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# Dante's Political Narratives

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## ABSTRACT

This contribution investigates Dante's work by putting it under the lens of law and the legal literature that has taken an interest in his reflections. The essay is divided into three parts: the first part discusses some legal writing on Dante's work; in the second part, I analyze some passages of the *Monarchia* in which Dante's imperial vision emerges; in the third part, I discuss the three political cantos of the *Commedia* in which Dante deals with the municipal, national and universal

dimensions of political action. I will argue that the political Dante does not reach the intellectual heights of Dante the poet, and that his conceptions of politics and law are contradictory and remain within the context of medieval culture.

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## KEYWORD

Dante, Monarchia, *Commedia*, law, literature, polyphony

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## SUMMARY

- I. LEGAL LITERATURE ON DANTE;
- II. MONARCHIA;
- III. COMMEDIA;
- IV. CONCLUSIONS

Dante Alighieri is a poet of universal value, the father of the Italian language and a genius of his time; his work reflects the tormented events of an adventurous and troubled life. His political exile, condemnation to death, and separation from his beloved Florence have strongly marked his literature. But alongside Dante's poetic genius, was there also a political or legal theorist?

This contribution investigates Dante's work by putting it under the lens of law and the legal literature that has taken an interest in his reflections. The essay is divided into three parts: the first part discusses some recent legal writing on Alighieri's work; in the second part, I analyze some passages of the *Monarchia* in which Dante's imperial vision emerges; in the third part, I

discuss the three political cantos of the Comedy in which Dante deals with the municipal, national and universal dimensions of political action.

The contribution intends to answer three fundamental questions: is Dante a compelling legal and political thinker? What kind of political vision does Dante articulate: realist, utopian or theological? Does Dante cross the frontier into political modernity?

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## I. Legal Literature on Dante

Among the innumerable studies of literary criticism, Justin Steinberg's 2013 publication, *Dante and the Limits of the Law*, made a great splash. It purported to be the first comprehensive study of the underlying legal structure of Dante's *Divine Comedy*<sup>1</sup>.

Steinberg argued that:

“Dante’s literary-theoretical framework is simultaneously and manifestly a legal one. His engagement with the law is most evident in the *Commedia*, where he imagines the afterlife as a highly regulated administrative body - complete with an elaborate network of local laws, hierarchical jurisdictions, and rationalized punishments and rewards. [...] Unlike his contemporary Cino da Pistoia, it is improbable that Dante had any formal training in civil and canon law, and his sporadic references to specific legal texts are concentrated in doctrinal works such as *Convivio* and *Monarchia*. On the other hand, as a convicted criminal and former public official, Dante was immersed in the legal culture of his day, and the *Commedia* is permeated with contemporary juridical rituals of everyday experience: deterrent and retributive punishment; testimony and confession; litigation and sentencing; special privileges, grants, and immunities; amnesties and pardons; and a variety of forms of oaths and pacts. These enactments of the life of the law - not his explicit citations of legal doctrine - represent the poet’s most profound statements about law and justice.” (Steinberg 2013, 1-2).

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<sup>1</sup> Steinberg 2013, 175: “There is no comprehensive study of Dante and the law”.

Steinberg sees Dante as interested in describing the phenomena that revolve around the law and the imaginative conditions that make it effective. The concept of exception is central, however understood in a medieval jurisprudential sense rather than a modern, political one. Interested in the role of discretion, both in art and in law, Dante tries to identify the boundaries of the law. Steinberg explores notions that he sees as contiguous to law: *Infamy* which lies beneath law; the *Arbitrium* beyond the law; the *Privilegium* above the law and the *Pactum* next to the law:

“Dante seeks in the *Commedia* to restore the common values, exemplary narratives, and disciplining practices that exist at the boundaries of the law. His poem is meant to occupy the interstices between law and life, to provide the moral and aesthetic preconditions necessary for the law to thrive. [...] Dante understood that compliance with the law depended more on an imaginative attachment to the ideal of an universal ‘imperator’ (emperor) who ‘in tutte le parti impera (rules in all parts; *Inf.* 1.124, 127) than in actual force.” (Steinberg 2013, 5).

While Dante scholars have concentrated mainly on the idea of justice, they have generally neglected the more specifically legal thought in Dante. This could be because Dante’s legal ideas are not very original, not very relevant and often apodictic and/or contradictory. But to admit this would mean relativizing the image of the divine poet, something that Dante scholars are generally reluctant to do. They have therefore preferred to analyze the fragments of Dante’s work in which he deals with legal phenomena to exalt their virtues, rooted in their assumption that Dante can do no wrong!

In this contribution, I would like to argue instead that, while Dante is a giant of Italian and medieval literature, a universal and eternal poet, his ideas about politics and law are not very innovative, coherent or precise.

In arguing for a measured approach to Dante as a legal and political thinker, I am building on doubts authoritatively expressed by Ernst Kantorowicz in asking:

“but who would care in any event to label Dante, the judge of the dead and the quick, a jurist?” (Kantorowicz 1966, 453).

Sceptical of a juridification of Dante's work, Kantorowicz nonetheless closed his monumental work on medieval political theology and the rise of the abstract modern state with a chapter dedicated to him:

“the image that Dante gave of the prince and the [...] monarch reflects the conception of a royalty centered on man and of a purely human *Dignitas* that without Dante would not have existed or that in any case would not have emerged in his time. Every Dante interpretation is destined to remain fragmentary, while Dante is complex in itself.” (Kantorowicz 1966, 454).

According to Kantorowicz, Dante was a genius with something to say about everything, even the legal tradition. And it is precisely the relationship between legal sources and Dante's work that Italian scholars have coined a “legal Dantism”, a branch of research into the

“intimate relationship that unites Dante's work to the sense of law and the legal language of his time, so that we can speak of a legal dimension of his moral and literary world and even of a manifest simultaneity of the theoretical-literary structure of his work with a sapiential nature and open to the most varied interferences of the common law”.<sup>2</sup>

A leading exponent of legal Dantism is Diego Quaglioni, who edited the new edition of the *Monarchia*, and argued that

“in Dante, the language of law, which he uses and reshapes as an expression of a flawless and redemptive “rule of reason”, is distinctly imprinted in Dante's political lexicon.”<sup>3</sup>

This idea that has been pushed further by another prominent legal Dantist, Claudia Di Fonzo, who argues that

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<sup>2</sup> D. Quaglioni 2022, 113: “Un'intima relazione unisce l'opera di Dante al senso del diritto e al linguaggio giuridico del suo tempo, sicché si può parlare di una dimensione giuridica del suo mondo morale e letterario e finanche di una manifesta simultaneità della struttura teoretico-letteraria della sua opera con la natura sapienziale e aperta alle interferenze più varie del diritto comune”.

<sup>3</sup> D. Quaglioni 2022, 121: “in Dante la lingua del diritto, di cui egli si serve e che egli riplasma come espressione di una indefettibile «regola di ragione» e della sua funzione eminentemente salvifica, e' impressa nel lessico politico di Dante come un'impronta distintamente leggibile.”

“the *Commedia* [...] is also the greatest legal fiction in the history of Italian literature which, following the tradition of the *partimen* of the troubadours, serves to pass judgment on ancient and recent history and to make Dante into an anti-Pilate. These are the phases of the great trial held ‘out of this world’..., in the presence of God as judge, Christ and Mary as defense attorneys”.<sup>4</sup>

The origins of contemporary legal Dantism can actually be traced back to the first publication of one of the greatest legal minds of the twentieth century, Hans Kelsen. In 1905, at the age of 23, he published “*Die Staatslehre des Dante Alighieri*”, an original book in which he investigated the literary culture of law in the work of a medieval poet. Although advised against taking this path by his academic superiors, the young Kelsen began his career in public law with a work that would have completely opposite characteristics to the later scientific production for which he would be renowned. The title is curious: the “*Staatslehre*” is a typical German expression indicating the theory of the State; *Lehre* is a lemma that expresses the conjunction of academic teaching and consolidated theory, *Staat* is obviously a modern word, introduced into the political and legal lexicon of modernity by Machiavelli and therefore unknown to Dante in its political meaning (Dante uses the noun “*stato*” only in sense of condition, never meaning a noun that indicates a political community established permanently in a given territory).

Kelsen’s first book was published twice in Italy, once in 1974 and then again in 2017. In the absence of an English translation, it is interesting to note the publication of a Portuguese translation in 2021, mainly due to the Brazilian legal academy’s fascination for Kelsen (who made an important contribution to the draft of the Brazilian constitution of 1933).

Why, we may ask, was Kelsen so attracted to Dante’s poetry? What does Dante, a man of the Italian Renaissance, have in common with Kelsen, a Jew from Prague, who taught in Cologne, Zurich and Berkeley? I believe that the answer lies in three directions: 1) the experience of political exile - Dante

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<sup>4</sup> Di Fonzo 2019, 35–36: “La *Commedia* [...] è anche la più grande finzione giuridica della storia della letteratura italiana che, nel solco della tradizione dei *partimen* dei trovatori, serve a dare un giudizio sulla storia antica e recente e a rendere Dante un anti-Pilato. Sono gli atti del grande processo celebrato ‘fuori dal mondo’ (la formula è di Cesare Segre), nei confronti del mondo e della storia esperita da Dante per conoscenza e per esperienza, al cospetto di Dio giudice, essendo Cristo e Maria avvocati difensori”. See also: Di Fonzo 2023.

was expelled from Florence, and Kelsen fled European racial persecution; 2) a common nostalgic and universalistic vision - Dante idealized the Holy Roman Empire, and Kelsen the Austro-Hungarian one; 3) a deep desire for harmony, a negative evaluation of conflict and a religious aspiration towards the unity of creation and of the cultural world.

Kelsen argued that no one before him had critically examined Dante's legal doctrine:

“For a more in-depth understanding of Dante's political position, the general doctrine of the State according to the Poet, which underlies it, has not been systematically exposed from a legal point of view or examined in a sufficiently critical manner so far.”<sup>5</sup>

Kelsen does not idealize Dante; he sees an author fighting against two sides of himself, one a medieval scholastic thinker, the other a Renaissance humanist:

“Dante's doctrine of the state is the most excellent expression of medieval doctrine and at the same time - at least in many points - its overcoming. And it is for this reason that Dante's doctrine of the State arouses our interest, for the fact that in it Dante, a medieval man of the Scholastica, fights against Dante, a modern man of the Renaissance. And it is also what makes us understand and excuse some obscurity and inconsistency of the Poet's doctrine.”<sup>6</sup>

Kelsen seems attracted precisely by the fact that Dante's political thought, unlike his poetry, has been basically ignored:

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<sup>5</sup> Kelsen 2017, 17: “Dennoch ist die für das tiefere Verständnis der politischen Stellung Dantes grundlegende, allgemeine Staatsdoktrin des Dichters von juristischer Seite bisher noch nicht systematisch dargestellt oder genügend kritisch untersucht worden. Diese Lücke auszufüllen, hat sich vorliegende Arbeit zur Aufgabe gesetzt.”

<sup>6</sup> Kelsen 2017, 2: “Denn abgesehen davon, dass die vornehmlich staats-theoretischen Problemen gewidmete Schrift des Dichters “Über die Weltmonarchie” ähnliche Publikationen ihrer Zeit sichtlich übertrifft, ist die Staatslehre Dantes der vorzüglichste Ausdruck der mittelalterlichen Doktrin und dabei, - in vielen Punkten wenigstens, - zugleich deren Überwindung. Darum ist uns auch die Staatslehre Dantes so interessant, weil in ihr der mittelalterliche Scholastiker und der moderne Renaissancemensch Dante miteinander ringen! Und das ist es auch, was uns manche Unklarheit und Inkonsistenz in der Lehre des Dichters verstehen und verzeihen lässt”

“Dante political philosopher occupies a prominent place among all the public law thinkers of his time. [...] We have already shown what new and rich ideas of the future are in his doctrine and we have seen how Dante fought against the concepts and prejudices of his time, how he took care to overcome the Middle Ages and to advance new ideals. However, he was not fully victorious in this struggle, and this is the reason why his doctrine of the state exercised so little influence in the following era.”<sup>7</sup>

Kelsen’s overall evaluation of the political Dante is ambivalent: on the one hand, Dante struck him as an inaccurate and contradictory political thinker; on the other hand, Kelsen considered him to be a prophet of some fundamental concepts of modernity, above all the unity of the sovereign:

“Outdated in its foundations, it constitutes the latest expression of the sterile idea of world empire! The modern elements it contains are very poorly formulated, having been expressed too early to constitute the decisive starting point for a new and vigorous process. In the field of the doctrine of the State, Dante only signifies the dawn of the Renaissance, which in its meridian height will yield a Machiavelli and a Bodin.”<sup>8</sup>

For Kelsen, Dante anticipates legal and political modernity. But does Dante cross the frontier of modernity? To answer this question, let us now leave the literature on Dante and turn directly to Dante’s literature. After all, as Italo Calvino reminds us, “a classic is a work that incessantly stirs up a dust of criticism, but always shakes it off.” (Calvino, 1986). Following this suggestion, let’s turn to Dante’s texts themselves, starting with his most specifically political book: the *Monarchia*.

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<sup>7</sup> Kelsen 2017, 157: “Daß aber dennoch der Staatsphilosoph Dante unter allen Publizisten seiner Zeit einen hervorragenden Platz einnimmt, ist sicher [...] Was sich an neuen, kommenden Ideen in seiner Lehre gefunden hat, haben wir gezeigt, und dabei gesehen, wie mächtig Dante mit den Begriffen und Vorurteilen seiner Zeit gerungen hat, wie er überall bemüht war, das Mittelalter zu überwinden, neuen Idealen sich entgegenzuarbeiten. Doch weil er in diesem Kampfe nicht völlig Sieger geblieben ist, darum hat auch seine Staatslehre in der Folgezeit so wenig Einfluß geübt.”

<sup>8</sup> Kelsen 2017, 158: “In ihren Grundlagen veraltet, bildet sie den letzten Aus- druck eines nicht mehr lebensfähigen unfruchtbaren Gedankens: des Weltkaisertums! Die modernen Elemente aber, die sie ent- hält, sind teils viel zu wenig klar und präzise gefaßt, teils zu früh ausgesprochen, als daß sie den festen Ausgangspunkt einer neuen starken Entwicklung hätten bilden können. Auf dem Gebiete der Staatslehre bedeutet Dante nur das Frührot der Renaissance, die in ihrer Mittagshöhe einen Machiavelli, einen Bodin gereift hat”.

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## II. The *Monarchia*

The *Monarchia*, is Dante's most political text.<sup>9</sup> Concerning power and law, it is written in Latin, the institutional language of his time. Dante's main intention was to reinforce the fragile autonomy of the Holy Roman Empire vis a vis the Roman Catholic Church. To do this, Dante argues against the hierocrats and the curialists, who of course would have subordinated the Imperial power to the Papal one.

It is therefore not surprising that the book was very provocative for its time; in fact, it was publicly burnt and inserted in 1559 in the Index of books prohibited by the Catholic Church. It would remain there until 1881 when, in the anti-clerical Risorgimento era it was finally reauthorized. In this work, Dante draws inspiration mainly from Aristotle and Cicero in describing the ideal structure of the Empire: it has the shape of the pyramid. Perhaps this is one of the reasons why Hans Kelsen was attracted to it.

Commentators have interpreted this work differently. According to Kelsen, it expresses a nostalgic utopia of the universal Empire. According to others, it is a "work of thought and doctrine, and its style is neither ideological nor utopian, but paradoxically realistic."<sup>10</sup> Still others see it as an analysis of the theological and metaphysical foundations of political power (Monateri 2017, 7-15).

In the first book Dante equates the concept of Empire to that of Monarchy; in his vision, the commanding sovereign must necessarily be unitary. From the patriarchal conception of the family, whose head must be only one man, the eldest, Dante ascends analogically to the conception of the village as a community held together by the command of a single head, then to the city, equally governed by a single man, up to the kingdom, which can only be ruled by a single man. For Dante, therefore, the Monarchy is not one form of government among others, but the only one that is appropriate and necessary for the universal good. *Unum oportet esse qui regulet et regat*:

If we consider the household, whose end is to teach its members to live rightly, there is need for one called the *pater-familias*, or for some one

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<sup>9</sup> A new Italian edition edited by Diego Quaglioni has recently been published: Dante, *Monarchia*, Milano, 2021.

<sup>10</sup> Quaglioni 2021, LXXI: "opera di pensiero e di dottrina, e la sua cifra non è né ideologica né utopica, ma paradossalmente realistica".



holding his place, to direct and govern, according to the Philosopher when he says, "Every household is ruled by its eldest." It is for him, as Homer says, to guide and make laws for those dwelling with him. From this arises the proverbial curse, "May you have an equal in your house." If we consider the village, whose aim is adequate protection of persons and property, there is again needed for governing the rest either one chosen for them by another, or one risen to pr eminence from among themselves by their consent; otherwise, they not only obtain no mutual support, but sometimes the whole community is destroyed by many striving for first place.

Again, if we consider the city, whose end is to insure comfort and sufficiency in life, there is need for undivided rule in rightly directed governments, and in those wrongly directed as well; else the end of civil life is missed, and the city ceases to be what it was.

Finally, if we consider the individual kingdom, whose end is that of the city with greater promise of tranquillity, there must be one king to direct and govern. If not, not only the inhabitants of the kingdom fail of their end, but the kingdom lapses into ruin, in agreement with that word of infallible truth, "Every kingdom divided against itself is brought to desolation."

If, then, this is true of these instances, and of all things ordained for a single end, it is true of the statement assumed above.

We are now agreed that the whole human race is ordered for one end, as already shown. It is meet, therefore, that the leader and lord be one, and that he be called Monarch, or Emperor. Thus it becomes obvious that for the well-being of the world there is needed a Monarchy, or Empire. (Alighieri, 1904, M. I, V, 5-10).

It is important to underline how Dante uses the terms Empire, Monarchy and jurisdiction as synonyms, thus articulating a specifically jurisdictional vision of the structure of political power. Significant is the use of the term *politia* to name the constitution, or the form of government, and of the lemma *politizante*, used in a derogatory sense to name the corrupt forms of exercising power. Certainly Dante cannot be considered a democratic thinker. For him, like Aristotle and Cicero, democracy is a deviant, corrupt regime:

Only if a Monarch rules can the human race exist for its own sake; only if a Monarch rules can the crooked policies be straightened, namely de-

mocracies, oligarchies, and tyrannies which force mankind into slavery, as he sees who goes among them, and under which kings, aristocrats called the best men, and zealots of popular liberty play at politics.<sup>11</sup>

To his contempt for the democratic form of government Dante adds a purely formal appreciation of legal pluralism. He values the existence of different legislative powers as responding to the need to reflect different lived realities. But he subordinates this pluralism to the ultimate need for the singularity and superiority of the imperial power:

Nations, kingdoms, and cities have individual conditions which must be governed by different laws. For law is the directive principle of life. The Scythians, living beyond the seventh clime, suffering great inequality of days and nights, and oppressed by a degree of cold almost intolerable, need laws other than the Garamantes, dwelling under the equinoctial circle, who have their days always of equal length with their nights, and because of the unbearable heat of the air cannot endure the useless burden of clothing.<sup>12</sup>

We have seen how Dante articulates a jurisdictional conception of the Empire, but what is his conception of law? It seems to me that his answer to the question “*quid est ius?*” is not clear: the law derives directly from the mind of God, precluding any distinction between the divine will that wills the good and the human will that organizes power. Dante thus denies the possibility of the existence of an unjust law: a law can only be either valid or not:

From these things it is plain that inasmuch as Right is good, it dwells primarily in the mind of God; and as according to the words, “What was made was in Him life,” everything in the mind of God is God, and as God especially wills what is characteristic of Himself, it follows that God wills

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<sup>11</sup> Alighieri 1904, M. I, XII, 9: Genus humanum solum imperante Monarcha sui et non alterius gratia est: tunc enim solum polittie diriguntur oblique – democratie scilicet, oligarchie atque tyrannides – que in servitutem cogunt genus humanum, ut patet discurrenti per omnes, et politizant reges, aristocratici quos optimates vocant, et populi libertatis zelatores; quia cum Monarcha maxime diligit homines, ut iam tactum est, vult omnes homines bonos fieri: quod esse non potest apud oblique politizantes.

<sup>12</sup> Alighieri 1904, M. I, XIV, 5-7.

Right according as it is in Him. And since with God the will and the thing willed are the same, it follows further that the divine will is Right itself. And the further consequence of this is, that Right is nothing other than likeness to the divine will. Hence whatever is not consonant with divine will is not right, and whatever is consonant with divine will is right.<sup>13</sup>

So to ask whether something is done with Right, although the words differ, is the same as to ask whether it is done according to the will of God. Let this therefore base our argument, that whatever God wills in human society must be accepted as right, true, and pure.<sup>14</sup>

To the theological conception which plants the foundation of law in God's will, Dante adds a providentialist interpretation of the rise and consolidation of the Roman Empire. For Dante, the Roman people are the true chosen people, as they were guided by the will to pursue the collective good through the law:

So it is clear that whoever contemplates the good of the state contemplates the end of Right. If, therefore, the Romans had in view the good of the state, the assertion is true that they had in view the end of Right. That in subduing the world the Roman people had in view the aforesaid good, their deeds declare.<sup>15</sup>

We behold them as a nation holy, pious, and full of glory, putting aside all avarice, which is ever adverse to the general welfare, cherishing universal peace and liberty, and disregarding private profit to guard the public weal of humanity. Rightly was it written, then, that "The Roman Empire takes its rise in the fountain of pity."<sup>16</sup>

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<sup>13</sup> Alighieri 1904, M. II, II, 4: Ex hiis iam liquet quod ius, cum sit bonum, per prius in mente Dei est; et, cum omne quod in mente Dei est sit Deus, iuxta illud «Quod factum est in ipso vita erat», et Deus maxime se ipsum velit, sequitur quod ius a Deo, prout in eo est, sit volitum. Et cum voluntas et volitum in Deo sit idem, sequitur ulterius quod divina voluntas sit ipsum ius.

<sup>14</sup> Alighieri 1904, M. II, II, 5, 6: Et iterum ex hoc sequitur quod ius in rebus nichil est aliud quam similitudo divine voluntatis; unde fit quod quicquid divine voluntati non consonat, ipsum ius esse non possit, et quicquid divine voluntati est consonum, ius ipsum sit.

<sup>15</sup> Alighieri 1904, M. II, V, 18: Declarata igitur duo sunt; quorum unum est, quod quicunque bonum rei publice intendit finem iuris intendit: aliud est, quod romanus populus subiciendo sibi orbem bonum publicum intendit.

<sup>16</sup> Alighieri 1904, M. II, V, 19: Nunc arguatur ad propositum sic: quicunque finem iuris intendit cum iure graditur; romanus populus subiciendo sibi orbem finem iuris intendit, ut manifeste per superiora in isto

In the third book of the *Monarchia*, the contradictions of Dante's political thought intensify: to his uncertain notion of what human law is, Dante adds an unspecified concept of human right, against which the political power is simply unable to act, even if it wanted to. The Empire can do no wrong! We can see that the idea of a "constitutionalist" Dante is anti-historical and unsupported by the text: for Dante, the Monarch cannot act contrary to the law, otherwise the unity of the universal political community would disintegrate:

Moreover, as the Church has its own foundation, so has the Empire its own. The foundation of the Church is Christ, as the Apostle writes to the Corinthians: "Other foundation can no man lay than that is laid, which is Jesus Christ." He is the rock on which the Church is founded, but the foundation of the Empire is human Right.<sup>17</sup>

Now I say that as the Church cannot act contrary to its foundation, but must be supported thereby, according to that verse of the *Canticles*: "Who is she that cometh up from the desert, abounding in delights, leaning on her beloved?" so the Empire cannot act in conflict with human Right. Therefore the Empire may not destroy itself, for, should it do so, it would act in conflict with human Right.<sup>18</sup>

For Dante, the Empire consists in the unity of the universal monarchy. The pluralism of local legal systems is legitimate only in so far as it is subordinated to the superiority of the unitary command of the sovereign. In no case is it possible for the Empire to disintegrate:

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capitulo est probatum: ergo romanus populus subiciendo sibi orbem cum iure hoc fecit, et per consequens de iure sibi ascivit Imperii dignitatem.

<sup>17</sup> Alighieri 1904, M. III, X, 7: Preterea, sicut Ecclesia suum habet fundamentum, sic et Imperium suum. Nam Ecclesie fundamentum Christus est; unde Apostolus *ad Corinthios*: «Fundamentum aliud nemo potest ponere preter id quod positum est, quod est Christus Iesus». Ipse est petra super quam hedificata est Ecclesia. Imperii vero fundamentum ius humanum est.

<sup>18</sup> Alighieri 1904, M. III, X, 8: Modo dico quod, sicut Ecclesie fundamento suo contrariari non licet, sed debet semper inniti super illud iuxta illud *Canticorum* «Que est ista, que ascendit de deserto delitiis affluens, innixa super dilectum?», sic et Imperio licitum non est contra ius humanum aliquid facere. Sed contra ius humanum esset, si se ipsum Imperium destrueret: ergo Imperio se ipsum destruere non licet.

Inasmuch as the Empire consists in the indivisibility of universal Monarchy, and inasmuch as an apportionment of the Empire would destroy it, it is evident that division is not allowed to him who discharges imperial duty. And it is proved, from what has been previously said, that to destroy the Empire would be contrary to human Right.<sup>19</sup>

Dante's distinction between the origin of the spiritual power of the Church and the foundation of the temporal power of the Empire rests upon a legal and jurisdictional conception of the Empire:

Besides, every jurisdiction exists prior to its judge, since the judge is ordained for the jurisdiction, and not conversely. As the Empire is a jurisdiction embracing in its circuit the administration of justice in all temporal things, so it is prior to its judge, who is Emperor; and the Emperor is ordained for it, and not conversely. Clearly the Emperor, as Emperor, cannot alter the Empire, for from it he receives his being and state.<sup>20</sup>

After having built an organic conception of the jurisdictional pyramid of imperial power in order to claim its autonomy from the Church, Dante takes a surprising U-turn at the end to conclude that the Empire must be subordinate to the Pope!

Wherefore let Caesar honor Peter as a first-born son should honor his father, so that, refulgent with the light of paternal grace, he may illumine with greater radiance the earthly sphere over which he has been set by Him who alone is Ruler of all things spiritual and temporal.<sup>21</sup>

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<sup>19</sup> Alighieri 1904, M. III, X, 9: Cum ergo scindere Imperium esset destruere ipsum, consistente Imperio in unitate Monarchie universalis, manifestum est quod Imperii auctoritate fungenti scindere Imperium non licet. Quod autem destruere Imperium sit contra ius humanum, ex superioribus est manifestum.

<sup>20</sup> Alighieri 1904, M. III, X, 10: Preterea, omnis iurisdictio prior est suo iudice: iudex enim ad iurisdictionem ordinatur, et non e converso; sed Imperium est iurisdiclio omnem temporalem iurisdictionem ambitu suo comprehendens: ergo ipsa est prior suo iudice, qui est Imperator, quia ad ipsam Imperator est ordinatus, et non e converso.

<sup>21</sup> Alighieri 1904, M. III, XVI, 18: Illa igitur reverentia Cesar utatur ad Petrum qua primogenitus filius debet uti ad patrem: ut luce paterne gratie illustratus virtuosius orbem terre irradiet, cui ab Illo solo prefectus est, qui est omnium spiritualium et temporalium gubernator.

The *Monarchia* therefore ends with a dramatic twist, an unexpected and inexplicable reversal of all the arguments made up to that point. But to the internal contradictions of the political thought that Dante expresses in Latin, are added the very different theses that he articulates in the Italian of the *Commedia*, to which we now turn.

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### III. The *Commedia*

Dante develops a specifically political theme in the sixth canto: in Hell he addresses the city, in Purgatory Italy, in Paradise the universal Empire. The whole poem is aimed, in its historical and prophetic aspect, at the denunciation of civil and ecclesiastical corruption, and these cantos appear as one of the backbones of the larger narrative.

The political canto of Hell is located in the third circle, where the sin of gluttony is punished. After the sad solemnity of the canto of Limbo and the high and tragic tone of Francesca's story, this canto establishes the direct, concrete and realistic style that will later characterize the Inferno. In addition to mythical characters and legendary heroes, here we also encounter humble, ordinary men. Among these is Ciacco, with whom Dante establishes a familiar dialogue on the tragic political condition of Florence, the divided city.

It is no small matter that Dante entrusts to the modest citizen Ciacco, symbol of the small and weak man, with judging the great and the powerful. For the first time in the poem, a prophetic reference to Dante's sad exile appears here. Dante asks him where are the great citizens of the past generation, those who were dedicated to the wise political work of civic virtue? Have they been saved or damned?

Ciacco's curt reply - *Ei son tra l'anime più nere* - confronts us with the profound gap in values between the earthly and the eternal perspective at the heart of the whole poem.

Various interpretations have been offered to Ciacco's answer to the question of whether there are any righteous citizens left in the city: *Giusti son due, e non vi sono intesi*. According to some, this verse should be interpreted to mean that there are really only two honest people left, everyone else being corrupt; according to others, this must be understood in the sense that two factions faced each other, both of which considered themselves to be on the right side, and for this reason they did not find an agreement, or no one listened

to them (Alighieri 1983, 95). Finally, Claudia Di Fonzo, a leading exponent of Italian legal Dantism, argues that Ciacco is referring to the opposition between two conceptions of justice, or rather the tension between positive law and natural law. (Di Fonzo 2010.) This (over?) interpretation imagines a constitutionalist Dante who, in my opinion, finds little confirmation in Dante's political thought, as expressed in the *Monarchia*:

I answered him: "Ciacco, your suffering  
so weights on me that I am forced to weep;  
but tell me, if you know, what end awaits  
the citizens of that divided city;  
is any just man there? Tell me the reason  
why it has been assailed by so much schism."  
And he to me: "After long controversy,  
they'll come to blood; the party of the woods  
will chase the other out with much offense.  
But then, within three suns, they too must fall;  
at which the other party will prevail,  
using the power of one who tacks his sails.  
This party will hold high its head for long  
and heap great weights upon its enemies,  
however much they weep indignantly.  
Two men are just, but no one listens to them.  
Three sparks that set on fire every heart  
are envy, pride, and avariciousness."<sup>22</sup>

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<sup>22</sup> English translation used: <https://digitaldante.columbia.edu/dante/divine-comedy/>  
INFERNO, VI, 58-63:

Io li rispuosi: «Ciacco, il tuo affanno  
mi pesa sì, ch'a lagrimar mi 'nvita;  
ma dimmi, se tu sai, a che verranno  
li cittadin de la città partita;  
s'alcun v'è giusto; e dimmi la cagione  
per che l' ha tanta discordia assalita».  
E quelli a me: «Dopo lunga tencione  
verranno al sangue, e la parte selvaggia  
cacerà l'altra con molta offensione.  
Poi appresso convien che questa caggia

In the sixth canto of *Purgatorio* Dante meets the troubadour Sordello da Goito, widely known for his texts of political and civil exhortation against the powerful of the world. Dante sees in Sordello an ideal representative of a counsellor to earthly authorities. Between the two poetic giants of Virgil and himself, Dante charges this character of his own age with describing the state of Italy's corruption and decadence:

Ah, abject Italy, you inn of sorrows,  
you ship without a helmsman in harsh seas,  
no queen of provinces but of bordellos!  
That noble soul had such enthusiasm:  
his city's sweet name was enough for him  
to welcome—there—his fellow—citizen;  
But those who are alive within you now  
can't live without their warring—even those  
whom one same wall and one same moat enclose  
gnaw at each other. Squalid Italy,  
search round your shores and then look inland—see  
if any part of you delight in peace.  
What use was there in a Justinian's  
mending your bridle, when the saddle's empty?  
Indeed, were there no reins, your shame were less.  
Ah you—who if you understood what God  
ordained, would then attend to things devout  
and in the saddle surely would allow  
Caesar to sit—see how this beast turns fierce  
because there are no spurs that would correct it,  
since you have laid your hands upon the bit!<sup>23</sup>

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infra tre soli, e che l'altra sormonti  
con la forza di tal che testé piaggia.  
Alte terrà lungo tempo le fronti,  
tenendo l'altra sotto gravi pesi,  
come che di ciò pianga o che n'aonti.  
Giusti son due, e non vi sono intesi;  
superbia, invidia e avarizia sono  
le tre faville c' hanno i cuori accesi».

<sup>23</sup> PURGATORIO, VI, 76–96:



We note that Dante, through Sordello, complains about the state of corruption in which Italy finds itself, testified by the split between formal legality and effective validity of the laws:

Che val perché ti racconciasse il freno  
Iustiniano, se la sella è vòta?

What is the use of Justinian's legal code if there is no one who enforces it? The positive validity of the codified law is irrelevant if there are no authorities endowed with the legitimacy and strength to guarantee its observance. The horse racing metaphor is also relevant here: the state is compared to a horse, and the Emperor to the rider. This metaphor had already been employed by Dante in *Convivio* IV, ix 10, where the horse was understood as the will of man:

Thus we might say of the Emperor, if we were to describe his office with an image, that he is the one who rides in the saddle of the human will. How this horse pricks across the plain without a rider is more than evident,

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Ahi serva Italia, di dolore ostello,  
nave senza nocchiere in gran tempesta,  
non donna di province, ma bordello!

Quell' anima gentil fu così presta,  
sol per lo dolce suon de la sua terra,  
di fare al cittadin suo quivi festa;

e ora in te non stanno senza guerra  
li vivi tuoi, e l'un l'altro si rode  
di quei ch'un muro e una fossa serra.

Cerca, misera, intorno da le prode  
le tue marine, e poi ti guarda in seno,  
s'alcuna parte in te di pace gode.

Che val perché ti racconciasse il freno  
Iustiniano, se la sella è vòta?

Sanz'esso fora la vergogna meno.

Ahi gente che dovresti esser devota,  
e lasciar seder Cesare in la sella,  
se bene intendi ciò che Dio ti nota,  
guarda come esta fiera è fatta fella  
per non esser corretta da li sproni,  
poi che ponesti mano a la predella.

especially in wretched Italy, which has been left with no means whatsoever to govern herself.<sup>24</sup>

The “empty saddle” is a metaphor that indicates that the horse/Empire has no rider/Emperor: the throne of the Roman Empire was considered vacant since the death of Frederick II, after which the three emperors elected later in Germany - Rudolf of Habsburg, Adolf of Nassau and Albert of Austria - were never crowned in Rome.<sup>25</sup>

Sordello also complains that the presence of a codified body of law that is not effectively applied increases Italy’s shame as the homeland of a legal culture that tramples on itself. One could forgive a barbarous people, unaware of laws and legal culture in the first place. But Italy should know better.

Sordello’s invective moves from Italy to the Church, specifically to the popes and cardinals who should devote themselves to the things of God and leave the care of temporal things to the emperor, according to the teaching of Scripture (“what God ordained”). Here Dante confirms the vision of the division of powers between the Empire and the Church that he previously articulated in *Monarchia* III, xii-xiv.

In this passage, Dante also puts forward a dark vision of human nature: the law serves to contain man’s negative instincts, like a “brake” or the bridle that the knight uses to control his otherwise wild horse. This pessimistic vision is also found in canto XVI of *Purgatory*:

Therefore, one needed law to serve as curb;  
a ruler, too, was needed, one who could  
discern at least the tower of the true city.  
The laws exist, but who applies them now?  
No one—the shepherd who precedes his flock  
can chew the cud but does not have cleft hooves;<sup>26</sup>

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<sup>24</sup> <https://digitaldante.columbia.edu/text/library/the-convivio/book-04/#09>. The same image in *Monarchia* III, xv 9.

<sup>25</sup> v. *Convivio* IV, iii 6: “Here it should be observed that Frederick of Swabia, the last of the Roman emperors (the last, I say, up to the present time, in spite of the fact that Rudolf, Adolf, and Albert were elected after the death of Frederick and his descendants)”. <https://digitaldante.columbia.edu/text/library/the-convivio/book-04/#09>

<sup>26</sup> *PURGATORIO* XVI, 94-99:

Onde convenne legge per fren porre;  
convenne rege aver, che discernesse

Shortly afterwards Dante articulates a new conception of politics, and of the relationship between the temporal sphere of Empire and the spiritual one of the Church, that is decidedly antithetical to the positions he had supported in the *Monarchy*. In the central canto of the poem (it is in fact the fiftieth), Dante articulates his political theory within his discussion of wrath, the passion that pits men against each other; in fact, the wrathful are blinded by a very dense smoke, just as the smoke of anger had blinded their mind. In the dark, like a blind man, Dante leans on Virgil and meets Marco di Lombardia, a court man known for his wisdom.

For Rome, which made the world good, used to have  
two suns; and they made visible two paths—  
the world's path and the pathway that is God's.  
Each has eclipsed the other; now the sword  
has joined the shepherd's crook; the two together  
must of necessity result in evil,<sup>27</sup>

While in the finale of *Monarchia* Dante had theorized a subordination of imperial power to papal power, here he articulates a very different conception of the proper separation between the two powers: they ought to be equal and independent of each other. Here we see the blindness of Dante scholars who posit a coherence in Dante's political reflections from the *Monarchia* to the *Commedia*, which is simply not grounded in the text.

These political reflections culminate in the sixth canto of *Paradise*, where Dante meets Emperor Justinian who, inspired by the Holy Spirit, codified Roman law, trimming the excess a contradictory legal system that had grown

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de la vera cittade almen la torre.

Le leggi son, ma chi pon mano ad esse?

Nullo, però che 'l pastor che procede,  
rugumar può, ma non ha l'unghie fesse;

<sup>27</sup> PURGATORIO XVI, 106–111:

Soleva Roma, che 'l buon mondo feo,  
due soli aver, che l'una e l'altra strada  
facean vedere, e del mondo e di Deo.

L'un l'altro ha spento; ed è giunta la spada  
col pastorale, e l'un con l'altro insieme  
per viva forza mal convien che vada

out of all proportion. While in the sixth canto of *Inferno* the attention was directed to the city, and in the fifth canto of *Purgatory* to the nation, in the sixth canto of *Paradise* Dante takes in the entire expanse of the Empire in which the two parties - Guelphs and Ghibellines - battle in the name of that sign (the imperial eagle) which should be the bearer of peace in the world. *Paradise* outlines God's will for the Roman Empire: first of all to establish the conditions of peace in which Christ was to be born and that universal institution which would give legitimacy to his death sentence as the redeemer of all mankind, and then to guard that political unity of the world in which the Church was to expand:

After Constantine had turned the Eagle  
counter to heaven's course, the course it took  
behind the ancient one who wed Lavinia,  
one hundred and one hundred years and more,  
the bird of God remained near Europe's borders,  
close to the peaks from which it first emerged;  
beneath the shadow of the sacred wings,  
it ruled the world, from hand to hand, until  
that governing—changing—became my task.  
Caesar I was and am Justinian,  
who, through the will of Primal Love I feel,  
removed the vain and needless from the laws.<sup>28</sup>

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<sup>28</sup> PARADISO, VI, 1-12:

Poscia che Costantin l'aquila volse  
contr'al corso del ciel, ch'ella seguio  
dietro a l'antico che Lavina tolse,  
cento e cent'anni e più l'uccel di Dio  
ne lo stremo d'Europa si ritenne,  
vicino a' monti de' quai prima uscìo;  
e sotto l'ombra de le sacre penne  
governò 'l mondo lì di mano in mano,  
e, sì cangiando, in su la mia pervenne.  
Cesare fui e son Iustiniano,  
che, per voler del primo amor ch'ì sento,  
d'entro le leggi trassi il troppo e 'l vano.

The sixth canto of Paradise also contains a passage that illuminates Dante's conception of the relationship between unity and plurality. Justinian answers the question relating to the relationship between the plurality of blessed souls present in Paradise and their different distance from God: how is it possible that, finding themselves in different positions with respect to God, they are equally blessed?

Differing voices join to sound sweet music;  
so do the different orders in our life  
render sweet harmony among these spheres.<sup>29</sup>

Dante uses the analogy of polyphonic music, in which the diversity of voices produces sweet notes. In the same way, the different degrees of bliss produce a sweet harmony in heaven. Dante recalls singing with many voices as an example for the harmonization of different things, and he defines it with the adjective *dolce*. The sweetness represents the spiritual concord of souls which he sees as the dominant note of the celestial homeland.

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## IV. Conclusions

In this paper I have discussed the most recent contributions of literary criticism to understanding Dante's political and legal thought, and then analyzed the most relevant passages of his work in order to highlight its fundamental lack of coherence. The fact that Dante is an eternal poetic genius does not necessarily make him a refined modern political or legal thinker! Undoubtedly, the *Commedia* is a masterpiece that paves the way for modernity, putting the subjective experience of the narrator in the foreground. As Henriette Karam astutely observed:

“The Divine Comedy inaugurates a new poetic expression and its combination of elements of Christian philosophy and classical art constituted

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<sup>29</sup> PARADISO VI,124-126:

Diverse voci fanno dolci note;  
così diversi scanni in nostra vita  
rendon dolce armonia tra queste rote

the first step towards the humanist thought that will impose itself in the Renaissance and on which modernity is based, which has discursive and diegetics that have contributed to the formation of the modern novel, especially as regards its narrative instance, from which derives its status as a forerunner of the ‘narratives of the self’, both due to the presence of a narrator-protagonist, and due to the fact that , for the first time in Western literature, we are offered the concept that human perception occupies a central position in the representation of the world”.<sup>30</sup>

However, the fact that Dante inaugurated poetic modernity does not imply that he anticipated political or legal modernity. In the *Monarchia* he articulates a thought that is neither democratic nor constitutional, but simply reactionary, all turned back towards the glories of ancient Rome and nostalgic for the unity of power of the Holy Roman Empire.

But the properly medieval nature of Dante’s political thought is measured in his formal conception of polyphony<sup>31</sup>: just as the plurality of local legal systems is tolerated in the Monarchy only as harmonized with the superiority of the imperial command, so the plurality of souls in Paradise is subordinated to the vision of the only narrator subject: Dante himself.

To find the first hints of political modernity in Italian literature it is necessary to wait for 1351 and Giovanni Boccaccio’s *Decameron*, where the narration is articulated by a collective of ten people, seven women and three men, who make possible the passage from the medieval monarchy of the unique narrator to the radical polyphony of modern republicanism<sup>32</sup>.

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<sup>30</sup> Karam, 2020, 135: “a *Divina Commedia* inaugura uma nova expressão poética e a sua combinação de elementos da filosofia cristã e da arte clássica constituíram o primeiro passo em direção ao pensamento humanista que irá se impor no Renascimento e no qual se funda a modernidade, que ela apresenta características discursivas e diegéticas que colaboraram para a formação do romance moderno, sobretudo no que se refere à sua instância narrativa, da qual deriva o seu estatuto de precursora das “narrativas do eu”, tanto pela presença de um narrador-protagonista quanto pelo fato de que, pela primeira vez na literatura ocidental, nos é oferecida a concepção de que a percepção humana ocupa uma posição central na representação do mundo”.

<sup>31</sup> For the relationship between polyphony and law see Axt, Trindade, 2018.

<sup>32</sup> I have developed this argument in Vespaziani, 2018.

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