beneath the veil of the strange verses.”*

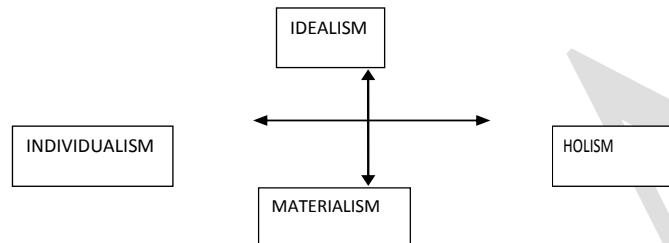
At this point, ‘the veil of the verses’ – that is, the story which serves as vehicle for the allegory or doctrine of the poem. Again, a mythical representation of the word meaning is the Medusa where “Employed here at the literal level of the narrative as blocking the protagonist’s further progress, they become figures for blockage of the hermeneutic process of interpretation itself on the part of the reader. Being blocked at the literal level forces the interpreter to dig deeper in order to find the rational, allegorical meaning that is masked beneath the mythic exterior. The interpreter must avoid becoming obsessed merely with the story and its images and must pass rather beyond the literal sense. The face of Medusa, whose beholders turn to stone, emblematises this tendency to remain fascinated and frozen or literally petrified by the aesthetic-erotic surface. .... Virgil’s action within the narrative in this way figures the interpretive action performed by the author upon the narrative: the abrupt

entirely<sup>14</sup> in Dante's works, and it may represent a correct way to intend Dante's<sup>15</sup> message as well<sup>16</sup>, because *The Comedy* - which represents a kind of metonymy of all Dante's works- has a value of "lived action, result of that experience where the subject knows and acts".<sup>17</sup>

Under these circumstances, Dante observed his reality and we, actually, observe Dante's observation by his works, interpreting them firstly, and by that knowing an actualization of Dante's reality: so, based on the Hermeneutical Circle<sup>18</sup> (*Zirkel des Verstehens*) the structure of meaning results circular itself, in which

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breaking off of the narration with the sudden switch to the discourse of address invasively interrupts the reader's involvement in the literal level of the story ..." *Ibidem*, 6,8;



Original : Hartmut Rosa Four Levels of Self-Interpretation: A Paradigm for Interpretive Social Philosophy and Political Criticism (unpublished) at <http://www.personal.uni-jena.de/~s2roha/Downloads/SelfInterpretation.pdf>

<sup>14</sup> Mantzavinos prefaces arguing "Hermeneutics as the methodology of interpretation is concerned with problems that arise when dealing with meaningful human actions and the products of such actions, most importantly texts. As a methodological discipline, it offers a toolbox for efficiently treating problems of the interpretation of human actions, texts and other meaningful material. Hermeneutics looks back at a long tradition as the set of problems it addresses have been prevalent in human life, and have repeatedly and consistently called for consideration: interpretation is a ubiquitous activity, unfolding whenever humans aspire to grasp whatever *interpretanda* they deem significant. Due to its long history, it is only natural that both its problems, and the tools designed to help solve them, have shifted considerably over time, along with the discipline of hermeneutics itself. The article focuses on the main problem areas and presents some proposals that have been put forward for tackling them effectively." Mantzavinos, *supra* note 2;

<sup>15</sup> "The author, then, of the whole and of the part is the person mentioned above, who is seen to be such throughout." Alighieri, *Epistola a Cangrande*, XIII, 38;

<sup>16</sup> Dante built his masterpiece through a complex linguistic and semantic network which are morally and didactically interconnected: a single concept can be observed from different perspectives (negative or positive) even though the general message of hope decanted on the background. See Seriacopi, Book Review. This is confirmed by the verb "see" and its semantic inclinations and emotional supports which emerged in Dante's memory (*auctor et agens*) connected with St. Albert Magnus' Comment on Aristotle's *De memoria et reminiscencia*. The poetical language tries to catch the emotions which followed the remembrance, progressing to a past biographical and cultural transfiguration; which, unlike to the position in *scriptura paganorum*, was subjected on an ethical judgment and a transcendent projection. See, Arqué, "Eterodossia" *passim*. Furthermore, considering Hell "The prompting of the readers to look beyond the letter of the text and to find a hidden, allegorical meaning, inevitably by application of the text to themselves, thus becomes perfectly explicit in cantos VIII-IX, pg.4 Even more significantly, the poem leads Dante, together with his reader, into further depths of revelation, into a space of interpretation where the true journey beyond the fictive one unfolds. The forward motion through hell thus becomes a figure for passage beyond the poem's literal sense to its 'doctrinal' – its educative and apocalyptic – meaning." Franke, *supra* note 13, 3;

<sup>17</sup> Mazzoni, *Commentatori*, 24;

<sup>18</sup> Founded on the fundamental paragraph n. 32 of Heidegger's "Being and Time", it acquired an ontological function in the act of understanding and through Gadamer's philosophy it raised in a programmatic openness to the "otherness" of the text. See, Gadamer, *Verità e Metodo*, 316);

the absence of objectivity and the role of oxymoron<sup>19</sup> express themselves toward the completeness of the sense. (see fig.1, below)

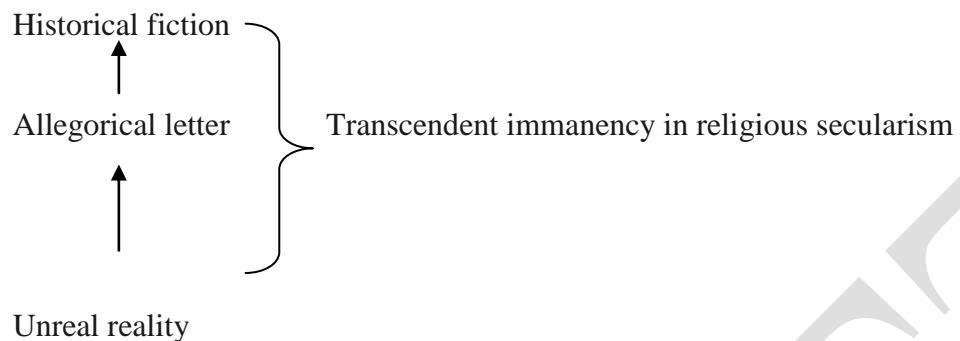


Fig. 1

### 1. *Dante and his time*

An authoritative scholar of Dante's works wrote in 1865: "It's difficult to decide if he was more expert in reasoning than in poetizing ... Alighieri's ideas on the notion of the *jus* rationally considered, the freedom, the justice and about the law as an expression of the mind and society's volition have had a wonderful accuracy and originality"<sup>20</sup>. I think the understanding of Dante's role in his time and the cultural impact of his works over the centuries could begin from this sentence .

In fact, many commentators have had rightly introduced Dante as a philosopher, theologian, historian, political scientist, economist and sociologist: a true encyclopedic genius *ante litteram*, who imposed a common language to Italians, by arguing in the *De Vulgari Eloquentia*, in the Convivio and firstly in The Comedy<sup>21</sup>, a pivotal role of vulgar language as a medium for moral instruction strictly bound to civil

<sup>19</sup> "dal senso letterale , l'allegoria fondamentale, nel ricondurre l'oggettivazione fantastica, l'immagine, all'atto morale di cui porta, sul piano dell'allegoria e della metafora, concreta significazione..." *Ibidem*, 25;

<sup>20</sup> Carmignani, *Considerazioni*, 27,32; (Translation is mine)

<sup>21</sup> The filologist Rosieri-Catach has pointed out the aristotelian theme of naturalness of language which is connected with the man's social dimension. In a context similar to Babele, the mankind had to adopt a linguistic reparation through the common language (volgare) which grew up as due normative measure. "Svolge così una funzione regolativa analoga al ruolo del padre d famiglia o, a più ampio raggio, dell'imperatore nel *Convivio* e nella *Monarchia*. Tale volgare illustre, sorta di "terza via" tra il latino e il volgare, 'cristallizzazione del legame tra linguaggio e politica' .... ,che viene declinato soprattutto sul versante poetico (modellato sull'*exemplum* della curia federiciana), corrisponde al concetto di

regeneration<sup>22</sup> and unification; through poetry, doctrine and imagination, he has therefore laid the fundamental premises for the unity of Italian mothertongue motherland . However, it is important to observe that his political thought has come from typical philosophical foundations: Dante followed the Classics<sup>23</sup>, which had strived to lead to the unity of things and the study of natural phenomena, extending that principle even to the human facts, and attributing divine origins to them.<sup>24</sup>

However, the legal background of Dante has been confirmed by several sources<sup>25</sup>: he studied law for the first time in Tuscany and then in Bologna, the home of the glossators. Furthermore, Bologna was a leading liberal arts center: for this reason, Dante<sup>26</sup> could have attended his studies in these fields (rhetoric, *ars dictandi*, philosophy and medicine) just as much as he studied together with Brunetto Latini, and he learnt his practice on philosophical-didactic prose work and his epistolography. This context influenced him and his intellectual inclinations, preferring the Major Guilds over the practice of law when, in 1296, he was asked to join one of the Major Guilds, following the provisions of the popular reform, applicable in Florence, favoring the art of Medici and Speziali, who would have connected him with scholars and experts

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“nobiltà” approfondito nel *Convivio*: e il contrario di “viltà”, vizio applicabile tanto alla sfera etico-sociale che a quella linguistica, ed è in prossimità con il principio di perfezione regolativa. Dante dunque, nei due trattati così complementari, sottolinea l’esigenza naturale dell’uomo di conoscenza e parola, a cui si oppongono tuttavia vari impedimenti di natura etica, sociale e politica.” Rosieri-Catach, “Uomo Nobile”, 166 and 169;

<sup>22</sup> The concept of political authoritativeness has to be connected with the aristotelian *megalopsychia*; the popular language aims to spread the knowledge against the privilege of a few people by using the latin, as well as it gives to whole language a public and political actuality. It seems to recall the Nembrot’s character in Inf. XXXI and it tries to recover a natural *forma locutionis* and “restituire senso alla presenza dell’uomo sulla terra”. See, Sánchez Madrid, “Nobiltà Poeta”, *passim*;

<sup>23</sup> Dante had in touch with the florentine conventional places after Beatrice’s death. There philosophy was practiced by studying Boezio’s *De Consolatione Philosophiae*, Cicero’s *De Amicitia*, and Arabic philosophers such as Averroè; however, a great attention was dedicated to Aristotle’s works and its comments by St. Thomas and St. Albert Magnus as well as its variations by St. Bonaventura and Duns Scoto. See Alighieri, *Conv.* II, XII, 7 – I, I, 1 and *Mon.* I, III, 9;

<sup>24</sup> “And just as the lesser parts which make up the human race are well adapted to it, so it too can be described as being well adapted to its whole; for its parts are well adapted to it in relation to a single principle, as can easily be deduced from what was said earlier: and so absolutely speaking it too is well adapted to the universe (or to its ruler, who is God and Monarch) in relation to a single principle, i.e. one ruler”. Alighieri, *Mon.*, I, 2;

<sup>25</sup> Several scholars considered Dante’s father as notary; surely, the friend of him had studied law in Bologna and after that, he had worked as judge in Verona. Giovanni Boccaccio confirmed these assumptions in his work “Vite di Dante” (§11), just as an accurate journey into Bologna’s places could be found in *De Vulgari Eloquentia*, 1, 9 §4 e 15 §2, II, 5; 12 §6; even more in Inf. XXXIII, 142 XXXI, 136 and Purg., XIV, 100;

<sup>26</sup> It’s interesting what Tommaseo said: “Tutto ciò ch’è alto e gentile nell’umana natura, riconosce, e lo venera dove che sia...” Mazzoni, *supra* note 11, 399;

in philosophical and natural sciences. This should not discredit the thesis according to which Dante's early studies in Florence and, since 1286, in Bologna had the law<sup>27</sup> as fundamental ground. Without this knowledge of the legal tradition, Dante could not have developed a deep understanding of justice, empire, church/religion, forms of government and federalism, society, jurisprudence and its characters of certainty and codification. Dante's idea of the Universal Monarch was developed out of the context of literary work,<sup>28</sup> such as the difference between two jurisdictions - the spiritual and the temporal one - that was based on Odofredo's thoughts, and the same consideration should be made regarding Dante's concept of *ius* and the several legal forms and their connection.

This notwithstanding, all of these intellectual results cannot be understood in a correct way unless the political framework of Florence, and more generally of the Italian communities between the XIII and XIV century<sup>29</sup>, is mentioned. A combination<sup>30</sup> of territorial and economical expansions destroyed the local unity, determining a social partition into opposite factions, which had been increasing political instability and fragility towards a papal submission after the battle of Tagliacozzo<sup>31</sup>.

Therefore, in these times, Dante had been joining democratic ideals, supporting a policy of absolute independency and autonomy, just as he showed himself as a balanced and reasonable pacifier - confirmed

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<sup>27</sup> Relying on this assumption, it's important to keep in mind the debate between two pivotal scholars (Chiappelli and Chiudano) that dealt with the Dante's direct knowledge about roman and canon laws;

<sup>28</sup> The concept of "Universal Empire", built on kingdoms, republics, cities and fiefdoms where existed roman law, had already imposed by the Bologna medieval law school. The four Doctores' teachings and the tradition of "glossa" evoked Dante's political ideas and his works, as well;

<sup>29</sup> The role of context such as an element to conduct a correct interpretation of text, was even affirmed by Hans Kelsen's "The theory of the State in Dante";

<sup>30</sup> "*I said to them, 'I was born and raised,  
and I am here in the body that was always mine.'*"

(Inf. XXIII, 95)

<sup>31</sup> It was fought on 23 August 1268 between the Ghibellines supporters of Conradijn of Hohenstaufen and the army of Charles of Anjou representing the last act of the german imperial Hohenstaufen line power in Italy. The end of Conradijn marked also the fall of the family from the Imperial and Sicilian thrones, leading to the new chapter of Angevin domination in Southern Italy;

by the role of Ambassador that he exerted in several occasions - which gave him many difficulties in spite of the political consideration of him. In fact, it is known that Dante, during his life, underwent four trials and four convictions, while a fifth trial was executed *post-mortem* accusing him of heresy as author of the Monarchy<sup>32</sup>. Sure enough Dante was sentenced for the first time on January 27<sup>th</sup> (1302), due to a violation of the norms of the Statutes of the Republic of Florence, after Charles of Valois had entered in Florence to restore the influence of pope Boniface VIII by imposing the black guelphs' regime. The sanction was, in that case, only a monetary punishment. Nevertheless, with the second judgment on March 10<sup>th</sup> (1302) Dante was sentenced to the stake, forcing him to be exiled<sup>33</sup> from Florence<sup>34</sup> and to travel through Italy in the search for friendships and protection<sup>35</sup>; later, his sons and heirs were also condemned and banned, as an indirect consequence of his works. Considering this, Dante persuaded himself on the current legal situation: criminal law was under the judge's will who was elected by the winning political party, based on public reputation, legal beliefs and mostly on torture<sup>36</sup>. Thus, judges were free to exert their power and abuse it; sentences were a great weapon of political persecution and a legal way to obtain revenge by the winning

<sup>32</sup> In that occasion, it had been the opportunity to burn Dante's bones by cardinal Bertrando del Poggetto "...a eternal infamia e confusion della sua memoria". Then, it's very useful to remember another trial (6<sup>th</sup>) in 1966, when it was stated definitely Dante's innocence;

<sup>33</sup> Since that time he had stayed in exile (see, *Conv. I, III,5* and *Vita di Dante*, 49-50). The exile has to be intended as occasion in which Dante could take consciousness about the grave crisis of medieval society in terms of philosophy and theology, which was advanced morally by Cacciaguida in Par. XVII;

<sup>34</sup> "You shall leave behind all you most dearly love,  
and that shall be the arrow  
first loosed from exile's bow".

(Par. XVII, 55-56)

<sup>35</sup> "Now that my bread has been cleansed on the one side, it is necessary for me to cleanse it on the other to escape a censure of this kind, for my writing, which can almost be called a commentary, is intended to remove the defect of the "canzoni" mentioned above, and this may itself prove to be perhaps a little difficult in part. This difficulty is deliberate here so as to escape a greater defect, and is not due to a lack of knowledge. Ah, if only it had pleased the Maker of the Universe that the cause of my apology had never existed, for then neither would others have sinned against me, nor would I have suffered punishment unjustly--the punishment, I mean, of exile and poverty. Since it was the pleasure of the citizens of the most beautiful and famous daughter of Rome, Florence, to cast me out of her sweet bosom--where I was born and bred up to the pinnacle of my life, and where, with her good will, I desire with all my heart to rest my weary mind and to complete the span of time that is given to me--I have traveled like a stranger, almost like a beggar, through virtually all the regions to which this tongue of ours extends, displaying against my will the wound of fortune for which the wounded one is often unjustly accustomed to be held accountable. Truly I have been a ship without sail or rudder, brought to different ports, inlets, and shores by the dry wind that painful poverty blows." Alighieri, *Convivio*, I, III, 3-5). With the next judgments on October 15th and November 6th 1315 were declared guilty Dante's sons as well were outlawed all works of him;

<sup>36</sup> This aspect is so clear to understand how Dante considered the torture such as kind of atonement of sin. See, Frosini "Misericordia Giustizia" *passim*;

faction<sup>37</sup>, and Dante's trials themselves were just a serious demonstration of the inevitable decline of coeval criminal law and legal procedures representing a trial much more political than legal, during a civil war in Florence, and anarchy in the rest of Italy.<sup>38</sup>

Under these circumstances, the civil and moral<sup>39</sup> message of human renaissance had to be explained in an effective way: not merely long – and probably inconsistent arguments, but “*exempla*” (subjective examples) by maximizing those historical and mythical characters who could have an impressive concreteness in the memory<sup>40</sup> of his contemporary and not contemporary reader, making The Comedy the

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<sup>37</sup> Beside the song “Tre donne intorno al cor” entirely inspired to the love to Justice and the hints to Florence “To me, however, the whole world is a homeland, like the sea to fish - though I drank from the Arno before cutting my teeth, and love Florence so much that, because I loved her, I suffer exile unjustly - and I will weight the balance of my judgment more with reason than with sentiment. And although for my own enjoyment (or rather for the satisfaction of my own desire), there is no more agreeable place on earth than Florence, yet when I turn the pages of the volumes of poets and other writers, by whom the world is described as a whole and in its constituent parts, and when I reflect inwardly on the various locations of places in the world, and their relations to the two poles and the circle at the equator, I am convinced, and firmly maintain, that there are many regions and cities more noble and more delightful than Tuscany and Florence, where I was born and of which I am a citizen, and many nations and peoples who speak a more elegant and practical language than do the Italians.” Alighieri, *De Vulgari Eloquentia* I, VI, 3 and what Alighieri said in *Convivio*, I, III, 3-6;

<sup>38</sup> The tyrants cited in Inf. XXVII during the dialogue with Guido da Montefeltro, are considered as a recall on the conclusion of city freedoms and a manifestation of violent usurpation of the power by singular people:

“...tell me if Romagna lives in peace or war.

*I came from where the mountains stand between  
Urbino and the ridge from which the Tiber springs.  
I still stood bending down to hear,  
when my leader nudged my side and said:  
'It's up to you to speak -- this one is Italian.'  
And I, who had my answer ready,  
without delay began to speak:  
'O soul that is hidden from my sight down there,  
'your Romagna is not, and never was,  
free of warfare in her rulers' hearts  
Still, no open warfare have I left behind.'*

Then, in the Purgatory, VI, 76-78 :

“Ah, Italy enslaved, abode of misery,  
pilotless ship in a fierce tempest tossed,  
no mistress over provinces but a harlot!”  
and *Ibidem* 124-126:

“For each Italian city overflows with tyrants  
and every clown that plays the partisan  
thinks he is the new Marcellus.”

<sup>39</sup> It's important to remember into this context the poems “Voi che’ ntendendo il terzo ciel movete” and “Amor che ne la mente mi ragiona”;

<sup>40</sup> In fact in Par., XVII, 124-135:

“...since the mind of one who listens will not heed  
nor fix its faith on an example  
that has its roots in things unknown or hidden  
or on some other proof not clearly shown.”

largest and most beautiful sum of examples and similes of those poems that were composed in Europe between the XIII and XV century.<sup>42</sup> More precisely, Dante combined the four meanings of Scriptures (literal, allegorical, moral, anagogical<sup>43</sup>) with the tragic, comic and elegiac styles (indirectly known from Aristotle's Poetics) and Aristotle's types of speech<sup>44</sup> (epideictic, judiciary and deliberative): in this context he often adopted a special rhetorical device (situated in the *inventio* phase of the *via argumentorum*) called *exemplum*<sup>45</sup>, or *imago*<sup>46</sup> (exemplary character), to be necessarily distinguished from symbol,<sup>47</sup> thanks to its

<sup>42</sup> Delcorno, "Dante Exemplum", *passim*;

<sup>43</sup> "Littera gesta docet, / quid credas allegoria, / moralis quid agas, / quo tendas anagogia" by Nicola di Lyre in *Postilla in Galates*, 4, 3; more in *Conv.* II, I and even more where it was said: "For these reasons, therefore, I shall on each occasion discuss first the literal meaning concerning each canzone, and afterwards I shall discuss its allegory (that is, the hidden truth), at times touching on the other senses, when opportune, as time and place deem proper." If Dante's journey develops itself in three otherworldly kingdoms from a literally point of view (*fictio poetica*), it's no doubt that it represents a conquest of happiness by Dante, through a philosophical and ascetic journey that a value of lived action. See Mazzoni, *supra* note 11, 228-229;

<sup>44</sup> Aristotle, *Rhetorics*, I, 4-15 and *Rhetorics to Herennius*, I, 1-2;

<sup>45</sup> If originally the *exemplum* had been distinguished just as a paradigmatic novel which dealt with the recall to the authority, short form and its historical semblance, presenting an unique interpretation as well as aiming to teach and delight, however during the time, it took a more moralized function and it extended its structure, polluting the historical source. So, it can be defined as a theoretical induction, now: a process from particular object to another particular object through the medium of general topic; from an object it is inferred to a class and so it is directed toward a new object. The *exemplum* can be a word, a fact or a set of facts and its paraphrase: it's a persuasive similitude, an analogical argument that has to create by whom is able to see analogies and antonyms. From Aristotle, it has been a solid idea by which any orator had to demonstrate by examples o enthymemes to product persuasion; however the exemplum both real and fictitious demonstrated a narrative nature and produced a sweeter persuasion, more appreciated from the people than the enthymeme which brought about the syllogism (*argumentum*). See Barthes, *Retorica Antica*, 64, as well as St. Gregory in his Dialogues argued "Sunt nonnulli quos ad amorem patriae caelestis plus exempla quam praedicamenta succedunt" and Stefano di Borbone in his *Tractatus de diversis materiis predicabilibus* where "Sermo enim corporeus facilius transit de sensu ad ymaginativam et de ymaginacione ad memoriam". Completely different is the role of symbol, which has always represented an allegorical and substitutive connection between concepts. It could say that if the nature diverges from the function in the *exemplum*, instead they are merged together in the symbol;

<sup>46</sup> Cicero said: "Cato illa virtutum viva imago". An evocative catalogue of these images, was established by the rhetorical school (*Factorum ac dictorum memorabilium libri novem*) and it was having a huge fortune during the Middle Ages, confirmed by Dante, too. However, the medieval scholars didn't define the concept of "*exemplum*" and it remained considered as narrative type and image useful for illustrating a moral concept, even though based on real facts. See Delcorno, *supra* note 38, 5;

<sup>47</sup> A symptomatic representation is offered by the serpentine forms in the seventh Bolgia in consideration of the role that they assume in the context of counterpass principle (see *infra*). In fact, "Within the seventh 'Bolgia' all seems to be contingent upon the serpent as an instrument of metamorphosis and upon the resulting suspension of the thieves in a state of disintegrated personality and inability to become 'whole'....Furthermore the idea of the serpent as a force of transmutation and renewal is a 'well substantiated archetype'; even more, there is an image of the serpent as the principle and purveyor of evil. Then, it seems defensible, give the Jung's theory of archetypes, that the poet is the sometimes unconscious transmitter of a mythological, archetypal universe inherited from preceding generations....The capacity for such evil to bring about the psychological disintegration of the sinner and his personality becomes, an ever present motif: 'The power of Hell to deprive man of sanity was impressed so deeply on Dante's mind'; Dante's portraits of the thieves all suggest a curious lack of self-possession and an incapacity to master their individual personalities in what Jung describes as the "abaissement du niveau mental". See Glyn, "Contrapasso Archetypal Metamorphoses", *passim*. Another circumstance is the dimension of the horrific by describing the category of the monsters in Hell, recalling to the symbolic function and nature of it. Considering that, one may argue that properly in Hell, Dante referred to a "symbology of sin" where "...the pains of the damned are in truth their own living sins, but sins converted to torturing images by what Dante would persuade us is the allegorizing eye of eternal Justice. These pains become portions of a total metaphoric vision of human evil, one in which the damned souls' existence is doubly circumscribed first by the orientation of their affections-which defines the individual nature of their transgression-and second by the fact of their being dead and placed in a realm beyond that of ordinary life." Gross, "Infernal Metamorphoses", 42;

direct reference to reality.<sup>48</sup> It designates the embodiment of a virtue in a figure, but even defines the relation between ‘defect / sin / crime’ with a personified image, referring to the two basic functions of the first part of the rhetorical technique: convincing through logic and psychology and being moved to action.<sup>49</sup>

This shows a marked linguistic and ‘pragmatically oriented’ approach endowed of illocutionary and perlocutionary<sup>50</sup> functions from a qualitative side as well as a shortness from the quantitative side; then, from the axiological point of view this structure aims to allow afford subordinating the narrative element to the moral nucleus of the novel<sup>51</sup>. This is why the Comedy<sup>52</sup> is such an excellent and evident model: a cosmic world based on orders of places distributed in Hell, Purgatory and Heaven with circular perspectives (Hell’s *bolgie* are the Heaven’s spheres down). It appears like a sum of similitudes and examples on a universal<sup>53</sup> background, represented by mnemonic devices: a bridge between an abstract concept and a concrete image

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<sup>48</sup> Collections of *exempla* were developing both in religious and in laic contexts; then, it was possible that Dante had in touch with them, in particular with the *l’Alphabetum predicatorum* or the Pietro Alfonsi’s *Disciplina Clericalis*;

<sup>49</sup> Properly in the *fidem facere*, the road to reasoning will come out, whether it’s supported by rhetorical proofs namely rational and persuasive ways. The *exemplum* belongs to those technical *probationes*, named “*artificiales*” that are sustained by internal reasons within the rhetorical technique. So, on the ground, there is a reasoning that entirely depends on by the orator’s power and it inheres in the practice of him: the rude material (ideas, words and speech) changes into persuasive strength by a logical operation (not merely deductive or inductive): in the first case it’s enthymeme the *exemplum* in the second one;

<sup>50</sup> It has been debated the pragmatic feature of *exemplum*, defining it such as belonging to a “shacking” or perhaps belonging to epideictic genre, that it tried to stimulate an action as well as in provoking an immediate reaction even more in the case of the *ad hominem* fallacy. The pragmatic function of exemplum concurs to determine its fundamental rhetorical aspects (such as the argumentative allocation and its role in the hierarchy of the context);

<sup>51</sup> Delcorno, *supra* note 38, 12;

For this reason Dante could be considered as a restorer of *proto-exemplum*:

“Now preachers ply their trade with buffoonery and jokes,  
their cowls inflating if they get a laugh,  
and the people ask for nothing more.”

(Par.XXIX 115-117 )

<sup>52</sup> It has been debated the problem to date The Comedy: it may have considered such as contemporary of Convivio or immediately subsequent from it even though several scholars have sited it after Arrigo’s coming in Italy. Then, there was doubts about its purposes, reading it by the senses of the Scriptures: from a lit literal prophecy modeled by The Bible to a work built by theologians or poets’ allegories. See Mazzoni, “Commentatori”, 65. Furthermore, regarding to the hermeneutical partition: “.. se materia letterale di essa è lo stato dell’anime dopo la morte, materia allegorica del Poema è appunto l’uomo, come unico soggetto di attività morale: in quanto si renda, con l’uso del libero arbitrio, meritevole del premio o degno d’eterna pena”. *Ibidem*, 39 (note:115);

<sup>53</sup> See Delcorno, *supra* note 38, 5 note 6;

inserted in an exemplary collection<sup>54</sup>, Dante's<sup>55</sup> characters, which come from Antiquities, Classics, the Bible or historical chronicles, explained themselves as figures that find their completion up to a unique eschatological time<sup>56</sup> ("*preasens aeternitatis*")<sup>57</sup>.

<sup>54</sup> "Ogni cornice ha una sua sceneggiatura allegorica, che da rilievo ai gesti ed alle parole delle anime occupate a celebrare un rito espiatorio basato sulla corrispondenza tra la colpa commessa e la pena scontata; ogni dettaglio della scena rimanda con precisione ad un'iconografia morale fissata nell'immaginario medievale..." Delcorno, *ibidem*, 24;

<sup>55</sup> The miserly' frame in Purg. V, might be considered as a model of that application:

"When I came out onto the ledge  
of the fifth round, I saw people on it  
lying face down on the ground and weeping.  
'Adhaesit pavimento anima mea'  
I heard them say with such deep sighs  
the words could hardly be distinguished."

(Purg. XIX, 70-75)

Indeed, miserly' punishment is the same as what it could be read in the Samaritan Pentateuch in terms of metaphor: their inordinate desire toward material goods was purified by its position in the structure of Purgatory.

They were woman's sons such as slothful and lustful people, who:

"..., in a dream  
stammering, cross-eyed, splayfooted,  
with crippled hands and sickly pale complexion."

(Purg. XIX, 7-9)

And they suffered a lack of spiritual appetite, which generated a disgust for the Good and drove the slothful to find a reward out of him. The misers' punishment deal with their confession of sin, which compelled them to fix their looks into the world's darkness turning their backs against the Light: so, this punishment may represent an exception from Purgatory "politics" of metamorphosis from the human worm to "angelic butterflies / that unimpeded soar to justice" Purg.X. 125-126."Il contrappasso viene dichiarato in tutti i suoi elementi di simmetria con un insistente parallelismo sintattico" Delcorno, *supra* note 38, 25;

"Just as we failed to lift our eyes on high  
because they were fixed on earthly things,  
so justice here has turned them to the earth  
as avarice quenched our love of worthy things,  
wasting our chance to do good works,  
so justice here has bound us fast."

(Purg. XIX, 118-120)

The misers "Securely tied are our hands and feet." Purg., XIX, 124, lead their look only to world's things terrene (1 Ioh., 2, 15-16: "*concupiscentia oculorum*" and "*terram continue inspicit: iusta illud Psalmum: Oculos suos statuerunt declinare in terram*" referring to *De avaritia* by Guglielmo Peraldo). So, the richness could have measured the punishment degree by the Evil "*pedibus et manibus*" See Giovanni di Galles, *Summa virtutum et vitiorum*, I, 93;

<sup>56</sup> However, temporal dimension has not the same in the three "Cantiche": an eternal ontology in Hell and Heaven while in Purgatory one may discover a dynamicity of souls by consoling or terrifying examples which entail an alteration in their conducts. Indeed, this condition allow the poem to realize itself, as Dante considered in Epistola a Cangrande "*removere viventes, in hac vita de statu miserie et perducere ad statum felicitatis*";

<sup>57</sup> Dante has insisted on the voice, emphasizing the persuasive and scary effects of word, when it was analyzed into its poetical power and it was perceived into its assertive function, taking it back in its original context (exhortation and sermon);

## 2. Elements of Dante's legal theory

### 2.1 The State

The gloomy situation of Italy during Dante's times seemed to anticipate the forthcoming Thomas Hobbes' *bellum omnium contra omnes*: Italian society was living in a state of nature, wracked from the inside by an incessant civil war among local municipalities (Comuni) and an ongoing struggle between municipalities and lordships.

While in Convivio Dante explained that men, inherently social beings on a quest to create increasingly large social groups through a concentric progression, in The Comedy the social realism became easy to perceive. Men live in the *civitas* and in the *polis* for their own profit, and not because they are social. Therefore, men are not actually and naturally social animals, but rather ferocious animals.<sup>58</sup> Basically, what remains was a pessimistic view of human nature,<sup>59</sup> typical of Hobbes' natural law doctrine. Then, the undertaken research by Dante would have manifested itself as an effort to track down which political power organization might have stopped this unacceptable state of ongoing war,<sup>60</sup> by proposing a cosmopolitan

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<sup>58</sup> "This he said to me, and then withdrew  
to his companions, who, drawing close together,  
now swirled up as in a whirlwind.  
My sweet lady, with but a single gesture, urged me on  
to follow right behind them up that stairway  
so did her power overcome my nature  
And never once down here below,  
where we mount and descend by natural law  
was there motion swift enough to match my flight.  
So may I, reader, once again return  
there to that holy triumph for whose sake  
I frequently bewail my sins and beat my breast,  
you could not have withdrawn and thrust your finger  
into the fire faster than I saw the sign  
that follows on the Bull and was within."  
(Par. XXII, 97-111)

<sup>59</sup> See Inf. III, 22-24 and 34-50;

<sup>60</sup> It remains, however, subject of discussion the real source of power, generally adopting for Dante a double affiliation to the organicistic/paternalistic or democratic views (e.g. Purg. VI, 77 and XVI, *passim* VS Mon. II, 3 and III, 10): Plato and Aristotle supported the first one, where the political power (*imperium*) proceeded top-down and not *vice versa* since the whole (State and society) came forward and above from its parts. Instead according to Kelsen's studies, Dante's thought explained that the immediate source of the sovereignty was related to

federalist view *ante litteram*.<sup>61</sup> However, it would be possible to conclude for an utter adhesion by Dante to the so-called men's natural theories in which the political aspect is emphasized through the double meaning that men need to live in a society and that the life in an organized society is superior to the state of nature.<sup>62</sup>

Human passions are restricted by the State but it is not a direct consequence of the sins committed as St. Augustine<sup>63</sup> used to say, but a necessary strength of the social life to which Christianity adds a divine foundation<sup>64</sup> even though not fused in it<sup>65</sup>. It is therefore a universal empire, with a cosmopolitan view of the citizenship.

Hence comes its necessity in the form of domain of a single supreme universal authority, both monarchist and imperial<sup>66</sup>, able to put together the social groups<sup>67</sup> and the wide variety of their political orientation: not an utopian doctrine whereas actually based on a concrete experience such as the Roman

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the popular sovereignty ideas, where the prince is supreme officer and the monarchy is “*ufficium deputantum imperatori*. See Falsitta, “Principio Proporzionalità Dante”, *passim*;

<sup>61</sup> This approach was in opposition to a men-state dichotomy, the Westport philosopher's typical political vision;

<sup>62</sup> “And he continued: 'Now tell me, would it be worse for man on earth if he were not a social being?' 'Yes,' I agreed, 'and here I ask no proof!'"  
(Par. VIII, 115-117)

<sup>63</sup> St. Augustine, *De Civitate Dei*, I, 14, 28 and 15,1; furthermore in Epistle to Romans, 44;

<sup>64</sup> In fact, Aristotle said that contemplative life and active life had to be governed by both the law and an external authority, able to properly guide them to the right way, which was lost by the original sin; there were two directive forces of the human genre, the Church and the State, both of them aiming to realize the amount of all the human natural qualities (*humana civilitas*) although in different contexts and autonomous functions. Dante was trying to find a solution to the matter about the asset of the social aggregate able to ensure and guarantee peace and justice, regardless of the government forms adopted by each one of them;

<sup>65</sup> Nagy refers especially to Ernst H. Kantorowicz's interpretation, that emphasized the secular nature of Dante's political view, with the full autonomy of the emperor, equipped with specific prerogatives and powers from the Pope, and Hans Kelsen's reading on it, that recognized in Monarchia, the Aristotle's *Nicomachean Ethics* and *Politics* influences, as well as the *Bible* and St. Augustine's derivations, including Egidio da Romano's political traces; the purpose of the government, in Dante's political philosophy was assuring peace, justice and freedom, encouraging every single person to realize their own potential intellect, in a context where God is the primary source of the Law both for the community and every single citizen. See Nagy, “Ideale Impero Monarchia”, *passim*;

<sup>66</sup> See *Conv.*, IV, 4,4 but mainly the reason of Monarchia where the research and exposure of the legal system were built. In the last chapter of it, Dante offered a masterful summary of the two ends issued from the Providence to the whole humankind summarizing its path: people is ordered to live happily by realizing the virtues of humanity and blessed with eternal life through the contemplation of God;

<sup>67</sup> Several authors had talked about the construction of a federal government and its subsidiary property, perhaps influenced by Dante's thought: Kant's *Idee Zu Einer Allgemeinen Geshscichte Weltburgerlicher Absicht* (1784) and Hamilton's The Federalist (1788), above all;

Empire, which kept enjoying its authority, with the possibility of a parallel openness to single sites of local power.

## 2.2 The Law and the law

In Dante's political thought, the discounting of natural law emerges in an exemplary way. Not only it should be included in positive laws, but the same positive order is mainly made up of the rediscovered Roman laws<sup>68</sup>, which are written *ratio* and the soul of justice.<sup>69</sup> In view of that, Dante followed the classification and the scholastic philosophy series (*nulla potestas nisi a Deo*) among *jus eternum – jus divinum – jus naturale – jus humanum (gentium/civile)*. The real issue is the identification, combination and correct application of human law: not only a declaration of it by the imperial political authority, but an actual realization through its observance, which the same authority should primarily impose itself and the society as a whole.<sup>70</sup> This is possible by imposing common rules and the exercise of a judiciary able to prevail upon kings and princes fights, but also among ordinary people. Thus, wherever a conflict may arise, there should be the right to judge.<sup>71</sup> Emperor takes over the function of *minister* and therefore as a “servant of the law that is the set of laws” official of a political organization meant to the full implementation of men's natural right and guarantor of the right universal principles.

Hence, not only the Law, but also the same empire ends up to identify itself with the Law,<sup>72</sup> making the realization of human natural law<sup>73</sup> and the emperor possible by applying the law.<sup>74</sup> Under the universal

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<sup>68</sup> This order was reflected in the Justinian's *Codex* and it was a mirror of God's will; the natural law served to accomplish the common good that coincided with the good of the State;

<sup>69</sup> See Dante's *Epistle*, VI, 22;

<sup>70</sup> The legislative power and jurisdictional power of the emperor have an extension that could be worldwide defined (e.g. *Mon.* 1,10); they were set above the humankind in order to keep the peace;

<sup>71</sup> Lit. *ubicumque potest esse litigium, ibi debe esset iudicium.* *Mon.*, I,10.

<sup>72</sup> Lit. *unum esse ius cum unum sit imperium.* Irnerius, *Quaestiones de iuris subtilitatibus* II 16.

<sup>73</sup> Lit. *natura posciente civiliste*, See *supra* note 62, 2;

Law and common laws (*ius commune*), whose rebirth is given thanks to the glossators - they are already active in the courts -, are placed the single minor legislations<sup>75</sup> that provide for the particular needs of the people gathered in the several imperial groups. All these laws<sup>76</sup> should, however, be ordered and codified<sup>77</sup> by the certainty of their knowledge and application<sup>78</sup>, so that they can fulfil their function of instruments for civil life<sup>79</sup> and social harmony. Statutory law is thus strictly defined as Law<sup>80</sup> if it is considered an image of the *ius gentium*, and the natural law<sup>81</sup>, as well as Law-, should be intended as a brake for the unreasonable individual appetites. The codification should be instead intended as a reorganisation of the regulatory chaos, i.e. the development of a consistent system, and a tool for the interpretation and identification of the rules of conduct, narrowing the gap between right and legal certainty, between text and rule.

### 2.3 The Counterpass

If it would be possible to ascribe a metaphorical meaning to Dante's job, this could be considered as "moral engineering", and his masterpiece, The Comedy, could be identified as the great building in which the human moral experience - that is feasible on the basis of the recognition of its freedom - is conducted in

<sup>74</sup> The function of Law as an instrument of social peace is highlighted in Monarchia, in *The Comedy* and even in the sonnet "se vedi gli occhi miei di pianger vaghi"; according to this approach, it could be note a similar point of view with Jhering's *Der Zweck im Recht* whereby the goal of the Law has to be maintaining the social order not just by single *ratio legis* but rather the ultimate aim of the entire legal system serves justice defending the social peace. See, Purg. XVI, *passim*);

<sup>75</sup> See Inf. V, 65-66 about Semiramide among the lustful;

<sup>76</sup> And doctrinal and legal results (*interpretationes*) made them by analogical criterion;

<sup>77</sup> See Par. VI, *passim* and Bacone's masterpiece *De Dignitate et augmentis scientiarum*, libro VIII, C. III, t. I.;

<sup>78</sup> "If there is no one in your saddle, what good was it Justinian repaired your harness?"  
(Purg. VI, 88-89)

<sup>79</sup> Florence legal system consisted in a radical denial of every justice and it did not deserve any observance as the regulatory chaos that derived from the hectic legislative output and the ongoing instability of the civic order which represented one of the most relevant symptoms of the Italian disorderly decency (e.g. Purg. VI, 127 / 151);

<sup>80</sup> According to S. Thomas, if the divine law represents the eternal law revealed, the natural law provides to integrate it, while the *lex humana* completes the natural law general requirements, in accordance with special needs, both by deductive reasoning – *per modum determinationis* – from the general principles, and by a more precise determination of these principles – *per modum conclusionis*;

<sup>81</sup> They were held together by an allegory in the Dante's song *Tre donne intorno al cor* according to Peter's comment, as well as in Inf. VI, 73 and St. Thomas's note "Duplex est iustum";

front of the divine justice, and it is sanctioned - recurring to the torture, as well<sup>82</sup>-, or rewarded, in a different way. In this regard, the sin is the “fundamental concept, both theological and juridical, as well<sup>83</sup>”: it represents a distorted and guilty use of human freedom, and yet a messy act that alters that rationally understood global divine order. Thus, a rational answer is offered by adapting the punishment<sup>84</sup> to the act, according to the degree of divine disorder.

If Justice is proportion, a criterion for humanizing and actualizing it should be recognized: in this circumstance, a regulatory transformation factor based on entropy in moral context becomes necessary, and this can be found in the ancient ethical principle of Counterpass, primarily referred to the punishment of souls in Hell and its variants<sup>85</sup> (analogy, opposition and contrast); therefore, even the relation between penalty and seriousness of the guilt, just like between act and virtuosity of action, can be rationalized in full<sup>86</sup>. This principle was inserted in the general topology of metaphysical places, and Dante had worked it out<sup>87</sup>, resuming the scholastic formulation<sup>88</sup> that was already adopted for the ontological identification of the

<sup>82</sup> “Per Dante il problema della tortura è in piena conformità allo spirito del tempo, un problema di legalità e giustizia nei modi e nei mezzi. La tortura da eccezione a regola costante di disciplina, una categoria di giudizio e di poesia, anche se rimane un rispetto profondo del mistero della creazione e della trasmissione di vita.” See, Frosini, *Misericordia Giustizia*, 313.

<sup>83</sup> Maglio, *Ordine Giustizia*, 75;

<sup>84</sup> See St. Thomas, *Summa Theologiae*, I,II, q.87, art.3;

<sup>85</sup> “...by a process either resembling or contrasting with the sin itself.” Musa, “Commentary Notes”, 38.

<sup>86</sup> The principle of “contrappasso”, sometimes erroneously spelt “contrappasso” despite its known derivation from the Latin *contra-passum* (from infinitive *patri*), was usually regarded as parallel to, and identical with, the biblical *lex talionis* (even though it has been confirmed a defined commingling with the pagan culture as well as with Islamic culture in Dante’s system of punishment). The first reference to this command has been found in Hammurabi’s Codex (artt. 156,197,199,200) and ancient Roman law where in the VII table: *Si membrum rupsit, ni cum eo pacit, talio esto*.and further Justinian in *Institutiones* ; however it’s generally renowned in Biblical context (e.g. Ex. 21, 23; Lv. 24, 17-20; Deut. 19,21; Matth.7,2) and in Virgil’s Epic. Then, it was “used in Aquinas’s translation of the Nichomachean Ethics to render a Greek phrase meaning “he who has suffered something in return”; hence the Latin sense of the word as “retribution” or “retaliation.” Gross, Infernal Metamorphoses, 43. Furthermore, the requirement that there should be an exact correspondence, and no more, between crime and its penalty, was fully debated: “Christ had, in fact, abrogated this law when introducing his command to his disciples to love their enemies (if someone should strike your right cheek, offer him the other one too). Thus, if Dante’s ‘contrappasso’ is his counterpart to the *lex talionis*, it indicated a reversion to strict Old Testament equivalence in his conception of God’s Justice administered to the souls of the dead.” Armour, Dante’s Contrappasso, 3-4.

<sup>87</sup> The Counterpass was directly affirmed by baron and poet Bertrand de Born during the XIIIth cent; he was punished into the ninth “Bolgia” (the schismatics), for (Dante believes) causing the rebellion of King Henry the Young against his father, Henry II of England. He was decapitated (in relation to a supposed act of political decapitation in undermining a rightful head of state) “by a sword-wielding angel, healed as he marches around his circle, and struck again as he repasses that angel, Bertran provides the pilgrims with the following commentary on his situation” Gross, *Ibidem*.

“Because I severed persons thus conjoined,  
severed, alas, I carry my own brain

Justice; he has analyzed the Aristotelian message in Nicomachean Ethics (V. 3-5)<sup>89</sup> about the “voluntary transactions”<sup>90</sup> in the Christian perspective. These require a special conception<sup>91</sup> of the equivalence between “giving / taking” (objective and quantitative) and of proportionality (equivalence in relations). However the Counterpass of Dante could be considered more “specific and personalized”<sup>92</sup> and creative<sup>93</sup> than the Aristotle’s original one. It is built it with fantasy and freedom, even combining the variants above<sup>94</sup>: it objectively pays<sup>95</sup> the sin, reaffirming an order that was upset by the human guilt, and at the same time, it “looks at the singularities of the individual soul evaluating the aspects of its personality, based on both analogical and oppositional<sup>96</sup> criteria”, until this personality will be transformed and identified in the penalty

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*from its starting-point here in my body.  
In me you may observe fit punishment.*

(Inf. XXVIII 139-142)

This translation changes the original “contrappasso” in “punishment” without giving back the essence of its meaning; instead another version by Longfellow restored a more ecclotic *lectio* in “counterpoise”, such as Singleton’s interpretation “...Thus is the retribution observed in me” which has represented moreover an *hapax legomenon* into The Comedy.

<sup>88</sup> St Thomas took into consideration the past participle *contrappassus* of the verb *contra patior* such as the latin version of greek *antipephontos* from the Nicomachean Ethics. Then, he argued that Justice and Counterpass sometimes didn’t represent the same thing. However, Dante considered the St. Thomas’s term without his argumentative subtleties. See Armour *supra* note 77,6;

<sup>89</sup> Particularly in *Eth.Nic.* V, 5,1132b Aristotle asked if properly the reciprocity could be considered as justice in general way, according to Pythagoreans said. However, having demonstrated that in many circumstances justice and reciprocity were different each other; so, it should be correctly said that reciprocity relating more to proportion rather than equality;

<sup>90</sup> St. Thomas discussed about the statement by which the counterpass coulb considered as justice in general meaning “in quibus utrinque est actio et passio” according to the syllogistic formula: “*Videtur quod iustum, sit simpliciter idem quod contrappassum. ..Iudicium enim divinum est simpliciter iustum. Ergo iustum est simpliciter idem quod contrappassum*” *Summa Theologiae* II-II, q.61,art.4 ad. So, the reciprocity with due corrections, must have held to commutative justice exerted by God;

<sup>91</sup> It was going to exclude the counterpass for the distributive justice due to the different criterion of proportionality;

<sup>92</sup> Maglio, *supra* note 75, 133;

<sup>93</sup> Such creativity has expressed with an application, sometimes combined, of criteria (e.g. Inf. III, 22-69) to which have added up moral judgments (e.g. Inf., XXV, 61-96 and 97-151);

<sup>94</sup> See *supra* note 84;

<sup>95</sup> “The system of divine retribution in Dante’s hell is unrelenting. Earthly crimes are illuminated and explained by the horror of their infernal punishment. The sinner is tormented most by a form of the sin in which he chose to live and act while on earth. (Inf. XXV, 142-143). It is in the psychological and poetic impact of this scene that one can best seek the drama of retribution: a drama unfolding in a pit whose frightful image is captured in the grotesque metamorphoses of serpentine forms. Furthermore, because of their archetypal nature, such forms may examined as expressions of a psychic world whose existence is contingent upon the operation of the poetic imagination.” Armour, *supra* note 77, 162;

<sup>96</sup> See Maglio, *supra* note 75, 133;

itself<sup>97</sup>. The wills of the damned do not accept the order coming from the divine Justice<sup>98</sup> and so they will live in Hell with an eternal pain<sup>100</sup>. In the Purgatory, instead, this principle assumes a penitential role: the souls are responsible only for repairable facts because their will has accepted the divine Justice. Therefore, they are able to rejoin themselves with God and they can serve a temporary punishment with an emendatory effect towards a complete purification<sup>101</sup>. Finally, in the Heaven, the Counterpass takes a role in assigning the prizes to the blessed souls: in fact, “the degree of the bliss assigned to the single soul has got a direct and proportional relation with the virtue that it has been exercised by man during his life: this enforcing, the mechanism in whom the heavens are structured and the blissful souls are subdivided in them<sup>102</sup>”. Then, it aims to be directly an instrument of God’s retributive justice but<sup>103</sup>, at the same time, it has a special “maieutical”<sup>104</sup> function.

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<sup>97</sup> “The thieves, by virtue of this kind of mental disintegration, become less human, monstrous and incomplete...part of their punishment lies in the ever-present nature of their crime and guilt captured in the external archetype of image of the serpent which assumes any one of several forms ....The “contrappasso” of the serpent, put in the simplest of the terms, is the drama of “thieving” souls whose eternal grief assumes the aspect of their earthly sin. ....individuation becomes the very antithesis to the state of things in the seventh Bolgia” Armour, *supra* note 77, 168;

<sup>98</sup> “*THROUGH ME THE WAY TO THE CITY OF WOE,  
THROUGH ME THE WAY TO EVERLASTING PAIN,  
JUSTICE MOVED MY MAKER ON HIGH  
THROUGH ME THE WAY AMONG THE LOST.  
DIVINE POWER MADE ME  
WISDOM SUPREME, AND PRIMAL LOVE.  
BEFORE ME NOTHING WAS BUT THINGS ETERNAL,  
AND ETERNAL I ENDURE.  
ABANDON ALL HOPE, YOU WHO ENTER HERE.*”  
(Inf. III,1-9)

<sup>100</sup> Concerning both the definitive exclusion from divine Light (*poena damni*), and the special torment to which they must have endured due to the counterpass (*poena sensus*);

<sup>101</sup> See Purg. I, 1-6 e I, 94-96 on purification gestures recommended by Cato; however according to older commentaries, the modes of contrappasso in the Purgatory reflect not only the correspondence between sin and punishment but also an allegorical relationship extended to the element of redemption. See Affatato, “Contrappasso”, *passim*;

<sup>102</sup> Maglio, *supra* note 75, 137;

<sup>103</sup> It hasn’t been intended such as a divine punishment but a “right disdain” to the human sin; this conception had been spread by the medieval interpretation of the Old Testament;

<sup>104</sup> If “...its functions do not consider merely as a form of divine revenge, but rather as the fulfillment of a destiny freely chosen by each soul during his or her life”, then it will have to be treated as an admonishment for Dante and readers’ future actions, confirming a kind of Socratic method founded on dialogue and truth’s unveiling by it. Again “una decifrabilità che ha lo scopo di farsi ammonimento ai fedeli perché da tali colpe si astengano, e consente di assolvere così a quella funzione glossatoria che lo scrittore nel racconto può invece affidare alle parole del personaggio-guida chiamato a spiegare quali colpe vengono punite con i singoli castighi” Longoni, “Contrappasso”, 211;

## 2.4 The Justice and the law

The exile represented an extraordinary occasion for Dante to deeply reflect on his political, theological and philosophical fundaments: in fact, it has allowed him to rise up his consciousness about the complex crisis that was characterizing the medieval society, and it has contributed to an innovative “Christian cosmic ideology”<sup>105</sup> applied to a political and normative theorization, as well as to a constitutional definition of state organization.

This intellectual result is visible in The Comedy, where Dante has resumed those traditional conceptions of Justice that had already been treated in other previous works<sup>106</sup>. The entire human context has been interpreted in the mind’s eye of divine justice<sup>107</sup>, that was able to express itself in a retributive (even vindictory) way, as demonstrated by a fair but relentless God (i.e. the Hell<sup>108</sup>), or through a pity and restorative utterance (i.e. the Purgatory<sup>109</sup>), but was always connected with the infinite love of Heaven<sup>110</sup>. Thus, departing from the pragmatic primacy of ethics compared to the metaphysics<sup>111</sup>, Dante referred to

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<sup>105</sup> Regarding to the word “insult” (it. “ingiuria”), cited in Inf. XI, 23, scholar Sabrina Ferrara defined this sin such as the injustice committed by man against God. Dante’s thought was affected by the idea in which only God’s action in the world might have established Justice for the mankind. Then, Dante’s desire of Justice had a deep political critical meaning by that it could be identified opponents to Empire as opponents to Justice itself, representing consequently an increasing of moral distance between human society to divine society (Augustinian’s *Civitas Dei*). Properly in the role of Dante’s exile one may identify the meaning of his mission revealed to him by Cacciaguida (Par. XV, 97-102) and his title of divine messenger: outside his homeland Dante was able to observe and judge world’s corruption and so, by this condition, The Comedy was raised in it.

<sup>106</sup> By the Monarchy and Convivio above all;

<sup>107</sup> This type of Justice justified it so as founded the mankind’s history overwhelming it;

<sup>108</sup> Topologically, Hell was being structured such as a chasm with a funnel from Jerusalem to the centre of the Earth; damned were distributed with a typical logic derived from Aristotle (*Nic. Eth.*, VII, 1, 1145a) to whom must have added what Virgil said about them; indeed, they were allocated (sloths, Limbo’s souls and heretics were exempted) according to a criterion of increasing seriousness of sin and consequently evaluating the role of their will and intention in committing crimes (from guilt to intentionality). The city of Dite signed the bound among two places of eternal punishment, as well as freedom was summed up by reason and will: so, it represented the distinction into moral behavior;

<sup>109</sup> Instead, Purgatory was intended as the place of *non facere* where not Aristotle’s ethical principles but Christ’s ones were following to. An image of an island with a beach in the middle of mountain and sea. If sin (intended both action and omission) was punished in Hell, in Purgatory it had already been condoned by God, so the soul continued atoning its sinful tendency; this place configures an application of divine emendatory justice inspired by the law of love in the Gospel;

<sup>110</sup>This sky was depicted like a theatre for admiring God;

<sup>111</sup> See Convivio, II,XIV,14 relating to the “just condemnation” principle;

Justice as an image<sup>112</sup> and a primary nature<sup>113</sup> of Aristotelian quality, to which Cicero's and stoic concepts, Justinian's results and the fundamentals of Christian ethics had to be added,. Thanks to all the previous sources, it would be possible to confirm what Dante said about the virtues of the right medium<sup>114</sup>, of the prudence, of the equilibrium and the proportion<sup>115</sup> (*equalitas ad alterum, proportio et aequa distributio, ordinatio ad alterum, voluntas suum cuique tribuendi*<sup>117</sup>) and of the rectitude<sup>118</sup> as well. Justice would be an ethical virtue progressively linked to the Law (*i.e.* legal science where “*ius est hominis ad hominem proportio*”)<sup>119</sup> and the law (*i.e.* singular performative prescription or disposition emerged by the Law)<sup>120</sup>: the

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<sup>112</sup> This kind of Justice depicted in the sixth sky, referred to Sap.1,1 with an eagle's image that represented the word “m”:

“Contingent things, which do not extend beyond the pages of your material world, are all depicted in the Eternal Sight 'yet are by that no more enjoined, than is a ship, moved downstream on a river's flow, by the eyes that mirror it.'”

(Par., XVII,37-42)

<sup>113</sup> Furthermore, see *Mon.* I,XI,1, Gilbero Porretano's *Liber Sex Principiorum* I, 1, 35 about Aristotle's *Categories* as well as *Nic. Eth.* V,3,1129b 26- 1130a 13 and D. I,1,10;

<sup>114</sup> “Moreover, obedience is within measure and not beyond measure when it goes to the limit of the command, and not beyond it, just as individual nature is obedient to universal nature when it gives a man thirty-two teeth, neither more nor less, and when it gives the hand five fingers, neither more nor less; and man is obedient to justice when he makes a sinner pay his debt to society, neither more nor less than justice demands.” *Conv.* I, VII 9; “The more it is proper to it, the more it is deserving of love; thus, although every virtue in man is deserving of love, that is most deserving of love in him which is most human, and that is justice, which resides in the rational or intellectual part, that is, in the will.” *Ibidem* I, XII, 9;

<sup>115</sup> From proportionality to Justice: even better, realizing Justice is treating everyone following its real condition and situation. Then, this idea of Justice can be tailored on both equal (synallagmatic) and distributive acceptations of it; See *Conv.* III I 7 D “...in a friendship of persons of unequal rank there must exist, in order to preserve it, a relation between them that in some way transforms the unlikeness into likeness...”.

<sup>117</sup> See entirely D.1.1.10pr.;

<sup>118</sup> It came from Augustinian's concept of rectitude (*rectitudo*) which was repeated by St. Anselm, too.

<sup>119</sup> “Therefore it is written in the beginning of the Old Digest that "Written law is the art of well-doing and justice." *Conv.*, IV, IX, 8 “Law is a relationship between one individual and another one in respect of things and people; when it is respected it preserves human society and when it is violated it destroys it. For the description of it given in the Digests does not say what right is, but describes it in terms of its practical application” *Mon.*, II,V,1 upon D.1.1.1 intended Law as *ratio scripta*. Dante was able to integrate Celsus in defining Law, following a long Scholars' tradition on reflection about it (Accursio, Odofredus, Cino da Pistoia). Dante's conception of Law can transform itself depending on the reality (like Aristotle's “turns”) but its ontological and teleological criteria remain fixed: proportional bond between man and man that ensures social living;

<sup>120</sup> Starting from the Dante's definition of *jus*, it could analyze the component of a legal proportion within any legal any inter-individual relation, toward the identification of legal causality link in legal rule, introducing a symmetric model of causation. This finds the idea that proportion and symmetry make order inside a legal System. Considering that, legal phenomena could represent themselves as an organic system of proportions and symmetries, making it orderly, to be even mathematically formalized and potentially able to orientate irrational decisions and risky management choices of legal operators interested in maximizing their welfare (expressed in terms of axiological legal assets). “A mathematical description of the idea of legal order is in proportion and symmetry.... might prove to be beneficial in outlining the rationale for

latter element would actualize its content into social reality, building it: following this process, the law perfects and concretizes the justness of human action, identifies the single righteous act and aims for a singular and collective welfare.

To reach this welfare, Dante followed a long tradition of reflections on Justice founded on the pitagorical doctrine of natural harmony by the Greek *antipeponthòs* (equal reciprocity according to proportionality). Adapted from Aristotle's Nicomachean Ethics, it structured the concept of general justice (legal or universal)<sup>121</sup> as a perfect virtue where the respect of the law and the equality were epitomized, like a chance to obtain human happiness into his relations,<sup>122</sup> and the particular justice. It is important to underline that the criterion of the "right medium"<sup>125</sup> was applied inwardly to the latter form of justice and its species (distributive and commutative). This being considered, there was a correspondence between the concept of medium and the one of justice (or, to paraphrase the presocratic philosophy, it corresponded to the pitagorical equal transformed by a proportional factor: it didn't mean giving the same to everybody, but

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the choices involving legal assessments of facts and values. The idea of proportion inside legal entities seems to emerge when a legal position is synthesized on the basis of orderly sequences of mass units, leading from the (explicit or active) subject to an object of pretention. Instead the idea of symmetry inside legal entities seems to emerge when a legal rule ... is synthesized on the basis of two mode situations.., which assume the vests of legal fact and legal effect once they are linked by a causation link. Thus, a legal relation of I order (a legal position) is composed of a real (*realis proportio* represented by the pretention axiological decrescent curve) plus a personal proportion (*personalis proportio* represented by the acknowledgment axiological crescent curve), glued together through a common axiological scale of measures. This circuit is circular, as the information message flows away from the claiming party, and it finally get back to the same subject charged of legally axiological data of intensity. So, "when we put together basic relations of first order, the positions give birth to a situation. The situation is as well an axiological organism of first order, and it entails an entitlement for the active subject." even if the context isn't derives from a constitutional and human rights law constraints of formal equality." M. Ferrara, A. R. Gaglioti, *Mathematical Models*, *passim*. Finally, "the decision to link two situations via a legal causality link builds up a legal rule (axiological organism of second order)...(where) the orientation of the causality vector (should) to be onwards directed only under a material time perspective; instead under a logical time point of view, the orientation of the time arrow within a legal rule can move backwards, forwards or even stand still." *Ibidem*, 140 This is why legal causality and symmetries seem to be directly correlated while describing the logical structure of any legal rule, (considering) a *maximum-entropy* approach, currently used in other realms of science, (that) might describe the welfare *equilibrium* of the legal system;

<sup>121</sup> They were already expressed in Conv. II, XIV, 15 with references to Nic. Eth. V, 3, 1129b, 33-34 and IV, 9, 1115 a 5 to be intended as Metaph., V, 16, 1021b 15, 30; Phys., III, 6, 207 a 13;

<sup>122</sup> *Ibidem, ad integrandum* Aristotle, *Politics*, III, 4 1276 b 38;

<sup>125</sup> "Moreover, obedience is within measure and not beyond measure when it goes to the limit of the command, and not beyond it, just as individual nature is obedient to universal nature when it gives a man thirty-two teeth, neither more nor less, and when it gives the hand five fingers, neither more nor less; and man is obedient to justice when he makes a sinner pay his debt to society, neither more nor less than justice demands." See Conv. I, VII 9; "The more it is proper to it, the more it is deserving of love; thus, although every virtue in man is deserving of love, that is most deserving of love in him which is most human, and that is justice, which resides in the rational or intellectual part, that is, in the will." Conv. I, XII, 9;

rather giving each person what he was due). In addition to these observations, there were references to the subjective view in stoics' justice intended as "*habitus*" and "*voluntas*", and the patristic spiritual interpretation of Law.

In this way, Dante tried to combine the abovementioned perspectives with the scholastic result of the conjunction between voluntary and intellectual elements, concluding that Justice is God's reason that rules the world: a divine justice that humanizes itself into natural justice and permits the proportional equality<sup>126</sup>.

However, Justice, which is lovable for the whole mankind<sup>127</sup>, requires will and power to realize itself; it has then to orient to the charity and carry on to the peace<sup>129</sup>. All these conditions might have been satisfied by the monarchical act, which highly loved the human good (both singular and cumulative). More precisely, the monarch had to do justice due to its feature of being the original *vox legis* and considering itself as the carrier of divine will: the law didn't simply become a prescription for future behavior, but seemed a description of fair nature<sup>131</sup>.

Following this theory, Justice is truth and vice versa, because everything expressed that universal rectitude on which Christian philosophy had focused on. It is the "key-value" that is discovering itself and is losing its human nature, but keeps its rational feature during Dante's journey until the concession of the Grace by St. Bernardo's intercession to the Virgin Mary. It could be epitomized in power, love and wisdom, and is

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<sup>126</sup> "Ratio iustitiae consistit in hoc, quod alteri reddatur, quod ei debetur secundum aequalitatem" *Sum. Th.*, II, 11, qu. 80, art.1 and II, 11, qu. 58, art. 10;

<sup>127</sup> See *Conv. I, XII,9* and Cicero, *De Officiis*, II, XI, 40;

<sup>129</sup> Peace through Justice is the scope of Christian society in this world if it does not want to contradict itself: the man naturally aims to live in accordance with Justice:

"O vainglorious Christians, miserable wretches!  
Sick in the visions engendered in your minds  
you put your trust in backward steps.  
Do you not see that we are born as worms,  
though able to transform into angelic butterflies  
that unimpeded soar to justice?"

(Purg. X, 121-126)

<sup>131</sup> However, about a Dante's more former legalistic point of view, see King Philipp episode in Purg., XX, 91-93;

able to demonstrate the human ontological bounds justifying the punishments and the assigned rewards. God affirms a through punishing the evil, confirming that the harmony of creation follows the good and recalls the man to respect his freedom<sup>135</sup> and the divine order. If this is obviously a retributive trait of justice – to be sometimes even vindictive (mainly in Hell), to which a constant punishment was added too - this aspect should be intended like a medium and not as God's achievement. The castigation of wickedness and injustice is a theological and rational<sup>139</sup> condition towards the triumph of good; it has to postulate a free and conscious human action, confirming the fact that the damned man admits his penalty and he recognizes it as just because he has provoked Good's indignation<sup>141</sup> and wants to atone for it quickly, in order for God to forgive him through his suffering.

### *3. The holistic feature of Dante's legal theory*

*"I, who had come to things divine from man's estate,  
to eternity from time,  
from Florence to a people just and sane. "*<sup>142</sup>

If it is possible to use a neologism, Dante simply offered us an authentic **self-interpreted**<sup>143</sup>{**onto-teleo**<sup>144</sup>-  
[t(ethical)]<sup>145</sup>} theory of social life in a normative way, through a phenomenological<sup>146</sup> hermeneutics<sup>147</sup> of

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<sup>135</sup> If, however, the work is considering from the allegorical point of view, the subject corresponds to man himself according to his merits or demerits; caught him exercising his free will, he is waiting his reward or punishment by justice. Alighieri, *Epistola a Cangrande*, 25 "subiectum est homo, prout merendo et demerendo iustitie premiandi et puniendi obnoxius est";

<sup>139</sup> "...malum passionis quod infligitur ob malum actionis..." Grotius, *De iure belli ac pacis*, lib. II, cap. XX, § 1,1;

<sup>141</sup> Inf. III,121-126 and Sal. 76, 8 / 94, 1-2 / 99,4;

<sup>142</sup> *"I, who had come to things divine from man's estate,  
to eternity from time,  
from Florence to a people just and sane,"*

(Par. XXXI, 37-39)

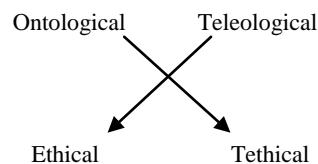
<sup>143</sup> See *supra* note 12;

<sup>144</sup> Even though it has been founded on an "*opus practicum*", it is dutifully finalized. See Christian Wolff, *Philosophia Rationalis sive Logica*, 1728, Disc. Prael, §85;

universal order and its language: in other words, a metaphysics of human being<sup>149</sup>, through an asymptotic relation between author and reader about its meaning.

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<sup>145</sup> It's really interesting that the headword "tethical" summarizes two functions in the same word: Dante could have discovered the essence of society but he has hypostatized it in his time with its values. Then, this complex word can demonstrate a clear rhetorical "chiasma". For these reasons it might be fascinating:



<sup>146</sup> I wanted to cite Mantzavinos again "Heidegger has proposed a hermeneutic phenomenology as a *Hermeneutik der Faktizität* that should replace traditional ontology: its centerpiece being an existential analytic of *Dasein*, i.e., human existence. The meaning of Being should be disclosed as a result of analyzing the unique features of *Dasein*, and *Auslegung* (interpretation) is proposed as a concrete way of being in the world." instead "Gadamer partly adopted this view of ontology, as well as the so called *philosophical hermeneutics* emerged as a philosophical program largely based on the work of these two protagonists. Although epistemological studies on hermeneutics can, they *need not* share these or any other commitments with respect to ontology. Epistemological approaches, either descriptive or normative, *can* start with problems of interpretation and propose solutions to the problems independently of the ontological constitution and structure that underlies each problem area.";

<sup>147</sup> Dante could be departed from a typical conception of poetry such as *narratio fabulosa* and hidden truth *integumentum*, as well as from the four senses of Scripture, Dante's view could found an obscure sense in perceptive word through an extraordinary use of figurative images for an contemplative experience. The Comedia's polysemy as Pietro Alighieri founded in it *seven modi loquendi: literalis* (or *superficialis o parabolicus*) – *historicus, apologeticus, methaforicus, alegoricus, tropologicus, anagogicus* which witnesses the hermeneutical difficulties and confirmed a right interpretative way, able to understand the moral address in an eschatological *fictio*. In Dante's works (but deeply in The Comedy) it could be founded a dialogue between history and eternity on the one side and between human citizenship with traditional membership and non-human citizenship on the other one, like human mind's structural elements . It becomes a special object where analyzing the Aristotelian and Thomist influences on it without to forget that it can't be reduce on scholastic schemes but instead referred to Plato's metaphysical conception. In these terms the Plato's protological aspect is recognized such a founded hermeneutical instrument to understand Dante's thought where it explains a systematic union of human horizon with the transcendent dimension of reality which is founded itself on God. In fact, it can see that the three Plato's *summa genera* (different – being - identical) reflect the three afterlife kingdoms explaining the analogies under a protological foundations (intellectual dimension of reality) as well as the neoplatonic conception can be viewed on the consideration that knowing oneself is the same as knowing our metaphysical groundwork and looking for an elevation toward a perception of a revealed Truth and its connection with our "be in the history" which it never hasn't to close itself to transcendence. The Dante's metaphysical message on protological perspective is doubtless actual: this *scientia* aims to know the whole reality in its each ontological aspects but choosing in them the Good and for this it represents an epistemological instrument by which connecting thought and being toward an implementation between reality and eternity. In his "poetic theology" the moving relation between human conscience of its limits and human desire of limitless, which is represented by a restless research of oneself as quantitative evaluation of meeting between human being and the Divinity. See Mazzotta, *Confine quasi Orizonte*, 5;

<sup>149</sup> Reconsidering Heidegger's thought: "Metafisica è il domandare oltre l'ente, per ritornare a comprenderlo come tale e nella sua totalità" Heidegger, *Che cos'è metafisica*, 61. This goal is obtained by appealing to the ancestral function of understanding and the role of tradition; so, hermeneutics was "Addressing the understanding of religious intuitions, Plato used this term in a number of dialogues, contrasting hermeneutic knowledge to that of *sophia*. Religious knowledge is a knowledge of what has been revealed or said and does not, like *sophia*, involve knowledge of the truth-value of the utterance. Aristotle carried this use of the term a step further, naming his work on logic and semantics *Peri hermeneias*, which was later rendered as *De interpretatione*. Only with the Stoics, and their reflections on the interpretation of myth, do we encounter something like a methodological awareness of the problems of textual understanding. With Augustine we encounter a thinker whose influence on modern hermeneutics has been profoundly acknowledged by Dilthey, Heidegger, and Gadamer. According to Gadamer, it is Augustine who first introduces the universality-claim of hermeneutics. This claim arises from the connection Augustine establishes between language and interpretation, but also from his claim that interpretation of Scripture involves a deeper, existential level of self-understanding. The work of Thomas Aquinas, to which the young Heidegger paid a great deal of attention, has also had an impact on the development of modern hermeneutics. Heidegger, however, was mainly interested in Aquinas's notion of Being, and not in his engagement with specifically hermeneutic issues such as the proper authorship of certain pseudo-Aristotelian texts. Presupposing the relative unity of an author's work, Aquinas questions the authenticity of these texts by comparing them to the existing Aristotelian corpus, thus anticipating a critical-philological procedure that would later emerge as a crucial aspect of Friedrich Schleiermacher's notion of grammatical interpretation. This, however, is not the only point of contact between medieval philosophy and modern hermeneutics. Another such junction is the way in which medieval interpretations of Sacred

It could be an effective way to summarize what has been entirely said, but it would be helpful to explain these adjectives or theoretical elements:

- 0) Self-interpreted (referred to the subject who interprets and who is in the reality)
- 1) Ontological (referred to the nature and essence of object: descriptive function )
- 2) Teleological (referred to the necessary aim of itself: prescriptive function)
- 3) Tethical (referred to the state of things: constitutive function)
- 4) Ethical (referred to the values of itself: axiological function)

In fact, Dante tried to set up a typical approach in legal speculation, named Christian Natural Law doctrine<sup>150</sup>, in a context named “Christian Humanism”<sup>151</sup>, through his both poetical and not-poetical works. He explained how the system of human relations was evolving in his society under a multi-disciplinary point of view, which aimed at revaluing the platonic *ordo sapientiae* in which there is no epistemological

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texts, emphasizing their allegorical nature rather than their historical roots, are mirrored in Gadamer's attempt to rehabilitate the hermeneutic relevance of the allegory.” Mantzanovis, *supra* note 1;

<sup>150</sup> Dante's greatness didn't consist only in describing the political, cultural and religious aspects of his time, but primarily in his extraordinary synthesis between historical and transcendent values, within “Christian cosmic ideology” which it was deeply current in medieval conscience but that it might be able to reproduce itself during centuries and offering itself to a mankind which discovers its values of freedom and moral responsibility, or better, its dignity. Dante's anthropology was affected by a mixture between Aristotelian and Christian doctrines about the essence of nature and the politics. Dante was convinced, like St Thomas and St. Albert, about the necessary role of Aristotle in a right speculation: human rationality, natural disposition of politics and the autonomous action were essential values for philosophy and practice. This established the human celebration of his integrity. St. Thomas represented a point of arrival of a speculation in which the great ancient tradition was renewed and revalued: in fact, the Christian idea of human being with its symbiosis of soul and body was evolving and emerging in those years and it was able to connect itself with the Aristotelian point of view. The bodily elements assumed a special dignity in defining human essence (*Homo non est anima tantum*) See St. Thomas, *Summa Theologiae*, I, q.75, art. 2, 4. Dante was the first thinker-poet who was persuaded on person's unity and the concordance between soul and body: so, it wanted to represent him not only with his vices and defects but even with the greatness of his soul, founding a man's “ultra activity” feature beyond his historical borders. Every aspect of Dante's humanism was interpreting in a such way: the man as main character with his desires and actions but constantly projected to the divine searching the final sense of his life. Dante's ethical and political renovation remained sustained by a Christian secularism as well as faith and reason met themselves in the prophetic vision. Finally, Dante's humanism investigated the human dignity through its axiological eternity and an infinity significant.

<sup>151</sup> Frosini said: “Misericordia e giustizia: sono due motivi spirituali conduttori nell'armonia ideale del Poema, ma sono pure ispirazioni morali della personalità di Dante, in quanto rappresentano due momenti della sua formazione umana e culturale, che fu quella di uomo di fede religiosa e di pensiero civile , portato a meditare sui problemi giuridici e politici...in queste parole è la cifra riassuntiva di tutto il giudizio morale, esercitato da Dante sui personaggi del poema. I tre regni, sono ordinati secondo questi due principi, i quali informano di sé l'insieme dell'universo: la misericordia come invenzione spirituale del cristianesimo (diversa dalla *philanthropia* e dall'*humanitas* v. Lc. 6.36 e Mt. 5.7)...è strettamente collegata con la giustizia divina: il giudizio finale sarà pronunciato in considerazione delle opere di misericordia compiute sui più deboli v. Mt. 25.31). Infatti Misericordia *non tollit justitiam, sed est quaedam justitiae plenitudo* (*Summa Theologiae* Ia, quaest. 21, art.3 ad2); essa è pienezza della giustizia...è la giustizia, lievitata e fiorita: man mano che Dante avanza nel suo viaggio oltremondano, si vede la giustizia nuda e dura dell'Inferno, coprirsi di pietà nel Purgatorio (XI, 36-39), in misericordia in quella Roma ove Cristo è romano (Par.III, 79-81). Diversamente dalla carità che rimane un rapporto tra uomo e Dio (*Summa Theologiae* 2.2, q. LVIII, a.6), la misericordia è un rapporto tra uomo ed uomo.” Frosini, *supra* note 36, *passim*.

difference in the substance of Knowledge, but only in the methods for acquiring it. It is an encyclopedic *summa notitiarum* qualified by its systematic structure, symbolic<sup>154</sup> consistency (or better an ontological significance of sign), practical<sup>155</sup> aim (or better again, the reader's address such as the scene of production of sense), harmonic rationality with metaphysical breath and heuristic potential, where its completeness<sup>156</sup> can be found in the appeal to faith. This is the reason of this small *excursus* from a "pure" political text, such as *Monarchia*, to a "hybrid" essay like *Convivio* and minor works of his poetical masterpiece (*The Comedy*): a single text cannot be read independently -and consequently a single concept cannot be understood without considering its semantic relations - from the others even if the entire is more than the simple sum of its parties<sup>157</sup>.

Therefore, starting from his personal life<sup>158</sup> and seeing the human nature itself<sup>159</sup>, Dante fixed with a bottom – up method<sup>160</sup> (or immanent process) the hypothesis of opposite human feelings of political nature

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<sup>154</sup> With reference to the role of symbol, it's very interesting what József Pál found: in fact he wanted to demonstrate that Dante, "besides the four sense of meaning, applied on hermeneutic method, typology, as well (i.e. historical and symbolic typology derived from the Bible and St. Paul letters). The Poet describes every important historical, natural or human event as a result of God/man/nature relationship, ( i.e. the periodic intervention of God in human history), renewed with salvation. In the inherent terminology, referred to the period before Christ, figure, prefiguration and fulfilment are the operative concepts and words, while in the Christian period these are repetition, exemplarity and renovation. Concerning the language, the different poetical constructions (letters, word forms, stress, hendecasyllabus, rhymes) the insertion in Latin, have an independent significance. These consequently recurring elements and citations from the other works of the poet reinforce Dante's consciousness in this aspect of medieval hermeneutics." Pál, "Ermeneutica Struttura", 63;

<sup>155</sup> In this term the moral element takes a central role: this is the world of free and voluntary human action where "...the beauty of wisdom, which, as has been said, is the body of Philosophy, derives from the order of the moral virtues which enable her to give pleasure perceptible to the senses." Conv. III, XV, 11;

<sup>156</sup> St Thomas taught that the true beatitude consists itself in *visio Dei* and in Heaven, Dante not only wanted to discover the latest answer for his own existence, but at the same time, he intended offering a glance on human destiny and its eschatological completion. Thus, the passage between reason and vision, through the faith, represents for Dante and the entire medieval conscience, the existential "finishing line" as the final part of the Comedy explains: " Here my exalted vision lost its power. / But now my will and my desire, like wheels revolving / with an even motion, were turning with / the Love that moves the sun and all the other stars." Par. XXXIII, 143-145;

<sup>157</sup> This reflects two constitutive axioms in hermeneutics: the Frege's principle of complexity ("...the meaning of a complex expression is supposed to be fully determined by its structure and the meanings of its constituents.") and the Meier's principle of equity by which "the meaning for hermeneutically true that best comports with the flawlessness of the originator of the sign, *until the opposite is shown.*" See further Mantzanovis, *supra* note 2;

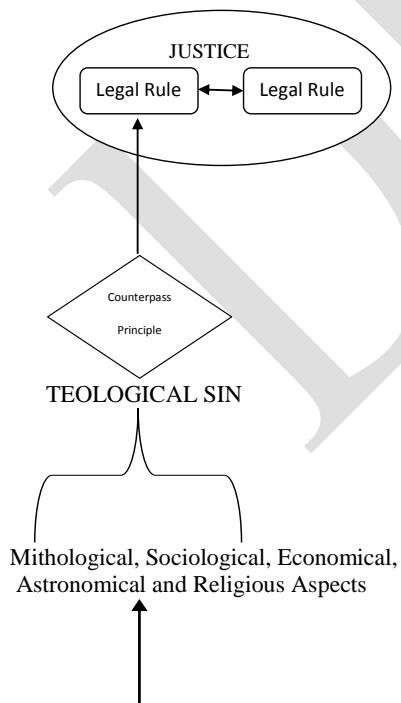
<sup>158</sup> "Dante's taking is own life ...as the fulcrum for his Christian didactic poem and epic fiction or history foregrounds this work's standing as interpretive undertaking ... Dante's poem programmatically places this ineluctable structural condition center-stage of fiction itself, blurring the boundary between fact and fiction in reaching toward their common origin in interpretation, in this instance in the mutual belonging of Dante as literary invention and as historical personage together, since the one would not be what it is at all without the other" Franke, *supra* note 13, 5;

<sup>159</sup> Could it be named "hermeneutic circle"? In fact if "The foundational law of all understanding and knowledge is to find the spirit of the whole through the individual, and through the whole to grasp the individual" as Friedrich Ast originally said, and Emilio Betti precised stating "This is one way of trying to express what has been called the "hermeneutical circle". What we are trying to establish is a certain reading of text

or expressions, and what we appeal to as our grounds for this reading can only be other readings. The circle can also be put in terms of part-whole relations: we are trying to establish a reading for the whole text, and for this we appeal to readings of its partial expressions; and yet because we are dealing with meaning, with making sense, where expressions only make sense or not in relation to others, the readings of partial expressions depend on those of others, and ultimately of the whole.” Matzanovis, *supra* note 2;

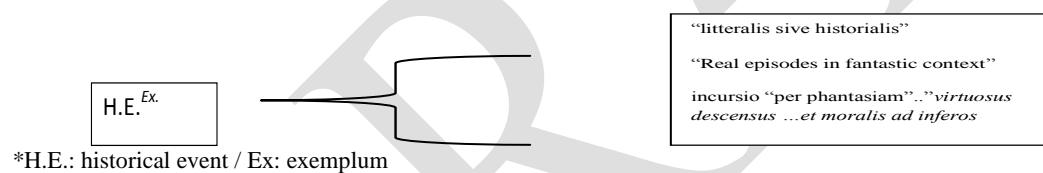
<sup>160</sup> According to Rosa’s sociological thought “ ...the situation of social science and social philosophy is characterized by what can be called ‘double-hermeneutics’, which is to say that the social scientist interprets a reality that is itself already an interpretation. This second interpretation is taken to be a form of societal ‘self-interpretation’ which is constitutive of social institutions and practices. Thus, Charles Taylor holds that what is interpreted by social science ‘is itself an interpretation; a self-interpretation which is embedded in a stream of action’. When speaking of socially constitutive self-interpretations, I mean in the following a certain sense of man and his relation to society which is embedded in social institutions and practices and defines their ‘point’. Only in the light of self-interpretations of that sort can actions and institutions be made intelligible. Therefore, in the view of interpretive social science, there is no social reality, and no form of individual or collective action or identity, independent of the self-interpretations that define their point, meaning and character. ...However, social actions, institutions and structures as well as individual and collective identities are affected by these factors precisely through modifications of the guiding self-interpretations; there are no social changes independent of the latter. ....I want to suggest that self interpretation should best be understood as a very wide concept in the tradition of Hegel...; a concept that does not only include conscious, reflective processes but also elements of taste, body-practices ,and emotions like shame and guilt etc. Self-interpretations lie at the heart of our social institutions and practices, and of our individual, incorporated habits, long before they become explicit in language and theories ...What is meant by self interpretation thus is a certain sense of what we are as human beings, of what society is, of what our relations in and toward society are like, and a sense of what truth, time and eternity might be, of what a good life consists in etc. In this sense, human beings are ‘interpretation all the way down’, which means that social existence and interpretation indeed become coextensive. it is self-interpretations that provide meanings to actions, institutions, individual lives and societies. They inevitably define ‘the point’ of an action or institution. However, it is obvious that we will find nothing like a monolithic, closed and coherent self-interpretation of a society, but rather a complex, multi-layered, partly self-contradictory, but nevertheless related set of self-interpretations.” Pavolicova, “Four Levels Self-Interpretation”, *passim*; this essay dealt with the problem about the sense in which the idea of humans as self-interpreting modifies the understanding of ethics, namely, if the idea of self-interpretation changes the understanding humans as moral beings. Furthermore the Danish psychologist Brinkmann claims an identification (or coincidence?) between human identity and interpretation of himself: “The hermeneutic tradition in psychology and the social sciences claims that we should understand human identity in terms of self-interpretation....[T]wo dimensions of identity as self-interpretation are outlined: that we can only have an identity if we are committed to issues of moral worth; and that self-interpretation involves a temporal dimension that has a narrative form. Second, [it may be found] four levels of self-interpretation in order to show that identity is not confined to either social or mental representations, but is dispersed across bodies, persons, practices, and society”. Brinkmann, “Identity Self-Interpretation”, 410;

This scheme has to read in relation to Self Interpretation scheme at note 12



and ferocity<sup>161</sup> - typical of the medieval natural law philosophy. He has enucleated *inter alia*<sup>162</sup> a synthetic and modern definition of Law (*jus*) with its function and scope<sup>163</sup> in society. He investigated the human "having to be" in relation to its natural and supernatural purposes, through the role of poetry<sup>164</sup> and its personification technique, qualifying it as an existential act; he was inspired by a desire to transpose the metaphysics into real times with an ascendant and proportional analogy. With reference to the public meaning of Law, instead, Dante anticipated the "realistic" conception of the "State of Nature", where the sovereignty (*imperium*) comes from a divine source but remains under the power of the Law, which has to be necessarily codified, assuring its certainty. Then, he contributed to establishing an original constitutional organization with an universalistic ambition and a federal system that overlaps with the States aiming to ensure peace and justice among them and their sub-political aggregations<sup>165</sup>.

On the other matter, Dante contributed to defining freedom as judgment of personal and social responsibility, which assumes a moral value by being committed to choosing<sup>166</sup> between possible



<sup>161</sup> These represent what human was and what human should be; Based on his philosophical background (*in bonam partem* by Plato and Aristotle while *in malam partem* by Hobbes);

<sup>162</sup> "What discovered in this poem,...was an approach to truth and to rendering it active, that is , to making it happen historically, of quite another order of power and significance. He discovered the capability of the work of art, as the site of a coming to be of truth, to open the world anew and give a new sense of history, actually founding an order of significances, or in other words a world, and originating a determinate historical dispensation." Franke, *supra* note 13, 8;

<sup>163</sup> The 19<sup>th</sup> cent. legal doctrine named as "*Interessenjurisprudenz*" founded by Rudolf von Jhering could have known the teleological role of Law which had been expressed by Dante a few centuries before it, giving up the opposite "*Begriffejurisprudenz*" doctrine as well as the dogmatic methods;

<sup>164</sup> Resuming Aristotle : "...since the universal is consequent upon the particular, that which is necessary is also possible, though not in every sense in which the word may be used." *On Interpretation*, Part 13. This means is saved (*inter alia*) the principle of no contradiction;

<sup>165</sup> This hasn't been treated such as an utopian project written by a dreamer but a real evidence that was established in several European countries between XVII and XX century. See Falsitta, *supra* note 57, 73 (nt.31) and 77 (nt 43);

<sup>166</sup> The free will was defined where "Therefore it must be borne in mind that the first principle of our freedom is free will, which many people talk about but few understand. For they go so far as to say that free will is free judgment in matters of volition." Mon. I, XII,2. And "Now if judgment controls desire completely and is in no way pre-empted by it, it is free; but if judgment is in any way at all pre-empted and thus controlled by desire, it cannot be free, because it does not act under its own power, but is dragged along in the power of something else" Mon.

alternatives<sup>167</sup>. The exercise of freedom is not limitless, because it finds its deep meaning in God: the man is a frail being<sup>168</sup> and is absorbed in an environment where he has to accept the divine will and to be daily conducted both by authorities<sup>169</sup> and his own practical reason. The human freedom is a free will, but not an unlimited free volition, because eternal law and natural law always realize a substantial adequacy to divine will. Furthermore, this freedom, even though naturally oriented, has to be inclined to that Love that generates happiness, inasmuch it is inclined to the natural good. On the other side, by referring it to the private or dualistic legal point of view, Dante repurposed a synallagmatic conception about interpersonal relations, both directly on punitive setting and indirectly on the deontic structure founded on a natural law perspective: this could be extended to a greater commutative justice theme under equivalent and proportional forms.

All of these intellectual products have been founded on axiological and methodological background dealt with a relation between faith and reason, order and justice, prophecy<sup>173</sup> and eschatology. Therefore, after seven centuries, Dante's doctrine could be identified as an ontological Mankind's<sup>174</sup> analysis<sup>175</sup> or, even

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I,XII, 4. In other words, the spirit of human freedom requires that the desire (*appetitus*) doesn't come early than, and doesn't shape the judgment (*judicium*) in a way that the human will adapts itself to reason.

In fact,

"Consider how your souls were sown:  
you were not made to live like brutes or beasts,  
but to pursue virtue and knowledge."

(Inf. XXVI, 118-120)

<sup>167</sup> "...man is deserving of praise or blame only for those things which it is in his power to do or not to do; but in those things in which he has no power, he deserves neither blame nor praise, since both must be attributed to another person, even though these things be part of the man himself." Conv. III, IV, 6.

<sup>168</sup> "At first it tastes the savor of a trifling good.  
It is beguiled by that and follows in pursuit  
if guide or rein do not deflect its love."  
(Purg. XVI, 91-93)

<sup>169</sup> "Therefore, there was need that laws be set  
to act as curbs, need for a ruler to discern  
at least the tower above the one true city."  
(Purg. XVI, 94-96)

<sup>173</sup> See Bianchini "Dante Giurista", 117-149;

<sup>174</sup> Dante considered the human being structured by soul and matter, identifying it like a medium between two worlds (Earth and Sky): it has remained famous his allegory with the equatorial horizon which shares both the hemispheres. See Mon., III, XV, 3-4;

better, as its axiological constitution. The universal theory of justice, in the more general study of the human being, as the concrete universal in relation to its specific substance of created nature, represented for Dante the greatest commitment of his life, achieved through a strong desire to discover the occult truths and to spread them to others<sup>176</sup>.

To conclude, shall one consider Dante also a jurist? Taking into account these sources, there would be no reason to answer negatively. However, he would not be considered as a modern jurist, i.e. a legal executer, but rather a legal theorist as a whole, an inquirer of the Law: a new Roman *jure consultus*, who practiced, as Ulpianus said, “*the art of knowing what is good and just. .... dividing right from wrong, and distinguishing what is lawful from what is unlawful; desiring to make men good through fear of punishment, but also by the encouragement of reward; aiming (if I am not mistaken) at a true, and not a pretended philosophy.*”<sup>177</sup>. Thus, one shall surely consider Dante both as a laic<sup>178</sup> and a moral philosopher<sup>180</sup>, who

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<sup>175</sup> Accordingly to that “Dante presents the supreme and absolute truth of Christianity, which his poem would propound, in a way that makes it indissociable from the story of his own individual search and journey. The way of understanding put in practice Dante’s work, as in all work of interpretation, consist in finding oneself in the midst of what is to be understood and understanding oneself and it in relation to each other.” anticipating Gadamer’s formula (All understanding is the application of what is understood to ourselves). So, “Dante dramatizes on an epic scale this basic principle of interpretation, ....[and his] work is exemplary and revelatory of the phenomenon of the interpretation in general.” Franke, *supra* note 13, 4. In this circumstance: “Christ is the key to all true interpretation, and the sprung bolts on the Gate of Hell mentioned at this juncture allude to him (VIII.126) ....Christ is the interpretive key that clears away all impediments to Christian understanding for the reader. He unveils allegorical meaning behind the fatal text (‘la scritta morta,’ III.127) of the letter that kills: ‘For the letter killeth, but the spirit giveth life’ (2 Corinthians 3:6). “Hell is opened now for Dante as protagonist, as well as for his reader, both of whom enter into ‘secret things’ (‘cose segrete,’ III.21), in order to emerge with new and enhanced understanding.” *Ibidem*, 5;

<sup>176</sup> “For all men whom the Higher Nature has endowed with a love of truth, this above all seems to be a matter of concern, that just as they have been enriched by the efforts of their forebears, so they too may work for future generations, in order that posterity may be enriched by their efforts.... (5)Now since among other truths which are hidden and useful, a knowledge of temporal monarchy is both extremely useful and most inaccessible, and since no one has attempted to elucidate it (on account of its not leading directly to material gain), I propose to draw it forth from where it lies hidden, as well as my wakeful nights may be of benefit to the world, and as well as I may be the first to win for my own glory the honour of so great a prize. (6) It is indeed an arduous task, and one beyond my strength, that I embark on, trusting not so much in my own powers as in the light of that Giver who “giveth to all men liberally, and upbraideth not”. See, *Monarchia*, 1, 1;

<sup>177</sup> pr. *Iuri operam daturum prius nosse oportet, unde nomen iuris descendat. est autem a iustitia appellatum: nam, ut eleganter celsus definit, ius est ars boni et aequi 1. Cuius merito quis nos sacerdotes appelle: iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illico discernentes, bonos non solum metu poenarum, verum etiam praemiorum quoque exhortatione efficere cupientes, veram nisi fallor philosophiam, non simulatam affectantes.*” D.1.1.1. (*Ulpianus Libro Primo Institutionum*).

<sup>178</sup> Dante gave back to the State its civil function and its autonomy; he refused the Pope’s technocratic temporalism and revalued those human universal values into the re-foundation of his Empire;

<sup>180</sup> “*He who casts off from shore to fish for truth without the necessary skill does not return the same as he sets out, but worse, and all in vain.*”  
(Par., XIII, 121-123)

adopts an active and eschatological<sup>181</sup> hermeneutics<sup>182</sup>, oriented to the text of not merely intellectual but sensitive reality (“*nomina sunt consequentia rerum*”<sup>183</sup>), and spiritual<sup>184</sup> as well. Through its method applied to literature and poetry, Dante pursues “the truth like subject, the profit like intent, and the interesting thing like medium”<sup>185</sup> and aims to a whole hermeneutics of whole humanity where its salvation<sup>186</sup>, happiness (*eudemonia*)<sup>187</sup> and human reason are nothing more than merciful<sup>188</sup> gifts of God.

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Philosophy under Dante's point of view was characterized such as a kind of therapy in front of the life pains and a key that permitted the human being to gain the happiness: any man, without social or economical limit could devote himself to obtain the knowledge, expressing an egalitarian and democratic soul which represented an internal evidence of justice.

Furthermore, “Dante's hermeneutic of faith can actually be continuous with his vision of historicity as a constitutive of truth...[it belongs] to interpretation rather than to “knowledge” is that a revelation of truth of a transcendent, eternal order in the form of a historical event ... [relating to] the founding of Christianity: ..the revelation of transcendent God in the historical man Jesus. Above all Dante's interpretive revelation of truth must gain its validity from participation in this master event. Interpretation is thereby revealed as an act of total existential conversion, of turning, first of all upon oneself and one's past, in answer to a claim one recognizes and the concomitant opening of a new horizon.” Franke, *supra* note 13, 23. This approach enforces an interesting argumentation: “ ...the best that humans can achieve of their own rational initiative would be the peculiar predicament that Dante ascribes to Aristotle: to live in desire without hope of attaining any eternal happiness, even were that to mean that the reward for such a living would be to live in grief without torture”. Aikin S. and Aleksander J., “All Philosopher”, 29. Aleksander citing Averroé's claimed that man's ultimate felicity does not consist in the human knowledge which comes through the speculative sciences, but through a connection with a separate substance, which they believed to be possible for man in this life. But, since Aristotle saw that there is no other knowledge for man in this life than through the speculative sciences, he maintained that man does not achieve perfect happiness, but only a limited kind of it, searching the whole Theodicy. In Dante's theory, “Philosophy had to be mitigated by the Divine (Rm, 5, 1-2): in effect Dante's depiction of Limbo seems to suggest that, because human beings must represent the possibility of such happiness to themselves in order to found a moral order, there can be no guarantees that such a representation to ourselves of the good we desire will ever be within our personal grasp. And this, then, is why all philosophers must go to Hell (or, more precisely, live in Limbo).... The person who rejects God does so because she did not understand properly who God was or because she did not know what she was rejecting when she rejected His commands, then she cannot deserve full punishment. She made an error, but it was one not of her character, but of her grasp of the divine.” *Ibidem*.

<sup>181</sup> Gianfranco Maglio defined Dante such as: “I' interprete del valore dell'ordine”; really “l'ordine non è un risultato di un'attività, ma una condizione ontologica di ogni realtà, ciò che rende possibile l'esistenza e la permanenza degli esseri, esprimendo l'analogia e la somiglianza con il creatore. L'ordine di Dante è il necessario passaggio dal finito all'infinito, dal temporale all'eterno, guarda al suo completamento in Dio che è il vero fine di ogni cosa ed il perfezionamento ultimo dell'umana natura. Il senso ultimo dell'ordine, che si rivela nella sua verità in Dio, è il vincolo d'amore che tiene unito l'universo come la giustizia che di quell'ordine è manifestazione, si proclama come misericordia così come enunciato in Sal.25, 6”. Maglio, *supra* note 75, 207;

<sup>182</sup> “The realization of the journey in an interpretive dimension is then carried to the level of the reader programmatically by Dante's explicit *meta - narratological* addresses to the reader” Franke, *supra* note 13, 7;

<sup>183</sup> Vita Nuova, XIII, 4 “since, as has often been said, names are the consequences of the things they name: *Nomina sunt consequentia rerum*.” Originally, this apophthegm may be found in Justinian's *Institutiones*, II, 7, 3 (“*nos ... consequentia nomina rebus esse studentes ...*”);

<sup>184</sup> “Spoken words are the symbols of mental experience and written words are the symbols of spoken words...This matter has, however, been discussed in my treatise about the soul [On the Soul], for it belongs to an investigation distinct from that which lies before us.” Aristotle, *supra* note 162, 16a, 1-2, 8;

<sup>185</sup> Originally “...l'utile per scopo, il vero per soggetto e l'interessante per mezzo” written by Alessandro Manzoni in his “*Lettera a Carlo d'Azeglio sul Romanticismo*”;

<sup>186</sup> “Dante's Hermeneutics of Salvation is a sustained argument for a faith-based reading of The Comedy. Christine Baur provides a philosophical foundation for the truth claims of the poem, which she locates in the states of being that interpretation creates in the pilgrim, the souls he encounters, and the reader. “Drawing chiefly on Heidegger, Baur argues that reality is inseparable from a person's orientation to the world; phenomena are as they show themselves to us. If I believe things and my knowing them are entirely discrete, I am not simply a dualist; I have consigned myself to the world this stance brings about, a world in which I am either a passive subject unable to resist external forces or a self-idolater for whom things exist for the sake of the meaning I assign them. More than frames or habits of mind, Dante presents both these ways of seeing as ‘infernal’ modes of existence; the damned inhabit a hell that they in part have made..... ‘Salvific’ hermeneutics is likewise a form of being; it “imparadeses” the self that under stands its finiteness is the precondition of transcendence—that the restrictions of time, space, and matter

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actually warrant our freedom to choose a future of not-yet-realized possibilities. As the pilgrim journeys through the realms of the afterlife, he progresses from the confinement of hellish to the liberty of celestial awareness. And the reader who follows him realizes that he, too, has a ‘duand salvific for him’. Every hermeneutic posture is at root a disposition toward time. Penitential interpretation repudiates the nostalgic utopianism of this view; it reforms the past by giving events a future. On each terrace of Purgatory, souls recall their vices in a present that is oriented toward a grace already assured but still to come. Penance is conversion, and conversion a being-in-the-world that is fundamentally heuristic. The penitent’s flesh-and-blood counterpart is the reader for whom Dante’s journey is not an ‘event that happened to someone else long ago’ but a narrative he helps write by choosing ‘possibilities that deepen his present, past and future self-understanding’. Paradisial hermeneutics is the activity of salvation: the dialectic that connects a person with the absolute; it is the ‘interpretive horizon’ disclosed to those who recognize that reality is grounded in ‘faith, hope, and love’, which in turn transforms the world they occupy.” Ginsberg, Review, *passim*. In relation to it but in a static way “On our account, only those who know what they’ve chosen in rejecting God can deserve Hell. It seems clear that only someone with appropriate philosophical acumen could have that kind of understanding. Being familiar with a textual tradition is clearly insufficient, as the art of interpreting those texts is what’s required to take them appropriately (for example, nobody takes Solomonic wisdom to be in the threatening to chop up things in contention)”. Aikin S. and Aleksander J., *supra* note 167, 30;

<sup>187</sup> Enrico Fenzi underlined how Dante dealt with the ontology of happiness in different occasions: one of them was in Convivio, where he lead a reflection on the relationship between happiness and knowledge, following a theoretical journey from the Holy Bible (Qohelet vs Proverbs XIII, 19) toward St. Augustine, St. Gregory and St. Bonaventura until St. Thomas: “To this we may simply reply that the natural desire within all things is proportionate to the capacity within that thing which has desire” Dante wrote in Conv. III,XV, 8. The whole happiness, it will be realize in the Heaven even though it would be possible a participation in its state of grace in this world, through a dialectic between desire of knowledge and the impossibility of a complete fulfillment: this kind of happiness can be considered such as the peace which the man can found in this world because he finds himself in communion with God when he operates following the theological virtues. See for further analysis Enrico Fenzi, “Conoscenza Felicità”, *passim*. In other words, like a singular epilogue: “We must know, however, that we may have two kinds of happiness in this life, according to two different paths, one good and the other best, which lead us there. One is the active life, the other the contemplative life; and although by the active, as has been said, we may arrive at a happiness that is good, the other leads us to the best happiness and state of bliss, as the Philosopher proves in the tenth book of the Ethics.” Conv. IV, XVII, 9;

<sup>188</sup> “Legge umana e legge divina, la legge della giustizia e la legge della misericordia, rappresentano in Dante due momenti di un unicum; stanno nello stesso rapporto tra antico e nuovo testamento , in cui la legge dell’amore assume e supera la legge della vendetta. Anche se rimane fortissima la vena del profetismo biblico con la giustizia riparatrice e vendicatrice ed il suo paradiso non è fatto per i semplici, ma per color che sono già stati personaggi. Dante può definirsi come il Virgilio della rinnovata civiltà: non solo come iniziatore di un nuovo modo di scrivere, ma proprio attraverso la lingua del popolo, si fa letterato evangelico, ossia si rivolge all’umanità, di uomo tra gli uomini.” Frosini, *supra* note 36, 319;

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