



THE UNIVERSITY *of* EDINBURGH

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IMAGES OF JUSTICE IN NORTHERN ITALY, 1250-1400

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VOLUME 1

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Declaration

This is to certify that the work contained within has been composed by me and is entirely my own work. No part of this thesis has been submitted for any other degree or professional qualification.

Signed:

CLARE SANDFORD-COUCH

ABSTRACT

This thesis considers some of the ways in which images of justice were used to express and in some cases promote certain aims and aspirations of those who commissioned them, in northern Italy between c.1250-1400, and whether and to what extent this impacted upon their depiction. It explores the question of a sacred/secular distinction in relation to the use and depiction of images of justice, and proposes that certain changes in such images can be read as responses to developments in the law and in the secular justice system.

An introduction defines the essential elements of the subject and the main objectives of the thesis. As the thesis takes a social historical perspective, the first chapter provides details to establish the historical context for the following case studies. The main body of the thesis adopts a thematic approach. The second chapter examines the interrelationship of divine and secular justice through an analysis of images depicting the Last Judgment, or referencing its imagery. First it looks at several monumental representations of the Last Judgment, addressing developments in the artistic treatment of the torments of Hell in the context of changes in contemporary legal punishment practices. The chapter then explores further the relationship of earthly punishments and divine imageries, in a work not previously studied as an image of justice. The congruence in these artworks of sacred and secular elements allows a discussion of the interrelationship of these terms in relation to the contemporary conception and practices of justice.

Further chapters examine how a new and increasing emphasis on the judge in the prosecution procedure from the early thirteenth century is mirrored in the artistic representation of secular and judicial authority after that period. This is first addressed by analysing images of the trials of Christ as examples of 'secular' justice in a religious or 'sacred' context, and exploring how contemporary issues relating to the administration of justice contribute to an understanding of changes in the iconography of these scenes. A fourth chapter addresses images more overtly associated with secular and judicial authority,

offering a new perspective on these images as expressions of contemporary societal interests, many arising from the justice system, leading to their use as exemplars, to guide and inform.

The thesis contributes to the debate on the distinction between the terms 'sacred' and 'secular' in the late medieval period, exploring how analysing artworks can lead to a better and more nuanced appreciation of the application of those terms in relation to the contemporary notion of justice. Further, my research has indicated that what could account most comprehensively for certain changes in the use and depiction of such images may be found in specific aspects of a justice system in transition.

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IMAGES OF JUSTICE IN NORTHERN ITALY, 1250-1400.

INTRODUCTION

My doctoral research aims to explore some of the ways in which images of Justice were used to express and in some cases to promote the social, cultural, political and religious aims and aspirations of those who commissioned them, in northern Italy between c. 1250-1400, and whether and to what extent this impacted upon their depiction. 'Justice', of course, is not the same as 'the Law'; it is a concept not capable of easy definition. Justice is unusual in that it is both an abstract, even abstruse philosophical and political concept and a reality affecting the daily lives of many. In the late medieval period, it comprised the law, but also its application or administration; it was economic and moral; importantly, it was also both sacred and secular. It is suggested that to study either divine justice or aspects of secular justice does not reflect the contemporary realities of Duecento and Trecento Italy, where such a rigid distinction would have seemed impossible to comprehend. To this end, my research addresses issues relating to both divine and secular imagery.

That this remains a vibrant area for research can be seen from an exhibition, *Dal Giglio al David* in May, 2013, of civic art in Florence from the Middle Ages to the Renaissance.¹ It considers the importance of images in the strategies of those wielding civic power in the city. Some of the works included in the exhibition are images addressed in or of relevance to this thesis. The exhibition catalogue notes that many images evidence the blurring of a distinction between sacred and secular; an issue which will also be addressed here. As such, my study contributes to and builds upon both the themes of the exhibition and, more widely, existing scholarship on late-medieval Italian history.

Further research on an area on which much has already been written can be justified by taking a multidisciplinary approach, as I attempt to offer a wide socio-political, cultural, economic, juridical, and theological, context for late-medieval images of justice. However,

¹ Unfortunately, I have been unable to see the exhibition before submission, but accessed the exhibition catalogue, edited by Maria Monica Donato and Daniela Parenti. 2013. *Dal Giglio al David. Arte civica a Firenze fra medioevo e rinascimento* (Florence: Giunti).

within the constraints of a thesis, it is not possible to offer a comprehensive survey of everything related to justice imagery in northern Italy between c. 1250 and 1400, and choices made as to the issues addressed, sources accessed, and interpretation, inevitably impact upon the end result. Therefore, as an introduction, this chapter will begin by defining the essential aspects of the subject and qualifying the main objectives of the research. A discussion of methodology will consider the range of sources used in achieving these aims and clarify the form that the study will take.

The material of my research, 'images of justice', needs careful definition as it can encompass a broad range, including artistic images of and relating to aspects of law - divine and civil law, criminal and canon law - both theoretical and practical or procedural. Despite this, much scholarship has focused upon particular representations, such as the personification of the Cardinal Virtue of Justice, or the Last Judgment, or specific artistic programmes addressing the theme of justice, such as Giotto's frescoes for the Scrovegni Chapel, Padua, or Ambrogio Lorenzetti's frescoes for the Palazzo Pubblico, Siena. It is contended that what constitutes an 'image of justice' must be construed more widely if we are to fully explore how the contemporary conception and practices of justice found expression in the art of the period.

Therefore this study aims to broaden the debate by offering new interpretations of several images, some interpreted here as images of justice for the first time, others little studied as such. Since I will move from analysis to synthesis, the study is object-based, focusing on particular works, and addressing the relationship between ideas and their visual expression (form and function). Through case studies this thesis aims to demonstrate that studying a broader range of representations, encompassing artworks which engage – in some cases less overtly - with the theme of justice, and their social and cultural functions, can enhance our understanding of the contemporary notion and practices of justice. In particular, new interpretations can offer fresh insights into certain specific questions.

My research explores the creation and use of visual art to embody contemporary notions and practices of justice, but also how certain images could promote aspects of contemporary jurisprudence, or of the legal system, or otherwise serve the interests or

concerns of those commissioning and producing such images. This thesis will also question whether these images could offer evidence of an interrelationship between the 'sacred and secular' realms in matters related to justice. In particular it suggests that what could account most comprehensively for certain changes in how images of justice were used and depicted in northern Italy c. 1250-1400 may be found in specific aspects of a justice system in transition, a contention which has been little explored generally. Particular consideration is given to a change in prosecution practice in the Duecento which enhanced the role of the judge, and to changes in punishment practice which hint at an evolving jurisprudence. The case studies aim to situate the art works within the social and cultural practices of that period, with particular reference to legal historical aspects. My research therefore encompasses aspects of legal history and social history as well as art history. Although considerable research has been undertaken into aspects of the subject of images of justice, none provide this specific legal and socio-political context.

In seeking to discover what notion of justice and aspects of its administration are evident in the art commissioned and produced in northern Italy c. 1250-1400, on a general level, my study entertains a broad discussion on the interrelationship of art and justice, and will explore the contention that images of justice may be indicative of a fusion of civic and religious interests, or interlocking interests of secular and sacred bodies. 'Secular' here will be taken to indicate an opposition to 'religious'.² The interrelationship of sacred and secular has formed the basis of several studies. *Sacred and Secular in Medieval and Early Modern Cultures: New Essays* edited by Lawrence Bessermann includes a discussion of those terms and explores their relationship in the Middle Ages and the early modern period in literature and history.³ More recent, and with a focus on the interpretation of art, are the several essays in *Negotiating Secular and Sacred in Medieval Art*.⁴ The editors, Alicia Walker and Amanda Luyster, noted a 'burst' of interest in recent years in several exhibitions, symposia,

² 'Secular' could have other meanings in the Middle Ages, which are considered by Joanna Cannon. 2000. 'Introduction: secular power and the sacred in the art of the central Italian city-state', in *Art, Politics, and Civic Religion in Central Italy 1261-1352*, ed. by Joanna Cannon and Beth Williamson, 3-4. (Aldershot: Ashgate Publishing).

³ Lawrence Bessermann. 2006. *Sacred and Secular in Medieval and Early Modern Cultures: New Essays* (New York, Basingstoke: Palgrave MacMillan).

⁴ Alicia Walker and Amanda Luyster. 2009. *Negotiating Secular and Sacred in Medieval Art. Christian, Islamic and Buddhist* (Farnham: Ashgate). For a useful overview of how the terms 'sacred' and 'secular' have been constructed in the nineteenth and twentieth-centuries, see Walker and Luyster 2009: 3-8.

and books exploring how to define and study ‘sacred and secular’ in medieval culture.⁵ Much of the debate addresses whether maintaining a rigid (and arguably artificial) distinction between the terms ‘sacred’ and ‘secular’ inhibits our understanding of the medieval world, or whether given that medieval authors themselves made distinctions along these lines, they can usefully be retained as ‘analytical tools’. These studies demonstrate that the interrelationship of secular and sacred in this period remains a vibrant area of research. Like Walker and Luyster, this thesis does not claim “comprehensive treatment of the vast topic of sacred and secular in medieval art”.⁶ Rather, it aims to contribute to the ‘sacred/secular’ debate by exploring whether and how analysing certain artworks can help us to gain a better and more nuanced appreciation of the application of those terms in relation to the contemporary notion of justice in the communes and city-states of northern Italy, in the late medieval period.

In exploring how the contemporary notion and practices of justice found expression in a broad range of visual representations from northern Italy in c. 1250-1400, and the role played by such images in supporting the administration of justice, my research takes a social historical perspective. The concept of a ‘social’ history of art is most frequently associated with Arnold Hauser, who sought to establish links between social history and the development of art.⁷ Social history of art approaches have been subject to criticism, in part for seeming to overlook the artwork itself, and in their historical specificity to a particular artist or artwork have been viewed as of limited success in building a larger picture, to enhance appreciation of how artworks may relate to broader trends.⁸ However, a social historical approach appears particularly suited to consider issues relating to justice, which is culturally grounded. There is also scholarly debate on the concept of social history, its

⁵ See Walker and Luyster 2009: 2, note 4.

⁶ Walker and Luyster 2009: 11.

⁷ On this period, see, Arnold Hauser. 1957. *The Social History of Art, Volume 1. From Prehistoric Times to the Middle Ages and Volume 2. Renaissance Mannerism Baroque* (New York: Vintage Books). On Hauser more generally, see <http://www.dictionarofarthistorians.org/hausera.htm>.

⁸ For Ernst Gombrich’s view that Hauser’s methodology led to a ‘remoteness’ from the artwork, see E. H. Gombrich. 1953. ‘Review of Arnold Hauser, *The Social History of Art*’. *The Art Bulletin* 35/1: 79-80. For a review of criticism of Hauser’s *Social History of Art* see Michael R. Orwicz and Claire Beauchamps. 1985. ‘Critical Discourse in the Formation of a Social History of Art: Anglo-American Response to Arnold Hauser’, *Oxford Art Journal* 8/2: 52-62. The approach still inspires scholarly debate; see, for example, the recent consideration of how a commitment to the social nature of art can be reconciled with artistic style in Axel Gelfert. 2012. ‘Art history, the problem of style, and Arnold Hauser’s contribution to the history and sociology of knowledge’, *Studies in East European Thought* 64.1/2: 121-142.

interrelationship with the field of cultural history and the notion of 'cultural/social history'.⁹ Whilst acknowledging that it could refer variously to the history of power and the political; the economy and the economic; and to the traditional concerns of social history, including class and economy as well as culture, to give only some of the possibilities, it remains a term I will retain, and use in the sense of perceiving art as a product of social relations and an expression of the culture (and its politics) in which it was created. Establishing the larger contexts of the chosen works, including their historical setting, patronage, function, and analysing a work as a product of its environment, can permit closer exploration of the interrelationship between that image and the contemporary understanding and practices of justice, making it possible to explore whether such factors may have been influential in changes in the use and depiction of images of justice in northern Italy c. 1250-1400.

The link between art, society, politics, and religion in Italy at this time has been the subject of several studies. The relatively broad discourse of the contributions to *Art and politics in late medieval and early Renaissance Italy, 1250-1500*, addressed generally how civic and sacred power was expressed through the art of the period.¹⁰ The essays included in *Art, Politics, and Civic Religion in Central Italy 1261-1352*, address a rather narrower geographical and temporal range than this study, looking at the role of art in the public life of certain city-states, Siena, Arezzo, Pisa and Orvieto, in the Duecento and Trecento, to show how art was used to express and promote political and religious aims and aspirations.¹¹ Other research has focused upon these matters in relation to specific cities.¹² For example, Diana Norman's *Siena and the Virgin*, demonstrated how images of the Virgin served as objects of religious devotion as well as a political function, expressing Siena's

⁹ On this question see, for example, Patrick Joyce. 2010, 'What is the social in social history?', *Past and Present* 206: 213-248.

¹⁰ Charles M. Rosenberg. 1990. *Art and Politics in Late Medieval and Early Renaissance Italy, 1250-1500* (Notre Dame, IN: University of Notre Dame Press).

¹¹ Cannon and Williamson. 2000.

¹² On Venice for example, on sacred themes in the Sala del Maggior Consiglio in the Ducal Palace, see Staale Sinding-Larsen. 1974. *Christ in the Council Hall: Studies in the Religious Iconography of the Venetian Republic* (Rome: L'Erma di Bretschneider), and Caroline Wamsler, 'Merging heavenly court and earthly council in Trecento Venice', in Walker and Luyster 2009: 55-74. More widely, see Fabio M. Barry. 2010. 'Disiecta membra: Ranieri Zeno, the Imitation of Constantinople, the Spolia style, and Justice at S. Marco', in *San Marco, Byzantium, and the Myths of Venice*, ed. by Henry Maguire and Robert S. Nelson (Washington, D.C.: Dumbarton Oaks): 7-62. I thank Lorenzo Calvelli (Università Ca' Foscari Venezia) for this reference.

'civic-religious identity'.¹³ More recently, essays in *Art as Politics in Late Medieval and Renaissance Siena*, explored how political concerns pervaded and shaped not only painting and sculpture in Siena, but also impacted upon its urban environment, through architecture, and urban design.¹⁴ My research draws upon such approaches, to explore both the use and depiction of images of justice and the concept of a sacred-secular distinction therein.

Much of the scholarship on images of justice, as noted above, has focused upon certain representations. The personification of justice as one of the Cardinal Virtues has been the subject of highly-regarded studies by Adolf Katzenellenbogen and Rosemond Tuve.¹⁵ More recently, Judith Resnik and Dennis E. Curtis, in their broad exploration of the relationship between courts and democracy, offered an overview of the development of the political icon of Justice in their 2011 work, *Representing Justice. Invention, Controversy, and Rights in City-States and Democratic Courtroom*.¹⁶ As part of their study of court architecture and arbitration, they address the image of Justice personified, but given the impressive range of the work - addressing a period of over two thousand years, and a wide geographical area (not only the USA, but also the UK, Australia, Europe, Latin America, and South Africa) – those parts addressing the chosen area and time frame of my research are of necessity rather brief. My intention is to set this conception of justice as a Virtue in the context of several of its other manifestations in late-medieval Italian art.

The *Last Judgment* as an image of justice has also attracted much research. However, and surprisingly, there exists no recent and comprehensive study of the Last Judgment scene across the Italian peninsula for the period c. 1250-1400.¹⁷ Of those addressing broadly the

¹³ Diana Norman. 1999. *Siena and the Virgin: Art and Politics in a Late-Medieval City State* (New Haven: Yale University Press). Other studies include Diana Norman. 1995. *Siena, Florence and Padua: Art, Society and Religion 1280-1400 Volume 1: Interpretative Essays*, and *Volume 2: Case Studies* (New Haven & London: Yale University Press, in association with The Open University).

¹⁴ Timothy B. Smith and Judith B. Steinhoff. 2012. *Politics in Late Medieval and Renaissance Siena* (Farnham: Ashgate).

¹⁵ On traditional and early medieval depictions of the Virtues, see Adolf Katzenellenbogen. 1939. *Allegories of the Virtues and Vices in Medieval Art* (New York: Norton & Company, Inc.); and, Rosemond Tuve. 1964. 'Notes on the Virtues and Vices'. *Journal of the Warburg and Courtauld Institutes* 27: 42-72; and 1963. *Journal of the Warburg and Courtauld Institutes* 26.3/4: 264-303.

¹⁶ Judith Resnik and Dennis E. Curtis. 2011. *Representing Justice. Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (New Haven and London: Yale University Press).

¹⁷ Several works have provided lists of representations of the Last Judgment, mostly focusing upon monumental works; these are considered in Chapter 2.

same region and period as this study, Janis Elliott's *The Last Judgment Scene in Central Italian Painting, c. 1266-1343* studied iconographical developments of the Last Judgment scene in central Italian mural painting. She addressed the revival of the 'complete' Last Judgment scene, and the separation of Heaven and Hell, and sought reasons for these developments in the theological and political contexts in which these scenes were produced.¹⁸ In particular, she focussed upon the use of the scene to further the interests of a Papal-Angevin-Guelf alliance. Lisa Wade, in *Representations of the Last Judgment and their interpretation*, sought to provide an interpretative framework for images of the Last Judgment in contemporary philosophy and literature, most particularly Dante's *Divine Comedy*.¹⁹

A broader approach is that taken by Jérôme Baschet's *Les justices de l'au delà*, an ambitious analysis looking at the development of the visual depiction of Hell over the course of four centuries and in two countries.²⁰ Perhaps as a result of this broad scope, Baschet does not always fully engage with the particular features of the visual images he refers to, and his arguments in relation to parallels between the representation of hell and contemporary theatre and visionary literature appear more pertinent to those sections of his book on France, than to the region of northern Italy addressed here. However, Baschet compellingly argued that, from relative stability in the representation of Hell in both France and Italy in the twelfth and thirteenth centuries, Trecento Italy imagery differs dramatically. His analysis focused largely on the fresco in the Camposanto, Pisa; which, he argued, illustrated the 'tortures' inflicted upon the sinners to a new and unusual degree.

My research aims to take further a point made by Baschet: that the increasingly detailed visions of judgment and punishment in Hell were shaped by changing penal and legal practices in contemporary Italy. Unlike Baschet's view of the depiction of Hell in the Camposanto frescoes as representing a startling departure from earlier iconographic traditions, my case studies explore the proposition that it and many further representations

¹⁸ Janis Elliott. 2000. *The Last Judgment Scene in Central Italian Painting, c. 1266-1343: the impact of Guelf politics, papal power and Angevin iconography* (PhD thesis, University of Warwick).

¹⁹ Lisa Wade. 2001. *Representations of the Last Judgment and their interpretation* (PhD thesis, University of Essex).

²⁰ Jérôme Baschet. 1993. *Les justices de l'au delà. Les représentations de l'enfer en France et en Italie (XII-XV siècle)* (Rome: École française de Rome).

of the Last Judgment commissioned and produced in northern Italy c. 1250-1400 share an alternative and broader interpretive framework: that not only are these works with a 'sacred' subject informed by and reflective of issues relating to the contemporary justice systems, but also, these images may have had a role to play in bridging a gap between justice practice and justice rhetoric.

There have also been several interesting studies carried out with a focus on images related to law and 'secular' justice. Christine B. Verzar demonstrated how civic monuments, including sculpture and fountains, acted as representations of civic authority and symbols of justice.²¹ Many were located where legal transactions took place. Often they appropriated ancient *spolia*, creating associations with Roman legal authority. Brendan Cassidy's *Politics, Civic Ideals and Sculpture in Italy c. 1240-1400* offered a political interpretation of mostly monumental sculpture – many examples related to justice – produced across the Italian peninsula, a wide geographical scope.²² Gherardo Ortalli's *Pingatur in Palatio* looked at the phenomenon of the *pittura infamanti* across the Italian peninsula.²³ My research draws upon these works but will not address in detail these well-studied images of justice.

Much scholarship has also been devoted to programmes incorporating several aspects of justice imagery, such as Giotto's frescoes for the Scrovegni Chapel in Padua which incorporates personifications of *Justice* and *Injustice* in the context of a fresco programme which also references the *Last Judgment* and the trials faced by Christ in the Passion.²⁴ Fresco cycles commissioned by communal governments have also produced a vast

²¹ Christine B. Verzar. 1999. 'The semiotics of the public monument in 13th- and 14th-century city squares. Civic values and political authority: *vox civitas*', in *Arte d'Occidente - Temi e metodi. Studi in onore di Angiola Maria Romanini*, ed. by Antonio Cadei (Rome: Edizioni Sintesi Informazione): 257-267.

²² Brendan Cassidy. 2007. *Politics, Civic Ideals and Sculpture in Italy c. 1240-1400* (London and Turnhout: Harvey Miller).

²³ Gherardo Ortalli. 1979. *Pingatur in Palatio. La pittura infamante nei secoli XIII-XVI* (Rome: Jouvence) is the leading study.

²⁴ There is a vast literature on Giotto, and the Arena chapel frescoes. A very limited selection includes James H. Stubblebine. 1969. *Giotto: the Arena Chapel Frescoes* (New York and London: W. W. Norton & Co. Inc.); Giuseppe Basile. 1992. *Giotto: La Cappella degli Scrovegni* (Milan: Electa); John White. 1996. *Art and Architecture in Italy 1250-1400*. 3rd edn. (London: Penguin Books Ltd): 309-32; Anne Derbes and Mark Sandona. 2004. *The Cambridge Companion to Giotto* (Cambridge: Cambridge University Press); Laura Jacobus. 2008. *Giotto and the Arena Chapel: Art, Architecture and Experience* (London: Harvey Miller Publications); Giuliano Pisani. 2008. *I volti segreti di Giotto. Le rivelazioni della Cappella degli Scrovegni* (Milan: Rizzoli), and Giuliano Pisani. 2009. *Il programma della Cappella degli Scrovegni*, in *Giotto e il Trecento*, ed. by Alessandro Tomei, 113–127. (Milan: Skira).

literature. To consider the limited example of one city, Siena, images of justice could encompass explicitly political iconography, as in Ambrogio Lorenzetti's *Buon Governo* frescoes for a civic location, the Sala dei Nove of the Palazzo Pubblico (1337-40),²⁵ but also works with a less explicit political meaning or function - such as Simone Martini's *Maestà*,²⁶ also for the Palazzo Pubblico (1315-16), or the *Maestà* of Duccio di Buoninsegna (c. 1308-11),²⁷ for a sacred space, the cathedral in Siena - can be seen to connect to issues of secular justice.

Other scholars have provided insights into how images of justice were used in Italy at this time. Samuel Y. Edgerton's *Pictures and Punishment* is particularly relevant to a study of the relationship between art and the criminal justice system.²⁸ In this innovative work, Edgerton explored aspects of this relationship in Renaissance Florence, through a wide-ranging study of images of or connected to justice. His research addressed the role and function of different visual images, including the *pitture infamanti*. Whilst some may have difficulty with Edgerton's central premise – that changes in the artworks reflected the influence of humanism, which had also led to a change in how criminal justice was perceived – his approach, looking as it does at the intersection of art and law, was extremely valuable for this thesis, not least for demonstrating that such a theme was worthy of study.²⁹ My study similarly aims to address the socio-political and religious use of images of justice. However,

²⁵ These frescoes have also inspired extensive literature. On the fresco programme as an expression of power through art, see Randolph Starn and Loren Partridge. 1992. *Arts of Power: Three Halls of State in Italy 1300-1600* (Berkeley and Los Angeles: University of California Press). On their political interpretation, see Chapter 1. For further discussion of the frescoes, see, for example: Jack M. Greenstein. 1988. 'The Vision of Peace: Meaning and Representation in Ambrogio Lorenzetti's *Sala della Pace* Cityscapes'. *Art History* 11/4: 492-510; C. Jean Campbell. 2001. 'The City's New Clothes: Ambrogio Lorenzetti and the Poetics of Peace'. *The Art Bulletin* 83/2: 240-258; Joseph Polzer. 2002. 'Ambrogio Lorenzetti's "War and peace" Murals Revisited: Contributions to the meaning of the "Good Government Allegory"'. *Artibus et Historiae* 23/45: 63-105; Maria Monica Donato. 2003. 'Il *princeps*, il *guidice*, il "sindacho" e la città: novità su Ambrogio Lorenzetti nel Palazzo Pubblico di Siena', in *Imago Urbis: l'immagine della città nella storia d'Italia*, ed. by Francesca Bocchi and Rosa Smurra. (Rome: Viella): 389-416. For a bibliography of the Lorenzetti frescoes, see Resnik and Curtis 2011: 26, note 152.

²⁶ On Simone Martini's *Maestà*, see Norman 1999: 45-67.

²⁷ Jules Lubbock's interpretation in *Storytelling in Christian Art from Giotto to Donatello* (New Haven and London: Yale University Press, 2006): 17-37, is considered in Chapter 3. On Duccio's *Maestà* generally, see James Stubblebine. 1979. *Duccio di Buoninsegna and his school* (Princeton, NJ: Princeton University Press); Enzo Carli. 1979. *Il Duomo di Siena* (Genoa: SAGEP Editrice and Monte dei Paschi di Siena); and, Florens Deuchler. 1984. *Duccio* (Milan: Electa).

²⁸ Samuel Y. Edgerton. 1985. *Pictures and Punishment. Art and Criminal Prosecution during the Florentine Renaissance* (Ithaca, New York: Cornell University Press).

²⁹ Such concerns are addressed in Martin Kemp. 1986. 'Review of *Pictures and Punishment*'. *The Burlington Magazine* 128/995: 147-148.

Edgerton's focus on Florentine art was narrower geographically than my research, which looks at an inter-relationship between art and the justice system across northern Italy. In addition, much of his study fell outside my time frame, and other aspects of his research, for example the impact upon the medical profession of the attachment of art to criminal prosecution, are not addressed here.

Clearly, late medieval images of justice is a vast area, the subject of much scholarship; as a discussion of all works treating the theme of justice would be beyond the limits on the length of this thesis, a specific focus is adopted. The images selected for study are from a particular area, which I will term 'northern Italy': largely comprising northern and north-central Italy, it is distinguished from Rome and the Papal States and those areas under imperial and Angevin control in Southern Italy, which will not be addressed; although occasional references to artworks from the rest of the peninsula may be used to illustrate a contrast or commonality. The images are from both civic and ecclesiastical settings. The need to contextualize such images, and exploring their social and cultural functions and relationship with contemporary juridical practice, has led away from the study of images intended for a smaller, or select audience, such as illuminated manuscripts, or objects for private use, to focus upon those with a 'public' aspect. Images of punishment will not form part of this study; in part this is because few such images survive, and some – such as the *pitture infamanti* - have been subject to detailed study. However, the impact of punishments from the secular justice system on images of Divine Justice will form part of the analysis in Chapter 2. Similarly, images of ecclesiastical justice in practice will not be addressed, nor will images of legal academics, such as the tombs of the doctors of law from Bologna, for example, be subject to detailed analysis. The majority of works selected for this study are large in scale, intended for public or semi-public display or consumption. Some are found in monumental form, in fresco, sculpture or mosaic; others are from painted panels. Most were intended for long-term survival, relatively unusual for images of justice, many of which were temporary or ephemeral.

Exploring the chosen images of justice in the context of their social, political and cultural background acknowledges the centrality of law and justice to late-medieval society. Crime,

law, and issues of power and authority are inextricably linked.³⁰ The acts a society chooses to criminalise and the punishments it metes out are revealing of its values and, arguably, its ruling class beliefs, concerns and ambitions. Exploring through images the interplay between political power, contemporary political philosophy, society and its understanding and practices of justice, my study will address the proposition that the artworks may have played an active role in that society, propagandising for and reinforcing social and behavioural norms and a particular contemporary conception of justice. It will suggest that these matters were of interest or concern, and most particularly at this time in the independent towns and cities of northern Italy.

There are several reasons for choosing to focus upon this well-studied region. In many ways, in their economic and socio-political situation the towns and cities of northern Italy were unique: they were republican, commercially-aware, urbanised, politically autonomous, territorially acquisitive. Authority frequently resided in *popolani* regimes, comprising wealthy (often commercially successful) and educated members of society. Moreover, such a focus is not an overly narrow approach: one cannot assume an identity of interest between 'the city-states'. It is important to note that patterns of development, whether political, economic, or social, varied in different towns, cities and regions, and across the period. As many became self-governing, towns and cities began to assert a specific and strong civic communal identity to cultivate and preserve their autonomy.³¹ Asserting jurisdiction in matters of law and justice was frequently seen as a means to reinforce independence and a distinct civic identity. In part, my research explores whether this autonomy, and the desire to retain it, resulted in the development of specific notions of justice and examples of justice imagery; or, possibly more interestingly, whether there are commonalities across geopolitical boundaries, between how these independent towns and

³⁰ This is explored by Mario Sbriccoli. 1997. 'Legislation, Justice and Political Power in Italian Cities', in *Legislation and Justice*, ed. by Antonio Padoa-Schioppa, 37-55. (Oxford: Clarendon Press; New York: Oxford University Press). See also the contributions to Brenda Bolton and Christine Meek. 2008. *Power and Authority in the Middle Ages* (Turnhout: Brepols).

³¹ On the notion of the communes as 'city-states', and the expansion of public power, see the work of Giorgio Chittolini, including, 1994. 'Organizzazione territoriale e distretti urbani nell'Italia del tardo medioevo' in *L'organizzazione del territorio in Italia e Germania: Secoli XIII-XIV*, ed. by Giorgio Chittolini and Dietmar Willoweit. (Bologna: Il Mulino): 7-26. See also the several contributors to *The Journal of Modern History* 'Supplement: The Origins of the State in Italy, 1300-1600' (1995: 67). Generally, historians are reluctant to apply the concept of a 'state' in the sense of an organized system, or an entity with autonomous self-sustaining centralized administrative structures, to late-medieval communes (pre-1400).

cities used and depicted images of justice. Therefore, a focus upon northern Italy provides a sufficiently wide scope to reveal whether common themes emerge from which conclusions may be drawn.

The period c. 1250-1400 was a crucial one for the region. It also attracts many labels: 'late Middle Ages', 'late medieval', 'early Renaissance'; it is contended that such labels miss the point: there are sufficient continuities pre-1250, across my chosen period of study, and post-1400 to resist such periodization, and inherent value-judgments. The date bracket is, however, not chosen arbitrarily. The 'Wider Trecento', as it has been termed, has been described as a "major formative period in European history".³² This late medieval period (my preferred term, whilst acknowledging the possibility that 'late' may imply a notion of 'decline' which is not intended) may be one of the most significant in the history of Italy.³³ Several important factors affected society. Some were social, such as increasing urbanisation,³⁴ the impact of the Black Death,³⁵ and the repeated out-breaking of violence, both within and between cities.³⁶ Some were economic, such as the commercial activities of the towns and cities of north and central Italy.³⁷ Others were cultural, such as the increasing use of the vernacular in literature, evidence of an awakening belief that the people, the laity, had an appreciable role to play in society, whilst retaining a religious belief that lay at the foundation of much of the daily life of these towns and cities, evidenced by the rise and

³² The period 1250-1400 was addressed in a collection of essays, Louise Bourdua and Robert Gibbs. 2012. *A Wider Trecento. Studies in thirteenth and fourteenth-century European art presented to Julian Gardner* (Leiden, Boston: Brill). The quotation is from page 3.

³³ On the criticism of a concept of 'growth, peak and decline' implicit in the distinctions of 'early, middle and late' Middle Ages, see Howard Kaminsky. 2000. 'From Lateness To Waning To Crisis: the Burden of the Later Middle Ages'. *Journal of Early Modern History* 4/1: 85-125.

³⁴ On this, see Chiara Frugoni. 1991. *A Distant City: Images of Urban Experience in the Medieval World*, translated by William McCuaig (Princeton: Princeton University Press).

³⁵ There is a vast literature on the Black Death. Useful references include Samuel K. Cohn Jr., *The Cult of Remembrance and the Black Death: Six Renaissance Cities in Central Italy* (Baltimore: Johns Hopkins Press, 1992).

³⁶ Samuel K. Cohn has written extensively on social unrest in this period; see, for example, 2007. 'Popular insurrection and the Black Death: a comparative view', *Past and Present* 195: 188-204; 2006. *Lust for liberty: the politics of social revolt in medieval Europe, 1200-1425* (Cambridge, MA: Harvard University Press); 2006. 'Popular revolt and the rise of early modern states', *Historian* 89: 26-33; and, 2004. *Popular Protest in Late Medieval Europe: Italy, France, and Flanders* (Manchester: Manchester University Press).

³⁷ This economic and commercial angle is considered by Philip J. Jones. 1997. *The Italian City-State: From Commune to Signoria* (Oxford: Clarendon Press), 152-332.

popularity of the mendicant orders.³⁸ Political change was also marked in the period, many city-states moving from rule by the *popolo* to more autocratic rule by *signorie*.³⁹

As well as being a time of societal change, significant developments were also taking place in relation to the law, and the administration of justice. The research of Chris Wickham has indicated that in twelfth century Tuscany, even judges were often deciding on the basis of ‘common sense’, rather than a strict interpretation of legal rules; however, by the fifteenth century, it is possible to argue that the legal ‘system’ was becoming autonomous, operating independently of social and political power structures.⁴⁰ Therefore, the thirteenth and fourteenth centuries are important phases in that transition, the development of ‘the law’ as a “political and cultural – and coercive – system” in society.⁴¹ The strong link between power, and society, makes the communes of northern Italy a particularly interesting study, given their autonomy, both politically, and, as we will see in Chapter 1, in matters of law. They therefore provide an ideal framework to explore the possible impact of the changing role of the governing authorities in law-making and law-enforcing, and the conflicts between the Church and secular authorities over matters of jurisdiction, on the creation and deployment of images of justice commissioned by or for these towns and cities.⁴²

Not only was the period one which saw the development of a recognisable legal ‘system’, but the concept of the law changed, from that decreed by the Church and local authorities

³⁸ On the mendicant orders, for an introduction, see Daniel R. Lesnick. 1989. *Preaching in Medieval Florence: The Social World of Franciscan and Dominican Spirituality* (Athens, Ga., and London: University of Georgia Press); and Andre Vauchez. 1999. ‘The Religious Orders’, in *The New Cambridge Medieval History*, V: c. 1198-c. 1300, ed. by David Abulafia (Cambridge: Cambridge University Press), 220-255. On the Franciscan Order, see John Moorman. 1968. *A History of the Franciscan Order from its Origins to the Year 1517* (Oxford: Clarendon Press); C. H. Lawrence. 1994. *The Friars: The Impact of the Early Mendicant Movement on Western Society* (London and New York: Longman); and, Michael Robson. 2006. *The Franciscans in the Middle Ages* (Woodbridge: Boydell & Brewer). On the Dominican Order, see William A. Hinnebusch. 1965. *The History of the Dominican Order*, vol 1 (New York: Alba House); and Marie-Humbert Vicaire, *Saint Dominic and His Times* (London: McGraw-Hill, 1964).

³⁹ This social change is considered in more detail in Chapter 1, but a comprehensive treatment is given Jones 1997.

⁴⁰ Chris Wickham. 2003. *Courts and Conflict in Twelfth-Century Tuscany* (Oxford: Oxford University Press): 206. This is also addressed in Thomas Kuehn, *Law, Family, and Women. Toward a Legal Anthropology of Renaissance Italy* (Chicago: University of Chicago Press): 77; 80-2.

⁴¹ Wickham 2003: 206.

⁴² For an indication of the variety of courts operative across Europe in the period, feudal, civic, corporate and ecclesiastical, see Thomas Kuehn, ‘Conflict Resolution and Legal Systems’, in Carol Lansing and Edward D. English. 2009. *A Companion to the Medieval World* (Oxford: Wiley-Blackwell): 335-353.

to that fostered in the law faculties of the nascent universities, academic law.⁴³ Significantly, this period saw medieval law develop from its roots in canon law administered by ecclesiastical courts, and customs and laws dispensed on a local level, to encompass a revival of Roman law principles and the formation of a legal profession and an intellectualised concept of law (a legal ideology) which was disseminated across the peninsula. The awareness of notions of justice, and the growth in medieval society of ‘legal consciousness’, can be seen as an active element in shaping people’s values, ideas, and aspirations.⁴⁴ Looking at these concepts will necessitate studying what form the law took at this time; statutes, case reports, judicial reports, *consilia*, even crime statistics can be useful in this regard, as can contemporary chronicles and histories.⁴⁵ Relatively recent studies include those of Trevor Dean, who has written several works addressing aspects of crime and the law in late-medieval Italy.⁴⁶ Other studies are more geographically specific, often dependent upon the survival of suitable records for research. Sarah Blanshei has written on crime in medieval Bologna and Perugia, for example.⁴⁷ Guido Ruggiero studied criminal violence in Venice 1290-1406.⁴⁸ Many studies focus upon Florence: for example, Laura Ikins Stern addressed medieval and Renaissance Florence.⁴⁹ Fewer studies have addressed the issues in more rural areas.⁵⁰ Others focus on a later period than that covered here, often the fifteenth century, such as the contributors to Lauro Martines’ important study of the expansion of the legal profession in Florence, *Lawyers and Statecraft in Renaissance*

⁴³ This is discussed in Chapter 1.

⁴⁴ On the concept of ‘legal consciousness’ generally, see Anthony Musson. 2001. *Medieval Law in Context* (Manchester: Manchester University Press).

⁴⁵ On the need to treat *consilia*, opinions written by scholars on particular legal problems, with a level of caution, see Edward D. English, ‘Society, Elite Families, and Politics in late Medieval Italian Cities’, in Lansing and English 2009: 185-208, 191. A similar caution may be required for chronicles. On the use of social chronicles as sources, see Louis Green. 2008. *Chronicle Into History: An Essay on the Interpretation of History in Florentine Fourteenth-Century Chronicles* (Cambridge: Cambridge University Press), and Sharon Dale, Alison Williams Lewin, and Duane J. Osheim. 2007. *Chronicling History. Chroniclers and Historians in Medieval and Renaissance Italy* (University Park, Pa. : Pennsylvania State University Press).

⁴⁶ The works of Trevor Dean include: 2007. *Crime and Justice in Late Medieval Italy* (Cambridge: Cambridge University Press); 2001. *Crime in Medieval Europe 1200-1550* (Harlow: Longman); Trevor Dean and K. J. P. Lowe. 1994. *Crime, Society and the Law in Renaissance Italy* (Cambridge University Press); also, David S. Chambers and Trevor Dean. 1997. *Clean Hands and Rough Justice: An Investigating Magistrate in Renaissance Italy* (Ann Arbor: University of Michigan Press).

⁴⁷ Sarah R. Blanshei. 1983. ‘Criminal Justice in Medieval Perugia and Bologna’. *Law and History Review* 1/2: 251-275; and, 1982. ‘Crime and Law Enforcement in Medieval Bologna’. *Journal of Social History* 16/1: 121-138.

⁴⁸ Guido Ruggiero. 1980. *Violence in Early Renaissance Venice* (New Brunswick, N.J.: Rutgers University Press).

⁴⁹ Laura Ikins Stern. 1994. *The Criminal Law System of Medieval and Renaissance Florence* (Baltimore Md.: Johns Hopkins University Press).

⁵⁰ See Duane J. Osheim. 1989. ‘Countrymen and the Law in Late-Medieval Tuscany’. *Speculum* 317-337.

Florence, and Andrea Zorzi's research into how criminal justice was administered in Renaissance Florence.⁵¹

Significantly, the practices of the administration of justice also changed around the late medieval period: it is generally accepted by legal historians and well-attested in contemporary records, statutes, and juridical theory and practice, that legal practices developed by canon law and the Church, based on an inquisitorial system, began to be adopted in secular justice systems.⁵² However, what has not been studied – and which forms a substantial part of my research – is what impact, if any, such changes had upon images of justice produced around the time of this change. In offering a new, legal perspective on images of justice, a careful balance must be struck between legal historical aspects and visual analysis. Few legal historians are concerned with images of legal authority, justice and punishment and how images can convey concepts of law and experiences of the legal system. My study aims to demonstrate that art has much to offer the study of such matters.

The structure and subjects of the thesis will be briefly outlined. The relatively wide geographical and chronological scope being attempted here in relation to a complex area has certain consequences for the approach – my study aims for a broad discourse, a consideration of the general, supported by close study of specific works, from which to draw particular conclusions. With this in mind, an introductory or opening chapter will provide detail on the background to the circumstances in which the works were produced. Primary sources, including specific, relevant aspects of theology and philosophy influential at the time, and contemporary literature, will provide some of this contextual information. In addition, there is much scholarship on Italy in this period. An invaluable work is Philip Jones's excellent and comprehensive, *The Italian City State: From Commune to Signoria*. This contextual information should establish what can be seen as the historical – social, economic, political, philosophical, legal-criminological – background to the works. This

⁵¹ Lauro Martines. 1968. *Lawyers and Statecraft in Renaissance Florence* (Princeton, New Jersey: Princeton University Press). See also Lawrin Armstrong and Julius Kirshner. 2011. *The Politics of Law in Late Medieval and Renaissance Italy. Essays in Honour of Lauro Martines* (Toronto, Buffalo, London: University of Toronto Press). Andrea Zorzi. 1988. *L'amministrazione della giustizia penale nella Repubblica fiorentina: Aspetti e problemi* (Florence: Leo S. Olschki).

⁵² This is addressed in Chapter 1.

introductory chapter will offer a particular focus on the law – its nature and practices. This information is important for the approach, as the case studies will suggest that several of the artworks were produced in response to, or their imagery was specifically intended to respond to, changes in the contemporary justice system.

The main body of the study is organised thematically. Chapter two deals with the intrusion of secular justice into imageries of the divine by exploring a possible relationship between earthly punishments and divine justice, in images depicting the Last Judgment or referencing its imagery. The intention is to show that more traditional and, on the surface, more ‘religious’ images also expressed the concept of Divine Justice and its interrelationship with secular justice, actively engaging with an evolving justice system and philosophy of justice.

This chapter on divine justice imagery comprises two sections. The first examines the contemporary understanding of divine justice through an analysis of images of the Last Judgment. As noted above, there are many works examining specific representations of the Last Judgment. Whilst benefiting from these works, this thesis takes a different perspective. The intention is, in part, to address the question of whether the contemporary understanding of the notion of divine justice as it appears in certain works of art recognised oppositions such as sacred/secular, this worldly/other worldly, or whether close analysis of such images indicates an arguably more sophisticated conception. In particular, the analysis, connecting imagery to society, permits an exploration of whether the concept of divine justice as depicted in such scenes impacted upon, engaged with or reflected concerns arising from contemporary realities or expectations of punishment, or justice. That these images may have had a role to play in bridging a gap between justice practice and justice rhetoric is a development symptomatic of an interrelationship of sacred and secular themes.

The second part of the chapter is a case study, an analysis of a work not previously studied as an image of justice, *The Virgin and Child Enthroned, with Scenes of the Nativity and the Lives of the Saints* by Margarito of Arezzo, now in the National Gallery, London. The scenes of the panel are analysed to explore a possible justice narrative, dealing with issues relating to trial and punishment. In a new interpretation, this is analysed as an example of the visual

culture of an Italian confraternity in Duecento Arezzo and the interrelationship of its theme with Last Judgment imagery and changes in punishment practice within the 'secular' justice system which can be dated to the mid-thirteenth century. Many of the observations arise from examination of primary sources, including the constitution of the confraternity. In addition, the research of the historian Guy Geltner on medieval prisons has proved valuable in my forming a new perspective on the painting.⁵³

Chapter 3 presents my research into the artistic representation of the exercise of judicial authority in the secular justice system in a specific context. The case studies comprise a detailed thematic analysis of examples of the treatment of a religious subject, the *Trials in the Passion of Christ*, in artworks commissioned and produced in northern Italy c. 1250-1400. There has been relatively little scholarship attempting a specific and systematic review of the treatment in art of the theme of the trials of Christ.⁵⁴ Colum Hourihane's *Pontius Pilate, Anti-Semitism, and the Passion in Medieval Art* involved a study of the iconography associated with Pontius Pilate, in the course of which he looked at artistic representations of the trials of Christ from across Europe, to determine how visual representations shaped perceptions of Pilate.⁵⁵ Hourihane's stimulating analysis encourages a new appreciation of representations of Pilate, which informs understanding of several of the trial scenes studied in this chapter. In general, he observed an expansion in scenes of the Passion from the Duecento, with more detailed treatment of the trials before all judges, not only that before Pilate; a finding which tallies with Anne Derbes's convincing argument that "during the thirteenth-century, and beginning about 1235-40, a full-scale transformation of traditional Passion narratives took place".⁵⁶ She analysed these changes as conscious manipulations of familiar imagery, and suggested that they might have been promoted by a desire to show more fully Christ's humanity. Hourihane similarly concluded

⁵³ Guy Geltner. 2006. 'Medieval prisons: Between myth and Purgatory'. *History Compass* 4: 1-13; and, 2008. *The Medieval Prison: A Social History* (Princeton: Princeton University Press).

⁵⁴ The trial sequence was addressed in Gertrud Schiller. 1971. *Iconography of Christian Art*, volume 2, trans. Janet Seligman (London: Lund Humphries): 56-66. Evelyn Sandberg Vavalà included a table detailing the distribution of artworks from the eleventh to fourteenth centuries featuring the episodes of the Passion in 1929a. *La croce dipinta italiana e l'iconografia della passione* (Verona: Casa editrice Apollo): 428-437.

⁵⁵ Colum Hourihane. 2009. *Pontius Pilate, anti-semitism, and the Passion in Medieval Art* (Princeton and Oxford: Princeton University Press).

⁵⁶ Anne Derbes. 1996. *Picturing the Passion in Late Medieval Italy: Narrative Painting, Franciscan Ideologies, and the Levant* (Cambridge and New York: Cambridge University Press). The quotation is from Derbes 1996: 158.

that this trend was part of a movement which included an increase in devotional writing centred on the Passion.⁵⁷

Whilst benefiting from Hourihane's analysis and accepting many of his and Derbes's conclusions, my research has a different focus. It offers a fresh perspective on these artworks; by visual analysis and contextualising, these are analysed as further instances of the intrusion of secular/human elements into divine imageries. Specifically, they are interpreted as scenes of legal procedures, as an accused facing their judge. In particular, these images are set in the context of specific developments in the administration of justice from the mid-Duecento. The chapter explores whether and to what extent considerations arising from the transition to a justice process based upon an inquisition procedure were to impact upon the selection and representation of the judge in scenes of the *Trials of Christ* from the Duecento and Trecento.

Chapter 4 explores further images which communicated - in visual and written form - contemporary interest in the administration of secular and judicial power and authority. The use of art to convey messages about the role of judges was addressed by Judith Curtis and Dennis Resnik in their analysis of works largely from northern Europe in the late fifteenth to seventeenth centuries, including *The Justice (Judgment) of Cambyses* (1498) and the programmes for the Town Halls of Geneva and Amsterdam.⁵⁸ Similar studies have not been undertaken for artworks from Duecento and Trecento northern Italy, which is one aim of this thesis. Therefore, this fourth chapter develops the notion of the importance of the enhanced role of those exercising secular and judicial authority by means of two case studies, of artworks little studied as images of justice.

The first part of the chapter addresses the concepts of the qualities to be sought in a contemporary judge, and also the concept of Justice as a Virtue, in the context of a fresco of *Brutus the Good Judge* (c. 1330s-1340s) commissioned for a secular location, the audience hall in the premises of the Arte della Lana in Florence. The fresco received authoritative consideration in the early twentieth century by Salomone Morpurgo in *Bruto 'Il Buon*

⁵⁷ Hourihane 2009: 296.

⁵⁸ Resnik and Curtis 2011: 38-61.

Giudice'.⁵⁹ It had received little further detailed scholarly attention until two studies were published during the course of my research.⁶⁰ In 2011, Giancarlo Breschi's '*Visibile parlare*' offered a philological analysis of the inscriptions to the fresco.⁶¹ Breschi analysed variations between, and the relative merits of the several accounts referenced by Morpurgo to reconstruct the now damaged and lost inscriptions. The fresco has been considered more recently by Jill Harrison, in *Being Florentine: a question of identity in the Arte della Lana, Florence*.⁶² Harrison addressed how "the scheme engaged with moral, political, religious and economic values and what it reveals about the complexities of 'being Florentine'", exploring the function of such an allegory in creating or shaping identities for the emergent merchant classes in the Trecento.⁶³ Neither Morpurgo, nor either of the recent studies, addressed the fresco from a legal perspective. In a new interpretation, the chapter contextualises the image, analysing it as relating to the concerns of those appearing before a figure of secular authority, exercising the judicial functions of the patrons of the work.

The final case study examines a lesser-studied work, the *Madonna and Child Enthroned with the Theological and Cardinal Virtues*, from San Miniato al Tedesco, in Tuscany (c. 1393). Recent art historical writing on the fresco is largely limited to a detailed analysis of its iconography and iconology in April 2012 by Alessio Guardini and Francesco Fiumalbi in a blog post consisting of four parts, *Madonna in Trono Con Bambino Circondata Dalle Virtu'*

⁵⁹ Salomone Morpurgo. 1933. 'Bruto 'Il Buon Giudice' nell'Udienza dell' Arte della Lana in Firenze', in *Miscellanea di storia dell'arte in onore di Igino Benvenuto Supino* (Florence: L.S. Olschki): 141-163. It has not appeared in English translation.

⁶⁰ Morpurgo's analysis is referred to with approval but without detailed comment in, amongst others, E. H. Gombrich. 1979. 'Giotto's Portrait of Dante?'. *The Burlington Magazine* 121/ 917: 471-483; Christiane L. Joost-Gaugier. 1990. 'Dante and the History of Art: The Case of a Tuscan Commune. Part II: The Sala del Consiglio at Lucignano'. *Artibus et Historiae* 11/22: 23-46; and Brendan Cassidy. 2007. 'Politics and Propaganda in late-Medieval Italian Mural Painting: some themes', in *Out of the Stream: Studies in Medieval and Renaissance Mural Painting*, ed. by Luis Urbano Afonso and Vitor Serrão (Newcastle upon Tyne: Cambridge Scholars Publishing): 260-289. The fresco is also mentioned briefly in Maria Monica Donato, 'Arte civica a Firenze, dal primo Popolo al primo Umanesimo. La tradizione, i modelli perduti', in Donato and Parenti 2013: 18-33, at 24-25.

⁶¹ Giancarlo Breschi, "'Visibile parlare': I cartigli dell'affresco di Bruto nel Palagio dell'Arte della Lana a Firenze', in *La parola e l'immagine: studi in onore di Gianni Venturi*, ed. by Marco Arani (Florence: Leo S Olschki, 2011): 117-135.

⁶² Jill Harrison, 'Being Florentine: a question of identity in the *Arte della Lana*, Florence', in *Art and Identity: Visual Culture, Politics and Religion in the Middle Ages and the Renaissance*, ed. by Sandra Cardarelli, Emily Jane Anderson, John Richards (Newcastle upon Tyne: Cambridge Scholars Publishing, 2012): 127-148.

⁶³ Harrison 2012: 127.

Cardinali e Teologali.⁶⁴ The analysis here has a different and specific focus: the intention is to contextualise the fresco, and then to draw some parallels with the fresco in the premises of the Florentine Arte della Lana. Together, chapters 3 and 4 put forward a case for these images as eloquent visual statements of an increased emphasis on the role and character of those exercising secular and judicial authority arising from the changes to the justice system from the Duecento onwards.

The last part of the thesis draws together the conclusions from each chapter. The primary questions are reviewed, to assess the extent to which the chosen images embody contemporary notions of justice, or promote particular aspects of contemporary jurisprudence, or of the legal system, or otherwise serve the interests or concerns of those commissioning and producing such images. It will attempt to demonstrate that the contention that what could account most comprehensively for certain changes in how images of justice were used and depicted in northern Italy c. 1250-1400 may be found in specific aspects of a justice system in transition has been borne out by the analysis. Further, it will reappraise what has been gleaned about the impact upon images of justice commissioned and produced in northern Italy c. 1250-1400 of changes in contemporary punishment and prosecution practices, and how this may assist in questioning a sacred/secular distinction in the contemporary notion of justice.

⁶⁴ Alessio Guardini, and Francesco Fiumalbi. 2012. *Madonna in Trono con Bambino circondata dalle Virtu' Cardinali e Teologali* [accessed 30 March 2013], http://smartarc.blogspot.it/2012/04/madonna-in-trono-con-bambino-circondata_01.html/. The fresco is also mentioned briefly in Donato 2013: 18-33, at 27.

Chapter 1 – Setting the scene: northern Italy, c. 1250-1400

Introduction

This thesis examines the interrelationship between the representation of justice in the art of the later Duecento and Trecento, and the contemporary understanding of justice, religious thought, and with law in theory and in practice. In order to do so, this must be set in its appropriate context. Therefore, this chapter offers details of the historical, social, political, legal and cultural context in which the artworks were created. The focus is specific, addressing only material necessary to enhance appreciation of whether such factors may have been influential in changes in the use and depiction of images of justice c. 1250-1400.

1.1 The geopolitics of 'Italy'

Throughout this period there was no single unified entity that could be called 'Italy'.⁶⁵ The peninsula was divided into roughly three distinct geopolitical regions (Figure 1). The focus of my research is on 'northern Italy', largely comprising the city-states of northern and north-central Italy, and the so-called 'Maritime Republics', Venice, Pisa and Genoa.

In detailing information relevant to contextualising works produced in this part of Italy, it is important to note that it is not possible here to address differing patterns of development in different towns, cities and regions, and across the period. There will, perhaps inevitably, be an element of generalization. However, not all matters were geographically specific. Despite contrasting situations across the region, there was an element of continuity and crossover. Where they impact upon the nature and use of images of justice, matters of specific political, social or cultural relevance to a certain geographical (or geopolitical) area will be addressed in that context.

⁶⁵ An introduction to the complexities of Italy in this period is David Abulafia. 2004. *Italy in the Central Middle Ages* (Oxford: Oxford University Press). See also Giovanni Tabacco. 1990. *The Struggle for Power in Medieval Italy: Structures of Political Rule*, trans. by Rosalind Brown Jensen (Cambridge: Cambridge University Press). For an accessible introduction to the situation in northern Italy, see D. P. Waley. 1988. *The Italian City-Republics* 3rd ed. (London: Longman), and Lauro Martines. 1988. *Power and Imagination: City States in Renaissance Italy* (Baltimore: Johns Hopkins University Press).

1.2 Political background

One of the factors making this an interesting area to study is that power was decentralized in Italy to a degree unusual at this time. The city-states were the site of dramatic social and political change, which had begun around the eleventh century, an “all-embracing, a universal urban shift, expansion, and diversification of economic and social forces, wealth, culture, and authority”.⁶⁶ As populations expanded rapidly between the early twelfth to later thirteenth centuries, and economies grew, these urban communities began to develop an independent identity.⁶⁷ The autonomy of the city-states is significant when exploring contemporary society and politics, as civic authorities assumed control of many aspects of urban life, including governance, administration and justice.

Whilst many city-states shared moves towards popular political regimes, they remained distinct entities, with different social, political and economic characteristics. Their independent nature contributed to the development of diverse practices of patronage. Such diversity is important in the context of this thesis, as continuities in the use and depiction of images of justice in politically autonomous towns and cities can be revealing of underlying and more widely-held notions and practices.

Popular government

These communities were, to an extent, socially mobile. In a process of “structural transformation”,⁶⁸ power began to move – albeit slowly in many cases, and rarely smoothly – from a land-owning noble elite, towards a new ‘middle’ class: non-noble but with financial status, largely achieved through commerce. However, it is questionable how ‘popular’ the communal governments were. In some independent communes, autocratic and noble figures continued to exert a high degree of influence.⁶⁹ In many cases, ‘popular’ governments appear to have been oligarchies, in effect, consisting of members of the new

⁶⁶ The rise of the communes has been the subject of much scholarship. Here I draw upon Philip Jones’s detailed and thorough analysis of the reasons underlying these societal and political changes (Jones 1997: 152-332). The quotation is Jones 1997: 155.

⁶⁷ An accessible examination of the autonomy of the city-states, and subordination of *contado* to city, is Giorgio Chittolini. 1989. ‘Cities, “City-States,” and Regional States in North-Central Italy’. *Theory and Society* 18/5: 689-706.

⁶⁸ Jones 1997: 53.

⁶⁹ On the control of power in the communes by a minority, see English 2009: 185-208.

merchant classes.⁷⁰ However, social classifications are complex. Many newly rich merchants joined the ranks of the nobles, whether through marriage or ennoblement. Conversely, in the Trecento, many magnates – especially in Florence – were to become *popolani*.⁷¹

The signori

The mid-Duecento perhaps marked the high point for popular, republican government. After that date many towns and cities of the region yielded to autocratic rulers, or *signori*, frequently drawn from members of the landed classes, magnates and nobles.⁷² It is difficult to reach a broad conclusion on this process, but by c. 1300, most cities of northern Italy were under signorial rule, and several in Tuscany were to be the subject of power struggles during the Trecento. Certain communes managed to be both politically independent and ruled by *signorie* at different times during this period: Parma, or Lucca, for example. Padua was an independent commune, between a period under Ezzelino da Romano in the thirteenth century, and then under the Carrara from c. 1330s. By the mid-Trecento, only economically strong cities like Florence, Venice, and Genoa largely resisted signorial rule.

However, although many scholars have seen the political regimes in this period in terms of the rise and subsequent fall from authority of ‘popular’ government, others, most compellingly Philip Jones, have questioned whether the commonplace view of a clear distinction between self-governing communes and ‘despotic’ *signorie*, was justified.⁷³ It is also questionable how ‘despotic’ were such rulers.⁷⁴ The opposition of tyranny/republic could have been a useful construct for communal governments seeking to reinforce their

⁷⁰ The term ‘oligarchy’ is used by many historians, although others including Mario Ascheri, have expressed concerns at its use in relation to certain cities, such as Bologna, where the relevant regime lacked consistent strategy or stability (Mario Ascheri. 2006. *Le Città-Stato. Radici del municipalismo e del repubblicanesimo italiani* (Bologna: il Mulino)).

⁷¹ Although it is generally assumed that Florentine anti-magnate legislation was intended to restrict nobles’ activities, Christiane Klapisch-Zuber suggested that from the mid-Trecento the intention was to encourage magnates to join the *popolo*, to enable them to take part in Florentine political life: Christiane Klapisch-Zuber. 2006. *Retour à la Cité: Le Magnats de Florence 1340–1440* (Paris: Éditions École des Hautes Études en Sciences Sociales).

⁷² See Trevor Dean, ‘The Rise of the Signori’, in Abulafia 2004: 104-124. See also Martines 1979: 94-110.

⁷³ Philip J. Jones. 1965. ‘Communes and Despots: The City State in Late-Medieval Italy’, *Transactions of the Royal Historical Society* (Fifth Series), 15: 71-96, reprinted in John Law and Bernadette Paton. 2009. *Communes and Despots in Medieval and Renaissance Italy* (Farnham: Ashgate): 3-26.

⁷⁴ See John M. Najemy. 2004. *Italy in the Age of the Renaissance: 1300-1550* (Oxford: Oxford University Press): 184-207, esp. 189-190. For an argument that the identification of the Italian *signorie* with despotism can be attributed to 19th-century scholarship, see Benjamin G. Kohl, ‘The Myth of the Renaissance Despot’, in Law and Paton 2009: 61-74.

regimes.⁷⁵ It is possible that changes were more evident in the rhetoric of contemporary political literature and thought than in institutions of government, including those relating to law enforcement. Transition from communal government to *signoria* was not always violent, but could develop naturally from particular circumstances. In Padua, for example, the commune voluntarily chose Giacomo il Grande da Carrara to act as '*Defensor, Protector et Gubernator populi paduani, et civitatis et districtus*' in 1318.⁷⁶

It is perhaps unsurprising that there may often have existed continuities between communal and so-called despotic regimes, which found expression in many ways. Significantly for the purposes of this study, many *signori* chose to preserve the machinery of communal government, including aspects of the law-making and law-enforcement function. In such circumstances, judicial attitudes and practices could survive political transition. Similar continuity may also be possible in the contemporary notion of justice; as laws are usually written and administered by those in authority to both express their beliefs but also to reinforce their rule, these same considerations might have impacted upon both communal governments and *signorie* alike.

Indeed, why should the signori reject profitable associations of city, ruling authority and justice? There is what Mario Sbriccoli described as a "circular relationship" between government and the judicial function.⁷⁷ Autocratic regimes may be as likely as popular regimes to commission images of justice, to link their authority to that virtue, using justice to encourage popular support for their rule. In many cases, the use of images to propagandise for the identity and values of the commune survived the transition to signorial rule. Evidence of the continuity in use of images of justice by both popular government and more autocratic rulers can be regarded as evidence of the importance of justice in contemporary society. This means that across a period of significant political upheaval, it may be possible to look for changes in the use and depiction of images of justice and to explore what may have produced or influenced those changes: the socio-political

⁷⁵ Starn and Partridge 1992: 21-5.

⁷⁶ See Benjamin G. Kohl. 1998. *Padua under the Carrara, 1318–1405* (Baltimore and London: Johns Hopkins Press).

⁷⁷ Sbriccoli 1997: 48.

background, a shift in the underlying meaning of justice, or the contemporary understanding of the concept, or a response to specific changes in the justice system.

1.3 The city-states

Clearly, one cannot assume an identity of interest between ‘the city-states’. As many towns and cities became self-governing, they began to assert a specific and strong civic communal identity to help them to cultivate and preserve their autonomy, to which the civic authorities took steps to encourage and foster allegiance. This was perceived as essential: threats to communal independence came from within and without.⁷⁸

Rivalry between cities

Despite their desire for independence and autonomy, many cities had territorial ambitions, and frequently resorted to violence to achieve this.⁷⁹ Some important cities dominated their neighbours. In Tuscany, from c. 1250-1340, Florence grew to dominate, amongst others, Arezzo, Prato and San Gimignano. In northern Italy, Milan, Venice, and Verona, exerted control over territory. Secondary cities or towns, limited in prestige, wealth and power, included Ferrara, Pistoia, or Ravenna. Yet even a secondary city like Arezzo, a commune from 1098, was sufficiently strong and independent in the mid-Duecento to forcefully subdue its neighbouring town of Cortona, before succumbing to Florentine control in 1384.

Major political differences between many city-states led to strategic alliances being formed, broken and reformed. These often reflected the complex situation between those who supported the imperial ambitions of the Hohenstaufens to control the Italian peninsula, and those who sided with papal attempts to curb imperial power.⁸⁰ The roots of these conflicts lay in the early Duecento, but after Frederick II’s death in 1250, his successors continued to fight to control Italy. A period of calm heralded by Charles of Anjou from c. 1263 and the consolidation of anti-imperialist (or anti-German) rule did not last. Disorder and violence soon broke out again. The complexities of political division between the so-called Guelf and

⁷⁸ Tabacco 1989 offers an introduction to this complex topic.

⁷⁹ On the territoriality of the city-states, see Stephan R Epstein. 2000. *The rise and fall of Italian city-states*. London: LSE Research Online. Available at: <http://eprints.lse.ac.uk/archive/00000663>. [accessed 25 March 2013].

⁸⁰ It is not possible to give more than a brief overview here of the complexities of this situation. See also Jones 1997: 341-9.

Ghibelline factions produced conflict, but alignments were often based more on familial links or local political allegiances than ideology. Cities changed allegiance for short-term gain, making a complex situation more so. Faction was rife and many people were exiled as political regimes waxed or waned.

Social disunity

Communal governments feared their hold on power could be threatened by a noble class unwilling or unable to accept a diminution of their authority.⁸¹ Many enacted so-called 'anti-magnate' legislation; this is considered in Chapter 4. Of dubious efficacy, such measures may have exacerbated social division. Criticism of magnates in many communal statutes may have been intended by popular governments to legitimize their rule.

Political violence was not the only potentially destabilising threat in towns and cities at this time. Inter-personal violence was rife.⁸² Feuding or *vendetta* was eagerly pursued; also addressed in Chapter 4. Across the period, and particularly during the Trecento, in both rural and especially urban communities, the gap between the economically successful and the poor widened, enhancing the potential for social unrest.⁸³ Conflicts were exacerbated in times of social stress.⁸⁴ Difficulties presented by aspects of the justice system (described below), may have encouraged citizens towards violence as a form of self-help.

Clearly, this was a fragmented region of Italy. Many towns and cities sought to foster a communal political philosophy to support their autonomy. This found expression in society, politics and culture; in architecture, literature and art, as well as daily life.

⁸¹ This was not always the case. In Venice, nobles tended to work with (and on occasion, in) the civic government of the city; see, for example, Dennis Romano. 1987. *Patricians and Popolani: The Social Foundations of the Venetian Renaissance State* (Baltimore and London: The Johns Hopkins University Press).

⁸² The violent nature of life in late medieval society is well-studied. See for example, the collection of essays in Lauro Martines. 1972. *Violence and Disorder in the Italian Cities 1200-1500* (Berkeley and Los Angeles: University of California Press).

⁸³ See John Kenneth Hyde, 'Contemporary Views of Faction and Civil Strife in Thirteenth- and Fourteenth-Century Italy', in Martines 1972: 273-307.

⁸⁴ On social unrest in this period, in particular focussing upon the impact of the Black Death; see, for example, the works of Samuel K. Cohn (note 36 above).

Common good

Against a background of social division and other sources of potentially destabilising violence and unrest, exacerbated by other factors, including, but not limited to famine, war and plague, achieving public order became a priority. By c. 1250 onwards, some communal authorities took steps to encourage their citizens to act for the 'common good', fostering a philosophy of 'concord' to encourage social cohesion, and promoting collegiality.⁸⁵ A strong collective civic political identity could theoretically unite formerly warring factions.⁸⁶ A united city was better able to face the threats of external attack, and internal violence.

To emphasise a notion of 'community', and discourage feuding, some communal authorities encouraged people to commit to something outside the family or kin structure. Guilds were one example: they represented trade associations, and are considered in more detail in Chapter 4. Confraternities were another; devotional societies, attractive to the laity, with several aims: *disciplinati* (penitential societies), *laudesi* (celebratory) and charitable; confraternities are considered in Chapter 2. Some have seen charitable confraternities as a manifestation of 'civic Christianity', effectively, "the appropriation of values of the religious life by urban powers for the purposes of legitimation, celebration and public well-being", part of a process of secularisation of society.⁸⁷ Other scholars have questioned the notion of lay-sponsored 'civic religion'.⁸⁸ In any event, social groupings such as guilds and confraternities may evidence connectivity between sacred and secular in the daily life of the city-states.

⁸⁵ For an analysis and reinterpretation of the origins of this concept, see Matthew S. Kempshall. 1999. *The Common Good in Late Medieval Political Thought* (Oxford: Clarendon Press).

⁸⁶ For an introduction to the literature on civic identity, see Edward Coleman. 1999. 'The Italian Communes. Recent Work and Current Trends'. *Journal of Medieval History* 25: 373-397. On urban identity formation and communal self-promotion, see Carrie E. Beneš. 2011. *Urban Legends. Civic Identity and the Classical Past in Northern Italy, 1250-1350* (University Park, PA: Pennsylvania State University Press).

⁸⁷ Andre Vauchez. 1995. *La religion civique à l'époque médiévale et moderne (Chrétienté et Islam)* (Rome: École française de Rome): 1. For Hans Baron's 'civic' construction of Italian religion, see Hans Baron. 1955. *The Crisis of the Early Italian Renaissance: Civic Humanism and Republican Liberty in the Age of Classicism and Tyranny*. 2 volumes. (Princeton: Princeton University Press).

⁸⁸ See David S. Peterson. 2000. 'Out of the Margins: Religion and the Church in Renaissance Italy'. *Renaissance Quarterly* 53/3: 835-879, esp. 835-854, for a survey of the treatment of the concept of 'civic religion' by historians. Despite criticism, it may serve as useful shorthand for a concept which may prove helpful when comparing the situation in Italy with that elsewhere in Europe. For the case in favour, see Vauchez 1995: 1-6.

This also manifested itself in the use of art to promote civic identity and communal philosophy, evident in civic emblems, or communal coats of arms.⁸⁹ Many included religious elements; towns and cities fostered a cult of the patron saints.⁹⁰ Mediating between the human and the divine, patron saints were used to articulate social, cultural, and political power. Patron saints often featured on civic seals, involving them in the politics of the commune, alongside personifications of abstract concepts with which the authorities sought to associate their cities, such as justice and the common good. It is a continued intertwining of sacred and secular which is to be significant in this study of images of justice.

1.4 Contemporary political philosophy

The works of many writers could be considered to gain an impression of the political philosophy of the communes in the Duecento and Trecento. Within the confines of this thesis it is possible only to offer a brief overview of those elements of political thinking which had the greatest impact or are most relevant to the theme of justice.

Aristotle's concept of the state as a body of citizens, and the view that as a rational being, and a political animal, man should live within a community to fulfil his potential and achieve virtues such as courage, honesty, and justice, was attractive to city-states and communes, from his *Politics* first being translated into Latin c. 1260.⁹¹ St. Thomas Aquinas too praised cities as the natural way of living.⁹² Contemporary political philosophers, Brunetto Latini, Ptolemy of Lucca, and Marsilius of Padua, also supported the republicanism of the communes, characterising civic authorities as best placed to exercise political authority. Man could live the best possible life, if free from 'despotic dominion', power concentrated in the hands of an individual, however benevolent.⁹³

⁸⁹ On communes as patrons of art generally, see John Larner. 1971. *Culture and Society in Italy 1290-1420* (London: B.T. Batsford Ltd.); and Helene Wieruszowski. 1944. 'Art and the Commune in the Time of Dante'. *Speculum* 19/1: 14-33.

⁹⁰ On patron saints in the political life of medieval city states, see Diana Webb. 1996. *Patrons and Defenders. The Saints in the Italian City State* (London: Tauris Academic Studies). On religion in the Italian city-states see Augustine Thompson. 2005. *Cities of God: The Religion of the Italian Communes 1125-1325* (University Park, PA: Pennsylvania State University Press).

⁹¹ Aristotle, Book 3 of the *Politics*. On its translation, see Paul F. Grendler. 2002. *The Universities of the Italian Renaissance* (Baltimore: The Johns Hopkins University Press), 303.

⁹² See R. W. Dyson. 2002. *Aquinas: Political Writings* (Cambridge: Cambridge University Press).

⁹³ Ptolemy of Lucca (Bartolommeo Fiadoni) (c. 1236–1327) was a Dominican friar, student of Aquinas in Paris and colleague of Remigio de' Girolami in Florence. His *De Regimine principum* c. 1302 was a continuation of

Contemporary political philosophers also perceived civic authorities like the communes as the primary authority for administering justice. Power, given to the ruler or government officials, to compel observance of the laws of the state by force or threat of punishment, was not to be exercised by another authority; it derived from the 'legislator', the people or a majority of a corporate body of citizens, such as the communal authorities.⁹⁴ Human law should be made and enforced by governments to achieve the aim of a peaceful society and to further the common good: justice was essential to civic peace and prosperity; as such, justice was regarded as central to medieval notions of good government. Justice therefore became a key factor in communal political philosophy and practice. This connection became increasingly important from the mid-Duecento.

1.5 Justice in contemporary political philosophy

When analysing what was comprised in medieval political thought on the subject of justice, there is considerable academic debate. In particular, analyses of Ambrogio Lorenzetti's fresco programme in the Sala dei Nove, Palazzo Pubblico, Siena (c. 1337-40), have indicated differences in what scholars perceive as having formed the Duecento and Trecento concept of justice as it appeared in political allegories. It is unnecessary to rehearse these competing theories beyond a brief overview here.⁹⁵

Nicolai Rubenstein's influential analysis offered an interpretation based upon Aristotelian and Thomistic concepts.⁹⁶ Within a Christian framework, the writings of Aquinas presented

Aquinas's *De Regno*. For a translation, see Ptolemy of Lucca, *On the Government of Rulers ("De Regimine Principum")*, with portions attributed to Thomas Aquinas, trans. by James M. Blythe (Philadelphia: University of Pennsylvania Press, 1997).

⁹⁴ Marsilius of Padua, *Defensor Pacis* ('Defender of the Peace'), 1324. On Marsilius generally, see Alan Gewirth. 1951. *Marsilius of Padua: The Defender of Peace, Vol. I: Marsilius of Padua and Medieval Political Philosophy* (New York-London: Columbia University Press); Nicolai Rubenstein. 1965. 'Marsiglius of Padua and Italian Political Thought of his Time', in *Europe in the Late Middle Ages* ed. by J.R. Hale (London: J. R. L. Highfield and B. Smalley): 44-76; and Felice Battaglia. 1934. *Marsilius of Padua*, *Enciclopedia Italiana* [http://www.treccani.it/enciclopedia/marsilio_\(Enciclopedia_Italiana\)/](http://www.treccani.it/enciclopedia/marsilio_(Enciclopedia_Italiana)/) [accessed 25 March 2013].

⁹⁵ Diana Norman, "'Love justice, you who judge the earth': the paintings of the Sala dei Nove in the Palazzo Pubblico, Siena", in Norman 1995b: 145-168, provides a critical analysis of several modern interpretations of the work. A summary of the various theories is also given in Resnik and Curtis 2011: 26-30.

⁹⁶ Nicolai Rubenstein. 1958. 'Political Ideas in Siennese Art: The Frescoes by Ambrogio Lorenzetti and Taddeo di Bartolo in the Palazzo Pubblico'. *Journal of the Warburg and Courtauld Institutes* 21:3-4: 179-207. This interpretation was followed by, for example, Uta Feldges-Henning. 1972. 'The Pictorial Programme of the Sala della Pace: A New Interpretation'. *Journal of the Warburg and Courtauld Institutes* 35: 145-162; and Chiara

a political philosophy which reflected “the constant, pervasive presence of Aristotle”, particularly Aristotle’s *Politics*.⁹⁷ His views on law and justice were most fully developed in his *Summary of Theology (Summa Theologica)*, written 1266-1273.⁹⁸ The *Summa* took the form of a series of questions and answers, including a definition of law, a survey of various types of law, as well as his well-known theory of natural law and its relationship to human (civil) law and a discussion of the form, function and limits of human law. Aquinas defined law as a rule of action effected by one with care of the community (*Summa* I-II. 90. 4). Human law should be made and enforced to promote “the preservation of the unity of the peace”, and to further the common good.⁹⁹

Aquinas’s treatise on justice (in particular, *Summa* II-II. 57-122), drew heavily upon Aristotle’s concept of general or legal justice as encompassing all virtue, but incorporated this into his own moral and political theory, mediated through his theological beliefs.¹⁰⁰ He considered Ulpian’s definition of justice, “the perpetual and constant will to render to each one his right”, which had been incorporated into the *Digest* of Justinian (discussed below), and approved it. He offered his own formulation (“justice is a habit whereby a man renders to each one his due by a constant and perpetual will”),¹⁰¹ which also accorded with that of Aristotle (“justice is a habit whereby a man is said to be capable of doing just actions in accordance with his choice”).¹⁰² In his commentary on Aristotle’s *Ethics*, Aquinas also adopted the Aristotelian conception of Justice as the highest moral (or political) virtue. Aquinas’s concept of justice as a virtue also addressed contemporary politics and communal

Frugoni. 1980. ‘The Book of Wisdom and Lorenzetti’s Fresco in the Palazzo Pubblico at Siena’. *Journal of the Warburg and Courtauld Institutes* 43: 239-241.

⁹⁷ Ralph McInerney. 2004. ‘Thomistic Natural Law and Aristotelian Philosophy’ in *St Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, ed. by John Goyette, Mark Latkovic and Richard Myers (Washington, D.C.: Catholic University of America Press), 25-40, at 26.

⁹⁸ *The Summa Theologica of St. Thomas Aquinas* (Second and Revised Edition, 1920), available online at <http://www.newadvent.org/summa/> [Accessed 25 March 2013]. The essential elements of Aquinas’s theory of natural law are largely contained in the ‘Treatise on Law’, Questions 90 - 108 in the first part of the second part of the three-part *Summa*. See also Dyson 2002.

⁹⁹ On the theological aspect to Aquinas’s conception of law, see William S. Brewbaker III. 2010. ‘The Bible as a Law Book? Thomas Aquinas on the Juridical Uses of Scripture’, *Rutgers Journal of Law & Religion* 12/1, 78-119, which explores the role of Scripture in the *Summa*’s account of legislation and judging.

¹⁰⁰ On which see Thomas J. Bushlack. 2011. ‘Reading justice in the theology of Thomas Aquinas: rediscovering civic virtue’ (PhD diss., University of Notre Dame), which sited analysis of Aquinas in the context of a broader discussion of the virtue of Justice in Duecento moral and political thought.

¹⁰¹ *Summa* II-II. 58.1.

¹⁰² Aristotle, *Nicomachean Ethics* v, 5. A translation would have been available from c. 1250 (Starn and Partridge 1992: 44).

philosophy, making explicit the link between the virtue of justice and the common good (*Summa* II-II. 58.5).

This interpretation was subsequently challenged by Quentin Skinner, who discounted an Aristotelian-Thomist basis for Ambrogio Lorenzetti's fresco.¹⁰³ He argued that writers influential in the Trecento, like Brunetto Latini - particularly his *Li livres dou trésor* (c. 1263), which set out a belief in justice as "halfway between gaining and losing and cannot exist without giving and taking and exchanging"- were influenced by Roman (not Greek) moralists, by Sallust, Seneca and, predominantly, Cicero (particularly *De inventione* and *De officiis*) and later writings derived from those sources.

Cicero (106 BC – 43 BC), posited an idea of natural law, arguing that human nature included reason, which could be used to discover justice, which was the basis of law.¹⁰⁴ A Ciceronian view saw justice as a matter of rendering to each his due, which required the exercise of good faith (*fides*, a willingness to stand by your word), clemency (the avoidance of cruelty and violence) and generosity, inextricably bound up with justice. Cicero regarded justice as the only means to gain and keep public affection, and so to secure governmental security. Therefore, people had to be convinced to submit to the dictates of justice by their belief in the wisdom of the law-giver. Randolph Starn followed Skinner in suggesting Latini's *Trésor* as a potential source, in particular for the detailed treatment of the Virtues and Vices in Lorenzetti's fresco.¹⁰⁵ Subsequently, scholars attempted to identify a particular philosophical basis for other programmes on justice.¹⁰⁶

¹⁰³ Quentin Skinner. 1986. 'Ambrogio Lorenzetti: Artist as Political Philosopher', *Proceedings of the British Academy*, 72:1-56; Quentin Skinner. 1990. 'Political Philosophy', in *The Cambridge History of Renaissance Philosophy*, ed. by Charles B. Schmitt and Quentin Skinner (Cambridge: Cambridge University Press), 389-451; Quentin Skinner. 1999. 'Ambrogio Lorenzetti's *Buon Governo* Frescoes: Two Old Questions, Two New Answers', *Journal of the Warburg and Courtauld Institutes* 62:1-28.

¹⁰⁴ Cicero's *De Legibus* (On Laws) was incomplete at his death, but his theories of justice appeared in Book 1 and in several other works. On Ciceronian influences into the Trecento, see Skinner 1990: 415.

¹⁰⁵ Randolph Starn. 1987. 'The Republican Regime of the "Room of Peace" in Siena, 1338-40', *Representations*, 18; and Randolph Starn. 1994. *Ambrogio Lorenzetti: The Palazzo Pubblico, Siena* (New York: George Braziller). See also, Campbell 2001.

¹⁰⁶ For a Ciceronian rather than Aristotelian basis to Giotto's depiction of Justice in the Scrovegni Chapel, see, Eva Frojmovič. 1996. 'Giotto's Allegories of Justice and the Commune in the Palazzo della Ragione in Padua: A Reconstruction', *Journal of the Warburg and Courtauld Institutes* 59: 24-47.

My study will not attempt to decide this scholarly debate. It acknowledges that scholarship in this area has informed understanding of late-medieval political thought on justice. However, it will suggest that in many (if not most) cases, it is difficult and perhaps impossible to identify a single ideology underpinning a particular programme or image of justice. One aim of this thesis is to demonstrate that the contemporary notion of justice was not a simple concept, but a sophisticated and blended notion. As such it would appear reductive to seek or identify a single source.

1.6 The Law

To investigate and fully appreciate contemporary notions of justice, and their representation in art, requires an appreciation of what the law actually was, what it comprised, how it functioned and how it was perceived in the region.

The period c. 1250-1400 saw a growing interest in and awareness of the law. This 'legal consciousness' was to play an important part in shaping the changing world of late-medieval Italy; and, as my research will demonstrate, its images of justice. Legal consciousness can be seen as the product of both legal culture and experiences of the law (at the level of both individual and groups within society).¹⁰⁷ The legal historian Anthony Musson has argued that as well as acting as an active element in shaping people's values, beliefs and aspirations, legal consciousness can also be seen as a passive agent providing a reserve of knowledge, memory and reflective thought, influencing not simply the development of the law and the contemporary legal system, but also political attitudes. It is, therefore, not surprising that the same period should see dramatic changes in both the legal and political worlds in Italy.

It is arguable that the evolutionary process in law and justice that occurred between c. 1250-1400 can be seen as part of a process of transition that began 100 or 150 years before. Therefore, to appreciate the nature of the substantive law and the operation of the legal system in northern Italy at this time, one must look back.¹⁰⁸ Significantly, many changes in law in theory and law in practice appear to have enhanced the role of the secular authorities in both law-making and law-enforcement.

¹⁰⁷ Anthony Musson. 2001. *Expectations of the Law in the Middle Ages* (Woodbridge: Boydell), 10.

¹⁰⁸ In this regard, particularly useful is the excellent study by Wickham 2003.

1.7 Law in theory - what was the law?

This late medieval period saw the co-existence of several different legal codes.

Canon law (*Corpus iuris canonici*)

Canon law formed the governing rules and principles of the western Church. Its development into a coherent system of law had started c. 1050 and by c. 1300 could be considered largely complete.¹⁰⁹ The *Corpus iuris canonici* is the collection of significant sources of canon law based mainly on papal decretals and promulgations.

The *Decretum* of Gratian, a canon lawyer, completed c. 1140 and widely available to canon lawyers c. 1150, is one of the most significant. Taking a dialectical format, it drew upon existing texts and current problems, raising legal questions and offering solutions. The Decretals of Gregory IX (*'Liber Extravagantium'*) were to remain the basis of canon law for centuries and were, according to a Papal Bull (*'Rex pacificus'*; September 1234), intended to bring together several important works and address inconsistencies, abrogating collections of canon law rules subsequent to Gratian's *Decretum*. These were followed by the Decretals of Boniface VIII (*'Liber Sixtus'*; March 1298), and those of Clement V, approved as a collection of canon law in 1317. Decretals were fairly inflexible, which may have led to a dissonance between law in theory and in practice. These works were subject to academic commentary and interpretation in the Duecento and Trecento. Together, jurists and legislators constructed a "live and ongoing" medieval system of canon law.¹¹⁰ However, canon law was not the only source of law at this time.

Papal legislation

Canon law was supplemented by laws made by the pope. Gratian's *Decretum* assumed papal omnipotence and the precedence of church law over secular or civil law (*Corpus iuris civilis*).¹¹¹ This view of papal decretals as superior to other statements of the law led to a

¹⁰⁹ On medieval canon law, see Wilfried Hartmann and Kenneth Pennington. 2008. *The History of Medieval Canon Law in the Classical Period, 1140-1234* (Washington D.C: The Catholic University of America Press); and James A. Brundage. 1995. *Medieval Canon Law* (London and New York: Longman).

¹¹⁰ Wickham 2003: 236.

¹¹¹ On the hierarchy of law at this time, see Padoa-Schioppa 1997: 1-16. However, not all legal historians accept the concept of a 'hierarchy' of laws. Manlio Bellomo persuasively rejects the concept, in 1995. *The Common Legal Past of Europe* (Washington DC: Catholic University of America Press), 149-155.

rapid expansion in papal power. The papal court traditionally heard appeals but, from the twelfth century onwards, many cases were transferred to Rome for decisions in the first instance.¹¹²

As the papacy was seen as the authoritative body able to offer a definitive ruling on the current state of the law, in the twelfth and thirteenth centuries the pope assumed increased legislative authority, with power to make or modify law. New law emanating directly from the pope often arose from the authoritative precedents established by papal decisions in legal cases, or pronouncements on inconsistencies in the law. The extensive role and jurisdiction of the papal court helped to draw together existing legal writings to produce a cohesive body of works that could form the basis of a legal 'system'. Some have argued that "without papal supremacy it is inconceivable that any such comprehensive system of law could ever have happened".¹¹³

Roman law (*Corpus iuris civilis*)

Although Roman law was central to the medieval legal system, its take-up was not uniform in justice systems across the region. Some communes adopted it relatively quickly; Pisa by c. 1159, and Siena by 1176, for example.¹¹⁴ Others, such as Florence, were considerably slower to do so. The survival of Lombard codes of law in some parts of northern Italy inhibited the impact of Roman law into the Trecento; in Lucca, for example.¹¹⁵ However, by the mid-Duecento, in many areas of northern Italy the revival and development of Roman law had produced a legal system with recognisably 'modern' procedures and systems.

Principles of Roman law had been codified under Justinian (in the sixth century) into the *Corpus iuris civilis*, which forms the basis of Latin jurisprudence. This consisted of the *Codex Iustinianus*, a codification of imperial constitutions from the 2nd century onward (issued in 529, with a final version in 534); the *Digests*, a compilation of older legal texts (dated to

¹¹² This process of appeal may have been modelled on the right of appeal to the Emperor, a notion retained in the works of Justinian: see Antonio Padoa-Schioppa. 1997. 'Hierarchy and Jurisdiction: Models in Medieval Canon Law', in *Legislation and Justice* ed. by Antonio Padoa-Schioppa (Oxford: Clarendon Press), 1-16, at 10.

¹¹³ Richard William Southern. 1970. *Western Society and the Church in the Middle Ages* (New York: Penguin Books), 117.

¹¹⁴ Wickham 2003: 108, 156.

¹¹⁵ Wickham 2003: 55.

533); the *Institutes*, a textbook explaining the principles of law; and the *Novellae*, new laws issued during Justinian's reign, which supplemented the *Corpus*. A definition of justice of Roman jurist Ulpian (193-235) - "Justice is the constant and perpetual will to render to every man his due" - appears in both *Digest* (1.1.10) and *Institutes*.¹¹⁶ The principles of the *Corpus* were subject to academic consideration and interpretation by the Glossators, of which the *Glossa ordinaria* of Accursius (d. 1263) is considered the most authoritative.¹¹⁷ Generally, glossators took a theoretical approach, which tended to enhance the importance of those with legal education, capable of adapting glosses to work in practice.¹¹⁸

The revival of Roman law principles was just one example of 'Romanising', as communal governments drew on practices and examples from Republican Rome, and many emphasised (or over-emphasised) their Roman origins.¹¹⁹ It also led to the growth of law schools which spread the ethos of written law across the peninsula (discussed below). The re-discovery of Roman law was substantially contemporaneous to the birth of canon law. This coincidence of timing may be indicative of a developing 'legal consciousness', an increasing awareness of what the law and justice could and possibly should mean.

The *ius commune*

The *ius commune* represented an amalgamation of ideological and cultural beliefs, combining principles and norms drawn from the *corpus iuris canonici* and *corpus iuris civilis*, as mediated through the commentaries of the glossators and the nascent schools of law.¹²⁰

Customary and local laws (*ius proprium*)

In the eleventh- and twelfth centuries, it was largely customary law that prevailed in the communes. It was localised, inconsistent, often maintained only by oral tradition, and dispensed by a local authority figure. Redaction of customary norms started around the

¹¹⁶ *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.*

¹¹⁷ On the glossators, see Bellomo 1995: 129-133.

¹¹⁸ Wickham 2003: 159.

¹¹⁹ This is considered in more detail in Chapter 4.

¹²⁰ For an accessible and detailed investigation of the development of the *ius commune*, with a particular focus on the impact of Roman law, see Paul Hyams. 2000. 'Due Process versus the maintenance of order in European law: the contribution of the *ius commune*', in *The Moral World of the Law* ed. by Peter Coss (Cambridge: Cambridge University Press), 62-90, 80.

Duecento, when certain communes began to draw local customs and laws into a single corpus, often written down, forming a book of laws, or codex. From the early thirteenth-century, many towns and cities promulgated statutes (often through a legislative council of the commune).¹²¹ This right of cities to pass their own legislation was distinctly unusual in Europe at this time.¹²² Therefore, in matters of law, these autonomous city-states are particularly worthy of study, to explore the impact of this ability to legislate on matters of specific and local interest on their use and depiction of images of justice.

They sought through their statutes to demonstrate their independence and autonomy. The use of statutes to promote a ruling body's authority might suggest that these quasi-legal instruments played a political role, propagandizing for a particular impression the authorities sought to create, which may in fact have differed from social realities: a nexus of law, justice and politics. Statutes could be seen as a form of constitution, containing binding rules rather than a body of laws per se, and so more open to change as political control of the commune changed, or to reflect shifting socio-political priorities. Mario Sbriccoli believes that the statute's "intrinsic flexibility made it one of the more effective and most used 'juridical instruments of power'".¹²³

This connection between law-making and political power is also evident in communal legislation framed to achieve communal stability and unity, however difficult that might have appeared against the socio-political background considered above. Civic authorities, in making laws, could use them to encourage loyalty to the commune; being subject to the same laws gives a sense of social cohesion, binding members into a community. This increased the importance of statutes within city-states, and to the communal authorities. Post-glossators attempted to reconcile the customary laws and statutes of the communes. Such academic interpretation may have led to the 'instrumentalisation' of these regulations, to make them easier of political use. Together these local regulations and norms formed the *ius proprium*.

¹²¹ The first city statutes appeared in the twelfth century (Wickham 2003: 17).

¹²² On research establishing this point covering England and Europe up to the Duecento, see Resnik and Curtis 2011: 26 note 138.

¹²³ Sbriccoli 1997: 53.

It is important to remember that these different bodies of law did not exist in isolation. Julius Kirshner observed that “the interplay of the *ius commune* and the *ius proprium* has long been a central issue for historians of law”.¹²⁴ All of these various sources of law came together in contemporary jurisprudence, which, by the mid-Duecento to late-Trecento, could encompass an interaction between criminal law, canon law, Roman law, communal statutes and local custom. Chris Wickham has suggested that there was a “genuine dialectic” between these various sources of law as early as the twelfth century.¹²⁵ The continued co-existence of these various legal codes suggests that contemporary jurists and legal scholars could produce a relatively harmonious combination of those elements.

1.8 Law in practice – how justice was administered

For a more complete understanding of the law as it was in this period, one must also look at the relationship between learned law and applied law, law in practice.¹²⁶ As well as several sources of law, there were also different legal fora for law enforcement during this period: the Papal court; ecclesiastical courts, dispensing canon law; local courts, applying law based on local custom; and civic courts, operated by the secular authorities.¹²⁷ This excludes private methods of dispute resolution such as feuding or arbitration. Perhaps inevitably, although technically spiritual and temporal matters were separate and distinct, in practice, ecclesiastical and secular spheres frequently overlapped, leading in some cases to jurisdictional conflict.

Although by the mid-Duecento it appeared that ‘church-state’ conflicts of the twelfth and thirteenth centuries may have been reaching some form of resolution, tensions remained between papal, ecclesiastical and communal authorities on matters of jurisdiction. As noted above, communal authorities regarded one of their main roles as dispensing justice,

¹²⁴ Julius Kirshner, ‘A Critical Appreciation of Lauro Martines’s *Lawyers and Statecraft in Renaissance Florence*’, in Armstrong and Kirshner 2011: 7-39, at 17. For a detailed consideration of the interaction of the *ius commune* and the *ius proprium* at this time, see Bellomo 1995: 149-159.

¹²⁵ Wickham 2003: 309.

¹²⁶ On the creation and development of legal professions and the dynamics between legal practice and theoretical, learned approaches to jurisprudence, see James A. Brundage. 2006. ‘Legal learning and the professionalization of canon law’, in *Law and Learning in the Middle Ages: Proceedings of the Second Carlsberg Academy Conference on Medieval Legal History 2005* ed. by Mia Münster-Swendsen and Helle Vogt (Copenhagen: DJØF Publishing), 5-28.

¹²⁷ On the variety of courts operative across Europe in the period, feudal, civic, corporate and ecclesiastical, see Thomas Kuehn, ‘Conflict Resolution and Legal Systems’, in Lansing and English 2009: 335-353.

bringing potential conflict with anyone claiming jurisdiction over their citizens. This thesis explores the notion that many images of justice were commissioned to assert – or to question - the authority of the patron or a particular figure responsible for administering justice, or to reassure that those entrusted with the task were competent for the role.

Papal legal authority

Arguably, the authority accorded to papal decretals and pronouncements on the law led to the increase in the numbers of legal cases the papacy was required to settle from the twelfth century, although the rather *ad hoc* and possibly arbitrary system for administering customary law in the communes might have contributed to the popularity of the papal court as a source of impartial and authoritative judgment. Some of the welter of litigation may lie in the fact that many litigants repeatedly appealed decisions.¹²⁸ As more cases and appeals came to the pope for his judgment, the papal court developed a well-ordered procedure to hear petitions and complaints, record decisions, draft documents etc., requiring a large, skilled bureaucracy to administer it.¹²⁹ Many of those staffing this function were from the new schools of law and universities, providing a direct link between law in practice and law as academic discipline.

Papal legal authority was contentious. A source of conflict lay in the notion of *plenitudo potestatis*, papal plenitude of power.¹³⁰ This is a complex notion, the subject of much scholarship. In essence, rather than claiming that the pope was omnipotent in all spiritual and temporal matters, this referred to the universality of papal jurisdiction, the authority of the Roman Church over all others. Innocent III (1198-1216) saw the papacy as the supreme ruling authority of the Church, the ‘universal ordinary’, or ordinary judge of all Churches; Innocent IV (1243–54) wrote on papal authority over temporal affairs in his *Apparatus in*

¹²⁸ For example, an ecclesiastical dispute heard by the pope in 1208 was appealed in 1223, c. 1230, 1251, 1253-8, 1278, 1293, and again thereafter (Wickham 2003: 242).

¹²⁹ See Richard Britnell, ‘Bureaucracy and Literacy’, in Lansing and English 2009: 413-434.

¹³⁰ On this complex concept, see Gerhart B. Ladner. ‘The Concept of “Ecclesia” and “Christianitas” and their relation to the idea of Papal “Plenitudo Potestatis” from Gregory VII to Boniface VIII’, repr. in Gerhart B. Ladner. 1983. *Images and Ideas in the Middle Ages: Selected Studies in History and Art*, 2 volumes (Rome: Edizioni di storia e letteratura); William D. McCready. 1973. ‘Papal Plenitudo Potestatis and the Source of Temporal Authority in Late Medieval Papal Hierocratic Theory’, *Speculum* 48/ 4: 654-674; and Kenneth Pennington. 1976. ‘The Canonists and Pluralism in the Thirteenth Century’, *Speculum* 3: 5-48.

quinque libros decretalium (c. 1245), a commentary on the decretals of Gregory IX.¹³¹ Communal authorities were reluctant to cede jurisdiction over their territory and their citizens to anyone, and they sought to forbid judicial appeals to another authority, including the papal court.

The issue was not settled even by the Trecento; for example, a Bull of Pope Boniface VIII (*'Unam Sanctam'*; November 18, 1302) stated: "we declare, we proclaim, we define that it is absolutely necessary for salvation that every human creature be subject to the Roman Pontiff".¹³² Its extensive role in deciding legal cases and creating new laws led to criticism - some from secular sources, some from reform movements within religious communities - that the papacy had been diverted from religious to legal functions. Tensions with civic governments were also raised as papal Inquisitors sought to claim jurisdiction over citizens within the city-states (discussed below).¹³³

Ecclesiastical legal authority

Conflicts with communal authorities were particularly likely to arise along 'fault-lines', areas where ecclesiastical authorities asserted jurisdiction over matters affecting everyday life. For religious, political, and economic reasons, civic governments increasingly regulated aspects of civic life and death, including marriage, prostitution, homosexuality, even gambling.¹³⁴

By the Duecento, steps were being taken to address conflict of jurisdiction between ecclesiastical and civil administrations. The Fourth Lateran Council (1215) required clergy to respect the boundaries of lay jurisdiction.¹³⁵ Effectively, by the mid-Duecento, in legal matters at least, the distinction between respective administrations was becoming clearer as, increasingly, jurisdiction in temporal matters fell to the civil authorities. Of course, jurisdictional conflict was settled in different regions and cities in varying ways, and to

¹³¹ For a general introduction, see J. A. Watt, 'The Papacy', in Abulafia 1999: 105-163.

¹³² See <http://www.papalencyclicsonline.net/Bon08/B8uman.htm> [Accessed 28 April 2012].

¹³³ Jurisdictional tensions were to an extent exacerbated by 'forum shopping', as litigants made strategic choices of court according to which they perceived as offering the greatest chance of success: see Wickham 2003: 300.

¹³⁴ Discussed in Peterson 2000: 835-879. Although the Church remained important in the daily lives of the Italian city-states: see Thompson 2005.

¹³⁵ Canon 42 of The Fourth Lateran Council, 1215: see Appendix 1.

differing extents. Generalising, whilst perhaps inevitable for the sake of brevity, blurs the distinct characters of the many city-states and the specific relationship between their civic and religious authorities.¹³⁶ At a local level, in many towns and cities, both religious and secular authorities adapted to collaborate in many aspects of daily life.¹³⁷ Some bishops continued to exercise considerable influence over legal affairs within certain communes, and during the Trecento the question of temporal or spiritual supremacy remained contentious in contemporary political philosophy.¹³⁸

Jurisdictional tensions were also evident in some city statutes. For example, in Florence, a law of October 1293 permitted the civic authorities to refuse the protection of communal law to anyone, including clerics, who 'declined' the commune's jurisdiction; this may have been the origin of the rubric concerning the same matter found in the statutes thirty years later, but its retention indicates that it remained a concern.¹³⁹ The statutes of Lucca in 1308 sought to regulate which cases could go to which court.¹⁴⁰ My research explores whether images of justice were used, or the depiction of justice changed to address concerns arising from these jurisdictional conflicts.

Civic legal authority

Changes to the legal system combined to give secular authorities increasing responsibility for law-enforcement. The transfer of principal judicial decision-making authority from Church to 'state' (in the form of the civic authorities of the city-states), from Duecento to Trecento, mirrored a change in the perception of the function of the law, and what was intended to be achieved by justice systems. As the connection between sin and crime

¹³⁶ Augustine Thompson's suggestion that agreement on jurisdictional conflict may have been largely accomplished by the mid-thirteenth century, may have been the case for certain communes, but appears early for others, perhaps evidencing the difficulty of general conclusions in relation to the complex political situation of the communes (Thompson 2005: 45).

¹³⁷ On the role of religion in society, c. 1100-1450, and that played by the laity in religious life, see Andre Vauchez. 1993. *The Laity in the Middle Ages* (Notre Dame: University of Notre Dame Press).

¹³⁸ Perhaps this is most evident in the examination of the relationship between Church and state in Marsilius of Padua's *Defensor Pacis* (1324).

¹³⁹ Archivio di Stato di Firenze, Provvisioni Registri, 3, f. 143r; considered by John M. Najemy. 2007. 'The beginnings of Florence Cathedral. A political interpretation', in *Arnolfo's Moment. Acts of an International Conference Florence, Villa I Tatti, May 26-27, 2005*, ed. by David Friedman, Julian Gardner, Margaret Haines (Florence: Olschki), 183-210, www.biblioteca.retimedievali.it. Accessible online at http://fermi.univr.it/rm/biblioteca/scaffale/Download/Autori_N/RM-Najemy-Florence.pdf [accessed 25 March 2013].

¹⁴⁰ *Statuto del comune di Lucca dell'anno MCCCVIII*. See also Wickham 2003: 43.

weakened, wrongdoing was no longer perceived as a matter for the individual and God (and so, via confession, the Church), but had a 'public' element. Criminal behaviour and other wrongdoing threatened the stability of society. Trial and punishment were therefore linked to the protection of the civic authorities and their values. The effect of this on the use and depiction of images of justice is considered in detail in Chapter 2.

1.9 Prosecution procedure

In the course of analysing the use and depiction of images of justice c. 1250-1400, my study will explore whether and to what extent changes to aspects of the administration of justice, specifically the adoption into the secular justice system of practices used in the Papal Inquisition were to impact upon such images.

Accusatory prosecution procedures

Pre-Duecento prosecution procedures were largely based on accusation or denunciation, and trial by ordeal. However, these were frequently flawed and inefficient. Accusatorial procedures effectively relied upon the accuser to bring the charge, prove it and fund the case, making litigation a risky and unattractive option, given the high standard of proof required under standards adapted from Roman law, and the financial consequences of unsuccessful prosecution. Courts could seem inaccessible (litigants usually appeared unaccompanied) and expensive; judicial decisions were often partial and inconsistent. The judge acted more as arbiter, orchestrating the trial but interfering little with it.¹⁴¹ In the secular courts, as most major crimes were viewed as against the individual, punishment was usually monetary, as compensation.

Reliance on denunciation (the procedure *per denunciationem*) was also inefficient; in the ecclesiastical courts the accuser had to follow strict procedural requirements, whilst in the secular courts secret denunciations opened possibilities for bias and impartiality.¹⁴² Such inefficiencies in the secular system led many to resort instead to 'private' justice, settling

¹⁴¹ Stern 1994: 23.

¹⁴² On denunciation in Trecento and Quattrocento Florence, see Andrea Zorzi, 'The judicial system in Florence', in Dean and Lowe 1994: 40-58.

disputes via feud or vendetta. Clerical involvement in the ordeal also needed reform.¹⁴³ The Duecento was to witness changes to all of these prosecution procedures.

The Papal Inquisition

The papal inquisition is important for making issues of trial, punishment and justice a pressing social concern. Significantly, it also made use of a new prosecution procedure, whereby the inquisitor's role went beyond that of a judge in the contemporary secular justice system. An inquisition into heretical activity, administered by local bishops, had been established in 1184 by a papal bull, *Ad abolendam*.¹⁴⁴ Action against heretics was reinforced by Canon 3 of the Fourth Lateran Council (1215).¹⁴⁵ It was the Fourth Lateran Council that was to introduce a "revolutionary change" in prosecution procedures in ecclesiastical courts, addressing failings in the existing system by introducing a new process.¹⁴⁶

Canon 8 of the Fourth Lateran Council required judges of the inquisition to question the accused and witnesses on oath, in a process known as the *inquisitio*: they interrogated the accused; they heard and questioned witnesses against the accused; they also gathered evidence or confession, and passed sentence.¹⁴⁷ By Canon 18 clerics were forbidden to pronounce or execute a sentence of death (or be present at its execution), or to take part in the judicial ordeal. Taken together, Canons 8 and 18 could be seen as part of a 'concerted program' of Pope Innocent III, intended to effect a radical change in prosecution procedure, abolishing the ordeal and providing an alternative.¹⁴⁸

Concerned that the episcopal inquisition was ineffective, Pope Gregory IX established the papal inquisition. The first inquisitors were appointed in 1233. Often they were from the

¹⁴³ The ordeal is beyond the scope of this thesis.

¹⁴⁴ For an introduction to the Inquisition, see Bernard Hamilton. 1981. *The Medieval Inquisition* (London: Edward Arnold) and Edward Peters. 1988. *Inquisition* (University of California Press: Berkeley and Los Angeles).

¹⁴⁵ See Appendix 1.

¹⁴⁶ See Richard M. Fraher. 1992. 'IV Lateran's revolution in criminal procedure: the birth of *inquisitio*, the end of ordeals, and Innocent III's vision of ecclesiastical politics', in *Studia in honorem Eminentissimi Cardinalis Alfonsi M. Stickler*, ed. by Rosalio Iosepho Card. Castillo Lara (Rome: Libreria Ateneo Salesiano), 97-111. The quotation is from page 109. See also, Richard M. Fraher. 1989. 'Preventing Crime in the High Middle Ages: The Medieval Lawyers' Search for Deterrence', in *Popes, Teachers, and Canon Law in the Middle Ages*, ed. by James Ross Sweeney and Stanley Chodorow (Ithaca, NY, and London: Cornell University Press), 212-33.

¹⁴⁷ By Canon 3, witnesses for the defence were not permitted on pain of excommunication.

¹⁴⁸ Richard M. Fraher convincingly argues for Innocent III's 'reforming vision' in bringing about this change: see Fraher 1992: 97-111.

mendicant orders.¹⁴⁹ Dominicans were involved in the inquisition almost from the start. Franciscans became independent inquisitors from 1246. Inquisition proceedings were usually private. Interrogation, even imprisonment during the inquisition process, could take place within mendicant establishments.¹⁵⁰

From c. 1250s, prosecution for heresy became more vigorous, as the papacy granted inquisitors wider powers. From 1252, inquisitors could imprison and torture suspected heretics to produce evidence of guilt, where this did not cause death.¹⁵¹ Although technically entitled to legal representation at their hearing, this was unlikely in practice, given the penalties imposed in Canon 3 of IV Lateran:

We decree that ... those who ... defend [heretics], are excommunicated; and ... if he has deliberately failed to make satisfaction within a year, let him incur *ipso jure* the stigma of infamy and let him not be admitted to public offices ... If perchance he be a judge, let his decisions have no force ... If he be an advocate, let his assistance by no means be sought. If a notary, let the instruments drawn up by him be considered worthless.

It is interesting that the implications for legal professionals are set out specifically, and that the sanctions relate to their secular or commercial life, as well as their spiritual wellbeing.

After judgment, inquisitors sought to impose penance, rather than punishment, to encourage the heretic to repent.¹⁵² If the heretic refused, Canon 3 required secular authorities to effect physical punishment, on pain of excommunication.¹⁵³ Many city-states resisted punishment of heretics, perhaps concerned at the threat posed to their autonomy. For example, San Gimignano in 1259 resisted the efforts of the Franciscan inquisitor Giovanni Oliva to require that communal statutes include laws against heresy until

¹⁴⁹ Some have suggested that the appointment of the mendicants as inquisitors could be seen as evidence that the papacy sought to avoid accusations of bias and fanaticism: see, for example, Peters 1988: 55. On the Dominicans in the Inquisition, see Michael C. Thomsett. 2010. *The Inquisition: A History* (North Carolina: McFarland Co Inc.), 53-69. On the Franciscans, see Holly Grieco. 2011. 'Pastoral Care, Inquisition, and Mendicancy in the Medieval Franciscan Order', in *The Origin, Development, and Refinement of Medieval Religious Mendicant Identities* ed. by Donald S. Prudlo (Leiden: Brill), 117-155.

¹⁵⁰ Vauchez 1999: 249.

¹⁵¹ A papal bull *Ad Extirpanda* (May 15, 1252) established a code for the conduct of the Inquisition.

¹⁵² To accord with Canon 18 of the Fourth Lateran Council.

¹⁵³ *Ad Extirpanda* provided a five day timescale for compliance. It was reinforced by several popes, including Alexander IV (1254-61), Clement IV (1265-68), Nicholas IV (1288-92), Boniface VIII (1294-1303), and others.

threatened with excommunication and interdict.¹⁵⁴ Resistance may have provided a further bond between civic authorities and their citizens. Some cities saw popular uprising against decisions of inquisitors.¹⁵⁵

Despite this, several aspects of inquisition procedure were to be adopted into the secular justice system. This thesis will suggest that these had a discernible impact upon the use and depiction of images of justice. It is therefore necessary to outline the most important of these changes.

***Inquisitio* in the secular courts**

The rapid adoption into the secular justice system of the inquisitorial procedure is “an uncontroversial assertion”, accepted by legal historians and well-attested in contemporary records, statutes, and juridical theory and practice.¹⁵⁶ Its attractions to the communal authorities were obvious: it was more efficient than previous methods of prosecution at producing convictions, it seemed fairer, and it brought the criminal justice process more under the control of those running the system. Under the new inquisitorial prosecution process the civic authority chose when, who and how to prosecute. It also appointed those in charge of the prosecution system, the podestà and his judges, making justice a more ‘public’ concept. An inquisitorial system effectively reversed the burden of proof, onto the accused.¹⁵⁷ This potentially could encourage claimants to have recourse to official justice to settle disputes, deterring private vengeance, making it in the public interest to adopt such a system. In addition, it was flexible: secular inquisition procedure “was continually developing and adapting to suit the needs of the practical problems to which it was being applied”.¹⁵⁸

¹⁵⁴ Grieco 2011: 139.

¹⁵⁵ For an interesting analysis of one such revolt in Bologna in 1299, see Thompson 2005: 433-456.

¹⁵⁶ Sbriccoli 1997: 48.

¹⁵⁷ For a description of the inquisition procedure, see Stern 1994: 20-33.

¹⁵⁸ Stern 1994: xii.

Scholars have demonstrated that in many communes the use of the *inquisitio* procedure increased markedly in the period c. 1230s-1280s.¹⁵⁹ The contemporary jurist Alberto Gandino regarded it as widely established in secular legal systems by the end of the Duecento.¹⁶⁰ My research explores the impact of this change in prosecution procedure on images of justice, particularly scenes of trials and those exercising judicial authority.

1.10 Legal professionals

The thirteenth century saw a significant increase in legal infrastructure. The adoption of the inquisitorial process into secular legal systems required more of the machinery one associates with a modern legal system. Concomitant with the increased role of governmental authorities in matters of justice goes an increased need for suitably qualified legal professionals familiar with the language of the law, its rules and processes, to ‘translate’ academic law into a justice system: to initiate inquisitorial legal proceedings, to investigate allegations, to hear and weigh evidence, to examine the accused and others, to pronounce decisions, and enforce sentences. Those educated in the schools of law, and the nascent universities, could fill that gap.¹⁶¹ The substance of the materials studied in the schools was the *Corpus iuris civilis* and *Corpus iuris canonici*: the *ius commune*, which underpinned contemporary legal practice. Local laws and customs (the *iuria propria*) did not form part of university legal education, but judges and lawyers could also have recourse to these as they remained relevant to the practice of law in Italy at this time.

In Paul Hyams’s view, “the emergence of a new breed of schools-trained lawyers may claim to be one of the most important consequences of the medieval legal revolution”.¹⁶² The birth of a legal profession in a recognisably modern sense can be dated to this period, as the rise of the study of law in universities contributed to the intellectualising of the law and the

¹⁵⁹ This phenomenon features in much scholarship: see, for example: Blanshei 1982; Blanshei 1983; Stern 1994; Jones 1997: 378; Hyams 2000; Dean 2001; Dean 2007. For a more specific analysis, see J.L. Peterson. 2008. ‘The Politics of Sanctity in Thirteenth Century Ferrara’, *Traditio* 63: 307-326.

¹⁶⁰ See Sbriccoli 1997: 49.

¹⁶¹ On the schools and universities at this time, see Antonio García y García. 1992. ‘The Faculties of Law’, in *A History of the University in Europe* ed. by Hilde Ridder-Symoens (Cambridge: Cambridge University Press), 388-398. For details of the structure of law schools, see Bellomo 1995: 112-125.

¹⁶² Hyams 2000: 84.

development of ethical standards of behaviour among legal professionals.¹⁶³ This thesis explores the visual expression of concerns regarding the behaviour of judges and other legal professionals.

The Podestà

From the late twelfth century, as secular authorities took control of the administration of justice, a system evolved in the city-states whereby a single magistrate, the podestà, exercised the powers of law enforcement within the territory of that town or city.¹⁶⁴ The podestà was initially a noble but later the role would become professional. The “classical age” of the podestà was c. 1220-1270, closely connected to *popolo* regimes.¹⁶⁵ The role of the podestà is addressed in Chapter 2.

Judges

From c. 1240s and after the increasingly widespread adoption of the inquisitorial prosecution process, there was a need for men educated to act as judges, and as advisors to law-enforcement officials.¹⁶⁶ The demand for legally qualified judges rose especially after 1250.¹⁶⁷ Numbers of judges appear relatively modest until c. 1260-70, after which they increased markedly. Hyde estimated that by the late Duecento, the average commune would have had around twelve active judges.¹⁶⁸ Within a university city many more would have described their occupation or status as judges: close to 120 did so in Padua by 1285.¹⁶⁹ Chapters 3 and 4 will consider whether and to what extent this increased the emphasis on the role and character of those exercising judicial authority, and, in turn, whether this impacted upon the use and depiction of images of justice.

¹⁶³ For this view, see James. A. Brundage. 1995. ‘The Rise of Professional Canonists and the Development of the *Ius Commune*’, *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Kanonistische Abteilung* 81: 26-63.

¹⁶⁴ For a comprehensive analysis of the role of the podestà, see Jean-Claude Maire Vigueur. 2000. *I podestà dell'Italia comunale. Part I, Reclutamento e circolazione degli ufficiali forestieri (fine XII sec.-metà XIV sec.)* (Rome: École française de Rome). Although there is no significant work in the English language on the role of the podestà in medieval Italy, Chambers and Dean 1997 offers useful information.

¹⁶⁵ Martines 1979: 43. The connection between the podestà and communal government is also made by Sara Menzinger, ‘*Consilium sapientium: Lawmen and the Italian Popular Communes*’, in Armstrong and Kirshner 2011: 40-54, 43.

¹⁶⁶ On the role of judges in medieval Italy, see John Kenneth Hyde. 1973. *Society and Politics in Medieval Italy: The Evolution of the Civil Life* (London: MacMillan), 63-84, 166-9.

¹⁶⁷ Jones 1997: 413.

¹⁶⁸ Hyde 1973: 116.

¹⁶⁹ Hyde 1973: 167.

Other legal professionals

Further evidence of increasing legal professionalism comes from the rise in importance of the notary, but the role of the notary may also be indicative of a certain duality in forms of dispute resolution available in northern Italy at this time. Alongside the formal judicial apparatus, in an attempt to discourage resort to violence and vendetta, and to further their goal of a peaceful and stable society, communal authorities permitted and even encouraged their citizens towards dispute resolution by other independent, extra-legal methods, in which notaries could be involved, such as arbitration or negotiated peace agreements (see Chapter 2).¹⁷⁰

Communal authorities could also delegate or share some of the responsibility to other fora for the settlement or arbitration of disputes. Guilds (*Arti*) had their own statutes and tribunals which played a role in dispute-resolution between or for their members. Such tribunals exercised wide powers of civil and criminal justice, even in the case of certain important guilds like the Florentine Arte della Lana, powers of imprisonment, and corporal and capital punishment. This function of the guild tribunal is addressed in Chapter 4.

These several means of administering justice were not perceived as mutually exclusive or incompatible. The legal historian Mario Sbriccoli concluded that, “all these various forms of resolving disputes fitted within a framework which bound them together”.¹⁷¹ Informal and formal processes combined to provide means by which the communal authorities sought to maintain order and to further the aim of fostering a state of concord. Matters of justice, law, the judicial function and politics frequently came together in northern Italy, c. 1250-1400.

¹⁷⁰ On reconciliation, see Pieter Spierenburg. 2008. *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge: Polity), 43-64.

¹⁷¹ Sbriccoli 1997: 43.

Conclusion

The legal landscape by c. 1250 appeared significantly different to that which had preceded it. In terms of substantive law and the operation of the judicial system, it is arguable that a constructive, evolutionary process then occurred to the late fourteenth century. The new universities were to play an important role in changing the academic discipline of law. Political and social developments changed how law was administered, and by whom. It would appear that there was also a decisive shift over that period, enhancing the role of legal professionals.

It is at least arguable that at this time the law - in some form or another – was more able to touch the lives of a larger percentage of the population of late-medieval northern Italy. In addition, the change from a ‘private’ to a more public conception of wrongdoing was to have important implications for how justice was administered, and what people’s experiences were of the justice available at this time.¹⁷² I suggest that these changes, indeed the process of transition itself, impacted upon the contemporary understanding of the notion of justice, both conceptually and in practice. In the remaining chapters this thesis will explore whether and to what extent those changes are evident in art, in the images of justice commissioned and produced in the period c. 1250-1400.

¹⁷² Sarah Blanshei has argued that this transition from ‘public’ to ‘private’ was not uniform across the region, but varied between city-states: Blanshei 1982: 125. Given the often significant differences between the nature of government across the city-states and over the period in question, this is a more credible and realistic view than the alternative.

CHAPTER 2:

The intrusion of secular justice into imageries of the divine in northern Italy, c. 1250-1400

Introduction

This chapter will address the treatment of the notion of 'divine justice' in scenes of the Last Judgment, or referencing its imageries, produced in northern Italy c. 1250-1400. In particular, the analysis will offer a new, legal perspective, exploring the impact of changes in the contemporary secular justice system upon the representation of a seemingly distinct notion of divine justice.

The first section focuses upon artistic representations of the ultimate manifestation of Divine Justice, the Last Judgment. By visual analysis and contextualising, this chapter explores possible connections between a specific development in the representation of a particular aspect of these images - the torments of hell - and changing practices of the secular justice system. As noted in the Introduction, there exists no recent and comprehensive study of the Last Judgment scene across the Italian peninsula for the period c. 1250-1400. Alison Morgan provided a list of principal mosaics, frescoes and altarpieces of the Last Judgment in Europe from the sixth to fifteenth centuries.¹⁷³ Jérôme Baschet lists the towns and cities in northern Italy where monumental representations of hell are located; these are divided into those pre- and post-1330, in line with his thesis of the pivotal significance of the Pisan Camposanto fresco.¹⁷⁴ Rupert Schreiner's list included examples from c. 1100-c. 1400, from panels and sculpture as well as fresco.¹⁷⁵ A list of the principal monumental representations known to me, from northern Italy, c. 1250-1400, is included as Appendix 2.

My analysis will not be limited to Last Judgment imagery. Divine justice can be represented in many other ways. It will be argued that more traditional and on the surface more 'religious' images, such as the Virgin and Child with saints, also expressed the concept of

¹⁷³ Alison Morgan. 1990. *Dante and the Medieval Other World* (Cambridge: Cambridge University Press), 199-200.

¹⁷⁴ Baschet 1993: 592.

¹⁷⁵ Rupert Schreiner. 1983. *Das Weltgerichtsfresko in Santa Maria Donnaregina zu Neapel: Materialien zur Weltgerichtssikonographie* (PhD diss. Ludwig-Maximilians-Universität, Munich), VIII-IX.

divine justice and an interrelationship with the contemporary realities of secular justice. To demonstrate this point, the chapter therefore includes a case study of a work not previously read as an image of justice, *The Virgin and Child Enthroned, with Scenes of the Nativity and the Lives of the Saints* by Margarito of Arezzo (c. 1260/3). I will offer a reinterpretation of this panel and its meaning, as well as a new hypothesis concerning its original dating, patronage and location.

2.1 Hell in the *Last Judgment*: a “manipulation of God’s wrath for secular polemical ends”¹⁷⁶

This section will explore the *Last Judgment* scene in northern Italy between c. 1250-1400, looking at certain innovations in its representation, most particularly in its treatment of hell.¹⁷⁷ I will suggest that these images of divine justice reveal a concern with contemporary socio-political matters, especially engaging with changes in punishment practices in the secular justice system from the Duecento.

The basic elements of Last Judgment imagery derive from Biblical accounts, such as Matthew 25: 31-46 and Revelation 20. Prior to c. 1250, depictions of the Last Judgment in Italy largely corresponded to an established iconographic formula:

the arranged hierarchies of celestial beings, the time-honoured contrasts between the Saved and the Damned, the depiction of the infernal regions, the representation of Christ as the Judge of the World. Altogether it is overwhelming in the weight of its dogma.¹⁷⁸

The hierarchical structure is most evident in those scenes featuring a strict demarcation of the registers, such as *Last Judgments* in Santa Maria Assunta, Torcello (twelfth/thirteenth century; Figure 2);¹⁷⁹ Sant’Angelo in Formis (c. 1180); and a panel, signed by Nicolaus and Johannes, the dating of which is uncertain: possibly late eleventh century, or twelfth century (Figure 3).¹⁸⁰ In sculpture, the hierarchical structure was also evident; for example, in the tympanum and lintel of the west portal of the baptistery in Parma (c. 1200; Figure 4).¹⁸¹ After c. 1250, there emerged a more complete Last Judgment scene. These generally more

¹⁷⁶ Joseph Polzer. 1964. ‘Aristotle, Mohammed and Nicholas V in Hell’, *Art Bulletin* 46:457-69; the quotation is at 469.

¹⁷⁷ It is important to note that the dates of many *Last Judgments* are not secure and remain the subject of academic debate, so a precise chronological development of the theme is not possible.

¹⁷⁸ Stubblebine 1969: 89-90.

¹⁷⁹ The source of the iconography of the mosaic in Torcello cathedral, dating from the late eleventh-early twelfth century, is unknown. See Otto Demus 1943 and 1944. ‘Studies among the Torcello Mosaics-I-III’, *The Burlington Magazine* 82/483:132-141; 84/491:39-45; and 85/497:195-200. For the suggestion that the mosaic is probably a reasonably accurate reconstruction of an eleventh-century original, see Luther Link. 1995. *The Devil: A Mask Without a Face* (London: Reaktion Books Ltd.), 111.

¹⁸⁰ From the Oratory of S. Gregorio Nazianzeno, Rome; now in the Pinacoteca Vaticana (cat. 40526). On dating, see Baschet 1993: 195-8.

¹⁸¹ See Dorothy F. Glass. 1997. *Portals, Pilgrimage, and Crusade in Western Tuscany* (Princeton: Princeton University Press).

detailed representations began increasingly to focus on hell. This can be explored through four key iconographic changes.

Firstly, many depictions of hell in the context of the Last Judgment began to lose the hierarchical structure. One example is Nicola Pisano's pulpit for the Pisan Baptistery (c. 1255-1260), which features as well as a Last Judgment several other themes related to justice (Figure 5).¹⁸² Although damage mars much detail of the *Last Judgment* relief, one can see most of the standard iconographical elements: Christ-Judge seated centrally, flanked by angels and the intercessors, the Virgin and St John the Baptist. The apostles appear to the right of Christ in ordered rows. To His left, hell now appears as a chaotic jumble: demons devour the arms of sinners; others are consumed whole by huge-mouthed beasts, whilst some tumble upside down, closer towards the bearded, naked, seated figure of Satan. The scene is asymmetrical, the damned squeezed into a smaller section of the scene than the Blessed, an innovation which adds to the sense of chaos. Although arguably a feature often associated with Pisano's work, it represents a departure from more traditionally hierarchical representations of the Last Judgment.¹⁸³ While such a development could be viewed in the context of a more general move towards greater naturalism in Italian art, such striking, unsettling, visual disorder can carry much meaning, including suggesting a breakdown of order.¹⁸⁴

The departure from a strictly compartmentalised hell is also evident (possibly to a lesser degree) in the pulpit in Siena, also by Nicola Pisano, dated c. 1265-68.¹⁸⁵ The *Last Judgment* spreads across two panels, divided by the figure of Christ-Judge, a layout familiar from many Last Judgment scenes. Heaven retains an ordered structure, while the figures in *Hell* jostle and writhe (Figure 6). Similarly, in S. Andrea, Pistoia, Giovanni Pisano's pulpit (begun c.

¹⁸² The scholarship on the pulpits of the Pisanos is extensive. For an overview, see White 1993: 74-83. For more detailed consideration see, for example, Anita Fiderer Moskowitz. 2005. *Nicola and Giovanni Pisano: The Pulpits: Pious Devotion – Pious Diversion* (London: Harvey Miller); and Max Seidel. 2012. *Padre e Figlio Nicola e Giovanni Pisano* 2 vols (Venice: Marsilio).

¹⁸³ On the Pisano style, see White 1993: 74-92, and 113-142, and note 182 above.

¹⁸⁴ See White 1993: 73. Jules Lubbock suggested that this disorder is also present in Giovanni Pisano's Pisa pulpit (Lubbock 2006: 124-138), and Duccio's *Maestà*, in particular the scenes of the trial before Pilate (Lubbock 2006: 17-37).

¹⁸⁵ See White 1993: 83-88. On the relationship between Nicola Pisano's pulpits for Pisa and Siena, see Lisa Marie Rafanelli. 1996. 'A Re-examination of Nicola Pisano's Pulpits for the Pisa Baptistery and Siena Cathedral', *Rutgers Art Review* 16: 1-21.

1298, completed 1301) features a striking and disordered *Last Judgment* (Figure 7). This theme was further developed in his pulpit for Pisa Cathedral (1310), which contrasts the calm order of the ranks of the Saved and the chaotic scene of the Damned; with a particular focus on the torments they endured (Figure 8).¹⁸⁶

Not only was the strict hierarchical formula frequently abandoned; a second iconographic change in the depiction of the Last Judgment was the development by the 1320s/1330s of scenes of hell separated from representations of heaven. This afforded opportunities to depict hell in greater detail, to develop the iconography.¹⁸⁷ The Magdalene Chapel (Cappella del Podestà) in the Bargello, Florence arguably featured the first separated, independent images of Heaven and Hell c. 1322.¹⁸⁸ The Chapel forms a sacred space in the Bargello, a civic building, home of the podestà but also the machinery of justice, including courtrooms and cells. The fresco is badly damaged, but it appears to have featured opposing scenes of heaven and hell; the question of whether it also featured a *Last Judgment* is unclear.¹⁸⁹ An image of hell occupies the entrance wall to the chapel (Figure 9).¹⁹⁰ This may have been intended to provide a focus for contemplation for those waiting in the chapel to be taken to the place of execution.¹⁹¹ Alternatively, the separation of Hell may have first appeared in Pisa, in the Campo Santo frescoes (Figure 10). This point is difficult to clarify, as the dating of the frescoes is uncertain. Millard Meiss suggested either after 1345 or around 1350 (dates crucial to his thesis regarding the impact of the Black Death on art).¹⁹² Most scholars now prefer a date c. 1330s.¹⁹³ The Camposanto was a location with a funerary connection. The

¹⁸⁶ See White 1993: 122-130; 130-139. For a perspectival analysis of Giovanni Pisano's pulpits in Pistoia and Pisa, see Lubbock 2006: 85-140.

¹⁸⁷ Baschet regarded the appearance of separate and enlarged hells as particularly significant (1993: 293-349).

¹⁸⁸ This suggestion is by Elliott, who noted also that architectural features such as tall windows may have brought about such a separation in Santa Maria Donna Regina, Naples (Elliott 2000: 255).

¹⁸⁹ Perhaps those condemned by human justice were thought not to need an image of the process of divine justice, their fate already having been determined.

¹⁹⁰ It has been suggested that the entire wall was an *Inferno*, as in the Strozzi Chapel, Santa Maria Novella: see Offner, *Corpus*, IV, II, 50.

¹⁹¹ This function is considered in the context of an imaginative description of the activities of the *conforterie*, confraternities devoted to comforting those condemned to death and burying their bodies: see Edgerton 1985: 51-58.

¹⁹² Millard Meiss. 1951. *Painting in Florence and Siena after the Black Death* (Princeton: Princeton University Press).

¹⁹³ See, for example, Henk van Os. 1981. 'The Black Death and Sienese Painting: A Problem of Interpretation', *Art History* 4: 237-249, and Baschet 1993. Polzer reviewed the suggested dates, preferring the second quarter of the fourteenth-century, fitting with his attribution of the work to Traini (which attribution is also held by

fresco cycle juxtaposes depictions of particular judgment - the *Triumph of Death* - and final judgment - the *Last Judgment* and *Hell*.¹⁹⁴ This separation was developed, so that Hell became decoupled from Last Judgment scenes and the subject instead of stand-alone images; as in frescoes in Santa Croce, Florence (c. 1350?; Figure 11), and the Collegiate Church, San Gimignano (1393; Figure 12).¹⁹⁵

A further iconographic change was a focus on the imagery of hell and greater specificity in the punishments inflicted upon the damned, many of which feature a certain symbolic logic. Not all Hells are disordered; indeed, some are intentionally hierarchical, ascribing a particular punishment in hell to a specific sin or reserving an area of hell for those committing certain deadly sins: adulterers hanged from sexual organs (Arena Chapel, c. 1304-10; Figure 13b); gluttons condemned to eat for eternity (San Gimignano; Figure 12a); sodomites impaled (Camposanto; Figure 10e).¹⁹⁶ These indicate a belief in 'poetic justice' also evident in contemporary literature, most notably Dante's *Inferno*.¹⁹⁷

The possible connection of several monumental *Last Judgments* to Dante's *Inferno* has provoked much speculation. That Dante's work impacted upon certain artistic representations of Hell is generally agreed, particularly Nardo di Cione's fresco in the Strozzi Chapel, Santa Maria Novella (1350s) (Figure 14). Lisa Wade suggested that the Camposanto Hell, "is clearly [my emphasis] an attempt to interpret Dante's *Inferno* artistically".¹⁹⁸

Meiss 1951; and White 1993: 552); other possible attributions include the 'Master of the Triumph of Death', and Buonamico Buffalmacco (Polzer 1964: 467-8).

¹⁹⁴ See Virginia Brilliant. 2009. 'Envisaging the Particular Judgment in Late-Medieval Italy', *Speculum* 84/02: 314-346.

¹⁹⁵ Elliott suggested that the Magdalene Chapel frescoes may have provided the prototype from which the Florentine S. Croce and Pisan Campo Santo frescoes derived (Elliott 2000: 241-248). The now-ruined fresco of *Hell* in the Church of Santa Croce is usually attributed to Andrea di Cione (Orcagna).

¹⁹⁶ For a suggestion that the Camposanto Hell first clearly linked a punishment of roasting on a spit with sodomy, see Robert Mills. 2005. *Suspended Animation: Pain, Pleasure, and Punishment in Medieval Culture* (London: Reaktion), 87. Mills discusses the way in which the nature of the retaliatory punishment imposed on those depicted in representations of hell as sodomites was in some cases based upon an inversion their perceived roles, whether passive or active, in the sexual acts they performed in life, in particular in *Hell* in the Camposanto, Pisa, see Mills 2005: 85.

¹⁹⁷ Dante (1265-1321). *Divine Comedy* written 1314-21. On medieval visions of the otherworld before Dante, see Aron Gurevich. 1990. *Medieval Popular Culture: Problems of Belief and Perception*, trans. by János M. Bak and Paul A. Hollingsworth (Cambridge: Cambridge University Press). The notion of moving through heaven and hell appeared also in the *Libro delle tre scritture* ('Book of the Three Writings', 1274) of Milanese Bonvesin da la Riva (c. 1240—c. 1313/5), which described in three sections of vernacular poetry the pains of hell, joys of heaven and the passion (crucifixion) as a form of progression.

¹⁹⁸ Wade 2001: 144-5 and 147.

However, others reject a connection between the Camposanto frescoes and Dante's *Inferno*: Baschet, for example, interpreted the programme as a didactic statement linked to the teachings of the Dominican order.¹⁹⁹ The specific punishments of Dante's *Inferno* do not appear in many frescoes of *Hell*. For example, in the *Inferno* (XIX) simoners were buried upside down, feet burning for eternity; but in the Camposanto fresco, they appear with their entrails hanging out. Those who committed the sin of lust are perpetually buffeted by a tempestuous storm in the *Inferno*; unlike the hanged figures in Giotto's Arena Chapel frescoes (Figure 13b). Liars are stricken with disease in the eighth circle of hell, but Last Judgments may show liars hanged by their tongues; for example, the Arena Chapel frescoes (Figure 13b), and Giusto de Menabuoi's Viboldone fresco (Figure 15b). Gluttons in Dante's third circle are clawed by Cerebus; those in the San Gimignano *Hell* are force-fed (Figure 12a).

I suggest that there is support for the view that many frescoes of *Hell* were not intentionally illustrative of Dante's *Inferno*, but that what underpins Dante's work – and other contemporary literature, such as Boccaccio's *Decameron* (c. 1349-51) – as well as many contemporary artistic representations of Hell, is a belief in the need for some form of 'proportion' between offence and punishment.²⁰⁰ Dante's *Inferno* may indicate those acts that contemporary thought envisioned as leading the perpetrator to eternal damnation; in effect, the circles of hell establish a hierarchy of sin, the severity of punishment determined by whether the sin is of an animal or rational nature.²⁰¹ The innovative depictions of the horrors of hell may well have alluded to such notions of justice; the symbolic nature of the punishments retaining clear and explicit links to the concept of the categorisation of sin.²⁰² Many Trecento *Last Judgment* frescoes were structured to represent the torments imposed

¹⁹⁹ On the Camposanto frescoes, see Baschet 1993: 293-349; on this point, see 330-6.

²⁰⁰ For an interpretation of *Decameron* VIII, 7 as a negotiation of distributive justice, see Ullrich Langer. 1999. 'The Renaissance Novella as Justice', *Renaissance Quarterly* 52/2: 311-341, 327. On the eighth day as a "parodistic" version of the Last Judgment, see Victoria Kirkham. 1985. 'An Allegorically Tempered Decameron', *Italica* 62/ 1: 1-23. See also, Victoria Kirkham, 'Painters at Play on Judgment Day (Decameron VIII, 9)', *Studi sul Boccaccio* 14: 256-77, which connects this story to the Camposanto frescoes.

²⁰¹ See also John Saly. 1989. *Dante's Paradiso: the Flowering of the Self. An Interpretation of the Anagogical Meaning* (New York: Pace University Press) for discussion of how Dante suggested his Divine Comedy could be interpreted on four levels: literal, allegorical, moral and anagogical.

²⁰² In Iris Grötecke. 1998. 'Representing the Last Judgment: Social Hierarchy, Gender and Sin', *The Medieval History Journal* 1: 233-260, Grötecke noted that Last Judgments depicted verdicts on recognisable groups of people; her analysis concluded that the images were used to prescribe and reaffirm political, social and gender hierarchies.

for each deadly sin: for example, Robert Mills viewed the Pisan Camposanto frescoes as such; the San Gimignano *Hell* can also be viewed in this light.²⁰³ This idea that the punishment should fit the crime is evident in the detail of many scenes of Hell.²⁰⁴ The iconography therefore represents a particular contemporary conception of justice. The symbolic logic of inflicting a punishment appropriate to the crime could indicate a belief in ‘corrective justice’, intended to equalise the scales.²⁰⁵

The period may also have produced a further iconographic development, a ‘secular’ Last Judgment. Scholars have suggested that this started to appear c. 1330s.²⁰⁶ It could be interpreted as further evidence of ‘civic Christianity’, part of a wider process of secularisation of society.²⁰⁷ Ambrogio Lorenzetti’s complex allegorical *Good and Bad Government* frescoes in the Palazzo Pubblico, Siena (1338-40) can be interpreted as a *Last Judgment*, visually portraying the fight between Good and Evil, played out in a recognisable landscape featuring Siena and its contado, where powers of justice are exercised, souls weighed in the balance, and the damned condemned (Figure 17).²⁰⁸ On this reading, the central section of *Ben Comune* and the seated virtues constitute a Heavenly tribunal similar to that in *Last Judgment* scenes, such as in a fourth-century Roman terracotta plaque (Figure 18).²⁰⁹ The imagery in Pacino di Buonaguida’s *Arbor Vitae* of Christ-Judge presiding over a celestial court is similar (Figure 19); it has been suggested that Orvieto’s cathedral façade *Last Judgment* reliefs may have been the inspiration for this aspect of the panel (Figure 20).²¹⁰ The scene of the *Good City and Countryside* would therefore be interpreted as Heaven, showing the fortune of the saved. The *Bad City and Countryside* depict Hell, ‘Tyranny’ resembling certain medieval depictions of the Devil.²¹¹

²⁰³ Mills 2005: 85.

²⁰⁴ Robert Mills regarded the Camposanto frescoes as “a supreme visualisation of the idea”: Mills 2005: 94.

²⁰⁵ The credit/debit notion of punishment is explored in William Ian Miller. 2006. *Eye for an Eye* (Cambridge: Cambridge University Press).

²⁰⁶ On the secularization of the Last Judgment generally from c. 1330s, see Elliott 2000: 241-248.

²⁰⁷ On the concept of ‘civic religion’ see Chapter 1.

²⁰⁸ On this interpretation, see Joseph Polzer. 2002. ‘Ambrogio Lorenzetti’s “*War and Peace*” Murals Revisited: Contributions to the Meaning of the “*Good Government Allegory*”’, *Artibus et Historiae* 23/45: 63-105.

²⁰⁹ Now in the Dumbarton Oaks Collection, Washington D.C. Pietro Cavallini’s *Last Judgment*, St Cecilia in Trastevere, Rome, would be a further example.

²¹⁰ See Elliott 2000: 225.

²¹¹ The appearance of the *Bad City and Countryside* to the right hand side of the central scene, not the left as expected in *Last Judgments*, may be attributable to peculiarities of location and/or function.

This study will focus upon another iconographic change, arguably a further aspect of the secularisation of the Last Judgment scene and of the increased focus on the punishment of the damned. A significant development in the representation of hell in the fourteenth century was the appearance of the punishment of sinners in the context of actual punishments inflicted as part of the contemporary justice system. This point has been made by several scholars, but with differing emphases. Edgerton recognised in the scenes actual methods of contemporary punishment.²¹² Phillippe Ariès suggested that Last Judgments in this period shift from “eschatology in favour of judicial machinery”, a change he attributed to an increase in legal consciousness.²¹³ Baschet suggested that rather than being representative of features of contemporary jurisprudence, these tortures were intended to recall literature of infernal visions.²¹⁴ Noting that “few people realise that the tortures in hell are mostly accurate representations of contemporary practice” Luther Link interpreted this in context of the search for heretics by the inquisition.²¹⁵ An alternative analysis will be proposed here.

A point often overlooked or misinterpreted is that the focus of these scenes of Hell is quite specific: they depict not torture, but punishment. Torture would be appropriate in a scene of particular judgment; that passed at the end of an individual’s life, at point of death: sinners in purgatory awaited their final or last judgment at the end of the world, on ‘Judgment Day’. Similarly, torture, in the contemporary justice system, tended to occur before the verdict (discussed further below). These scenes instead represent the punishment of the damned after the final verdict of Divine Justice, after they are sent to hell, which perhaps makes it less surprising that scenes began to feature real contemporary after-verdict punishment. This element of realistic punishment is not evident in earlier northern Italian representations of hell, such as Torcello (Figure 2a), or the Florentine baptistery mosaic (Figure 16b), and there is speculation as to when it first appears.²¹⁶

²¹² Edgerton 1985: 66-69.

²¹³ Philippe Ariès. 1985. *Images of Man and Death* trans. by Janet Lloyd (Cambridge, MA: Harvard University Press), 100-2. On increasing legal consciousness, see Chapter 1.

²¹⁴ Baschet 1993: 278-285.

²¹⁵ Link 1995: 136; 119.

²¹⁶ Dating of the mosaics is uncertain. Most scholars now regard c. 1250-1270 as most probable (see, for example, Miklós Boskovits. 1975. *Pittura fiorentina alla vigilia del Rinascimento: 1370-1400* (Florence: EDAM), 155).

Arguably some elements appear in Giotto's *Last Judgment* fresco for the Arena Chapel, Padua (c. 1306; Figure 13a).²¹⁷ However, I suggest that there was little or no real intention here to mirror contemporary realities. Although hanging was a feature of contemporary justice, here sinners are hanged by their hair or genitalia: unrealistic in practice, this appears more a moral judgment associated with sexuality (Figure 13b). Hanged sinners appear here alongside more fantastical torments, such as being bitten by giant reptiles (also evident in the Florentine Baptistery mosaics (Figure 16b)). That Giotto's commission was by a private patron for a private chapel might suggest a particular motivation influencing the iconography.²¹⁸ Some scholars have found a sadomasochistic subtext in the images.²¹⁹ Others have suggested a possible humorous intention.²²⁰ This is not perhaps as unlikely as it may appear. There is evidence of representations of hell being seen as civic entertainment. A celebration in 1304 of a reconciliation of rivaling political factions, invited Florentines who wanted to know 'news of the other world' to assemble on the Ponte della Carraia over the Arno; they witnessed a representation of hell, complete with flames and demons.²²¹

The development in the representation of the Last Judgment scene to include a hell featuring punishments familiar to the contemporary justice system seems more clearly to appear around the 1320s/1330s. The most obvious and detailed example of the representation of the punishment of sinners in hell in the context of actual contemporary punishments is the fresco of hell in the Camposanto, Pisa (c. 1330s?; Figure 10a). Other examples also indicate an intention to relate the torments of hell to real punishments

²¹⁷ On Giotto, and the Arena chapel frescoes, see Introduction, note 24 above.

²¹⁸ His possible motives in commissioning the chapel are addressed in Chapter 3.

²¹⁹ Richard Cavendish. 1977. *Visions of Heaven and Hell* (London: Orbis Publishing), 104. In relation to sodomy, see Mills 2005: 83-105. On the prevalence of sexual tortures, and a suggestion that this derived from a contemporary association of usury with perverse sexuality, see Derbes and Sandona 1998: 284, 291, notes 80 and 82.

²²⁰ See Andrew Ladis. 1986. 'The Legend of Giotto's Wit and the Arena Chapel', *The Art Bulletin* 68: 581-96; and Brendan Cassidy. 2004. 'Laughing with Giotto at the Sinners in Hell', *Viator: Medieval and Renaissance Studies* 35: 355-86. Boskowitz noted that "the [Florentine] Baptistery hell seems to me dominated by a kind of black humour common to most late-medieval representations of the subject" (*Corpus*: 167). For the influence of the Florentine Baptistery mosaics on Giotto's Arena Chapel frescoes, see, Cassidy 2004: 360 note. 29, and Link 1995: 90.

²²¹ Many were killed when the bridge collapsed, "so that the pastime from sport became earnest, and, as the proclamation had said, many by death went to learn news of the other world, with great lamentation and sorrow to all the city": Villani, *Cronica*: Book VIII, 70. Such spectacles may have drawn on mystery play traditions.

imposed after the secular trial process. For example, contemporary records confirm that many found guilty of murder were beheaded, or hanged. We see the damned in the Camposanto *Hell* holding their severed heads (Figure 10b). Beheading was generally perceived as a 'better death' than being hanged, and so was used more often for noble offenders. Beheading was the specified punishment for vendetta causing death in the Florentine statutes of 1325, a crime often associated with young noble males.²²² In 1371 the *Cronica senesi* recorded that four men were beheaded in the Campo, Siena, following social unrest.²²³ Also in 1371, two men in Lucca were beheaded in the Piazza San Michele for riot.²²⁴

Hanging was perceived as a degrading punishment; being hanged upside down particularly so.²²⁵ Villani recounted that in Florence in 1343 an official of the hated Duke of Athens was hanged by his feet.²²⁶ In the Camposanto *Hell* we see sinners hanging, some upside down (Figure 10b). This is also seen in the *Last Judgment* in Viboldone Abbey, near Milan, for example (Figure 15b).²²⁷ Modena hanged men deemed as 'traitors' in 1287.²²⁸ In Siena in 1328, when several of the podestà's men were killed attempting to quell food riots, six men accused of inciting the riots were publically hanged.²²⁹ Hanging was also deemed appropriate for thieves, although they could be whipped.²³⁰ This seems to reflect the contemporary conception of theft (and similar offences of robbery and burglary) as

²²² R. Caggese. 1910-21. *Statuti della repubblica fiorentina* 2 vols (Florence), vol 2, 278 (trans. Dean 2000: 188). The association between vendetta, gender and social class is discussed further in Chapter 4.

²²³ *Cronica senesi*, 1371 (trans. Dean 2000: 174).

²²⁴ *Le chroniche di Giovanni Sercambi* 1:204-5, in Dale, Osheim and Williams 2007: 163.

²²⁵ This may stem from association with the hanging of Judas, or the lack of dignity or honour in being inverted. Robert Mills considered the concept of hanging in texts and images in *Suspended Animation*. Hanging upside down is often associated with the *pittura infamante*.

²²⁶ Villani, *Cronica* Book XIII, 17.

²²⁷ The fresco is often attributed to Giusto de' Menabuoi and dated to third quarter of the fourteenth century. This feature may derive from Giotto's Arena Chapel *Last Judgment*, where a similar figure hangs upside-down. However, it also bears similarities to Nardo di Cione's *Last Judgment* (c. 1350s-60s; Santa Maria Novella, Florence).

²²⁸ The Chronicle of Salimbene: see see G.G. Coulton. 1972. 2nd ed. *From St Francis to Dante. Translations from the Chronicle of the Franciscan Salimbene (1221-1288)* (Philadelphia: University of Pennsylvania Press), 209.

²²⁹ *Cronica senesi*, 1328 (trans. Dean 2000: 172).

²³⁰ An example, from early-mid thirteenth century, in Parma is addressed below.

‘infamous’, meaning those who committed such offences were without honour and so deserving of a dishonourable treatment.²³¹

Whipping was also a frequent punishment, often to take place in public. It may have been seen as a punishment for the infamous: a late thirteenth-century Florentine law provided that prostitutes could be whipped and their pimps fined.²³² Although the Camposanto fresco is too badly damaged to allow us to make out finer details, such as a whip, this too appears in Last Judgment scenes, in San Gimignano, for example (Figure 12a). *Last Judgments* also show people being flayed; the Camposanto, for example (Figure 10c). There is little evidence of flaying being used generally as a punishment in the later Middle Ages, but the removal of skin carries a particular symbolism, the removal of a protective barrier.²³³ The San Gimignano *Hell* shows a sinner’s body covered in scorpions attacking the flesh (Figure 12b). The scenes may be paralleled in the punishment of a female slave who had poisoned her master: her skin was torn off with pincers, and she was then burned to death, in Florence in 1379.²³⁴

The amputation of limbs - usually hands - was deemed appropriate punishment for being involved in a riot.²³⁵ It was also used for theft.²³⁶ The Camposanto frescoes may also include scenes of amputation.²³⁷ In the scene of the *Triumph of Death*, one can see a possible victim of such a punishment (Figure 21). One might even wonder whether perhaps a punishment of being boiled alive was mirrored in the fate of those damned to a *bolgia* or pit in hell. This

²³¹ On the importance of the concept of honour or ‘fama’ in contemporary legal thought and practice, see Thelma Fenster and Daniel Lord Smail. 2003. *Fama. The politics of talk and reputation in medieval Europe* (Ithaca, New York: Cornell University Press).

²³² Giuseppe Papaleoni. 1886. ‘Nuovi frammenti dell’antico Costituto Fiorentino’, in *Miscellanea fiorentina di erudizione e storia*, ed. by Iodoco del Badia (Florence: S. Landi), vol 1, 73-74; trans. Lynn Marie Laufenberg, in Katherine L. Jansen, Joanna Drell and Frances Andrews. 2009. *Medieval Italy* (Philadelphia: University of Pennsylvania Press), 196-7.

²³³ Mills 2005: 65-7. He also makes the point that violated skin may inspire feelings of fear or repulsion, through connotations of diseases like leprosy and plague.

²³⁴ *Diario d’anonimo fiorentino*, 400, 525-6; in Dean 2007: 70. This may have been an exemplary punishment, possibly because of the potential social impact of a servant killing her master, but also because poisoning appears to have been regarded as a ‘dishonourable’ method of killing someone: see Franck Collard. 2008. *The Crime of Poison in the Middle Ages* trans. Deborah Nelson-Campbell (London: Praeger).

²³⁵ The loss of his right hand was the punishment imposed by the podestà of Lucca in 1371 for a man involved in a riot: *Le croniche di Giovanni Sercambi* 1:204-5 (Dale, Osheim and Williams 2007: 163).

²³⁶ See the example, from early-mid thirteenth century Parma below.

²³⁷ The Magdalene Chapel in the Bargello, Florence may have included detailed scenes of amputations, although given the state of the frescoes this is not certain.

was a punishment administered to early Christian martyrs such as Saint Cecilia, Saint Margaret (in some accounts, sentenced to be cast into a cauldron of boiling pitch), Saint Lucy and S. Cyrinus, as well as John the Evangelist (as seen in a panel by Margarito of Arezzo, discussed below).²³⁸ It remained current in the late-medieval period: in 1236, the communal authorities in Parma punished a murderous cleric by boiling him in a pot on the Piazza Communale.²³⁹ We see sinners in a pit (*bolgia*) in the Camposanto (Figure 10f), Santa Croce (Figure 11), and San Gimignano (Figure 12).

Those accused of treacherous activities could face having their tongues cut out; the fate of the sister of a man found guilty of betraying Bianello, Reggio Emilia.²⁴⁰ This punishment can be seen in a *Last Judgment* at Campione d'Italia (1400; Figure 22a). Several frescoes feature sinners (sometimes identified as sodomites) impaled (Camposanto, Figure 10e; San Gimignano, Figure 12a); whilst not suggesting that in practice those charged with sodomy were actually roasted on a spit, we can consider the similarities to an exemplary punishment of a youth convicted of being a 'public and notorious passive sodomite' in Florence in 1365: he was sentenced to be dragged by an ass to the 'place of justice', publicly castrated and punished by branding between the thighs with a hot iron.²⁴¹

On this reading, these images from Last Judgments feature the torment of sinners in the context of actual contemporary punishments, the after-trial verdicts of secular justice. The didactic impact could be enhanced, by 'labelling' to identify those guilty of particular behaviours or sins so that those viewing the image could see the specific punishment being suffered. In several frescoes the sinners wear identifying labels, or a 'mitra', a form of paper hat bearing an inscription of the matter being punished, a feature of contemporary juridical

²³⁸ See, for example, Altichiero's *Saint Lucy Refuses Her Suitors*, Oratory of San Giorgio, Padua (c. 1380s).

²³⁹ For the murderous cleric, see *Chronicon Parmense* (1236), 11; cited by Thompson 2005: 45. The boiling in a pot as punishment may be attributed to a prohibition on the spilling of blood in sacred areas of Parma. Salimbene de Adam, *Cronica*, vol 1, 79 reported that in Parma a communal statute of 1233 forbade 'shameful deeds' near the Baptistery, on pain of being placed in chains in the main square (cited in Jansen, Drell and Andrews 2009: 244). This too was contemporary reality: for example, in Padua, a cleric thought to have committed 20 offences was imprisoned in an iron cage hanging from the tower of the Palazzo Comunale in 1301 (Cassidy 2004: 370).

²⁴⁰ According to the *Cronica* of Salimbene (see Coulton 1972: 209).

²⁴¹ The example of the exemplary punishment is given in Mills 2005: 95. Salimbene's *Cronica* suggested that Ezzelino da Romano had a servant "bound to a great pole and turned as on a spit, before the fire": see Coulton 1972: 266.

practice. This is evident consistently across the Trecento: in Giotto's Arena Chapel fresco (c. 1306; Figure 13b), the Camposanto (c. 1330s; Figure 10e); Viboldone Abbey (Figure 15c); the Church of Santa Croce, Florence (c. 1350s/60s; Figure 11); and in San Gimignano (1393; Figure 12a).

That the punishment was intended to be recognisable to a contemporary audience may be surmised from the appearance or non-appearance in representations of hell of sinners being tortured upon the wheel. The wheel was not much used in parts of northern Italy, and this absence is evident in fourteenth-century representations of hell from these regions.²⁴² However, further north, use of the wheel was more widespread, particularly in Germany and Switzerland. In a representation of the *Last Judgment* from Campione d'Italia near Lake Lugano, we see an image of a sinner in hell stretched on a wheel (1400; Figure 22b).

The appearance in a Last Judgment depiction of hell of a particular punishment which may not feature in records of criminal justice practices from that same town or city is not overly problematic, as, "for most of the period, the cities of the centre and north of Italy shared a roughly similar judicial structure and similar judicial procedures".²⁴³ In part this must be attributable to the impact of Roman law.²⁴⁴ In addition, punishment practice could be spread across the region, standardising the punishments awarded for particular offences. This was encouraged by the mobility of many of the officials of law enforcement, particularly the podestà and his judges.

Frequently appointed by civic authorities to exercise their law-enforcement role, ensuring that the judicial function was to an extent state-controlled, the *podestà* was usually not a citizen of the town or city in which he operated. In theory, this brought an element of impartiality to the role. His appointment was for a limited term, often one year or six months, again to encourage impartiality, although in many cases, the podestà was an

²⁴² The use of the wheel as an instrument of torture is discussed in Mitchell Merback. 1999. *The Thief, the Cross and the Wheel: Pain and the Spectacle of Punishment in Medieval and Renaissance Europe* (London and Chicago: Reaktion Books), 164-7.

²⁴³ Dean 2007: 11.

²⁴⁴ See Chapter 1.

overtly political appointment.²⁴⁵ By the fourteenth century, all were usually professionally qualified, most often as judges or notaries, or at least possessing a law degree.²⁴⁶ The need for competent podestà produced a competitive market, with some cities even offering bonus payments to secure good candidates.²⁴⁷ This system of administering justice largely remained in place across the period until 1400, despite political changes and despite the development in certain city-states of specialised courts or systems of appeal.

The podestà was expected to bring amongst his retinue, and maintain at his expense, officials necessary to perform his role. This included judges (although the podestà himself acted as judge in some cases), notaries, and 'law-enforcement officers'. Given the limited terms of office, the mobility of many of the officials of law enforcement is – it is argued – significant in ensuring the transmission of certain prosecution and punishment practices across northern Italy. This mobility can be illustrated by the example of Simone Engelfredi, a jurist from Padua who was to serve as podestà in Bergamo (in 1290), Todi (1295), Orvieto (1296), Pisa (1300), Bologna (1304-5), Vicenza (1306), Verona (1307), Modena (1307-8), and was imperial vicar in Arezzo at the time of his death in 1311.²⁴⁸ The character of the podestà could influence the severity of the punishments awarded, but the need for the podestà to secure further appointments could act as a check on extremes.²⁴⁹

Such a system ensured that a relatively small body of highly professional, learned, skilled and experienced officials were involved in frequent movement across the region. This facilitated the dissemination of prosecution and punishment practice across the towns and cities of northern Italy, making conformity of practice more likely than not. In such

²⁴⁵ This can be seen in Florence, for example, where Charles of Anjou served as podestà (1267-1282); and Robert of Anjou nominated the podestà from 1313-1322; thereafter, until 1325, the podestà was democratically elected. An attempted appointment in 1224 of a podestà from Parma by the bishop of Brescia was thwarted, when the swearing in ceremony was disrupted by rock-throwing citizens, who subsequently elected a podestà of their choosing (Miller 2000: 167).

²⁴⁶ This professionalization of the role of podestà is considered by Jones 1997: 412-5.

²⁴⁷ In the case of Siena, see William M. Bowsky. 1981. *A Medieval Italian Commune: Siena under the Nine, 1287-1355* (Berkeley: University of California Press), 30.

²⁴⁸ Sante Bortolami. 1993. 'Simone Engelfredi', *Dizionario Biografico degli Italiani - Volume 42*. Available online [http://www.treccani.it/enciclopedia/enghelfredi-simone-simeon-symeon_\(Dizionario_Biografico\)/](http://www.treccani.it/enciclopedia/enghelfredi-simone-simeon-symeon_(Dizionario_Biografico)/) [accessed 6 May, 2013].

²⁴⁹ The Chronicle of Salimbene suggested that the podestà of Modena was criticised in 1287 for hanging 'traitors', as the townspeople feared it was likely to inspire reprisal (Coulton 1972: 203). On chroniclers' views of the role of the podestà, see Dean 2007: 52-71.

circumstances, the appearance in the records of a specific punishment being meted out in one town or city for a particular offence, makes it almost certain that a similar outcome could be observed in others, even where contemporary records do not exist or may be silent upon the point. Consequently, this circulation of podestà and judicial personnel would have contributed to the dissemination of punishment practices across the region. In addition one must also consider the possibility of the movement of artists having a similar effect for the transmission of the iconography.

What could motivate patrons and artists to depict Hell in the context of specific contemporary secular punishments? The earliest of these horrifying hells appeared in buildings with a religious function: in baptisteries and duomos. Later frescoes appear in locations with a funerary connection, such as the Camposanto, Pisa. This might suggest that religious patrons sought to utilise the deterrent effect of such images. These images may have been at least in part intended to encourage confession, an annual requirement specified in the Fourth Lateran Council (1215).²⁵⁰ Increasing awareness of the eternal consequences of certain behaviours - Lateran IV appeared to make it clear that one's actions on earth would determine one's fate after death - might have concentrated the minds of those viewing the image of the Last Judgment.²⁵¹ The verdict of the Divine Judge and its consequences would then have assumed increased significance. The Last Judgment demonstrated – in a visual image understandable by all – the need to behave in an orthodox manner, a message clearly important to ecclesiastical authorities, particularly in the time of the papal inquisition. Detailed punishments, often identifiable from contemporary realities and linked to a particular behaviour, could appeal more directly to popular concerns.

Punishments in hell are the manifestation of divine justice: the guilty being punished by God, through the actions of Satan and demons.²⁵² It is the diabolical activity in these Last Judgment scenes - and consequently the suffering of sinners - which becomes increasingly

²⁵⁰ Canon 21: see Appendix 1.

²⁵¹ Canon 1: see Appendix 1. Elliott suggested that, "the reappearance in the later thirteenth century of the 'complete' Last Judgment scene, complete with vivid images of Paradise and Inferno, is most certainly related to the renewed interest in the fate of the soul after death" (Elliott 2000: 183).

²⁵² On contemporary belief in the devil performing torments on behalf of God, see William Granger Ryan. 1993. *The Golden Legend. Readings on the Saints. Jacobus de Voraigne Volume II* (Princeton: Princeton University Press), 86.

terrifying and vivid (Orvieto; Figure 23). This may reflect the preoccupations of those preaching to the laity.²⁵³ The preaching activities of the mendicant orders particularly may perhaps at least partly explain the timing of the appearance of these horrifying hells.²⁵⁴ The link with preaching may also help to explain the location of certain of these detailed hells; images on pulpits or on the wall of a church could reinforce the message of a sermon. This might be particularly the case at S. Maria Maggiore, Tuscania, where the *Last Judgment* fresco appears unusually over the main apsidal wall, so worshippers could focus upon it throughout the sermon (first half of the fourteenth century - c. 1315-1320?; Figure 24). Artistically, it is similar to Giotto's *Last Judgment* in Padua, but in Tuscania there is a much greater emphasis on the devil, an enormous figure occupying most of the depiction of Hell (Figure 24a). He is assisted by many demons, almost equal in number to the sinners they torment.

But not all of these Trecento *Hells* were commissioned by or for religious authorities. One of the most artistically significant *Last Judgments* of the Trecento was commissioned by a private patron, Enrico Scrovegni. Some were commissioned by secular governmental authorities, such as the Magdalene Chapel in Florence.²⁵⁵ Others appear in buildings with a dual religious/secular function: baptisteries, for example, where several of the innovations in representations of hell occurred in the mid-late thirteenth century, played a role in civic life as one could not be a citizen until baptised.²⁵⁶ In Florence, for example, administration

²⁵³ On preaching, particularly by the mendicant orders, there is an enormous literature. See, for example, Laura Gaffuri and Riccardo Quinto. 2002. *Preaching and society in the Middle Ages: ethics, values and social behaviour: proceedings of the XII Medieval Sermon Studies Symposium, Padua, 14-18 July 2000* (Padua: Centro studi antoniani); Daniel R. Lesnick. 1989. *Preaching in medieval Florence: the social world of Franciscan and Dominican spirituality* (Athens, Georgia, and London: University of Georgia Press); Lina Bolzoni. 2003. *The web of images: vernacular preaching from its origins to Saint Bernardino of Siena*. (Aldershot: Ashgate); Katherine Ludwig Jansen. 2000. *The Making of the Magdalene: Preaching and Popular Devotion in the Later Middle Ages* (Princeton, N.J.: Princeton University Press), and with a focus on Italy, 1995. 'Mary Magdalen and the Mendicants: The Preaching of Penance in the Middle Ages', *Journal of Medieval History* 21/1: 1-25.

²⁵⁴ On the liturgical functions of and relationships of the laity to the pulpits and the reliefs, as well as their social and historical context, see Rafanelli 1996: 1-21.

²⁵⁵ On the funding of the decoration of the chapel from fines collected by the Florentine communal authorities, see Elliott 2000: 200-1.

²⁵⁶ Although it appears there is no single accepted explanation for the prevalence in northern Italy of independent baptisteries which in scale and prominence rank alongside churches and important secular buildings, it may be attributable to an "architectural expression of the intense civic pride and economic competitiveness of the Italian city-states": Annabel Jane Wharton.

"Baptistry." In *Grove Art Online*. Oxford Art Online, <http://www.oxfordartonline.com/subscriber/article/grove/art/T006189> (accessed 25 June, 2012).

of the baptistery was shared between the Guild of the Calimala and the Church. It was a feature of most baptisteries that the decoration often included images of Christ and the *Last Judgment*. But this begs the question: why might civic authorities condone or even commission images of the punishments they inflicted through their administration of the justice system upon their own citizens?

Around the early Duecento theories of criminal law developed which were based upon punishment being administered in this world, rather than being left as a matter for divine judgment in the next.²⁵⁷ There are generally two justifications for punishment: to pay back someone for harm they committed against others; or to prevent or reduce future harms. In the former instance, someone who harms society by breaching its rules upsets the scales of justice. Equilibrium is restored by punishing the perpetrator, in some way in proportion to the harm caused. Criminal acts offended against both divine and secular law, deserving of human and eternal punishment. Failure to punish would bring God's displeasure. As civic authorities assumed greater control of prosecution under the inquisitorial system, they regarded themselves as having a duty to punish; they adhered to the legal maxim, 'It is in the public interest that crimes should not remain unpunished'; this required that the state – the governing authorities of the city-states - prosecute and punish wrongdoing.²⁵⁸

Many city statutes referred to *publica utilitas*, a concept taken from Roman law (Justinian's *Digest*, 1.1.2), which could justify the steps taken by the authorities against their own citizens as part of the law-making and law-enforcing function.²⁵⁹ Criminal behaviour and other wrongdoing threatened the stability of society or the common good.²⁶⁰ As communal authorities sought to secure social stability, civic harmony, or 'concord', they placed an increased and increasing emphasis on issues of law and order. Most sought to secure public order by the *cultus justitiae*, the establishment of effective legal processes. Maintaining a

She offers, as examples, the Florentine Baptistery as a means of defining the civic space of the city; similarly, Cremona baptistery (begun in 1167) and the Pistoia baptistery (1339–59).

²⁵⁷ The Roman law sources for this imperative to punish are considered in Fraher 1989: 213-233.

²⁵⁸ '*Rei publicae interest ne crimina remaneant impunita*', translation by Hyams 2000: 77. The concept is considered in more detail in Richard M. Fraher. 1984. 'The Theoretical Justification for the New Criminal Law of the High Middle Ages: "*Rei Publicae Interest, Ne Crimina Remaneant Impunita*"', *Illinois Law Review* 577-95.

²⁵⁹ For example, in the *Statuta lucensis civitatis*, IV.1; *Statuto del Capitano del Popolo degli anni 1322-1325*, p.127, in Dean 2007: 87.

²⁶⁰ On the common good, and contemporary political thought, see Chapter 1.

peaceful society required the rights of the individual be subordinated to the common good: communal philosophy perceived the needs of the individual best served by a strong and peaceful society. This would not mean everyone was treated equally (few would have considered that desirable or even possible), but it was thought this would create justice, vital to the preservation of the city-state.²⁶¹ Authorities could regulate individual behaviour by providing laws to obey; increasing the acts a society treated as criminal as the state sought to identify and penalise behaviour thought to threaten social stability.²⁶² The communes legislated on many matters: statutes could be in part an end in themselves, serving to define social and behavioural norms, to inspire or instil 'social discipline'.

Images of the infliction of punishment in these Last Judgment scenes could achieve that same goal by visually expressing the consequences of wrongdoing. The eternal punishments inflicted on sinners in Hell as a result of God's divine justice may have served as a justification for physical punishment following trial and sentence: human justice would merely (on a temporal level) be implementing the same or lesser torments as Divine Justice (in that case, for eternity). No one witnessing these scenes of hell could harbour any doubts on these matters, and the relevance of the message would be enhanced by the inclusion of contemporary and recognisable punishments. In revealing the punishment appropriate to the crime or sin, but also the behaviours suitable for punishment, in an image of divine justice utilised to propagandise for contemporary secular judicial values, these Last Judgment scenes would suggest a 'just deserts' or retributive notion of justice – which desires punishment of transgressive behaviours as an end in itself, without further justification - prevailed in northern Italy at this time.²⁶³ However, it is not clear that this was in fact the case.

One might assume from the increasingly horrifying and realistic punishments featuring in Hells of the fourteenth century that civic authorities of the city-states were demonstrably avoiding any lightness in penalty for wrongful behaviour, yet it is here we find an anomaly. It

²⁶¹ On contemporary expectations of the law, see Musson 2001: 10.

²⁶² As well as more obvious measures against public displays of violence, further examples include Siena's tight control over the area around the Campo by statutes of 1309 (Jansen, Drell and Andrews 2009: 261-4), or Parma's around the baptistery (Jansen, Drell and Andrews 2009: 246).

²⁶³ This retributive theory has come to be associated with Immanuel Kant, whose *Philosophy of Law* (1797), advocated punishment proportionate to an offender's 'wickedness'.

is around this time that they appear to have started to move away from physically destructive or disfiguring punishments, which were forever stigmatizing and, as they offered the offender little or no possibility of reintegrating into society, seemed inevitably to lead to further criminality or a drain upon charitable resources. There is evidence that the authorities were increasingly prepared to make use of punishments which appeared significantly more lenient than those in the contemporary images of Hell, ordering punishments not involving physical mutilation or execution for a wide variety of criminal activity.

For example, many crimes, even in some cases murder, were punished by fines; advantageous for both offender and 'cash-strapped' communal authorities. These are not compensatory payments made to the claimant or family of a victim, as under earlier forms of dispute resolution; rather these form part of a more sophisticated legal system. These were 'state' controlled, imposed by the governing authorities of towns and cities, and codified in communal statutes. Some statutes set a sliding scale of financial penalty, depending on the nature and severity of the offence; for example, increasing the fines for scratching, hair-pulling, biting or assault, where blood was drawn.²⁶⁴ This reinforces the concept of the grading of crimes as socially constructed. Fines were levied even for violent crimes: in one example from Modena, a son who 'grievously wounded and maimed' the man who had mocked his dead father was fined.²⁶⁵ In Pistoia, a vendetta led to the murder of a judge in the palace of the podestà and in front of one of the podestà's magistrates; despite the flagrant lack of respect for the podestà and his office, the murderer was sentenced to a fine and exiled.²⁶⁶ Florentine statutes provided,

because of fist fights which often happen in the city of Florence and its suburbs, sedition, tumults and many wounds are committed, it is established that no one in the city or suburbs of Florence is to fight with fists or at fist-fighting games, and if anyone contravenes, he is to be detained and not released until he pays ... 100s if aged 15 or below, or L10 if aged over 15.²⁶⁷

²⁶⁴ Statutes of Castellarquato, near Piacenza, c. 1350: see Coulton 1972: 16 note 2.

²⁶⁵ The example is from the *Cronica* of Salimbene (see Coulton 1972: 205).

²⁶⁶ See Dean, 2000: 185-7; on Pistoia, see David Herlihy. 1967. *Medieval and Renaissance Pistoia: The Social History of an Italian Town, 1200-1400* (New Haven and London: Yale University Press).

²⁶⁷ *Statuto del podestà dell'anno 1325*. Caggese 1921: vol 2, 200 (trans. Dean 2000: 183).

The same statutes also provided for fines in cases of vendetta causing ‘disability of limb’ or facial disfigurement.²⁶⁸ That fines were seen as suitable punishment in such cases is striking, given the extreme concern of the Florentine authorities at the socially destabilising effect of vendetta.²⁶⁹ That the statute provided as punishment for vendetta causing disability or disfigurement, “a fine double *what it would have been if the attack had not occurred as part of a vendetta*” [my italics] indicates that fines were normally levied for such attacks.

Similar trends towards non-violent punishment can be seen in the use of imprisonment as a punitive measure, which offered at least the possibility of redemption or social reintegration. Imprisonment had been a feature of medieval life well before the thirteenth century.²⁷⁰ Its traditional role was custody for those awaiting trial, but the Duecento saw changes in its use. In part, this was a process that began in the papal inquisition, where ecclesiastical prisons were an important feature, and this new punitive use of imprisonment spread to the secular justice system in the mid-thirteenth century. The emergence of formal building programmes for municipal prisons appears only from the late-Duecento; Florence started in 1297, passing legislation for the building of the Stinche as a new prison.²⁷¹ Other city-states soon followed.²⁷² Prisons were built at least in part as symbols of political authority and new policies of social control, indicating a preference for “regulated interaction over social destruction”.²⁷³ Guy Geltner’s dating of the emergence of municipal prisons to the late-Duecento, and that his research indicated the years c. 1250-c. 1350 to be “a watershed period in the history of the prison” would seem to accord to the suggestions put forward here linking these images of punishment to changes in communal authorities’ prosecution practices, from physical punishments to containment.²⁷⁴

²⁶⁸ Caggese 1921: vol 2, 78 (trans. Dean 2000: 188).

²⁶⁹ *Vendetta* in Florence is discussed further in Chapter 4.

²⁷⁰ On the use of imprisonment in medieval society, a general discussion can be found in Jean Dunbabin. 2002. *Captivity and Imprisonment in Medieval Europe 1000-1300* (New York: Palgrave MacMillan).

²⁷¹ 12th March 1297. *Provvisioni*, Archivio di Stato di Firenze, 8, c. 51r, entitled, ‘Super quibusdam carceribus faciendis pro Communi’ (see Marvin E. Wolfgang. 1960. ‘A Florentine Prison: Le Carceri delle Stinche’, *Studies in the Renaissance* 7:148-166).

²⁷² The demolition of houses to make way for a new communal prison behind the podestà’s palace in Siena in 1326 is noted in the *Cronica senese attributa ad Agnolo di Tura del Grasso*: see Dean 2000: 25.

²⁷³ Geltner 2008: 104-5.

²⁷⁴ Geltner 2006: 1-13, at 3.

The development of punitive incarceration appears to be an indication of a significant shift away from notions of ‘eye for an eye’, or poetic justice, and towards something perhaps more socially useful. An ex-offender who bore physical deformities was less likely to be able to reengage and successfully contribute to the common good of society than one subjected to imprisonment, who, after serving their sentence or being otherwise released from imprisonment, could become an economically viable citizen. Exile or banishment was also a favoured option; in many cases the commune profited by confiscating the property of the exiled.²⁷⁵ Banishment was considered an appropriate punishment in 1324 in Siena when a fist-fight erupted into mass violence, leaving four dead.²⁷⁶

Civic authorities also sought to encourage peaceful dispute resolution alongside the legal system. This was often an attempt to discourage resort to violence and vendetta, and to further the goal of a peaceful and stable society.²⁷⁷ In Florence, in 1295, a ceremony of reconciliation was held in the church of San Pietro Scheraggio to end a feud between the Mannelli and Velluti clans; the ceremony culminated in a kiss on the mouth between the protagonists.²⁷⁸ Courts and judges were sometimes responsible for conducting negotiation and arbitration.²⁷⁹ Notaries could also be involved in drawing up and officiating over written legal instruments.²⁸⁰ In relation to vendetta, the most usual form of contract was the peace act or *pax*.²⁸¹ *The Mystic Marriage of Saint Catherine* (c. 1340), attributed to Barna da Siena, is thought to have been commissioned by Arigo di Neri Arighetti (named in the inscription)

²⁷⁵ On banishment see, for example, Peter Raymond Pazzagli. 1979. *The Criminal Ban of the Sienese Commune, 1225-1310* (Milan: A. Giuffrè); and Randolph Starn. 1982. *Contrary Commonwealth: The Theme of Exile in Medieval and Renaissance Italy* (Berkeley: University of California Press).

²⁷⁶ *Cronica senese*, 416 (trans. Dean 2000: 174).

²⁷⁷ On reconciliation, see Spierenburg 2008: 43-64.

²⁷⁸ Spierenburg 2008: 42. On the kiss of peace, see Kiril Petrov. 2003. *The Kiss of Peace: Ritual, Self and Society in the High and Late Medieval West* (Leiden and Boston: Brill).

²⁷⁹ Florentine communal statutes involved courts and judges in promoting negotiated agreements to resolve conflicts: *Statuti del podestà del 1325* (Caggese 1921: 152-5). In Bologna, lawyers and professors appear also to have acted as arbitrators, perhaps attributable to the importance of law to the city (Wray 2009: 737).

²⁸⁰ On notarial acts generally, see Paolo Brezzi and Egmont Lee. 1996. ‘Sources of Social History: Private Acts of the Late Middle Ages’, *Past and Present* 151: 28-59.

²⁸¹ Peace acts have been studied for Bologna for both Duecento and Trecento by Shona Kelly Wray. 2009. ‘Instruments of Concord: Making Peace and Settling Disputes Through a Notary in the City and Contado of Late Medieval Bologna’, *Journal of Social History* 42/3: 733-760. Wray 2009: 757 note 60, provides references for further studies of peace acts for Trecento Siena by Glenn Kumhera. 2005. *Making Peace in Medieval Siena: Instruments of Peace, 1280-1400* (PhD diss., University of Chicago), and for Duecento Florence, Katherine Jansen. 2004. ‘Peacemaking in the Oltrarno, 1287-1297’, in *Pope, Church, and Society: Essays in Honour of Brenda M Bolton*, ed. by Frances Andrews, Christoph Egger and Constance M Rousseau (Leiden and Boston: Brill), 327-344.

to celebrate the peaceful settlement of a feud, a visual form of peace agreement (Figure 25).²⁸² Even peace acts, which might appear a matter for agreement between those involved, provided an opportunity for social control. In Siena, the Nine took supreme authority for conflict resolution, offering, to those entering a peace agreement to end a feud, not to prosecute for acts related to the feud, dropping pending prosecutions or lifting bans.²⁸³ Peace agreements stand as evidence for a less formal system of justice – and by implication the approval of non-physical punishment - operating outside the courts but with the approval and even encouragement of the communal authorities.

Concern at the imposition of physical punishment, particularly after the mid-Duecento, and the changes in the justice system practice towards the use of lesser punishments might indicate a concomitant change in the philosophy of justice. Further, I suggest that the changing iconography of these scenes of hell may be indicative of a different or evolving philosophy of justice prevailing in the communes. An alternative theory of punishment to retribution seeks its justification in achieving some future goal - most often the prevention of future harm - by administering punishment.²⁸⁴ One example of this, deterrence theory, argues that the punishment inflicted should be just sufficient to prevent repetition of the harm, thereby incentivising individuals (whether the offender receiving the punishment, or others in society more generally who are aware of both offence and punishment) to act in accordance with normative behaviours. This theory of punishment suggests that members of society perform a type of 'cost/benefit' analysis which may deter them from perpetrating harm. This is essentially a forward-looking process, much like encouraging people to engage when alive with scenes of the punishments awaiting in Hell for those who transgress.

²⁸² *The Mystic Marriage of Saint Catherine* (c. 1340), attributed to Barna da Siena. 138.7 x 111.1cm. Museum of Fine Arts, Boston.

²⁸³ Mario Ascheri. 1994. 'Siena in the Fourteenth Century: State, Territory and Culture', *Studies in Medieval Culture* 34: 163-197. See also in relation to Siena, William M. Bowsky. 1967. 'The Medieval Commune and Internal Violence: Police Power and Public Safety in Siena, 1287-1355', *American Historical Review* 12-13, and Pazzaglini 1979: 93-5.

²⁸⁴ This utilitarian or consequentialist theory has come to be associated with the work of Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

There is even evidence of a contemporary mindset whereby behaviours were criminalised with little attempt or, at least, success in prosecution, such as sumptuary laws.²⁸⁵ That certain communes continued to legislate on such matters despite little evidence of achieving their goals, may support the notion that statutes could be promulgated for their deterrent effect. We may see this in an example from the Parma communal statutes:

... The podestà is to have men living within two miles of watercourses along which wood comes to the city ... swear not to remove any wood ... and the podestà is to set up gallows in two suitable places ... and if anyone, male or female, is found stealing any of this wood, the podestà is to amputate one of their hands and hang it on the gallows, unless he or she redeems the hand at 100s, and if he or she redeems the hand, he or she must carry the wood around his or her neck through the city and be whipped.²⁸⁶

Rather than a statement of intent, setting out in detail such horrifying and shaming punishment could well have been intended to ensure no one was tempted to commit such crimes. Similarly, images of punishment in Last Judgments could inhibit others within society from committing harm, encouraging citizens towards good behaviour, better to preserve the 'concord' or common good of the commune.

Crime offended against society and so had to be punished: punishment was not only seen as a necessary response, but – significantly - as also having the potential to fulfil a wider social function of deterrence. The issue of whether the deterrent impact of these images was intended for the individual or society more generally is unclear; either, or both, would serve the needs of the civic authorities. The increasingly horrific images portraying Hell may well have had such an effect by conveying clearly and in unambiguous terms the dire consequences of particular transgressive behaviours (creating an association between behaviour and punishment) and providing people with an opportunity to dwell upon this for their moral education. What a society chooses to treat as criminal can be revealing of its underlying values: enacting legislation publically defined normative behaviour, much as sermons could expound upon what constituted sin. It is noticeable that there is from around

²⁸⁵ On sumptuary legislation, see Catherine Kovesi Killerby. 2002. *Sumptuary Law in Italy 1200-1500* (Oxford: Oxford University Press).

²⁸⁶ Early-mid thirteenth century, *Statuta communis Parmae* (trans. Dean 2000: 126)

1250 an increase in the amount of legislation passed by the communes criminalising matters of morality.²⁸⁷ Significantly, perhaps, this is roughly the period when representations commissioned and produced in northern Italy of the punishments inflicted on sinners in hell started to become more vivid and more specific. This might mean that the same images of punishment could serve the deterrence needs of both religious and civic authorities.

Increasing the horror of images of Hell by incorporating recognisable and realistic contemporary punishments could enhance their deterrent effect. This could be reinforced by images attempting to convey the impact of such punishments on the sufferers. Several sinners hide their faces in the Siena Duomo pulpit (Figure 26a). One can witness screaming horror in the Orvieto Duomo façade reliefs (Figure 23), and the anguish of those in the Camposanto Hell (Figure 10g).²⁸⁸ Interestingly, close examination of certain images of Hell, in mosaics such as Torcello, but particularly in Giotto's Arena Chapel fresco (Figure 13a; 13b), reveals a slightly disconcerting lack of emotional response (or, as Brendan Cassidy termed it, an "enviable sang-froid") in some of those suffering eternal and horrific torments.²⁸⁹ Wade attributed this to the awareness of both sinner and viewer that any suffering is predicated upon divine law, and as such is incontestable, to be borne without complaint.²⁹⁰ Alternatively, it may be intended deliberately to divert attention away from pain but also possibly to inspire respect for the dignity with which the punished faced their ordeal.²⁹¹

²⁸⁷ Thompson 2005: 139. Marvin B. Becker suggested that Trecento chroniclers sought a connection between social vice and municipal decline, thereby linking sinful or immoral behaviours with the threat to the city or the common good: Becker 1972: 289

²⁸⁸ For the suggestion that the Siena Duomo pulpit may have been an influence on the Orvieto façade reliefs, see Frances Ames-Lewis. 1997. *Tuscan Marble Carving 1250-1350* (Aldershot and Brookfield: Ashgate), 145; and yet, in relation to the Orvieto Duomo façade reliefs, John White argued that, "the influence of painting on the sculptural vision bodied out in the completed compositions of ... the *Last Judgment* needs no emphasis" (White 1993: 460). On the Orvieto façade reliefs more generally, see, White 1993: 452-464; and Anita Fiderer Moskowitz. 2009. *The facade reliefs of Orvieto Cathedral* (London: Harvey Miller).

²⁸⁹ Cassidy 2004: 359. This absence of a realistic response may be compounded by the notable absence of blood in these images. I suggest that a relative lack of emotion evident in Giotto's Arena Chapel fresco may be attributable to the private patron's intention in commissioning the work: if Enrico Scrovegni was concerned he might be destined for hell, he might prefer not to dwell too explicitly on its pain and anguish.

²⁹⁰ Wade 2001: 136. Cassidy 2004: 366 suggested the lack of emotion was intended to deflect sympathy and to emphasise the comedic nature of certain of the sins depicted.

²⁹¹ This notion is discussed at Mills 2005: 17.

However, there is a further point to be made. In several Last Judgments, we see that the anguish is particularly evident not in those suffering torment but more in those about to enter hell.²⁹² The Siena duomo pulpit shows sinners looking back beseechingly towards Christ-Judge, a cleric praying to avoid his fate (Figure 26b); sinners in the Orvieto façade reliefs are forcibly drawn towards hell, bound by ropes much like prisoners of war, or captured criminals led to trial (Figure 23).²⁹³ In the Camposanto frescoes, many in the ranks of the damned show anguish, compassion and horror, their pain and panic at impending damnation forming the focus of the Last Judgment scene, observed by Christ and the Virgin who gaze impassively in their direction (Figure 10). If the intention behind commissioning horrifying representations of hell was didactic, to shape behaviour, to both deter and coerce, the reactions of the sinners and particularly those being shown they are to join the ranks of the damned become increasingly relevant. The desire to avoid such terrors could have acted as a considerable incentive to conform. Vivid and dynamic images of hell featuring the sufferings of those subject to punishments recognisably part of the contemporary justice system provided an ever-present reminder of the consequences of transgressive behaviour. A punishment that was both possible and real would carry a far greater deterrent effect.

As noted above, there were sound, often financial reasons for adopting restorative, non-punitive punishments, such as fine or imprisonment, exile or banishment. Civic authorities may have been deterred from inflicting public physical punishment in an attempt to minimise the resort to violence prevalent in the city-states, and potentially threatening to the *buon comune*. However, this is a precarious balance to strike: a government that appears weak may in fact encourage social and political violence threatening to their regime. Moves towards more lenient punishment were therefore potentially dangerous: civil authorities and *signorie* alike would have been alive to the possibility that any suggestion that offenders could expect to receive ‘lighter’ punishment (or none at all) might

²⁹² This is evident also in Dante’s *Inferno* (3: 103-8), describing those waiting to enter hell, with teeth chattering, weeping bitterly.

²⁹³ On chained sinners led to hell, see Baschet, 1993: 334-6. This feature of the Orvieto façade reliefs may derive from an ancient source, a procession of captured prisoners of war from a triumphal arch or column perhaps, although it would be difficult to specify a specific source for what may have been a generic image. Ambrogio Lorenzetti’s *The Good Government* features captured prisoners roped together before the seated figure of Justice (Figure 28).

appear as though they were disregarding their duty to punish. Many would have feared that a failure to punish might not only incur God's wrath, but might also act as an incentive to further criminality. It has been suggested that "the two features of the judicial system that were blamed in this respect were the ease of obtaining pardon and the lightness of penalties".²⁹⁴ Concerns that the authorities might be inclined to make use of lesser punishments might remove an important deterrent, at a time when social unrest was an ever-present and active concern in many city-states.²⁹⁵ It is, perhaps, revealing that there is little evidence of prosecution practices based on fines or imprisonment in the punishments in representations of hell.

Therefore, I suggest that these images of divine justice reveal something of a divergence between criminal justice practice reality and the criminal justice rhetoric implicit in the scenes of hell. The images appear more severe than many contemporary realities; more akin to exemplary punishments. Punishments, in these *Last Judgment* scenes, act as signs, linking particular punishments to specific sins in hell – but also to specific crimes on earth, as much as sinful or immoral behaviours also constituted criminal offences. In revealing the punishment appropriate to the crime or sin, but also the behaviours suitable for punishment, these images would suggest a 'just deserts' or retributive notion of justice prevailing in the northern Italian communes at this time, whilst actual criminal justice practice from c. 1250 indicates an evolving approach towards punishment. Arguably, these gruesome depictions of hell addressed this divergence. They acted as ever-present reminders of the consequences of criminal and sinful behaviour, reinforcing social and behavioural norms, encouraging or even (depending upon the level of horror the images could provoke) coercing citizens towards conformity.

I believe that changes in these *Last Judgment* scenes towards more horrifying hells engage with changes in the justice system in northern Italy from the mid-thirteenth century; a system in transition, both in terms of changes in its practices but also its jurisprudence. The same changes may be indicative or reflective of a changing philosophy of law, a society

²⁹⁴ Dean 2007: 89.

²⁹⁵ This concern appears to have remained during the Trecento, in many cases whether governed by commune or signoria. On social unrest, see for example, Cohn 2006; and Cohn 2007.

moving from retributive notions of justice and towards a more 'utilitarian' concept, an awareness of the wider significance of punishment on the community as a whole, or at least a concern with such matters. Changes to these representations of Hell appear socially, and politically, driven. These images appear to have been adapted to serve a specific function within contemporary society. In their depiction of hell, these Last Judgments could keep the concept and possibility of physical punishment fresh in peoples' minds, whilst practice and the developing jurisprudence urged limitations or restrictions on its use. In providing a visible reminder to citizens of the potential consequences of criminality, these scenes served to bridge a gap between justice practice and theory. On this reading, these scenes of Hell are an example of imageries of the divine utilised to propagandise for contemporary secular judicial values, and, underlying the changing iconography, a belief in a particular notion or a possibly more merciful, philosophy of justice.

2.2 Margarito of Arezzo: *The Virgin and Child Enthroned, with Scenes of the Nativity and the Lives of the Saints*

This case study aims to develop the theme of the intrusion of aspects of the secular justice system into artistic representations of divine justice by exploring a possible internal iconographic programme in a panel by Margarito of Arezzo, *The Virgin and Child Enthroned, with Scenes of the Nativity and the Lives of the Saints*, now in the National Gallery, London, that – it will be argued - deals with justice, both divine and secular (Figure 29). I consider why this might be the case, and will offer some new suggestions as to the original location and patron for the work.²⁹⁶

Little is known of either the artist Margarito of Arezzo, or of his work.²⁹⁷ There is relatively little scholarship on the panel, as most scholars have focussed on other of Margarito's works; it was only in 2011 that the panel received comprehensive treatment in a new National Gallery catalogue.²⁹⁸ The artist is known variously as Margarito, Margareto or, from Vasari, Margaritone.²⁹⁹ He is believed to have been active c. 1250-1290; and is thought from a notarial document, unrelated to his work but the only known document to mention him, to have been in Arezzo in 1262.³⁰⁰ The signature on certain of his works, '*Margaritur de Aritio me fecit*', suggests that he was born there.³⁰¹ However, it is difficult to provide any meaningful chronology for his work as no secure dates survive. It is thought that this panel dates from around 1260. It was convincingly argued by Dillian Gordon in 2011, that the scenes may have derived from *The Golden Legend*, an anthology of medieval readings about

²⁹⁶ National Gallery, London (NG564). 1260s. Egg tempera on poplar, 92.5 x 185cm.

²⁹⁷ On Margarito of Arezzo, see the bibliography at John Richards, 'Margarito d'Arezzo', in *Grove Art Online*. *Oxford Art Online*. Oxford University Press, <http://www.oxfordartonline.com/subscriber/article/grove/art/T054312> [accessed 26 March 2013].

In addition, see Ada Labriola. 1987. 'Ricerche su Margarito e Ristoro d'Arezzo', *Arte Cristiana* NS 75: 145-160; Maria Grazia Fachechi. 2007. 'MARGARITO (Margaritone) d'Arezzo', *Dizionario Biografico degli Italiani - Volume 70* [http://www.treccani.it/enciclopedia/margarito-d-arezzo_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/margarito-d-arezzo_(Dizionario-Biografico)/) [accessed 26 March 2013]; and, Alessio Monciatti. 2010. 'Margarito, l'artista e il mito', in *Arte in terra d'Arezzo Il Medioevo* ed. by Marco Collareta and Paola Refice (Florence: Edifir Edizioni), 213-224.

²⁹⁸ See Dillian Gordon. 2011. *The Italian Paintings Before 1400* (London: The National Gallery), 314-325, the most recent study on the work in English.

²⁹⁹ Giorgio Vasari, *Lives of the Artists Volume 1* (London: Dent, 1927, revised ed. 1963), 62-65.

³⁰⁰ Giorgio Vasari, *Le Vita de' più eccellenti pittori, scultori ad architettori*, ed. G. Milanesi: vol I, 359, note 1.

³⁰¹ This signature appears on the London panel. On artist's signatures, see the bibliography at Claudia Bolgia. 2012. 'Mosaics and Gilded Glass in Franciscan Hands: 'Professional' Friars in Thirteenth- and Fourteenth-Century Italy', in *Patrons and Professionals in the Middle Ages. Proceedings of the 2010 Harlaxton Symposium*, ed. by Paul Binski and Elizabeth A. New, Harlaxton Medieval Studies, XXII (Donnington: Shaun Tyas), 149, note 28.

the saints drawn from earlier legends and hagiographical works, written c. 1260-3 by Jacobus de Voraigne, a Dominican friar who was to become archbishop of Genoa, suggesting a date c. 1263/4.³⁰²

Given that the format and function of a work can offer a deeper understanding of a painting in its original context, it is unfortunate that the function is not known. It is likely that the panel was an altarpiece, intended to form a backdrop to the performance of Mass: the angels swinging censers on either side of the Virgin, mimetic of practice at mass, support this theory. It has been suggested that the panel was probably a retable, a type of painted altarpiece which tended to be horizontal and rectangular, and appeared above and at the back of the altar table.³⁰³ This appears to be borne out by technical analysis by the National Gallery; channels on either side of the reverse indicate that vertical battens extended below the base moulding, designed to slot into the back of an altar table. Further, the carpentry appears different to that of surviving altar frontals with 'legs' extending the front mouldings of the frame, to support the painting on the floor.³⁰⁴ The position of the artist's signature, under the Virgin, would also appear to confirm the panel was intended to be positioned on and behind, rather than resting on the floor before, an altar.

The panel is a complex work, with many possible artistic borrowings, and iconographic elements worthy of analysis. Visually, it is superbly decorative, delicate yet striking. Although the colour palette is limited, the colours are rich and bold, with a deep rich red and black predominating against the gold background: these colours would have been striking, particularly when lit by candlelight. The central panel depicts the Madonna and Child Enthroned. This was a popular image in Italian art of the last half of the thirteenth

³⁰² Gordon 2011: 319-320 considers other theories on the date for the work before offering the connection to the *Golden Legend* accounts as establishing a *terminus post quem*.

³⁰³ Gordon 2011: 321.

³⁰⁴ Gordon 2011: 321. Such decoration may have assumed particular importance when liturgical practice changed and the priest moved from behind the altar, facing worshippers, to stand in front of the altar, facing away from worshippers. Kees Van der Ploeg dated the change to the early Duecento (2002. 'How Liturgical is a Medieval Altarpiece', in *Italian Painting in the Duecento and Trecento*, ed. by Victor M. Schmidt (Washington: National Gallery of Art), 103-121). At this time, such panels are also thought to have been moved from the floor at the front of the altar to above and behind it, although the position of the celebrant may not be conclusive on the point (see Mario Ciatti, 'The Typology, Meaning, and Use of Some Panel Paintings from the Duecento and Trecento', in Schmidt 2002: 15-30, at: 16). See also, Julian Gardner. 1983. 'Fronts and Backs: Setting and Structure', in *La Pittura nel XIV e XV Secolo: Il Contribuito dell'Analisi tecnica all storia dell'Arte*, ed. by Henk van Os and J.R.J. Asperen de Boer (Bologna: Cooperativa Libreria Universitaria Editrice), 297-323.

century, and had multiple layers of meaning. It was an image which Margarito, or his workshop, was to paint on at least four occasions.³⁰⁵ The London panel is to be the subject of close analysis here. In addition to the central image of the Madonna and Child Enthroned, the scene at the top left corner features the birth of Christ, and the remaining seven scenes of the saints include Latin inscriptions identifying both the saint and the depicted scene. I suggest that, given the visual similarities between significant aspects of these works, the seeming presence of a justice subtext only in the London panel is more likely to be intentional, chosen specifically to serve a particular end.

Such a justice subtext – not only the allusion to Last Judgment imageries (discussed above), but also to secular justice practices in certain of the side scenes (addressed below) - appears quite unusual in altarpieces of this date.³⁰⁶ In fact, a relative lack of strictly comparable programs makes it somewhat difficult to set the London panel in its artistic and functional context. Many near-contemporary images of the Madonna and Child Enthroned lack side scenes,³⁰⁷ or feature static images of saints and their appropriate attributes.³⁰⁸ Other works with side scenes focus upon a single theme, whether the life and passion of Christ (as seen in several works addressed in Chapter 3), or *vita* panels, featuring the life of one saint.³⁰⁹ However, in the London panel, there is little evidence that it was intended to promote the

³⁰⁵ Margarito's style is evident in the marked similarities between these several depictions of the Madonna and Child Enthroned, which fall into two iconographic types:

- *Madonna and Child* c. 1250, from S. Maria, Montelungo, now in the State Museum of Medieval and Modern Art in Arezzo (Figure 30); and *Madonna and Child with Four Saints* c. 1270, now in the National Gallery of Art, Washington DC. (Figure 31);
- the London panel, c. 1260-4; and *Virgin and Child with New Testament Scenes* c. 1285, Monte S Savino, S Maria delle Vertighe (Figure 32).

As none is dated, dates are approximate.

³⁰⁶ On mid-late Duecento altarpieces, see for example Henk van Os. 1984. *Sienese altarpieces, 1215-1460: form, content, function. Vol. 1 1215-1344* (Groningen: Bourma's Boekhuis); *Italian altarpieces, 1250-1550: function and design* ed. by Eve Borsook and Fiorella Superbi Gioffredi (Oxford: Clarendon Press, 1994); *Italian Painting in the Duecento and Trecento*, ed. by Victor M. Schmidt (Washington: National Gallery of Art, 2002); and, Gordon 2011.

³⁰⁷ On several such works attributed to Coppo di Marcovaldo for example, see White 1993: 164-6. See also *The Casale Madonna* by the Master of Greve (first half of the Duecento; now in the Uffizi Gallery, Florence).

³⁰⁸ See, for example, Guido da Siena's *Virgin and Child and four Saints* (1270s; Siena, Pinacoteca); or Giotto's *Badia Polyptych* (c. 1300; now in the Uffizi Gallery, Florence), where the central half-length Madonna is flanked by Saints Nicholas, John the Evangelist, Peter, and Benedict.

³⁰⁹ Examples include Bonaventura Berlinghieri's St Francis altarpiece, in San Francesco, Pescia (1235); the *Virgin and Child Enthroned with Saints Leonard and Peter and Scenes from the Life of Saint Peter* attributed to the Magdalen Master (c.1280; now in Yale University Art Gallery, No. 1871.3); or those considered by Joanna Cannon in 'Beyond the Limitations of Visual Typology: Reconsidering the Function and Audience of Three *Vita* Panels of Women Saints c. 1300', in Schmidt 2002: 291-313.

cult of a particular saint. Instead we see a collection of narrative scenes including the Nativity, and five saints: three male saints (John the Evangelist, Nicholas, and Benedict), and two female saints (Catherine and Margaret). The selection of these particular saints and the manner of their depiction were specific and deliberate choices. It will be argued that what connects these scenes is a justice subtext, absent even in a similar work by Margarito of Arezzo in Monte S. Savino (Figure 32), and that this new interpretation can lead to a possible patron, location and function for the panel.

The Madonna and Child Enthroned: an image of Divine Justice

The central figure of the Madonna and the Christ-Child inside a *mandorla* offers some evidence that it was intended to be interpreted as representing Divine Justice (Figure 29a). The mandorla, here richly decorated, indicated timelessness, and those who radiate divine light, and so denotes or emphasises the supernatural or divine status of those enclosed within. The angels with censers are also within the mandorla. The Virgin and Child sit on a rich red cushion, which rests on a backless throne featuring two cream-coloured lions. Outside the mandorla is a rectangular frame, inside which are the symbols of the evangelists.³¹⁰ The Book of Revelation 4: 6-7 describes the throne of God at the Last Judgment:

round about the throne, were four beasts ... And the first beast was like a lion, and the second beast like a calf, and the third beast had a face as a man, and the fourth beast was like a flying eagle.³¹¹

The unusual depiction of the Virgin and Child surrounded by the symbols of the four evangelists I believe reinforces the argument that the choice of imagery in the central panel of Virgin and Child was intended to allude to iconography associated with the Divine Judge at the Last Judgment, with Virgin and Child representing the 'Judge'.³¹²

³¹⁰ St Matthew was symbolised as an angel; St Mark, a lion; St Luke, an ox; and, St John, an eagle.

³¹¹ See also for example, the throne of Christ-Judge in Nicola Pisano's *Last Judgment* (Figure 5).

³¹² A conjunction of Mary and the Evangelists was described as a "highly uncommon image", in Kees Van Der Ploeg. 1993. *Art Architecture and Liturgy. Siena Cathedral in the Middle Ages*. (Groningen: Egbert Forsten), 92.

This reading may be reinforced by the imagery of the lion-headed throne on which they are seated, which raises an allusion to Solomon, the Biblical king associated with judgment, justice and wisdom:

Moreover the king made a great throne of ivory, and overlaid it with the best gold. The throne had six steps, and the top of the throne was round behind: and there were stays on either side of the place of the seat, and two lions stood beside the stays. (I Kings 18-20)

This throne combines regal and judicial iconography in one image. In Solomon, seen as a wise and just ruler (I Kings 3.16-28), we see the link between Justice and Wisdom often associated with Mary.³¹³ Indeed, medieval theologians often used the notion of the Tree of Jesse to suggest that the Virgin's bloodline descended from King David, making her a direct descendant of Solomon.³¹⁴ The *Golden Legend* stated this connection clearly: "among David's sons there were two, Nathan and Solomon" and "it is perfectly true ... that the Blessed Virgin descended from the lineage of David".³¹⁵

However and wherever it is used, the link between the image of a lion-headed throne and a dispenser of justice appears established by allusion to Solomon. The imagery therefore proved attractive to those involved in the administration of justice. It featured in papal thrones, which would also have alluded to judging, as the papacy had held the right of appeal since the mid-twelfth century.³¹⁶ A manuscript illustration shows Pope Boniface VIII seated on a lion-headed *sella curulis* at his investiture in 1295 (Figure 33).³¹⁷ It was also used in bishops' cathedrae, as in the bishop's throne in Anagni cathedral (Figure 34).³¹⁸ The Trecento tomb of Archbishop Simone Saltarelli, Archbishop of Pisa, in the Church of Saint

³¹³ On the Judgment of Solomon, see I Kings, 3:9-28; on Solomon's wisdom, I Kings, 4:29-3.

³¹⁴ Discussed in Ilene H. Forsyth. 1972. *The Throne of Wisdom: Wood Sculptures of the Madonna in Romanesque France* (Princeton: Princeton University Press), 23.

³¹⁴ Ryan 1993: II, 149.

³¹⁵ Ryan 1993: II, 149.

³¹⁶ On papal appeals, see Chapter 1.

³¹⁷ *De Coronatione*, written in 1299 by Jacopo Stefaneschi, the pope's nephew (Biblioteca Apostolica Vaticana, Cod.Vat.Lat. 4933, fol. 7v.). On Pope Boniface VIII and his use of the lion-headed throne imagery, see Elliott 2000: 136. On the *sella curulis*, see Chapter 3.

³¹⁸ A number of surviving 11th - 13th-century Italian stone ecclesiastical thrones feature lion-head imagery. Bishops' cathedrae featured in the ceremony for the installation of a new bishop, possibly symbolising the presence of Christ, particularly as many were intended to hold relics (see further, Forsyth 1972: 87).

Catherine, Pisa, shows him on an episcopal seat with lion-heads (Figure 35).³¹⁹ Saints could be represented seated on a lion-headed throne; for example, the twelfth-century wooden statue of San Zeno, in San Zeno Maggiore, Verona (Figure 36).³²⁰ The image and its associations also appealed to secular rulers.³²¹ However, there is little evidence that it was used by Frederick II.³²² In the second half of the thirteenth century, lion-headed throne imagery was utilised in the statue of Charles I of Anjou, now in the Musei Capitolini, Rome and generally attributed to Arnolfo di Cambio (Figure 38).³²³ Members of the Angevin dynasty used it on their coinage; for example, Charles I (Figure 39a) and Robert of Anjou (Figure 39b). Other examples include King Robert of Naples's tomb monument in Sta. Chiara, Naples (Figure 41), or his frontispiece portrait from an illuminated manuscript (Figure 42).³²⁴ It was used in the Trecento, in a marble relief in the Cathedral (Basilica di S.Giovanni), Monza, showing the investiture of a Lombard king, for example (Figure 43), or an illumination of Henry VII, Holy Roman Emperor (Figure 40).³²⁵

³¹⁹ The tomb of Archbishop Saltarelli might have been designed by Andrea Pisano c. 1343-7, but executed by a workshop sometime thereafter: see Anita Fiderer Moskowitz. 1986. *The Sculpture of Andrea and Nino Pisano* (Cambridge: Cambridge University Press), 80-90.

³²⁰ It is debatable whether this iconography could be linked to the long-standing association of the church with emperors from Charlemagne until the early tenth-century: see Maureen Miller. 1991. 'Donors, their Gifts, and Religious Innovation in Medieval Verona', *Speculum* 66/1 (Jan.): 27-42; and, Charles T. Little. 2005. 'Kingship and Justice: Reflections on an Italian Gothic Sculpture', *Arte Medievale* 4/1: 91-108, esp. 104.

³²¹ The iconography had a long history. Emperors of the late Roman Empire were often depicted seated on a lion-headed throne (Figure 37). The emperor Lothar (*reg* 840-55) appears seated in a similar chair c. 842 (London, BL, Add. MS. 37768). The so-called 'throne of Dagobert', c. 622-38 (now in Paris, Bib. N. Cab. Médailles), a bronze X-frame chair of the *sella curulis* type, has legs which may include lions' heads. See Little 2005: 102.

³²² This is despite his tendency to refer to himself as 'Caesar', as in his Constitutions of Melfi (1231). For speculation that a damaged fresco of a procession in San Zeno, Verona, may show Emperor Frederick II on a lion-headed throne, see Little 2005: 103-6.

³²³ On the statue of Charles of Anjou, see Julian Gardner. 1992. *The Tomb and the Tiara: Curial Tomb Sculpture in Roma and Avignon in the Later Middle Ages* (Oxford: Clarendon Press), 44-5, 96. On his image-making more generally, see Jean Dunbabin. 1998. *Charles I of Anjou. Power, Kingship and State-Making in Thirteenth century Europe* (London and New York: Longman), 194-213; and 2007. 'Creating an image for a new kingship', in *Aspects of Power and Authority in the Middle Ages*, ed. by Brenda Bolton and Christine Meek (Turnhout: Brepols), 23-31.

³²⁴ Many Angevin rulers sought to associate themselves with justice in some form. Samantha Kelly addresses the importance of justice to Robert of Naples's public image and his extensive use of justice imagery in her thematic study of 2003, *The New Solomon: Robert of Naples (1309-1343) and Fourteenth-Century Kingship* (Leiden and Boston: Brill). *King Robert enthroned among the virtues overcoming the vices*, the Anjou or Malines Bible (K. U. Leuven, Maurits Sabbe Library, Ms 1): probably commissioned late-1330s and largely completed by 1340. The 'Anjou Bible' is available online at <http://www.anjoubible.be/thebibleonline> [accessed 30 March 2013].

³²⁵ Possibly attributable to Matteo di Campione or his workshop, c. 1350-60, this shows a royal coronation by the archbishop, in the presence of electors, ecclesiastics, secular priests and citizens or communal officials, some of which wear miniver capes (discussed in Chapter 3).

Secular kingship iconography – seated, frontal pose, crowned, iconic and enthroned – appears in Margarito’s depiction of the Madonna, creating associations between the religious imagery of Divine Justice and contemporary depictions of secular kingship, presenting the Virgin in a manner traditionally associated with male rulers.³²⁶ The iconography could be used for female figures, often personifications; for example, *Ecclesia* – seated, crowned, enrobed, holding an orb and Bible - from the bronze doors of the Chapel of St John the Evangelist in the Lateran Baptistery (twelfth century; Figure 44a);³²⁷ *Fylosofia*, seated on a lion-headed throne in a relief from the Fontana Maggiore, Perugia (c. 1278; Figure 44b); or *Justitia*, from Giotto’s Arena chapel fresco (Figure 45), or the Florentine Campanile (Figure 46), or Baptistery doors (Figure 47). Ultimately, many of these depictions of seated authority figures may derive from images of Christ-Judge;³²⁸ examples from *Last Judgment* scenes include Nicola Pisano’s pulpits (1260; 1265-8; Figures 5 and 6); Giotto’s Arena Chapel (c. 1304-1313; Figure 13); the fresco in the nave of the abbey church (Santa Maria) in Pomposa, near Ferrara (c. 1351; Figure 48); Nardo di Cione’s frescoes for the Strozzi Chapel, Santa Maria Novella, Florence (c. 1350s/1360s?; Figure 14); and the Christ in Majesty from the *Last Judgment* in S. Pietro Abbey, Viboldone, near Milan (Figure 15). Secular rulers drew upon this imagery, seeking to justify their rule and their administrative, judicial and military authority by invoking the divine.³²⁹ Secular imagery of kings and emperors, depicted seated on a throne, holding symbols of power such as the orb or sceptre, seems to recall the manner in which the Christ-Child holds the scroll in the London panel.³³⁰

³²⁶ An important text on the imagery of seated authority figures is Julian Gardner. 1998. ‘Seated Kings, Seafaring saints and heraldry: some themes in Angevin Iconography’, in *L’etat Angevin: Pouvoir, Culture et Societe entre XIII – XIVth Siècle: Actes du Colloque International, Rome-Naples 71–November 1995* (Rome: Istituto storico italiano per il Medio Evo). See also, Little 2005. This is also considered in Chapter 4.

³²⁷ On the iconographical programme of the doors, see Claudia Bolgia. 2008. ‘Celestine III’s Relic Policy and Artistic Patronage in Rome’, in *Pope Celestine III (1191-1198)*, ed. by John Doran and Damian J. Smith (Farnham: Ashgate), 237-270, at 244-248.

³²⁸ He is similarly depicted as the universal sovereign; see, for example, the sarcophagus of Junius Bassus (Figure 59b).

³²⁹ On the perceived close rapport between earthly rulers and Christ, see Ernst H. Kantorowicz. 1957. *The King’s Two Bodies: A Study in Medieval Political Theology* (Princeton, N. J.: Princeton University Press), 42-86, 155-64, 317-36. This tradition of invoking the divine to support secular authority had a long history. The stone throne of Charlemagne, for example, represented the emperor’s secular authority but also held relics, intended to reinforce his divine right to rule (see Hans Belting. 1994. *Likeness and Presence: A History of the Image Before the Era of Art* (Chicago: University of Chicago Press), 164).

³³⁰ In Byzantine imagery the scroll in the Christ-Child’s left hand symbolised the divine Logos or ‘Word’ from John 1:1. With His right hand, He made the sign of blessing (also a Byzantine element): the scroll or sceptre

Images of the Madonna and Child Enthroned, “recalled the majesty of secular rulers and more especially, of Solomon, whose Throne of Wisdom was regarded as the prototype of the divine *sedes sapientiae*”.³³¹ Equating the Madonna with the *sedes sapientiae* or the Throne (sometimes Seat) of Wisdom (also known as the *marie-maestas*), was often represented in statues where the Madonna and Child together sit in majesty, enthroned, full length and frontally, which “combine the majesty of male and female figures in one image. The Child-King, the divine ruler of the Christian world, is enthroned in the lap of the Queen of Heaven”.³³² Margarito’s depiction of the crowned Madonna enthroned presents Mary as the Queen of Heaven (*Regina Coeli*), her stance alluding to other images of frontal, seated authority figures, such as Christ Pantokrator and God in Majesty.³³³ Depicting the Virgin as a heavenly mother holding out her child emphasises the idea of the Incarnation.³³⁴ It also focused on her femininity; the tender gesture where she touches the Child’s foot may allude to this maternal relationship (although it may have other connotations, discussed below). Interpreting the Madonna as the throne of wisdom derived from this maternal role as the agency through which the mystery of the Incarnation was realized, the bearer of that Wisdom; by the mid-Duecento this was already relatively familiar in painting and sculpture in Western Europe.³³⁵

The image shares the traditional rigidly austere immobility of *Sedes Sapientiae* imagery, which may have been chosen deliberately to enhance the allusion to iconic or cultic images.³³⁶ It may also have drawn upon other examples of the theme in earlier images in

often held by secular rulers appears to mirror this feature. Secular leadership iconography is also discussed in Chapters 3 and 4.

³³¹ On the *sedes sapientiae*, see Forsyth 1972. Although the work focuses on France, specifically Romanesque wood sculptures of the Virgin and Child Enthroned, many points, particularly on iconography, have more general application. The quotation is from Forsyth 1972: 90-91.

³³² Forsyth 1972: 29.

³³³ For example, a magnificent *Christ Pantokrator* from the Pisa Duomo, sits on a seat with lion supports, raising his right hand in blessing (1301; Figure 49).

³³⁴ See Belting 1994: 33 for further discussion of the concept of the heavenly mother, a notion expressed in the iconic type *Theotokos*, god-bearer, or Mother of God (*Mater Dei*).

³³⁵ On this, see Forsyth 1972: 24. See also Jaroslav Folda, ‘The function of the Rucellai Madonna in the Church of Santa Maria Novella’, in Schmidt 2002: 122-45, esp. 133-4; and Little 2005:1; 91-108.

³³⁶ Belting suggested the full-length figure of the enthroned Madonna and Child as an image which developed in Italy as the painted panel of the Madonna and Child took over from similar wooden or metal statues previously in shrines behind altars (Belting 1994: 23, 349). On such statues see Gianna A. Mina, ‘The *Madonna*

Arezzo. A Romanesque relief at Santa Maria della Pieve in Arezzo of the *Adoration of the Magi*, shows the Madonna as the throne of wisdom (Figure 50), and a statute, now in the Duomo Arezzo, seem to show this and bear similarities to certain features of Margarito's imagery, such as the highly-coloured cheeks (Figure 51). A statue of the *Madonna and Child Enthroned*, dated 1199, from the Camaldolese abbey in Borgo San Sepolcro, near Arezzo, shows the Virgin's feet on a footstool with lion iconography (Figure 52).³³⁷ Outside Arezzo, a work which is substantially contemporaneous to the London panel and which features an identification of Mary as the *Sedes Sapientiae* is the relief of the *Adoration of the Magi* in Nicola Pisano's Pisa Baptistery pulpit (c. 1255-60), where the throne of the Virgin features lions-head imagery (Figure 53).³³⁸ Eloise Angiola described the Pisa relief as indicating, "some of the richness of the role of Mary in the medieval Church. She is Mother of Christ, she is *Ecclesia* who is His bride, she is the Throne on which the child is seated".³³⁹ I suggest that Margarito's image may, in fact, go further. The central image of Virgin and Child may represent the Divine Judge, combining Justice with Wisdom; the Virgin, therefore, exercising judicial qualities.

The image of the Divine Judge usually features as the central figure in a Last Judgment, and it is possible to find allusions to the iconography of the Last Judgment in Margarito's panel. The image (upper register, top left corner), to the right hand of the Virgin, is of the Nativity (Figure 29b). The inscription reads: DE PARTV VIRGINI MARIE ('Concerning the childbirth of the Virgin Mary') & ADNŪITATIŌE PASTORVM ('The annunciation to the shepherds').³⁴⁰ In Christian tradition the birth of Christ and His subsequent sacrifice represent for Man the possibility of salvation: forgiveness and redemption of sins, the hope of life everlasting.

del Bordone', in Cannon and Williamson 2000: 237-293, esp. 247, note 99. Iconic allusions are discussed by Belting 1994: 126.

³³⁷ On this, see Folda 2002, and Little 2005: 97. For the footstool motif as metaphor, see Cannon 2010: 14.

³³⁸ John White argued that Nicola Pisano's Madonna here was "a direct quotation from the second century Roman sarcophagus of Hippolytus and Phaedra", still in the Camposanto, Pisa (White 1993: 78). On the relationship between antique sources and works of the thirteenth and fourteenth centuries, see Salvatore Settis. 1985. *Memoria dell'antico nell' arte italiana*, 2 volumes (Turin: Giulio Einaudi).

³³⁹ Eloise M. Angiola. 1977. 'Nicola Pisano, Federigo Visconti, and the Classical Style in Pisa', *The Art Bulletin* 59/1: 1-27, 10.

³⁴⁰ Translations of the inscriptions are from Gordon 2011: 314-5.

This scene of life and the promise of salvation through the birth of Christ can be contrasted with the scene at the opposite top corner, which bears an inscription, HI[C] S[ANTUS] B[E]NEDICT(US) P[RO]IECIT SE I[N] SPINAS FVGIE[N]S DIABOLI TE[N]TATIO(N)E(M) ('Here St Benedict flings himself among thorns fleeing the temptation of the devil') (Figure 29e). The founder of the Benedictine Order is featured naked, rolling among thorns; several accounts suggested that this was the means Benedict chose to overcome sexual feelings generated by his ascetic way of life.³⁴¹ The consequences of failure to resist temptation are evident in the rear of the scene: the mountain seems to hold the jaws of Hell, with flames leaping around it. Fire features in both the *Dialogues* and the *Golden Legend* accounts of St Benedict.³⁴² Contemporary belief appears to have located hell underground, craters of volcanoes leading straight to hell.³⁴³ So what we see depicted here could be St Benedict's battles to avoid the temptation of sin and the risk of being condemned to the everlasting punishments of Hell-fire.³⁴⁴

Therefore, to the right hand of the enthroned figure one sees the possibility of salvation; to the left, damnation: the same symbolism of right/good and left/evil indicated in the Gospel of St Matthew (25:33), and the same imagery as in a Last Judgment scene. Further evidence to support this reading can be found in the scenes in the lower tier. Under the scene of the Nativity, one sees the death of St Catherine and her fate as angels carry her body upwards; to join the ranks of the Saved (Figure 29f). However, on the far side, below the scene of the mouth of Hell, almost after descending into Hell itself, a scene of St Margaret's martyrdom

³⁴¹ The *Golden Legend* account of Saint Benedict (Ryan 1993: 186-193) included the story depicted in the panel (Ryan 2003: 187). It appears to derive almost exactly from Book II (2) of the *Dialogues* often attributed to Pope Gregory the Great (589-604), 'Life and Miracles of St Benedict Founder and Abbot of the Monastery which is known as the Citadel of Campania' (Odo John Zimmerman, trans. 1959. *Saint Gregory the Great, Dialogues* (New York: The Fathers of the Church), 55-110, in Patrick J. Geary. 2010. *Readings in Early Medieval History. The Early Middle Ages* (Ontario: University of Toronto Press), 189-208, at 191).

³⁴² In the *Golden Legend*, "he conquered sin by putting out the fire of lust" (Ryan, 2003: 187). In the *Dialogues*, "the pain that was burning his whole body had put out the fires of evil in his heart. It was by exchanging these two fires that he gained victory over sin" (Geary 2010:191).

³⁴³ On the notion of hell-mouth, see Pamela Sheingorn. 1992. "'Who can open the doors of his face?': The Iconography of Hell Mouth", in *The Iconography of hell*, ed. by Clifford Davidson and Thomas H. Seiler (Kalamazoo, Mich.: Medieval Institute Publications, Western Michigan University), 1-19.

³⁴⁴ The figure in white is enigmatic. In a scene of temptation, its enjoyment of the fires of the underworld suggest that it could be the devil, disguised. The *Golden Legend* and the *Dialogues* both refer (in the same paragraph as his rolling in the bushes) to a blackbird annoying Benedict. As *merula* in Latin can mean both 'blackbird' and 'simpleton', the figure may be a simpleton (Gordon 2011: 320). The *Golden Legend* may link white robes to fools: "Herod, who deemed Jesus a simpleton and of unsound mind ... draped him in a white robe to make a fool of him" (Ryan 2003: 206), deriving from Luke 23:11.

includes a two-headed dragon behind bars, suggesting a form of imprisonment or incarceration; arguably indicative of the torments of the Damned (Figure 26i).³⁴⁵ A dragon appears in Hell in a *Last Judgment* substantially contemporaneous to Margarito's panel, by Guido da Siena (Figure 27). If this reading of the flanking scenes of the panel as suggesting Heaven/Hell, Salvation/Damnation, is correct, the allusion to the Last Judgment would support the interpretation outlined above of the central figure as the Divine Judge.

So, one can interpret these scenes and the central panel as evoking the imagery commonly associated with representations of the Last Judgment, the manifestation of Divine Justice (Figure 29j). By placing the Enthroned Virgin within a mandorla, it would appear that the panel intended to create an allusion to Her not only in relation to earthly or secular justice, but as a form of Divine Justice, and, possibly, as expressing the relationship between the two concepts. The scene of the Nativity (Figure 29b) can be interpreted as a representation of the transition from the 'Old Law' to the 'New Law'.³⁴⁶ The Old Law was those laws that ordained before Christ's birth, and was seen as

synonymous with merciless revenge... opposed to mercy and as such it offered no hope for sinful man's redemption, whose offenses (sic) to God were so great that he could never make adequate recompense unless God was willing to be merciful.³⁴⁷

The New Law, the law of the New Testament, however, was tempered with mercy, which, coming from Christ's sacrifice, can be represented by the Christ Child. The transition between the Old Biblical Law and the New Law, the laws of man, was made by the birth of Christ: the Nativity, and therefore the Virgin, represented that transition. St Thomas Aquinas referred to the Virgin as "the common boundary between the Old and the New Law, as

³⁴⁵ Byzantine Last Judgment iconography frequently included depictions of fire flowing from Christ-Judge to His left (the viewer's right) towards the Damned: see Robert S. Nelson. 1985. 'A Byzantine Painter in Trecento Genoa: The Last Judgment at San Lorenzo', *The Art Bulletin* 67/4 (Dec.): 548-566, 557. In the panel, two scenes featuring flames appear to the Virgin's right. This may suggest that, despite the panel's somewhat iconic appearance, it largely followed Italian, rather than Byzantine, artistic examples.

³⁴⁶ Simone Martini's *Maestà*, Palazzo Pubblico, Siena, included a visual representation of this concept. For a suggestion that the Arena Chapel frescoes also treat the matter of the Old and New Law, through an analysis of architectural features, see, Laurine Mack Bongiorno. 1968. 'The Theme of the Old and the New Law in the Arena Chapel', *The Art Bulletin* 50/1:11-20. For a similar point, in relation to the Baroncelli Chapel, see Julian Gardner. 1971. 'The Decoration of the Baroncelli Chapel in Santa Croce', *Zeitschrift für Kunstgeschichte*, 34. Bd., H. 2; 89-114.

³⁴⁷ William Ian Miller. 2006. *Eye for an Eye* (Cambridge: Cambridge University Press), 84.

dawn is of night and day".³⁴⁸ This interpretation of the Nativity scene is supported by the central scene featuring the Virgin on Solomon's lion-headed throne, which too may also be interpreted as a representation of the 'Allegory of the Old and the New Law'. Solomon's throne was associated with Biblical law, the Old Law; the Christ-Child represented the New Law: Virgin, seated between Christ and the throne, therefore represented the transition between Old and New Law. The reiteration of the relationship between a form of Divine Justice and earthly justice reinforces the presence of a theme of justice in the altarpiece, but also points possibly not to the harsh retribution of the Old Testament, but to a more merciful justice.

By creating an association between the Divine Judge and an image of the Virgin and Child Enthroned, the panel may have been intended to indicate such a notion of justice, possibly even a merciful judge. In the context of a Last Judgment a plea for divine mercy through the mediation of the Virgin was an established theme. For example, the *Golden Legend* seems to reflect this belief in a story of a sinner at the judgment seat of God:

God said: 'Let the scales be brought and all his good and bad deeds be weighed.' Truth and Justice said to the sinner: 'You see there the mother of mercy, seated beside the Lord. Call upon her with your whole heart and try to win her help.' He did this, and blessed Mary came to his aid. She put her hand on the side of the scale ... while the devil tried to pull the other side down; but the mother of mercy prevailed and the sinner was freed.³⁴⁹

Although the panel does not reflect the substance of this story, a similar belief in the intercessory powers of the Virgin may underlie the imagery.³⁵⁰ Her ability to influence man's fate at the Last Judgment derived from her role as the Mother of Christ, particularly evident in images where she holds the Christ-Child on her knee, which leads to her power as intercessor. The belief (or hope) was that Mary would demonstrate her divine mercy, exerting her unique maternal influence to intercede with her son, Christ-Judge on behalf of

³⁴⁸ St Thomas Aquinas, *Commentum in quattuor libros sententiarum magistri Pater Lombardi*, 4.30.2.1.

³⁴⁹ 'The Assumption of Mary', *The Golden Legend*: Ryan 1993: II, 87.

³⁵⁰ This may also offer further evidence that the work was inspired by the *Golden Legend*: its author, Jacobus da Voragine, as archbishop of Genoa (1292-1298), preached many sermons on the Virgin and her intercessory powers.

Man at the point of Divine Judgment.³⁵¹ As an ‘instrument of salvation’, Mary was to intervene in the process of judgment in an attempt to gain a more merciful outcome: to tip the scales of divine justice in man’s favour, in other words. As intercessor, her role can be likened to an advocate in a law court. It is often indicated by artistic devices such as Mary’s hand touching Christ, or holding a petition in her hand.³⁵² Here, the Virgin holds in her left hand the left foot of the Christ-Child; a gesture thought to derive from Byzantine art, but its precise meaning is uncertain. It may be an allusion to the Passion and the wounds of the crucifixion, as suggested by Rebecca Corrie.³⁵³ However, this argument appears stronger when applied to images where the Madonna specifically touches the heel, as in Coppo di Marcovaldo’s *Madonna del Bordone* (1261; Figure 54).³⁵⁴ Alternatively, it may be intended to suggest petition, in her role as intercessor, through submission at the foot of Christ, an interpretation considered by both Hans Belting and Joanna Cannon.³⁵⁵ That in the London panel the Madonna does not touch Christ’s heel, I suggest strengthens a petitioning aspect.

This intercessory role of the Virgin was frequently linked to the theme of divine justice, appearing in many scenes of the Last Judgment in northern Italy.³⁵⁶ For example, in the pulpits by Giovanni Pisano in Pistoia and Pisa, the latter included the Virgin twice, her role as intercessor apparent as she implores Christ-Judge to show mercy to the Damned; she also appears to speak directly to the Saved (Figure 56; 57).³⁵⁷ The Virgin’s role as intercessor is also emphasised in a Trecento Last Judgment in San Lorenzo, Genoa (c. 1310), which featured Christ and the Virgin on a double throne; this arrangement moved John the Baptist

³⁵¹ For further discussion of the Virgin as intercessor, see Dorothy Shorr. 1956. ‘The Role of the Virgin in Giotto’s *Last Judgment*’. *The Art Bulletin* 38/4: 207-214. The concept is also considered in Cathy M. Oakes. 1998. ‘An iconographic study of the Virgin as intercessor, mediator and purveyor of mercy in Western understanding from the twelfth to the fifteenth century’ (Ph.D. thesis, University of Bristol), 48-101.

³⁵² Features noted by Belting 1994: 124; 281.

³⁵³ Rebecca W. Corrie. 1990. ‘The Political Meaning of Coppo di Marcovaldo’s *Madonna and Child in Siena*’, *Gesta* 29: 61-8, 70.

³⁵⁴ On which see Corrie 1990: 61-8, and Cannon 2010: 10-14.

³⁵⁵ On the gesture as a petition, see Belting, 1994: 390, and Cannon 2010: 14. It appears also in the early thirteenth-century Sienese work, *Madonna degli Occhi Grossi* (Figure 55); a suggestion that this may originally have had side panels might reinforce similarities with Margarito’s work (Van der Ploeg 2002: 110).

³⁵⁶ The notion of the Virgin acting as an advocate and interceding at the point of judgment by Christ-Judge on behalf of Mankind at the Last Judgment featured in Byzantine art as the *Deësis*, or supplication; Margarito’s panel does not feature the specific iconography of the *Deësis*.

³⁵⁷ On the Pisano pulpits, see above.

amongst the Apostles, leaving the Virgin as sole intercessor.³⁵⁸ The Pisan Camposanto *Last Judgment* features the Virgin alongside Christ in a mandorla (Figure 10), unlike earlier representations which centred on Christ alone, such as the Florentine Baptistery mosaic (Figure 16) or Giotto's Arena Chapel fresco (Figure 13).

This notion of Mary intervening on behalf of mankind incorporates many concepts, such as the interdependent relationship between salvation, divine mercy, justice and wisdom, and the Virgin's role in the exercise and dispensation of justice. This link between Mary and Justice is interesting. In the Middle Ages, *Justitia* - the female personification of the cardinal virtue of justice - was perceived as mediating between the absolute law of God and man's actions, and was also associated with the virtue of mercy, much as the Virgin is associated with the quality of divine mercy. This may have led to the image of Justice being equated with or at least incorporating several of the qualities associated with the Virgin.³⁵⁹ Personifications of Justice often depict a female figure, crowned and enthroned, bearing the traditional attributes of justice, including the scale or balance, which the *Golden Legend* suggested Mary could influence (for example, *Justitia*, from the Arena chapel (Figure 45), Paduan Salone (Figure 58) and Florentine Campanile (Figure 46), and baptistery doors (Figure 47)). That the altarpiece appears to accord such a central role to the Virgin may reflect the increasing reverence of the Virgin and her role as intercessor, and the importance of this to the patron of the work. The reiteration of the relationship between a form of Divine Justice and earthly justice reinforces the presence of a theme of justice in the altarpiece, but also points possibly to a merciful notion of justice. It has been recognised that there was an 'unprecedented emphasis placed on Mary's intercessory aspect in Last Judgment images made in late-medieval Italy'.³⁶⁰ I believe that this may suggest that the panel might have been intended to represent a plea for leniency in earthly judgment too.

The scenes of the Lives of the Saints as images of secular justice

³⁵⁸ This feature, which may derive from Roman apse mosaics as in Santa Maria Maggiore, is discussed at Nelson 1985: 560.

³⁵⁹ For a suggestion that the figure of *Justitia* and the attendant virtues in Giotto's Arena Chapel frescoes might have been intended to parallel the Virgin of Charity, flanked by saints, see Lubbock 2006: 309, note 62.

³⁶⁰ Brilliant 2009: 338. Brilliant also finds evidence of the Virgin as intercessor in Santa Maria Donna Regina, Naples, in the west wall fresco of the *Last Judgment*.

This case study will suggest that there are elements in the side scenes of the saints which appear to relate to aspects of the contemporary justice system in Arezzo and the city-states in the mid-late thirteenth century. Before turning to a visual analysis of these smaller scenes, as a general point, it is likely that these brief narratives were intended as a focus for thought or prayer, or as an aid to memory or active devotion, rather than having to educate people as to the detail of the story or a particular saint's life or miracles, with which it would most likely be assumed that people would be familiar, or which could be addressed in a sermon. The figures appear rather two-dimensional, yet the lively narrative quality of the scenes is immediately apparent. A further caveat: many saints' lives featured trial and punishment for their beliefs, so it would not be surprising to find references to such themes in altarpieces. However, I suggest that within these scenes there is a justice subtext which may have been construed as a possible response to or reflection of contemporary social and political factors, most particularly those arising from changes in the justice system in the thirteenth century, which may have made issues relating to justice, trial and punishment of particular relevance to contemporary patrons or viewers of such a panel.

The side scenes comprise, on the upper register, reading from the left: the Nativity, discussed earlier; two scenes featuring St John the Evangelist – to the left of the central panel, his being boiled in oil, and to the right, his raising the dead Drusiana; to the far right, St Benedict, rolling in thorns. On the lower register, to either side a female saint. To the left, St Catherine; to the right, St Margaret; these flank two scenes featuring St Nicholas. All of these saints' lives are included in the *Golden Legend* and, in the cases of Sts John and Nicholas the two scenes featured appear in consecutive paragraphs in the *Golden Legend* accounts, possibly suggesting that the patron or artist had access to certain pages of a manuscript copy to work from. The probable date of the altarpiece so soon after the *Golden Legend* became available might suggest patron(s) with some connection to the Dominican Order. The question of the possible patron for the altarpiece is considered below.

The selection of the particular saints and the specific events from their lives reveal a concern with issues relating to trial and punishment. The scenes of St Catherine and St Nicholas feature beheading, a form of execution with which those viewing and worshipping before the panel would have been familiar. The scene at the left corner of the lower tier (Figure

29f) depicts the beheading of St Catherine of Alexandria and her subsequent transportation by angels to Mount Sinai. The inscription reads, HI[C] S[AN]C[T]A CATTARINA SVSCEPIT MA[R]TIRIV[M] & I[N] MO[N]TE(M) SINJ AB A[N]G[E]LIS E[ST] D(E)LATA ('Here Saint Catherine undergoes martyrdom and is transported by angels to Mount Sinai'). The executioner wears the same as that in the scene of St Nicholas. St Catherine was a popular female saint at this time, often seen as a personification of Wisdom/Learning, and depicted in the context of images of the Virgin, another figure linked with Wisdom and Justice.³⁶¹ St Catherine underwent a trial of faith by the Roman Emperor Maxentius, who sent fifty philosophers to argue with her; instead, she succeeded in converting the philosophers, which may account for association with the quality of wisdom. Maxentius then had her tortured on the wheel.³⁶² In a powerful demonstration of divine judgment on an unjust punishment, it was destroyed by a thunderbolt from Heaven, leaving Catherine unharmed; Maxentius then had her beheaded.

Depicting the beheading, the moment of death, as here, is unusual. That patron or artist eschewed the more common imagery of St Catherine's torture on the wheel may be attributable to the fact that the wheel was not commonly used as a form of punishment in this part of Italy at this time.³⁶³ The figure to the right of the scene, presumably Maxentius, wears clothing familiar from Duecento (and Trecento) images of those associated with the law or authority, emphasising the contemporary relevance of the scene.³⁶⁴ He is also depicted pointing, a gesture traditional of martyrdom scenes, but also often associated with authority figures and judicial imagery.³⁶⁵ Alongside the theme of persecution and punishment for religious belief runs an associated theme of unjust punishment, 'judicial' torture and execution. If the date of 1260s often suggested for the panel is correct, it is possible that the contemporary significance of the theme of in/justice and possible torture may be linked not only to the papal inquisition, but also to court practice, as the use of torture spread from the ecclesiastical courts to secular courts.

³⁶¹ Her popularity with contemporary audiences may be indicated by the detail given to her story in the *Golden Legend*: see Ryan 1993: II, 334-341.

³⁶² The account of her torture in the *Golden Legend* is remarkably horrifying: see Ryan 1993: II, 338-339. It is discussed in the context of the use of the wheel as an instrument of torture at Merback 1999: 164-7.

³⁶³ See Edgerton 1985: 190; and, in particular, Merback 1999.

³⁶⁴ Clothing associated with authority figures is discussed in Chapters 3 and 4.

³⁶⁵ The pointing gesture is discussed in Chapter 3.

It appears that from the mid-thirteenth century, judges may have used torture as part of their investigation to extract a confession, given the high standard of proof required by the *ius commune* for a conviction.³⁶⁶ Italian jurists appear to have justified torture as part of the criminal justice process on the grounds that it was in the public interest, and also for its general deterrent effect, beneficial to those in charge of administering justice.³⁶⁷ Legal historians disagree over the extent to which torture was a recognised element of the secular justice system. Paul Hyams suggested that, “procedures for summary and inquisitorial process against crime seem to lead inexorably towards judicial torture”.³⁶⁸ Richard Fraher argued that torture was part of the justice theory and practice of the *ius commune* and was used extensively from the thirteenth century.³⁶⁹ Kenneth Pennington believed that Fraher’s view is based upon a misreading of the works of Alberto Gandino, specifically *De maleficiis* (c. 1299), which instead reveals a concern to set limits on when and how a judge should resort to torture. He suggested that torture was in fact used rarely by the courts as part of their investigation of allegations, citing records of c. 143 criminal cases from the Bolognese archives between 1284 and 1299, which revealed evidence of torture in only four cases.³⁷⁰

It is difficult to establish the truth in such matters.³⁷¹ It is perhaps not surprising that contemporary records rarely accurately recorded what torture was administered and why. Similarly, we do not have much information on how judicial practice on torture conformed to theory. However, contemporary opinions, *consilia*, produced by academic lawyers as commentary on cases, indicate that torture was used excessively and even unlawfully on occasion by judges, and there is further evidence of concern in the fact that many city-states

³⁶⁶ On medieval judicial torture, see Esther Cohen. 2010. *The Modulated Scream: Pain in Late Medieval Culture* (Chicago and London: The University of Chicago Press), 52-86.

³⁶⁷ Hyams 2000: 84. They may have been correct: in Lucca, for example, in 1365, in 17 criminal trials conducted by the inquisition process, the defendant confessed in each case (see Dean 1989: 45).

³⁶⁸ Hyams 2000: 82. Edward Peters. 1996. *Torture* (Philadelphia: University of Pennsylvania Press), addresses both the use of torture under Roman law and its reintroduction into medieval law.

³⁶⁹ See Fraher 1992: 97-111.

³⁷⁰ Kenneth Pennington. 2008. ‘Torture and fear: enemies of justice’, *Rivista Internazionale Di Diritto Comune* 19 available online <http://faculty.cua.edu/pennington/PenningtonTortureEssay.htm>. [accessed 27 June 2012]. His evidence from Italy is, however, scant; he refers only to records examined by Ernst Kantorowicz, from Bologna and Milan.

³⁷¹ Trevor Dean noted the difficulties of obtaining reliable evidence of actual judicial proceedings (Dean 2007: 1-13). Trial records exclude much of the evidence relevant to assessing investigative methods used in legal proceedings at this time. Chronicles are often partial, which does not decrease their value as sources, but necessitates a level of caution.

passed legislation restricting the use of torture during the justice process, and in records of public protests against the practice.³⁷² Given this background, a scene of torture followed by execution ordered by a figure in clothing associated with contemporary authority figures could allude to realities of the justice system.

The punishment of beheading also features in one of the two scenes in the lower tier illustrating stories from the *Golden Legend* associated with St Nicholas,³⁷³ who was often portrayed as a worker of miracles.³⁷⁴ One scene to the right of centre in the lower tier has a possible subtext of justice and punishment (Figure 29h). The inscription reads, HI[C] S[AN]C[TU]S NICHOLAUS LIBERAT CO[N]DE[M]NATOS ('Here Saint Nicholas frees the condemned men'). St Nicholas is depicted liberating three figures due to be unjustly executed. Nicholas is, unusually, not the largest figure in the scene as one would expect of important religious figures; depicting the purported executioner, brandishing his sword, as larger than the figure of Nicholas draws particular attention to his actions. The three men kneel on the ground before the executioner, hands tied behind their backs and their eyes covered.³⁷⁵ To their right stand armed guards; to their left, the executioner. His sword is drawn, but his hand is stayed by St Nicholas. The *Golden Legend* recounts how after three men were "thrown into jail immediately and to be put to death without trial that very night":

[One] recalled that the blessed Nicholas had lately, in their presence, saved three innocent men from death, and exhorted his companions to invoke the holy man's aid ... they raised their hands to heaven and prayed to God to save them, by the merits of Saint Nicholas, from the peril in which they found themselves.³⁷⁶

³⁷² Parma saw public protests in 1273 at the torture of a suspected thief, and in Perugia, where the body of a suspect who died under torture before being sentenced had no teeth, no genitals and its feet were burned (Dean 1989: 57).

³⁷³ The detail of the account of St Nicholas in the *Golden Legend* is extensive: see Ryan 1993: 21-27.

³⁷⁴ As, for example, in the scene of St Nicholas to the left of centre on the lower tier (Figure 29g), the inscription reads: HI[C] S[AN]C[TU]S NICHOLAUS PRECEPIT NAVTIS VT COL/TVM A DIABULO I[N] MARI P[RO]ICERE[N]T ('Here Saint Nicholas instructs the sailors to throw into the sea the jar filled by the devil'). Saint Nicholas, the patron saint of sailors, is depicted helping sailors to escape death, instructing them to throw overboard a jar filled by the devil (disguised, in the boat to the left).

³⁷⁵ The fact that the men's eyes were covered may point to *The Golden Legend* as Margarito's source, this detail being absent from other works suggested as possible sources, such as the *Liber Epilogorum* (Gordon 2011: 120).

³⁷⁶ Ryan 1993: 24.

This appeared to have the desired outcome: “when the emperor had heard from [the men] about the life and miracles of the saint, he released them, saying: ‘Go and thank God, who has saved you at the prayer of this Nicholas’”. Therefore, St Nicholas became associated with intercession: for coming to the defence of the falsely accused and providing release from captivity and imprisonment. Traditionally, in the early Church, bishops had the right of intercession, to ask civil judges to pardon condemned prisoners, especially those sentenced to death, and to petition to have prisoners discharged.³⁷⁷ St Nicholas was a bishop; his intercessory aspect may be emphasised by the iconography, as he appears here with cloak, mitre and crosier.³⁷⁸

Analysing further scenes from the lives of the saints would suggest that aspects of secular justice - trial, punishment, liberation, law and justice - may be reflected in the panel. St John the Evangelist appears in two scenes.³⁷⁹ St John is associated with the Apocalypse, and so with the theme of divine justice; however, a secular justice theme may also be relevant to a scene to the right of the Nativity (Figure 29c). The inscription reads HIC BEAT[US] JOH[ANN]ES EV[AN]G[ELISTA] A FERVORE OLEI LIBERATVR (‘Here Blessed John the Evangelist is rescued from the heat of the oil’). St John, naked in a cauldron of boiling oil, flames beneath stoked up by figures on either side, is rescued from the cauldron by an angel above him. This scene refers to an episode in the persecution of early Christians when the Roman emperor, Domitian, had John thrown into boiling oil, yet he emerged miraculously unharmed. This scene, and the story it relates, appears to concern themes of liberation, from punishment and injustice, specifically the delivery (through faith) from punishment (and also, perhaps a pertinent theme at the time of the inquisition, from persecution inflicted for religious belief). Of course, one must exercise caution when attempting to draw any wider conclusions about the extent to which themes of justice or injustice, trial or punishment, can be discerned in scenes of martyrdom, as all such scenes necessarily engage with those themes. However, there are additional factors in the panel which may support

³⁷⁷ C. Collard. 1911. ‘Prisons’, *The Catholic Encyclopedia* (New York: Robert Appleton Company). Available online from New Advent: <http://www.newadvent.org/cathen/12430a.htm> [accessed 2 February, 2012].

³⁷⁸ On iconography associated with St Nicholas, see James Hall. 1974. *Dictionary of Subjects and Symbols in Art* (London: John Murray), 223.

³⁷⁹ These stories of St John would have been widely known at this time. They appear together in the *Golden Legend* (Ryan 1993: I, 50-55). For the story of St John in a vat of oil, see Ryan 1993: I, 51 (which, interestingly, does not refer to angelic intervention). For the raising of Drusiana, see Ryan 1993: I, 51.

the contention that the justice theme may have been intended over and above the commonplace of martyrdom imagery. In fact, unlikely though it may seem, this scene may in fact refer to thirteenth-century legal practice: recall, for example, the communal authorities in Parma who in 1236 boiled a murderous cleric in a pot.³⁸⁰

The side scene to the far right of the lower tier features St Margaret (Figure 29i).³⁸¹ The inscription reads: HI[C] S[AN]C[T]A MARGARITA ... ORE ERUPTIS/ VISCERBIS ('Here Saint Margaret ... in the mouth [of the dragon, escapes] when his entrails burst'). A legendary Christian virgin martyr, she often appears with St Catherine of Alexandria in pictures of the Virgin.³⁸² When St Margaret refused to marry the prefect of Antioch, he had her tortured and imprisoned in a dungeon (indicated by the cross-hatching over the scene). While in the dungeon, Satan appeared in the form of a dragon, and ate her. She was saved when the cross in her hand caused the dragon's stomach to burst open. The *Golden Legend* detailed Margaret's torture and beating while in prison. After escaping the dragon, she was stripped, burned, bound and submerged in water until the earth shook; she was then beheaded.³⁸³ This scene, and the story it relates, appears to reiterate a justice subtext, specifically liberation (through faith and prayer) from persecution, punishment, torture, and imprisonment.

The theme of imprisonment is significant in the context of this analysis. Changes in the criminal justice system made it more likely that the city-states would need to imprison; in particular, the introduction of the inquisitorial method of prosecution around the mid-Duecento meant that people had to be held securely for questioning (and torture to secure evidence or confession) by civil judicial officers. In addition, the research of Guy Geltner (based on archival records of prisons in Florence, Venice, Siena and Bologna) has indicated that incarceration as a formal punishment was more widespread than previously realised.³⁸⁴ Significantly for the arguments advanced here, Geltner's research dated the use of punitive

³⁸⁰ *Chronicon Parmense* (1236), 11; cited by Thompson 2005: 45.

³⁸¹ Jones 1997: 380.

³⁸² Hall 1974: 198

³⁸³ See Ryan 1993: I, 368-370.

³⁸⁴ Geltner 2008.

incarceration firmly to the mid-thirteenth century.³⁸⁵ However, the emergence of municipal prisons was a development from the late-Duecento: as noted above, it was not until 1297 that Florence built a municipal prison; other city-states followed thereafter. Prior to that, civic authorities tended in the mid- to late-Duecento to rely on the ad hoc use of private premises. Prisoners were often housed in the premises of the podestà, or cells in the town hall, or private buildings rented for the purpose, such as the towers of private palazzi.³⁸⁶ Even after municipal prisons were built, prisoners could still be held in other locations, including private towers, in times of social unrest.³⁸⁷

Therefore, prisoners were arguably 'present' in mid-thirteenth century society to an extent somewhat difficult to grasp today. Many relied upon their families to provide their food and concern for their physical welfare, avoiding prisoners being totally withdrawn from society. Geltner's view is that prisons were not intended to exclude prisoners from society, to 'other' them, but to regulate social contact between inmate and society; prisons were therefore part of a "harm reducing semi-inclusive approach towards socially stigmatized groups".³⁸⁸ Prisoners could be regarded rather as liminal, temporarily marginalized figures.³⁸⁹ This connection with the outside world was also maintained through the church, as many local ecclesiastical authorities oversaw the spiritual welfare of prisoners. For this reason, arguably, at this time, prisoners generally avoided being perceived as in some way 'outside' society, which had the side-effect that they could be seen as worthy objects of charity. Many towns and cities organised festive releases of prisoners, as oblations, to mark a point on the liturgical calendar such as Easter, or the feast day of the Virgin, or to honour a city's patron saint.³⁹⁰ Many lay societies, known as confraternities or sodalities, which had as their

³⁸⁵ Geltner 2008: 3; 100-1.

³⁸⁶ For restrictions placed by the Aretine communal authorities on private towers in the thirteenth century, see Franco Paturzo. 2002. *Arezzo Medievale La città e il suo territorio dalla fine del mondo antico al 1384* (Cortona: Calosci), 369-70.

³⁸⁷ For example in Florence in 1301: "... the first thing that [M. Corso] did was to go to the prisons of the commonwealth, which were in the houses of the Bastari, ... and these he opened by force, and set the prisoners free; and this done, he did the like at the palace of the Podestà" (Giovanni Villani, *Cronica*: Book viii, 49).

³⁸⁸ Geltner 2012: 32.

³⁸⁹ On the subject of 'marginality' in medieval society, see Michael Goodich. 1998. *Other Middle Ages: Witnesses at the margins of medieval society* (Philadelphia: University of Pennsylvania Press).

³⁹⁰ For example, Florence released prisoners at Christmas, Easter and on the patron saint's day (Florence Stat. (1322), 5.1, 217-8); Modena similarly awarded pardons on those dates (Modena Stat. (1306/7), 2:103; Thompson 2005: 275). Rather than a general amnesty, the communal authorities of Bolzano released certain

objects charitable aid to certain sections of society, included prisoners as suitable to receive their charity. This could take several forms, but included for example, prayers for their spiritual welfare, a form of intercession.

Themes of liberation, petition, or intercession, and punishment appear strongly in the panel. The scene of St Nicholas intervening to save the condemned men alludes to his powers of intercession.³⁹¹ According to the *Golden Legend*, both Sts Catherine and Margaret were also associated with the hearing of petitions. The notion of intercession to relieve punishment underlines that in Margarito's image of the Virgin: petitioning the Christ-Child to show mercy to mankind, the lion-headed throne suggesting she could intercede for man acting with the authority, justice and wisdom of Solomon, her association with Justice and Wisdom seeming particularly appropriate for her role as intercessor or mediator. This reiteration appears unlikely to be coincidental. But why might intercession or merciful judgment have been a significant theme for someone commissioning a panel which engaged with issues of justice, trial and punishment, in or around Arezzo around 1263? Who are likely patrons for this work?

The theme of intercession may have had special appeal for Aretine patron(s), as it was linked to Arezzo's patron saint Donatus.³⁹² *The Golden Legend* relates that a man and his sons threatened with state-approved torture, for non-payment of taxes, were saved by the intervention of Donatus.³⁹³ Indeed, other aspects of the selection of the saints and the particular incidents of their lives depicted in the panel may have had special resonance with an audience in Arezzo, as many are reflected in the *Golden Legend* story of St Donatus.³⁹⁴ For example, Donatus was Bishop of Arezzo (mirrored in the episcopal clothing of St

prisoners to mark the death in 1315 of a local 'saint' (Webb 2007: 245). Perugian Statutes specified how many prisoners were to be released to mark particular feast-days (*Statuti di Perugia* (1342), vol. 1, 211-14, in Dean 2000: 98). See also Geltner, 2008: 74-80.

³⁹¹ Scenes such as St Nicholas's intervention to secure the release of prisoners may have had particular resonance, given that Saint Nicholas is sometimes associated with the inscription, 'Love justice, you who judge the earth' (Wisdom 1:1): Hall 2008: 223. The phrase was subsequently to assume particular significance in certain Trecento images of justice (discussed in Chapter 4).

³⁹² A civic cult of St Donatus as Arezzo's patron saint was already established by 1257 (Giovanni Freni. 2000, *Studies in Art, Architecture and Patronage in Arezzo: 1277-1400* (PhD thesis, Courtauld Institute of Art), 114). On the role of patron saints in the religious and civic life of cities, see Chapter 1.

³⁹³ Ryan 1993: II, 60

³⁹⁴ On iconography associated with St Donatus, see Hall 1974: 108. On St Donatus in *The Golden Legend*, see Ryan 1993: II, 59-61.

Nicholas); Donatus was associated with poison (which appears in the scene of St Nicholas with the sailors), a dragon (present in the scene of St Margaret), and raising someone from the dead (like the scene with St John Raising Drusiana; Figure 29d). The fate of Donatus himself, according to *The Golden Legend*, imprisoned and subsequently beheaded, mirrors the fates of St Catherine and St Margaret. These parallels may indicate that the patron(s) chose particular saints for these side scenes to refer to aspects of Donatus's life and iconography. This would appear to make it more likely that the panel was commissioned by or for a patron in Arezzo.³⁹⁵

Several of the side scene inscriptions include explicit reference to 'liberation'.³⁹⁶ It may be that the panel was commissioned by an individual donor or a family, possibly to commemorate liberation from imprisonment, perhaps after a successful intervention by a particular saint in response to prayers, like St Nicholas. However, there are no indications of a private donor in the work, no reference to family emblem or arms, which one might perhaps expect.

An alternative patron might be a religious institution or community in or around Arezzo. The notion of suffering trial, torture and punishment for religious belief may have assumed contemporary relevance given the practices of the Inquisition, but alternatively it may have been motivated by concerns related to the contemporary justice system. From the eleventh century, power, including judicial authority, moved from church to civic authority, which may have led certain ecclesiastical authorities in and around Arezzo to commission an altarpiece a subtext of which may have expressed their concern at how such powers should be exercised. However, such an approach might have been perceived as unduly provocative, particularly as, although the disputes over ecclesiastical jurisdiction in secular matters had supposedly been settled in favour of the secular authorities by Canon 42 of the Fourth Lateran Council (1215), in certain cities tensions remained.³⁹⁷

³⁹⁵ Vasari referred to 'Margaritone' having produced "a reredos in the Pieve of Arezzo which contains scenes from the life of S. Donato" (Vasari, *Lives*, 1: 66).

³⁹⁶ I thank Dr. Joanna Cannon for this observation.

³⁹⁷ See Chapter 1.

Other possibilities for a patron may be a religious establishment, in or around Arezzo concerned with the care and spiritual welfare of prisoners, or those otherwise involved in the justice system, interceding on their behalf, not in relation to the trial or verdict, but on their treatment thereafter. The double appearances of Sts John and Nicholas may suggest that the panel could have been commissioned for titular churches in Arezzo. The two scenes of St Nicholas might suggest the church of San Niccolò in Arezzo as a possible location.³⁹⁸ The association of St Nicholas with the theme of intercession may make that a credible possibility, and according to Vasari, examples of Margarito's work could be seen in that church.³⁹⁹

However, the theme of intercession which pervades the work, taken together with the subtext of trial, punishment, and imprisonment, may suggest an alternative possible patron as a confraternity in Arezzo or its contado. Confraternities were religious organisations which encouraged laypeople in acts of devotion and charitable works, such as tending for the poor, elderly, sick, widows, or lepers, for example, and burying the dead.⁴⁰⁰ Many of their art commissions directly related to these functions.⁴⁰¹ Many were *laudesi*, who sang vernacular songs of praise (*laude*) to the Virgin and other patron saints. They became popular in many towns and cities in northern and central Italy from around 1260. It is suggested that a possible patron for the altarpiece produced around this time, when changes to the legal system made issues of trial and punishment a relevant concern in

³⁹⁸ As suggested at Gordon 2011: 321. The church belonged to the Girataschi family; situated in the Piazzetta S. Niccolò. The palazzo Girataschi also served as the seat of the podestà of Arezzo (Paturzo 2002: 375). Prisoners may have been held in the podestà's premises.

³⁹⁹ Vasari, *Lives* 1, 64.

⁴⁰⁰ Increasing interest in the role of the confraternity in late medieval Italy over the past thirty years has produced much scholarship. For details of the historiography of confraternity studies, see Barbara Wisch and Diane Cole Ahl. 2000. *Confraternities and the Visual Arts in Renaissance Italy. Ritual, Spectacle, Image* (Cambridge University Press), 4, note 21. On the changing focus of much of this research, see Ronald E. Weissmann. 1991. 'Cults and Contexts: In Search of the Renaissance Confraternity', in *Crossing the Boundaries: Christian Piety and the Arts in Italian Medieval and Renaissance Confraternities* ed. by Konrad Eisenbichler (Kalamazoo, MI.: Medieval Institute Publications), 201-220. Although much research on confraternal art has focussed on Florence, Siena, Rome or Venice, and on the Renaissance period and thereafter, general points can be of relevance to mid-Duecento Arezzo. See, for example, Nicholas Terpstra. 2002. *Lay Confraternities and Civic Religion in Renaissance Bologna* (Cambridge: Cambridge University Press); John Henderson. 1997. *Piety and Charity in Late Medieval Florence* (revised ed.: Chicago University Press); Ronald E. Weissman. 1982. *Ritual Brotherhood in Renaissance Florence* (New York: Academic Press).

⁴⁰¹ On confraternities as patrons of art, see Wisch and Cole Ahl 2000: 1-19.

contemporary society, may have been a confraternity which had amongst its objects the care of prisoners.

As stated earlier, documentary evidence places Margarito in Arezzo around 1262, and the London panel is thought to date from 1260-3/4. A possible patron for the work may be a confraternity in Arezzo, first mentioned in a papal indulgence of 1257.⁴⁰² It was originally linked to the Dominican order.⁴⁰³ Its activities included daily prayer, monthly meetings to hear a sermon and confess sins, and celebration of the Virgin's feast days.⁴⁰⁴ Records indicate that in 1262 the 'congregazione della Vergine di Arezzo' adopted new statutes, approved by the Bishop of Arezzo, Guglielmo degli Ubertini.⁴⁰⁵ These ratified the abandonment by the confraternity of its devotional nature and the adoption of a public charitable function.⁴⁰⁶ The preamble to the statutes referred to "hec consuetudines et ordinamenta fraternitatis Sancte marie de Misericordia". The imagery related to the Madonna of Mercy may indicate a possible timeframe for the panel. Hans Belting noted that in 1267 a confraternity of Our Lady of Mercy in S. Maria Maggiore, Rome, depicted the Madonna sheltering members of the confraternity under her cloak and that "confraternities – particularly those connected with the mendicant orders ... from now on favoured the image".⁴⁰⁷ Although far from conclusive, that this image was not adopted by the Aretine confraternity for the panel may suggest a possible *terminus ad quem* of c. 1267 for its production.

⁴⁰² The history of the confraternity is addressed in the introduction to Augusto Antoniella. 1985. *L'Archivio della fraternità dei Laici di Arezzo. Introduzione storica e Inventario* (Florence, Editrice Bibliografica). For the text of the papal indulgence, see Gilles Gérard Meersseman's comprehensive study of confraternities, 1977. *Ordo fraternitatis. Confraternite e pietà dei laici nel medioevo, volume II* (Rome: Herder Editrice e Libreria) 971-2; 1013-1029, at 1011-2. I contacted the modern-day Fraternità dei Laici in Arezzo, but they declined to respond.

⁴⁰³ As evidenced by its inclusion in Meersseman's study, which focused on confraternities linked to the Dominican order.

⁴⁰⁴ Meersseman 1977: vol 2, 921-1004 gives details of the general activities of confraternities associated with the Dominicans.

⁴⁰⁵ Meersseman stated that the drafting of the 1262 statute was entrusted to a Dominican 'prior' of the confraternity (Meersseman 1977: vol 2, 971).

⁴⁰⁶ For the text of the statute, see Meersseman 1977: II, 1015-1029, and Appendix 3. On the activities of the confraternity, see Louise Marshall, 'Confraternity and Community: Mobilising the Sacred in Times of Plague', in Wisch and Cole Ahl 2000: 20-45, at 29-30. There is also information on the foundation and early years of the confraternity on its website; see <http://www.fraternitadeilaici.it/storia.php> [Accessed 14 February 2012].

⁴⁰⁷ Belting 1994: 356.

The panel may have been commissioned to commemorate the award of the new statute, which would date it to after 1262. It may even have been prompted in a spirit of corporate competitiveness. Belting suggested that a replica of an image of the Madonna, commissioned in 1262 by a Franciscan confraternity in Siena (S. Maria degli Angeli), was kept in the Franciscan church in Arezzo, from which he deduced the presence of a confraternity in Arezzo which required a cult image for its chapel in the Franciscan's church.⁴⁰⁸ It is tempting to speculate that the Fraternità Santa Maria della Misericordia, with its links to the Dominican order in Arezzo, might have been encouraged at around the same time to commission its own cult image, in the form of Margarito's altarpiece.

In the latter part of the thirteenth century, the confraternity used to meet in Santa Maria della Pieve, Arezzo.⁴⁰⁹ If the panel was commissioned by the confraternity, it may have been intended as an altarpiece for a side chapel. Confraternities were important in the development of the altarpiece, and many Marian panels were commissioned for confraternity chapels within churches, rather than high altars, often serving as the focus for sermons.⁴¹⁰ However, establishing a possible location for the panel within Santa Maria della Pieve is complicated by several reorganisations of the interior.⁴¹¹ If the London panel was intended for a chapel within the Pieve, the similarities between Margarito's and an older Romanesque image of the Madonna in the sculpted *Adoration of the Magi* may have been intentional allusions to a respected image long-associated with the location (Figure 50). This might help to explain the relatively unusual appearance of the fleur-de-lys on the Virgin's crown.⁴¹²

⁴⁰⁸ Belting 1994: 390-2.

⁴⁰⁹ It began construction of the premises it still occupies at Palazzo Fraternità dei Laici, Via Vasari 6, in 1375. The Pieve (dedicated to Santa Maria Assunta) was the baptismal church of Arezzo. For more on the Pieve, see Freni 2000.

⁴¹⁰ Belting addresses the role of confraternities in the development of the altarpiece. Although he focussed on panels of confraternities in Florence and Siena, his points on the appearance in these works of panels of the Madonna Enthroned and the development of this painted image from Romanesque *marie-maiestas* sculptures are clearly of relevance to an analysis of the London panel (Belting 1994: 384-408). On how images of the Virgin and practices of devotion to her were integral to the formation of communal and personal Christian identities in the twelfth-fourteenth centuries, see Anne L. Clark. 2004. 'The Cult of the Virgin Mary and Technologies of Christian Formation', in *Educating People of Faith: Exploring the History of Jewish and Christian Communities*, ed. by John Van Engen (Grand Rapids, Michigan: William B Eerdmans Publishing Co), 223-253.

⁴¹¹ The Pieve was renovated by Giorgio Vasari in 1560-4, and extensively in the nineteenth century.

⁴¹² This possible allusion has not been previously commented upon. On the crown, see Gordon 2011: 318; and Anna Maria Maetzke. 1973. 'Nuove Ricerche su Margarito d'Arezzo', *Bollettino d'Arte* 58: 95-112.

The 1262 statute was like a charter or articles of association, setting out the objects of the confraternity. The Virgin was the patron of the company, her attribute 'of Mercy' being taken to mean her role as merciful mother to all in need of consolation (Chapter 2 of the statute). Chapter 1 of the statute refers to the Last Judgment, warning that those who have shown no mercy will receive no mercy. Chapter 1 also states more philanthropic aims, requiring the members to move beyond 'private' devotional activities towards more 'public' works of charity: the confraternity will work to aid widows, orphans, the poor and '*incarceratis*' – prisoners.⁴¹³ The statutes repeatedly refer to Mary as advocate for the confraternity (for example, '*advocate nostre*'; Chapter 18), and to her ability to intercede in Christ's judgment ('*que apud filium suum pro nobis intercedat*'; Chapter 15). Members were required to observe her four liturgical feasts (Chapter 18), which may as in other towns and cities have been marked by prisoner releases. Confraternal rituals frequently accentuated the importance of the altar and altarpiece (as in Chapter 8, for example), so theme of the Virgin interceding on behalf of '*incarceratis*' perhaps provided one focus for the prayers of the confraternity members.

The socio-political situation in Arezzo around the time the London panel is thought to have been commissioned would make issues of justice a pressing concern. The period 1259-61 could be described as one of crisis in Arezzo - it experienced considerable social unrest, the city divided by conflict between rival factions.⁴¹⁴ The political situation and shifting affiliations in Arezzo around this time were as complex as for many other city-states. Although much of the discontent may have owed less to political belief and more to *realpolitik*, the end result was often further social instability following the exile or banishment of the then opposition consequent upon a change of control.⁴¹⁵ Arezzo had strong pro-imperialist traditions; by 1251 it had a formal Ghibelline party.⁴¹⁶ It retained some Ghibelline allegiance, at least partly due to long-standing rivalry with Florence (which

⁴¹³ By the Trecento and thereafter, many confraternities had as their object working to improve the condition of prisoners. For example, the Pia Casa di Misericordia, Pisa; the Santa Maria della Morte, Bologna; and the Compagnia di Santa Maria della Croce al Tempio, Florence.

⁴¹⁴ See Paturzo 2002: 248-262.

⁴¹⁵ Evidence of unrest in Aretine society can be seen in, for example, the writings of Guittone of Arezzo (c. 1235-1294). During his exile to Florence, he joined the *Milites Beatae Virginis Mariae*, a lay order devoted to the promotion of civic harmony (Waley 1988: 157). See Monica Cerroni. 2004. 'Guittone d'Arezzo', *Dizionario Biografico degli Italiani* - Volume 61.

⁴¹⁶ Discussed by Waley 1988: 146.

pragmatically remained Guelf partly due to profitable economic links with the papacy), yet a Guelf-inclined popular government concluded an alliance in 1256 with Florence. Arezzo's attack and partial destruction of Ghibelline-supporting Cortona in 1258 allegedly occurred with the assistance of Guelf supporters within Cortona.⁴¹⁷ The situation was exacerbated following the battle of Montaperti in 1260: fierce fighting between rival factions outside the Aretine city walls, when Guelfs in Arezzo moved against Ghibelline supporters (and the bishop), led to food shortages inside the city. This came at a time when the city population may have been swollen by those attending the *studium*, including the sons of Ghibelline Tuscan nobles choosing to be schooled in Arezzo (or Siena) rather than Bologna, for example, where they might have been unwelcome.⁴¹⁸ Although some level of order and security was restored in late 1261, there were later outbreaks.⁴¹⁹ It is entirely likely that this unrest led to more people coming before the courts, and perhaps to a concomitant increase in the number of prisoners within the city.

I suggest that there is a close relationship between the decorative program of Margarito's panel, a focus for prayer and devotion, and the charitable objectives of the confraternity towards prisoners, as set out in the statutes. The 1262 statute expresses piety and spirituality, and yet also addresses the confraternity's more secular activities. Even from its inception, the confraternity and its members appear to have been socially-engaged: *misericordia* might suggest an outward-looking, socially-focused view of the confraternity's charitable function.⁴²⁰ It claimed to represent and serve the entire city and diocese of Arezzo, not just confraternity members. The confraternity seems to have become very popular very quickly; although this was not uncommon in the city-states, confraternities appear to have had an unusually strong presence in Duecento Arezzo.⁴²¹ Women were

⁴¹⁷ Miller 2000: 255.

⁴¹⁸ See Helene Wieruszowski. 1953. 'Arezzo as a Center of Learning and Letters in the Thirteenth Century', *Traditio* 9: 321-391; 332-3. Political events severely affected the activities of the *studium* in 1260 (Paturzo 2002: 286).

⁴¹⁹ Paturzo suggested that relations between Guelf and Ghibelline factions in Arezzo entered a period of relative tranquillity after 1264 (Paturzo 2002: 261).

⁴²⁰ Oakes considers the meaning of 'misericordia' in the middle ages (Oakes, 1997: 296-300), concluding that although it had no specific meaning (297), "*Misericordia* was tinged with connotations of good works, wise deliberation, and kindness" (298). She also looked at its interrelationship with the operation of divine justice, although the focus of her research is Northern Europe.

⁴²¹ As noted by Cohn 1992: 64.

permitted to join, relatively rare in confraternities at this time (Chapter 12).⁴²² By the end of the thirteenth century, incomplete membership lists, detailing around 1,700 names, suggest that almost all the adult population of Arezzo would have been counted as members of the confraternity.⁴²³ This makes it quite likely that membership was drawn from all social levels, and many may have been connected to law. Mid-late thirteenth-century Arezzo had a significant legal presence; in 1256, for example, among 247 attending a council meeting, 18 were notaries, 10 judges and 1 advocate; in 1255, the *studium* had 8 professors of law and many law students, and there are suggestions that after 1240, Arezzo was a centre for training notaries.⁴²⁴ It is, therefore, at least arguable that many members of the confraternity may have been connected to the legal profession, with an interest in matters relating to justice.

Confraternities, through their activities, both devotional and social, but also through the visual art they commissioned, could establish a corporate identity.⁴²⁵ A corporate identity which linked the confraternity with the broader community was important. In the case of a confraternity such as that in Arezzo, given that a majority of citizens would appear to have been members by c. 1300, in addition to their charitable and devotional activities, it had an important role to play within Aretine society. Membership of a confraternity might better promote social cohesion than a guild, for example, which would be largely concerned with the wellbeing of its members. Providing a focus for socialisation outside the traditional family grouping may have helped to control, to an extent at least, the factionalism, feuding and internecine violence which affected so many towns and cities. This potential to diminish socially destabilising forces may have been a significant factor in the encouragement many

⁴²² On the gender balance in confraternities, see Jennifer Fisk Rondeau. 2000. 'Homosexuality and Civic (Dis)order in late medieval Italian confraternities', in *The Politics of Ritual Kinship*, ed. by Nicholas Terpstra (Cambridge: Cambridge University Press), 30-47.

⁴²³ Marshall 2000: 30. It would be difficult to establish conclusively whether Margarito might have been a member: many may have been known as 'Margarito of Arezzo', and Vasari's account suggested that he was also a sculptor and architect, so an occupation, even if indicated in the membership lists, might not prove conclusive.

⁴²⁴ Wieruszowski 1953: 331. On the *studium*, see Patruzio 2002: 286. It appears the communal authorities exerted over it - particularly its finances - a high level of control (Jones 1977: 449).

⁴²⁵ On corporate patronage by confraternities, see Ellen Schiferl, 'Italian Confraternity Art Contracts: Group Consciousness and Corporate Patronage, 1400-1525', in Eisenbichler 1991; 121-140. She noted that corporate commissions usually involve a contract between artist and patron, and that hundreds of examples survive for the Italian Renaissance. Perhaps owing to the earlier date of the commission by the Aretine confraternity, there is no evidence that such a contract has survived.

civic authorities gave to confraternities within their cities.⁴²⁶ It may have played a part in the popularity of the *Fraternità*.⁴²⁷ Also, many of the objectives of the early confraternities reflected the concerns of the civic authorities – caring for the poor, widows, orphans, prisoners. The confraternity provided a means for the laity, usually of the merchant and artisan classes (although the high membership suggests the Aretine confraternity must have been relatively socially diverse) to actively express their religious life separate from, but not in opposition to, the local parish church or mendicant establishments, whilst simultaneously addressing the social concerns of the civic authorities.

I suggest that Margarito's altarpiece and its treatment of the theme of justice is indicative of this close rapport between the civic and religious, the interconnectedness of divine and secular justice. At the time the panel may have been commissioned and produced, possibly more so than at any point in the previous few hundred years, imprisonment, and torture, both state-ordained as an integral part of the criminal justice system as well as Church-ordained in the context of the inquisition, became more of a contemporary reality. Saints' tales of imprisonment and torture could have resonated with the concerns of many in contemporary Arezzo. That religious faith brought about subsequent (albeit miraculous) liberation from those fates could have provided a focus for prayer before the altarpiece. The panel draws together themes of divine justice and practices of the secular justice system into one image, incorporating elements of the divine yet engaged with contemporary social realities.

Analysis of this image of divine justice as represented in the London panel suggests that the panel engages with concerns relating to and possibly arising from changes in the criminal justice system, which saw an increased and increasing use of imprisonment. This was a marked departure from reliance on punishments such as execution and physical mutilation (which nevertheless remained in use). We can see that the notion of justice revealed in the panel is quite sophisticated: one which blends elements of divine and secular, which

⁴²⁶ On this, see Pauline Stafford, Janet L Nelson, and Jane Martindale. 2001. 'Introduction', in *Law, laity and solidarities. Essays in Honour of Susan Reynolds*, ed. by Pauline Stafford, Janet L Nelson, and Jane Martindale (Manchester and New York: Manchester University Press), 1-11.

⁴²⁷ In Arezzo this encouragement might have had ulterior motives: by c. 1300, the communal authorities "exerted growing control ... over the funding and management of charities to the point of virtually municipalizing certain institutions ... like the Misericordia in Arezzo": Jones 1997: 447.

represents a relationship between a form of divine justice and earthly justice, which encompasses both punishment by physical mutilation and death, but also which engages with the contemporary realities of a justice system open to new forms of punishment. Concerns arising from the contemporary justice system were considered appropriate for inclusion in an altarpiece. There is no rigid secular/sacred distinction here.

Conclusion

This chapter has sought to provide a theoretical interpretive framework for images of divine justice to determine what of that concept is evident in the art of the city-states of northern Italy in c. 1250-1400. The case studies have construed the artworks as possible responses to contemporary social and political factors, and more particularly to concerns arising from changes in the criminal justice system which made issues relating to justice of particular relevance. It has been suggested that themes relevant to issues of the contemporary justice systems were considered appropriate for inclusion in images intended to be the focus of worship and veneration in religious establishments - whether altarpiece, pulpit or fresco.

My interpretation of *The Virgin and Child Enthroned* by Margarito of Arezzo suggests that the painting alludes to themes of divine justice, whilst also reflecting the concerns of those who commissioned the work, arising from matters relating to secular justice and the contemporary justice system. I have argued that the panel engages with a justice system – and perhaps a philosophy of law - in the early stages of transition, from a punitive retributive system of justice reliant on traditional punishments leading to death or physical mutilation, towards a more merciful, but also utilitarian approach, containing the possibility of redemption or of rehabilitation. These same themes – societal concerns and the practices of secular justice – have been demonstrated as impacting upon other images which perhaps more explicitly address notions of divine justice, images of Hell in the context of *Last Judgment* scenes from c. 1250-1400.

I suggest that not only do images of divine justice commissioned and produced in this period engage with the notion of secular justice, but specifically that the images relate to aspects of contemporary justice practice. Changes in the representation - particularly its development in the fourteenth century - and the use of Last Judgment scenes engage with this transitional justice system, and a changing jurisprudence. Moreover, these images may have had a role to play in bridging a gap between justice practice and justice rhetoric. Therefore, both in their depiction and use, images of divine justice are seen to actively engage with both a secular justice system and a philosophy of criminal justice in a state of evolution.

Neither altarpiece nor *Last Judgment* scene reveals a rigid distinction between secular and sacred. Rather, these artworks allude to a relationship between Divine Justice and earthly justice. In the next Chapter, further images from northern Italy c. 1250-1400 will be subject to detailed analysis, to determine whether similar patterns – an active engagement with contemporary justice philosophy and the practices of the secular justice system and the unsuitability of a sacred/secular opposition to the contemporary understanding of secular justice – can be discerned.

CHAPTER 3: Scenes of the Trials in the Passion of Christ, c. 1250-1400

Introduction

In Chapter 2 it was demonstrated that images relating to 'Divine' justice can allude to a number of matters of importance arising from aspects of secular justice in northern Italy, from the mid-Duecento to the late Trecento. It is evident that issues – social, political, even religious – arising from changes to the legal system from the Duecento onwards, pervaded and shaped the artistic representation of the imagery of the Last Judgment and the iconography of the altarpiece of an Aretine confraternity. The purpose of this chapter will be to establish whether and to what extent those same themes impacted upon images of 'Secular' justice. The chapter explores this question in the context of the artistic representation of a religious subject, the *Trials in the Passion of Christ*.

The intention is to offer a new perspective, analysing the scenes of the *Trials of Christ* as images of justice, as images of a particular aspect of the material, secular, 'human', legal world: a trial, an accused facing their judge. The aim is by visual analysis and contextualising to determine whether a connection can be established between aspects of the artwork, specifically the selection and representation of the judge, and the change in prosecution practice in the Duecento. This change was to place increased emphasis on those involved in the exercise of judicial authority. The intrusion of matters arising from such changes into images of 'the divine' would be significant, offering evidence of the interrelationship of secular and sacred notions of justice, because, as with the works addressed in Chapter 2, many such images were commissioned by religious patrons for religious locations.

3.1. Biblical accounts of the Trials of Christ

Before considering its appearance in art, it is worth looking at Biblical accounts of the trials.⁴²⁸ All Gospels report that, after betrayal by Judas, Christ was brought before the Jewish high priest, Caiaphas.⁴²⁹ The trials took place when Judaea was controlled by a Roman governor, so Christ had to appear before both Jewish and Roman authorities. The Sanhedrin was the highest Jewish court, given control over religious and secular matters, but required the governor's approval for sentences of death. The Gospels report Christ being hit, mocked, even spat at, at the trial.⁴³⁰ Matthew and Mark referred to Caiaphas rending his clothes, a traditional sign of anger, in response to Christ's answers.⁴³¹ After the Sanhedrin reached its decision, Christ was taken to Pilate for sentencing.⁴³² As the Jews would not enter the Roman governor's palace, Pilate held some of the proceedings outside.⁴³³

With the exception of John, Gospel accounts of the proceedings before the Sanhedrin are relatively brief. More details are provided of the trial before Pilate which, in the Christian tradition, condemned Christ to death. Matthew described Pilate as sitting on the 'judgment seat'.⁴³⁴ Jesus was largely silent. Against his wife's advice, Pilate bowed to mob pressure to crucify Jesus and, absolving himself of the decision, washed his hands.⁴³⁵ Mark mirrors the account of Matthew, but gives fewer details of proceedings before Pilate, omitting the washing of hands, for example. Luke stated that, before passing judgment, Pilate referred Christ for trial before Herod, a Roman puppet-king whose jurisdiction included Galilee (Christ was a Galilean).⁴³⁶ Herod sent Christ back to Pilate. In the judgment hall, he offered

⁴²⁸ Information and analysis on the Trials of Christ can be found on the famous trials website located at <http://www.law.umkc.edu/faculty/projects/ftrials/ftrials.htm> created by Professor Douglas O. Linder for the University of Missouri-Kansas School of Law. On the differing accounts of the trials in the Gospels and other historical accounts, see Robin Lane Fox. 2006. 'Jesus on Trial', in *The Unauthorised Version: Truth and Fiction in the Bible* (London: Penguin), 283-310.

⁴²⁹ Matthew 26.57; Mark 14.53; Luke 22.54; John 18.24.

⁴³⁰ Matthew 26.66; Mark 14.65; Luke 22.64; John 18.22. This is not the Mocking of Christ after judgment by Pilate.

⁴³¹ Matthew 26.65; Mark 14.63.

⁴³² Matthew 27.2. Mark 15.1. Luke 23.1. John 18.29.

⁴³³ John 18.28.

⁴³⁴ Matthew 27.19.

⁴³⁵ Matthew 27.24.

⁴³⁶ Luke 23.7.

the crowd a choice three times, before sentencing Christ as they required. Pilate does not wash his hands and Christ remains largely silent.

John's account of the trials is more detailed: Christ was brought first before Annas, who sent Christ, bound, to his son-in-law Caiaphas, in the hall of judgment; no account is given of proceedings before Caiaphas.⁴³⁷ Christ spoke with Pilate. Pilate repeated his reluctance to sentence Christ but acceded to Jewish protests.⁴³⁸ Pilate told the Jews to deal with Christ according to their law, but only he had authority to pass a death sentence.⁴³⁹ Pilate does not wash his hands in John's account. The interpretation of these accounts in art is interesting. Some details are always depicted, others rarely; some scenes, and even characters, are conflated.

3.2 Early history of the scene

It is also helpful to consider, albeit briefly, pre-thirteenth century artworks which feature scenes of the trials of Christ. This can help to identify iconographic trends related to the theme, to provide a framework from which to analyse changes in the artistic representations of c. 1250-1400. In turn, this should facilitate an analysis of what may have prompted or necessitated any such changes, and whether they could be attributable to the influence on the art of contemporary experiences or expectations of trial or the administration of justice.

That the trial scenes can be selected and depicted as part of a specific and intended programme is evident even in works of an early date.⁴⁴⁰ Depictions from the fourth century focus upon the role of Pilate in what was legally the most important trial. A relief on the sarcophagus of Junius Bassus, a prefect in Rome, shows Christ being led before Pilate, and Pilate washing his hands (359; Figure 59). Pilate appears as an imperial, classical-looking figure, seated before a crenelated building, on a Roman-style X-frame stool or seat, a *sella*

⁴³⁷ John 18.13.

⁴³⁸ John 19.12.

⁴³⁹ John 18.31.

⁴⁴⁰ For a comprehensive list of depictions of Pilate in early Christian and late antique art, see Hourihane 2009: 375-381.

curulis or magistrate's chair (Figure 59a).⁴⁴¹ His hand cups his chin in contemplation and his legs are crossed, possibly a traditional iconography for judges or secular authority figures (discussed below). Other sarcophagus reliefs c. 400-500 show Pilate washing his hands.⁴⁴² These works appear to adapt imperial iconography; the focus on Pilate in thought, or washing his hands, not on the trial, may indicate a desire of Roman patrons to exculpate a representative of the Roman Empire of responsibility for the death sentence on Christ.

The judicial figure in certain early scenes can be difficult to identify. The 'Brescia *Lipsanothek*', an ivory relief from a casket or reliquary (now in the Museo di Santa Giulia, Brescia), shows Christ being led towards two 'judicial' figures, shown seated with legs crossed on imperial or Roman looking seats (c. 360-70; Figure 60, bottom left).⁴⁴³ That there are two may suggest the High Priests, but they are bare-headed and clean-shaven. Pilate is shown separately, washing his hands, seated on the judgment seat on a dais.⁴⁴⁴ Similarly the 'judicial' figure cannot be firmly identified in a trial scene from the historiated cypress wood doors, at Santa Sabina, Rome (dated by inscription to 432; Figure 61). The panels have been repeatedly rearranged; the particular panel has suffered damage and extensive 'renovations', which may indicate changing perceptions of the various characters in the trials.⁴⁴⁵ He is clean-shaven, on an imperial or Roman-looking 'judgment seat', wearing domed hat and robes. He may be Caiaphas, but the High Priests are most frequently depicted with head-shawls and beards. Some scholars have identified it as Pilate, suggesting that the figure wears a *chlamys*, unsuitable for a High Priest.⁴⁴⁶ A separate panel of Pilate

⁴⁴¹ The *sella curulis* derived from a model used across the classical world. Disseminated across the Roman empire, it was associated with rank and authority: see Cybèle Trione Gontar. 2003. 'The Campeche Chair in the Metropolitan Museum of Art', *Metropolitan Museum Journal* 38: 183-212.

⁴⁴² See Schiller 1972: figure 3.

⁴⁴³ It may be impossible more precisely date this work than c. late fourth century, with a provenance of north Italy or south Gaul: Carolyn Joslin Watson. 1981. 'The Program of the Brescia Casket', *Gesta* 20/2: 283-298.

⁴⁴⁴ Various theories have been advanced to explain the iconography, including a theme of salvation or a link with Lent or Easter, specifically in the liturgy of Milan: see Watson 1981: 283.

⁴⁴⁵ See Dominique Collon, et al. "Door." *Grove Art Online. Oxford Art Online*. Oxford University Press. <<http://www.oxfordartonline.com/subscriber/article/grove/art/T023323> [Accessed 14 June 2013]. Jean Baptiste Seroux D'Agincourt, *Histoire de l'art par les monuments* (Paris, 1823; translated into English in 1847 as *History of art and its monuments, from its decline in the fourth century to its restoration in the sixteenth*) Vol, ii Plate XXII included a representation of the door panel before nineteenth-century renovations, but unfortunately the face of the judge remains a blank.

⁴⁴⁶ Richard Delbrueck, a proponent of the identification as Pilate, suggested that the lack of official robes indicated that the panel was probably designed by an artist from a 'politically abandoned, outlying territory' of the Roman Empire: Delbrueck. 1952. 'Notes on the Wooden Doors of Santa Sabina', *The Art Bulletin* 34/2: 139-145, at 140-3.

washing his hands may indicate that he featured in both panels.⁴⁴⁷ An early sixth century mosaic in Sant'Apollinare Nuovo, Ravenna, shows Christ facing three figures, seated under an awning, or portico with supporting columns (Figure 62). Departing from previous depictions of the *sella curulis*, the raised seat, with a step for their feet, may allude to a form of judgment seat, or contemporary iconography for judicial proceedings. Who these judicial figures are is unclear, as they lack identifying attributes.⁴⁴⁸

However, the trial before Pilate is clearly depicted in the sixth century (third quarter) Byzantine Rossano Gospels (*Codex Purpureus Rossanensis*), the earliest surviving illustrated New Testament.⁴⁴⁹ Two scenes feature Christ before Pilate, each highlighting his role as judge. In one, Pilate, the central figure, sits, flanked by bearers with imperial standards (Figure 63a). Pilate appears dignified and official, holding a scroll: his raised chair or judgment seat alludes to a divine and imperial throne, the table before him having almost the appearance of an altar. Christ stands, to the left. Two bearded figures (possibly the High Priests) put their case to Pilate. A subsequent scene of Pilate inviting the people to choose between Christ and Barabbas further highlights Pilate's role as judge (Figure 63b).⁴⁵⁰ Pilate's dignified appearance indicated the competence and legitimacy of his actions as a representative of the emperor, presiding over a trial held with all due formalities.⁴⁵¹

The role of Caiaphas was emphasised in the late sixth century Gospels of St. Augustine (Figure 64).⁴⁵² The Gospel book, probably made in Rome, is traditionally supposed to have been given by Pope Gregory the Great to St Augustine when he went to England, c. 596.⁴⁵³

⁴⁴⁷ Herod is unlikely; Christ's gesture may indicate speech, inconsistent with Gospel accounts of that trial. On such gestures, or Christ's silence or speech in the trial scenes, see Derbes 1996.

⁴⁴⁸ If the scene represented Christ before the Sanhedrin, the figure with hand raised may be Caiaphas, the other priests deferring to him: see Sandberg Vavalà 1929a: 428.

⁴⁴⁹ Originating possibly in Syria, Palestine, Constantinople, or Antioch, it may have arrived in Italy, then part of the Byzantine Empire, from the Eastern Mediterranean. See Hourihane 2009: 53 note 8.

⁴⁵⁰ The Rossano Gospels may have originally included a scene of Pilate washing his hands: see William Loerke. 1961. 'The Miniatures of the Trial in the Rossano Gospels', *The Art Bulletin* 43/3:171-195, 176.

⁴⁵¹ Loerke speculated that the scenes were taken from original wall paintings in St Sophia, Jerusalem, set up c.450 in the *Domus Pilati* (House of Pilate), to offer Christian pilgrims a 'virtual' experience of standing in the actual courtroom, which could account for the emphasis on the formal legal process and the prominence given to the role of Pilate, rather than Christ: Loerke 1961: 171. On this church, see Denys Pringle. 2009. *The Churches of the Crusader Kingdom of Jerusalem: A Corpus*. Vol 2, L-Z (Cambridge: Cambridge University Press).

⁴⁵² Cambridge, Corpus Christi College Library, Ms 286, Fol 129.

⁴⁵³ See M. A. Michael, "St Augustine Gospels", *Grove Art Online*. *Oxford Art Online*. Oxford University Press, <http://www.oxfordartonline.com/subscriber/article/grove/art/T075031> [accessed 14 June 2013].

Christ's arms are held by two men (Figure 64a). Caiaphas, identified by name, rends his robe. This work raises many interesting questions, as the scene featuring Caiaphas rending his robes appears to be its earliest surviving representation in Italian art. It might have derived from an earlier source, now lost, or have been a standard image, but it is difficult to draw conclusions from the few extant sixth-century Italian manuscripts.

These early examples may suggest that specific iconography was developing to depict the trials. However, it is difficult, perhaps unwise to draw too many conclusions, as survival of works featuring trial scenes from this period is patchy. From the twelfth century, some images appear more formal, more legal; significantly, as discussed in Chapter 1, it is from this period that interest in Roman law reawakens, and works of canon law such as Gratian's *Decretum* are produced. Notable images include bronze doors at the Basilica of San Zeno Maggiore, Verona, with panels depicting forty-eight Biblical scenes, one possibly a trial before Pilate (Figure 65). Pilate is seated, and wears a different head-covering to what may be assumed to be the Jewish High Priests. He points at Christ.⁴⁵⁴ A relief on a marble parapet between the central nave and the crypt in the Duomo, Modena (Figure 66), shows Christ standing with His (bound ?) hands held before Him, a soldier holding His arm (Figure 66a).⁴⁵⁵ Pilate sits, feet on a dais, with beard and cap. He points, his right arm crossing his body, to one outcome of his judgment, the Flagellation. The parapet also unusually features Judas receiving money from a figure identified as Caiaphas, who adopts a posture identical to that of Pilate (Figure 66b).⁴⁵⁶

From S. Paolo fuori le Mura, Rome, a late twelfth-early thirteenth century Romanesque Easter (Paschal) candlestick features scenes of the Passion and Resurrection of Christ (Figure 67). The iconography is unusual, possibly derived from Early Christian sarcophagus reliefs,

K. Weitzmann. 1977. *Late Antique and Early Christian Book Illumination* (New York: G. Braziller), 112–15; and Francis Wormald. 1954. 'The Miniatures in the Gospels of St Augustine', in *Collected Writings* (Cambridge: Cambridge University Press; reissued 2010), 20 and Plate v.

⁴⁵⁴ The gesture of pointing features in many contemporary (and earlier) images of judges, possibly suggesting this was an easily comprehended iconography.

⁴⁵⁵ The parapet reliefs were created by Anselmo di Campione, c. 1160-80. See Roberto Coroneo, "Campionesi", *Grove Art Online*. *Oxford Art Online*. Oxford University Press, <http://www.oxfordartonline.com/subscriber/article/grove/art/T01353>. [accessed 2 March, 2013]

⁴⁵⁶ The similar posture may have been intended to indicate Pilate as Jewish: Hourihane 2009: 174. On the reliefs, see Chiara Frugoni. 1999. *The Cathedral of Modena* 3 volumes (Modena: Franco Cosimo Panini).

and difficult to interpret.⁴⁵⁷ One scene features Christ before Caiaphas, wearing a head-shawl, seated and holding an open book on his lap to which he points; he does not bear his chest in the traditional gesture. Christ is held by soldier-like figures with pointed helmets and armour or mail. Other scenes may represent Christ before Pilate; and Pilate seated (washing his hands?), possibly holding a scroll, which here may allude to judicial attributes; the Rossano Gospels featured Pilate with a scroll, for example.

Drawing general conclusions on the significance for contemporary notions of earthly justice, and trial procedure from the surviving examples must be tentative, as they are few in number and many extant pre-c. 1250 Passion cycles do not feature the trials. There appear to be few common iconographical elements to the trial scenes. Some attempt realistic representations of trial procedure, but most do not. Many appear to draw upon iconography associated with authority figures, and judging. No artwork explicitly depicts all three trials or judges; some have one judge, or two, or a single conflation representing several judges. In some scenes it is difficult to identify the judicial figure without clear iconography, such as Pilate washing his hands, or Caiaphas rending his garments. The Trial before the High Priests seems to appear quite rarely. Scenes unequivocally featuring the trial before Herod are scarce. Depictions vary from detailed contemporary officials to figures with little attempt at characterisation. No particular representation appears especially popular in one area than in another, or at a specific date. However, the analysis above would suggest that most depicted Pilate. Rather than accurate representations of Gospel accounts, therefore, the most important message to be conveyed seems to have been the notion of Christ being judged and condemned. From the mid-Duecento, there are further extant examples from which to draw conclusions.

3.3 Duecento visual representations of the trials of Christ

An analysis of artworks c. 1250-1300 addressing the trials should determine whether the contemporary realities of law, earthly justice, and the trial experience featured in the art, or impacted upon how the trials were depicted. Any discussion of the implications of the

⁴⁵⁷ It is inscribed with names of sculptors Niccolò d'Angelo and Pietro Vassalietto (the latter attributed with the concept of the work). See P. Cornelius Claussen, "Vassalietto", *Grove Art Online. Oxford Art Online*. Oxford University Press. <http://www.oxfordartonline.com/subscriber/article/grove/art/T088258> [accessed 14 June 2013].

appearance or otherwise of certain of Christ's trials must acknowledge that many Duecento Passion cycles pass directly from Betrayal to Flagellation.⁴⁵⁸ However, arguably, this scarcity makes the where, when, who, and why of the works depicting the trial sequence of interest.

Significantly, from the mid-Duecento, in a change of iconography from most pre-Duecento trial scenes, some works feature the High Priests or Herod, as well as, or instead of Pilate. Of particular interest in this context is a series of four extant historiated crosses which share many areas of artistic and iconographic similarity, notably in the selection and depiction of scenes from the trial sequence.

The earliest of these works is a historiated cross in the Uffizi Gallery (no. 434), most probably painted in Florence c. 1240-5, showing the *Crucifixion with Eight Stories from the Passion* (Figure 68). The name of the artist is not known.⁴⁵⁹ It is a large work (250x200cm) making the smaller narrative scenes of the Passion visible from a relative distance; although it is unclear now whether the work was intended for contemplation by clergy or laity, nor for where the work was commissioned. Setting the scenes of the Passion in the context of the larger image of the crucified Christ provided a temporal context for the crucifixion. The Passion scenes begin at the top left with the trial, indicating its importance to the narrative in the following scenes (Figure 68a). The scene is flat, the figures arranged with isocephalism. Christ stands before two High Priests, wearing head-shawls. They are seated before a building. Setting the scene outside does not refer to Biblical accounts, so may refer to contemporary legal proceedings conducted in public and outdoors (discussed below). The High Priests sit side by side, with feet raised as if on a cushion, or step, a feature common to seats of rulers (seen for example, in papal and ecclesiastical thrones, as well as those of secular authority figures), and judges. The cushion on which they sit is familiar to many late medieval Italian images of seated figures, especially of the Madonna: for example, the *Madonna degli Occhi Grossi* (early thirteenth century; Figure 55), and the *Madonna del*

⁴⁵⁸ Sandberg-Vavalà's comprehensive catalogue of Italian works from the Duecento featuring the Passion cycle details no fewer than eighteen (from twenty-five) which do not feature trial scenes: Sandberg-Vavalà 1929a: 428-430.

⁴⁵⁹ The artist may also have been the author of a fragment of a diptych showing the Stigmata of Saint Francis, also in the Uffizi; other possible attributions for this fragment (and so by implication the cross itself) include Coppo di Marcovaldo. For a bibliography of the Uffizi Cross, see Offner, *Corpus* Volume 1: 373-391.

Bordone by Coppo di Marcovaldo (1261; Figure 54). The back of the seat is not visible, but it seems to be a solid piece, not a *sella curulis*.

Caiaphas is a dramatic red-robed figure, baring his chest. This gesture may be a traditional Jewish response to blasphemy.⁴⁶⁰ It appears in certain Biblical accounts.⁴⁶¹ However, in late medieval Italy, it could indicate anger: Giotto illustrated the Vice of *Ire*, Anger, in the dado to his Arena Chapel frescoes as a figure rending its robe (Figure 69). Another figure, presumably Annas, raises his hand, a gesture indicative of speech or a response to Christ's words; Christ's hand gesture seems to indicate this interaction. Christ is held by a soldier wearing a sword. Behind Christ a figure raises his arm. The Gospels record that a man struck Christ.⁴⁶² It is unclear whether this scene had been represented in Italian art prior to the Duecento.⁴⁶³ Departing from the iconography most common prior to the mid-Duecento, there is no trial before Pilate.⁴⁶⁴

Clearly the selection of the scenes was significant, but of what? This may have been part of a larger iconographical change towards more detailed depictions of scenes of the Passion. As noted above, Anne Derbes and Colum Hourihane both suggested that such changes might have been promoted by a desire in the Duecento to encourage people to contemplate events in the life of Christ as if they had been present.⁴⁶⁵ Texts and images were to be interpreted anagogically, which may have led to greater emphasis on all aspects of Christ's Passion, reflected in more detailed renditions of the trial sequence.⁴⁶⁶ Derbes traced the appearance of aspects of the trials of Christ in Byzantine painting in Passion sequences from c. 1240-90, many of which originate from city-states in Tuscany.⁴⁶⁷ This suggests at the very least that Italian painters had access to Byzantine images, and, further,

⁴⁶⁰ Derbes 1996: 74, note 9.

⁴⁶¹ Matthew 26:65 and Mark 14:63. Neither Luke nor John refers to it.

⁴⁶² Matthew 26:67. Mark 14:65. Luke 22:63. John 18:22.

⁴⁶³ In the late sixth century Gospels of S. Augustine, a scene to right of that featuring Christ before Caiaphas may show the figure furthest left with arm raised.

⁴⁶⁴ A figure possibly identifiable as Pilate appears in a later scene of the *Flagellation*: he adopts a judicial pose, seated on a judgment seat (with the same pink footrest as Annas) and pointing (Figure 68b).

⁴⁶⁵ This is discussed in the Introduction.

⁴⁶⁶ Although relating to the fifteenth century, Michael Baxandall's explanation of the interaction between a painter's 'external visualization' and the public's 'interior visualization' is helpfully clear: see, 1988. *Paintings and Experience in Fifteenth-century Italy* (Oxford: Oxford University Press), 46-8.

⁴⁶⁷ Derbes 1996: 72-93.

that they made sophisticated and selective use of Byzantine imagery (and in some cases northern European or Gothic elements) in formulating their own. Further, she argued that the main impetus for the changes to the several Tuscan Passion narratives that she analysed lay with religious groups, especially the Franciscan Order. Franciscan ideology focused on the physical suffering of Christ, and the Order was an important patron in the later Duecento, often with an emphasis on art which provoked an emotional response or an empathy with His suffering during the Passion. Historiated crosses were especially popular with the Franciscans, often commissioned for female religious communities.⁴⁶⁸ The Uffizi Cross demonstrates the veneration of the *Christus Patiens*, an emphasis on Christ's humanity and suffering evident also in contemporary texts by Franciscan authors. The inclusion in the trial scene of a man with arm raised to hit Christ may allude to the Franciscan interest in Christ's physical suffering.

However, the Franciscan provenance of this work is not secure.⁴⁶⁹ Moreover, the choice to depict the trials does not accord with the Franciscan preference for commissioning art which emphasised the saint's role as the *Alter Christus*.⁴⁷⁰ Scenes from his life were paralleled with those from Christ's Passion, but Saint Francis faced no judicial procedure. The frescoes from Assisi do not feature the trial sequence.⁴⁷¹ Nor does a panel (c. 1290s), despite an "assertively Franciscan focus" in its twelve scenes of the Passion (Figure 71).⁴⁷² The role of the Franciscan Order as art patrons may be a better explanation for the prevalence in Duecento art of Passion cycles which pass from Betrayal directly to the Flagellation, emphasising Christ's emotional and physical suffering. Derbes's argument in this respect seems relatively unconvincing in relation to the changed iconography of the trial scenes. Indeed, Derbes concedes that "the trial of Christ has few apparent connections with

⁴⁶⁸ Derbes 1996: 170, note 16. Scenes of the Passion may have appealed to a female order as patrons, by extension of an argument that affective Passion meditation developed specifically in the context of women's spiritual practices (see Sarah McNamer. 2010. *Affective Meditation and the Invention of Medieval Compassion, The Middle Ages*. (Philadelphia: University of Pennsylvania Press)).

⁴⁶⁹ See Derbes 1996: 170-1 for her argument on this point.

⁴⁷⁰ On the notion of *Alter Christus*, see Henk van Os. 1974. 'St. Francis of Assisi as a Second Christ in Early Italian Painting', *Simolius* 7:115-32.

⁴⁷¹ The Upper Church at Assisi may have featured a *Trial before Pilate*, but this cannot be confirmed from what remains; it may have been a Flagellation scene (see White 1993: 200).

⁴⁷² Magdalen Master and an unknown Florentine artist, *Madonna and Child with two angels, twelve scenes of the Passion of Christ*, San Diego, California, Timken Museum of Art, formerly Convento di Santa Maria a Candelì, Florence. The quotation is from Derbes, 1996: 166.

Francis ... beyond the fact that both this scene and some of Bonaventure's writings participate in the discourse of anti-Semitism".⁴⁷³ This led her to explore contemporary anti-Semitism – and the appropriation by Tuscan artists of Byzantine (and other) artistic models to express such feelings - as a context for the artistic change c. 1240 in trial judge from Pilate to the Sanhedrin.⁴⁷⁴

However, these High Priests are not depicted in a notably anti-Semitic fashion. Apart from the head-shawl, their clothing does not appear distinctively Jewish.⁴⁷⁵ The depiction appears relatively neutral. Whilst many negative and anti-Semitic images of the trials are to be found in northern European art, there are also examples from northern Italy. This includes, for example, another cross in the Uffizi Gallery (no.432), usually dated to the late twelfth century, where a *Flagellation* scene features characters with 'Jewish' physical attributes and a pointed hat (Figure 72).⁴⁷⁶ Although its origin is unknown, it is thought to have been Tuscan, possibly by an anonymous master from around Pisa or Florence, possibly with some awareness of the Byzantine mosaics in the Cappella Palatina, Palermo.⁴⁷⁷ The absence of such features in the Uffizi Cross no. 434 to some extent limits its effectiveness as a vehicle to express anti-Semitic attitudes.

Whilst agreeing with Derbes's conclusion that "Tuscan painters and patrons saw in Byzantine images a potent visualization of local concerns", and selected elements from available precedents to form their own iconography, here it is suggested that these scenes may have been intended to reflect rather different contemporary interests.⁴⁷⁸ My research suggests that the unusual choice of the High Priests as judges, and the prominence they are

⁴⁷³ Derbes 1996: 162.

⁴⁷⁴ On the trial sequence in the Duecento and contemporary anti-semitism, see also Hourihane 2009: 227-295.

⁴⁷⁵ Canon 68 of the Fourth Lateran Council required that Jews (and Saracens) be distinguishable from Christians "through the character of their dress". What this meant in practice is unclear, as no detail was given of what was required. On the use of clothing to identify Jews, see Hourihane 2009: 190-197. For the view that "the evidence that medieval Jews wore distinctive caps after Lateran IV, or that the Christian establishment took pains to impose them, is slim", see Jacqueline E. Jung. 2007. 'The Passion, the Jews, and the Crisis of the Individual', in *Beyond the Yellow Badge New Approaches to Anti-Judaism and Antisemitism in Medieval and Early Modern Visual Culture*, ed. by Mitchell Merback (Leiden; Boston: Brill), 145-178, 151.

⁴⁷⁶ Florentine painter, *Crucifixion with Stories of the Passion and the Redemption* (last quarter, twelfth century), Uffizi Gallery, Florence.

⁴⁷⁷ See Offner, *Corpus I*: 245-259; and Gloria Fossi. 2001. *Uffizi Gallery. Art, History, Collections* (Florence: Giunti), 44.

⁴⁷⁸ Derbes 1996:93.

given in scenes of the trials of Christ commissioned and produced from the mid-Duecento, can be connected to changes in the contemporary secular justice system dateable to the period in which the historiated crosses were commissioned and produced, which increased interest in those exercising judicial authority.

Derived from the *inquisitio* prosecution procedure introduced into the ecclesiastical courts after IV Lateran in 1215, and also used by the papal inquisition, secular legal systems adopted a new method of government-initiated prosecution by inquisition.⁴⁷⁹ Historians have concluded that in many communes the use of the *inquisitio* procedure increased markedly in the period c. 1230s-1280s.⁴⁸⁰ The contemporary jurist Alberto Gandino regarded it as widely established in secular legal systems by the end of the Duecento.⁴⁸¹ Under the new inquisitorial prosecution procedures, civic authorities appointed those in charge of the prosecution system, and gave the judge considerable autonomy to control proceedings. He would determine whether a crime had been committed, whether it was punishable, and then investigate it; hearing evidence, calling and examining witnesses; reaching a verdict and deciding the sentence. Against this background, substantially contemporaneous with the historiated crosses, a focus on the judge in a trial scene would appear to relate directly to contemporary realities. In addition, and similarly likely to make contemporary society aware of the enhanced powers of the judge, and therefore the possibilities for injustice arising, from the mid-thirteenth century, judges could use torture as part of their investigation.⁴⁸²

As well as giving the judge autonomy to control proceedings, conduct investigation into the charges (even by torture) and pronounce sentence, medieval jurisprudence also permitted judicial discretion in punishment after the verdict was reached, again in part attributable to the influence of Roman law principles. Legal historian Laurent Mayali commented that,

⁴⁷⁹ This is addressed in detail in Chapter 1.

⁴⁸⁰ This phenomenon features in much scholarship: see, for example: Blanshei 1982; Blanshei 1983; Stern 1994; Jones 1997: 378; Hyams 2000; Dean 2001; Dean 2007. For a more specific analysis, see J.L. Peterson. 2008. 'The Politics of Sanctity in Thirteenth-Century Ferrara', *Traditio* 63: 307-326.

⁴⁸¹ See Sbriccoli 1997: 49.

⁴⁸² On medieval judicial torture, see Chapter 2.

“judicial discretion knew few limits” at this time.⁴⁸³ Changing the secular legal process by adopting the *inquisitio* prosecution procedure, enhancing the role of the judge, and giving him wide discretion in awarding the punishment which best served the public interest, made the character of those exercising these powers of increased significance. Concern at judicial probity is evident in diverse contemporary sources. For example, Guittone of Arezzo, a poet and Guelf sympathiser, blamed his voluntary exile not only on political differences with the Ghibelline authorities governing Arezzo, but also on judicial involvement:

People loathsome and low | An evil base regime | Judges plunged in perfidy |
a war steely and strange | make me hate my land | alas, and love another's.⁴⁸⁴

Such concerns prompted discourse about the qualities required of a secular judge. Several treatises sought to offer advice by whom and how judicial power should be exercised (whether by judge or podestà). For example, *The Pastoral Eye (Oculus pastoralis)* (c. 1222), a treatise in Latin, addressed whether a podestà or others in authority should interpret justice strictly, or with clemency or severity; the treatise ended with a figure of Justice railing against the vices seen as habitual in podestà. John of Viterbo's *The Government of Cities (De regimine civitatum)* (c. 1240s) also addressed the issue of the appropriate character and behaviour of podestà and city magistrates; John himself had been a judge for a podestà of Florence.⁴⁸⁵ All such manuals or handbooks may have derived from a prototype, now lost.⁴⁸⁶ In one treatise c. 1264, Brunetto Latini specified the qualities needed in a secular judge. As well as adhering to the laws of the commune, remaining impartial and ensuring his courts were just, he needed to be not only “wise, discreet and experienced”, but also one who

fears God, speaks well, is not dishonourable, is chaste with women, not proud, not wrathful, nor fearful, speaks two languages, and who is neither too harsh nor lenient, but is strong and upright, just and of good faith and religious towards God and the Holy Church.⁴⁸⁷

⁴⁸³ On judicial discretion, see Laurent Mayali, ‘The concept of discretionary punishment in medieval jurisprudence’, in Castillo Lara 1992: 299-315. The quotation is from page 300.

⁴⁸⁴ *Gente noiosa e villana*, ll.1-8. See Cerroni 2004, and Martines 1979: 112.

⁴⁸⁵ Both *The Pastoral Eye* and *The Government of Cities* are discussed in Quentin Skinner. 1978. *The Foundation of Political Thought. Volume 1: The Renaissance* (Cambridge: Cambridge University Press), 33-34.

⁴⁸⁶ Martines 1979: 117.

⁴⁸⁷ Brunetto Latini. 1993. *The Book of Treasure (Li Livre dou Tresor)*, Book III, Chapter 79. In 2000. *Readings in Medieval Political Theory: 1100-1400*, ed. by Cary J. Nederman and Kate Langdon Forhan (Routledge; repr. in: Indianapolis; Cambridge: Hackett Publishing Co.), 78.

As if recognising such paragons may be rare, Latini advised that it would be sufficient if the judge chosen were “at least loyal and stable, incorruptible, trustworthy and not too naïve, nor enmeshed in evil vices”.

The impact of the Inquisition and these significant changes to the secular justice system may suggest that matters of justice were particularly relevant around the mid-Duecento, to patron, artist, or wider society, increasing interest in images of judicial procedures. This may have been particularly the case in Florence. Research into the emergence of communal courts as a venue for settling disputes, has suggested that such judicial institutions started to develop considerably later in Florence than in other cities such as Lucca or Pisa.⁴⁸⁸ Florence had only two known tribunals in 1200, increasing to possibly seven by 1230; real development of the criminal law system and the inquisition procedure in Florence took place largely after c. 1230.

Therefore in Cross 434 we see the appearance of an innovative treatment of a trial scene in a Florentine work at a time of significant development in matters of law and justice in the city. Moreover, the iconography reinforces the argument that this should be read as a scene of judge and accused, and reflects contemporary interest in those exercising secular judicial authority. Caiaphas is shown in a red robe, an interesting feature, as red robes were associated with figures of legal or secular authority in the Duecento. From the early Duecento, guidance on suitable dress by institutions such as the University of Paris, had led to academics and certain other professions becoming recognisable by their clothing.⁴⁸⁹ At that date, there was no specific dress for judges, but they tended to wear clothing similar to that of doctors of law or medicine, and other figures of secular authority.⁴⁹⁰ This was most often ‘scarlet’, a specific and expensive woollen cloth.⁴⁹¹ Salimbene’s chronicle refers to a noble Parmese family that apparently produced a number of judges: Salimbene comments, “I have myself seen most of the members of this family. Some of them, especially the

⁴⁸⁸ Wickham 2003: 169-171.

⁴⁸⁹ Margaret Scott. 2007. *Medieval dress and fashion* (London: The British Library), 84.

⁴⁹⁰ Research indicates little change from Duecento to mid-Trecento in the clothing worn by lawyers, judges, and other authority figures: the standard reference is W.N Hargreaves-Mawdsley. 1963. *A History of Legal Dress in Europe until the end of the Eighteenth Century* (Oxford: Clarendon Press), 4-6.

⁴⁹¹ Scott 2007: 85. For further detail, see John H. Munro. 1983. ‘The Medieval Scarlet and the Economics of Sartorial Splendour’, in *Cloth and Clothing in medieval Europe: Essays in memory of Professor E. M. Carus-Wilson*, ed. by N.B Harte and Kenneth G. Ponting (London: Heinemann), 13-70.

judges, dressed in scarlet”.⁴⁹² Dress could be used in art to convey meaning: depicting Caiaphas in the red robes associated with figures of contemporary legal and secular authority specifically alluded to judges and their important and newly enhanced role.

The specific representation of the judge in trial scenes contains further elements alluding to contemporary realities of the administration of justice. Under the previous system of *accusatio*, the role of the judge was largely to lead the parties to agreement. Proceedings could take place almost anywhere, most likely a public location: “a simple marble seat, a chest or a wooden bench located in porticos, loggias, gardens, church interiors, convents and private houses was sufficient for a juridical act to take place”.⁴⁹³ This could help to account for the importance of the attributes associated with judges and judging. Iconography associated with administration of justice includes particular dress, such as the scarlet robes; also, a judicial sceptre (*baculus judicarius*); gestures like pointing; and, possibly, adopting a seated position with legs crossed.⁴⁹⁴ A distinctive form of judgment seat, often with step, which raised the judge above the public and those involved in the trial was also typical. Such actions, or specific and easily recognisable attributes, were necessary signifiers of when the court was in session, calling attention to the point at which justice was to be dispensed in public. Looking again at the trial scene in the Uffizi Cross no. 434, we see that several of these features are present: the trial takes place outside; a judge wears scarlet robes; there is a judgment seat, with step. The iconography clearly draws attention to the notion of the judge as a figure of contemporary secular judicial authority.

Similar changes in the iconography of the Trial scenes in the Uffizi Cross are also evident in a work attributed to Coppo di Marcovaldo for the Franciscan church of Santa Chiara, San

⁴⁹² Salimbene, *Cronaca*, 80; see *The Chronicle of Salimbene de Adam*. Translated by Joseph L. Baird, Giuseppe Baglivi, and John Robert Kane (Binghamton: Centre for Medieval and Early Renaissance Studies, University of Binghamton, 1986): 30.

⁴⁹³ Claudia Bolgia. 2001. ‘The So-Called Tribunal of Arnolfo di Cambio at S. Maria in Aracoeli, Rome’, *The Burlington Magazine* 143/1185 (Dec.): 753-755, at 755.

⁴⁹⁴ A seated, legs-crossed position appears in imagery of authority figures generally. The iconography when passing judgment appears comparatively infrequently in Italian Duecento and Trecento works. For further discussion, see Judith K Golden. 2005. ‘The Iconography of Authority in the Depiction of Seated, Cross-legged Figures’, in *Between the picture and the word: studies in celebration of John Plummer*, ed. by Colum Hourihane (University Park, Penn.: Pennsylvania State University Press), 81-99.

Gimignano (c. 1261; Figure 73).⁴⁹⁵ Notably, both conflate the trials before the High Priests into one dramatic scene (here, top right), while the trial before Pilate is not represented. Again, the Priests are bearded and wearing head shawls, whilst the other figures are bare-headed (Figure 73a). The raised feet recall judgment seats; the ornate cushion on which they sit bears similarities to that in Coppo's *Madonna del Bordone* (1261; Figure 54). The encounter between Christ and the High Priests is intense, direct. Christ raises a hand, possibly indicating speech. The representation of the judges alludes to contemporary iconography: Caiaphas again wears the red robes of authority; Annas points at Christ. Pointing was a gesture often associated with judgment. It appears in an image of Solomon, for example (1250; Figure 74).⁴⁹⁶ Many trial scenes, both before and after the Duecento include judges pointing.⁴⁹⁷ It also featured in scenes of martyrdom.⁴⁹⁸ The crowded figures increase the dramatic intensity of the scene, but also the sense of disordered proceedings, indicative of injustice in the trial. Despite the focus of the cross on scenes of the Passion, the most prominent feature is not the presence of Christ. Significantly, the judges are raised high above the other figures on a dais, enhancing their importance to the scene; they seem to glower down at Christ. In this scene of an accused man facing trial, the attention is drawn to the figures dominating the legal procedure: the judges.

This piece shares these iconographic features with two further works, from communes in northern Italy. Neither work had a Franciscan patron. A cross commissioned for the Cathedral of Pistoia is sometimes attributed to Coppo di Marcovaldo, or to his son Salerno (1274; Figure 75).⁴⁹⁹ The trial before Pilate is not represented. The trials before the bearded High Priests in head shawls are again conflated into one scene to the top right, but the style

⁴⁹⁵ On dating, see Derbes 1996: 73. For a bibliography of this work, see Offner *Corpus* I: 524-536. Marked similarities between Coppo's Cross and the Uffizi Cross may be attributable to Coppo being the author of the Uffizi Cross, or the Franciscan patronage of this work, and may support Derbes's argument that the Uffizi Cross may share the Clarissan provenance of the San Gimignano cross: see Derbes 1996: 170-2.

⁴⁹⁶ Lucca, Bibl. Capitolare, cod. I, fol. 3v, *King Solomon*. Marco di Berlinghiero, 1250.

⁴⁹⁷ Pre-Duecento examples include those on the doors of San Zeno, Verona (Figure 65), and the pontile relief in Modena Cathedral (Figure 66a), referred to above. Further Duecento and Trecento examples are discussed below.

⁴⁹⁸ Examples include, the Emperor in Margarito of Arezzo's *Madonna and Child* (c. 1263; Figure 29f); Pacino da Bonaguida's *The Martyrdom of Saint Christopher* (c. 1340, Cambridge, Queen's College (Ms.77b)); and *A Martyrdom*, c. 1350, attributed to the Master of the San Lucchese Altarpiece, now in the National Gallery of Scotland (NG 1539 B).

⁴⁹⁹ It may have been a collaboration between father and son. For a bibliography of this work, see Offner *Corpus* I: 596-610.

is flatter and less dramatic (Figure 75a). The spacing – particularly between Christ and Caiaphas - removes some of the intensity of the scene, and the rage with which Caiaphas rends his robe in the San Gimignano cross is lost in the milder scene from Pistoia, and the menacing raised arm of the figure behind Christ is missing. Despite this lack of intensity in the confrontation between Christ and His judges, here the judges on their judgment seat are raised even higher above the other figures than in the San Gimignano image, further highlighting their dominance over the other characters, their judicial function, and their centrality to the trial procedure. Caiaphas wears a red robe, and one judge (Annas?) points. Again, attention is directed to those exercising judicial authority.

A further work, a cross from Santa Marta, Pisa (c. 1280-90), also depicts a trial scene in which Pilate does not appear (Figure 76). The provenance of the work is not known.⁵⁰⁰ The artist is unknown, attributed to a 'Master of the Crucifix of Santa Marta'.⁵⁰¹ Again the trial scene appears to the top right (Figure 76a). Similarities in the iconography are striking, despite the cruder rendering of the scene. Several features, such as the cushion and footrest, or the buildings in the rear, are less defined. The scene in the Santa Marta cross is even less dramatic than the Pistoia version; faces appear calm, even placid. There are only five people in the scene, losing the jostling intensity of some of the other Duecento scenes. Of these figures, the most detailed depiction is of the High Priests. Annas (with a long, elaborate beard) raises both hands, and, in the iconography associated with judges and judging, points at the accused; Caiaphas parts his red robe.

Taken together, these works appear to emphasise similar and unusual elements of the trial sequence: the omission of trials before Pilate; the conflation of trials before two High Priests into one scene; gestures indicating emotion and interaction between the participants in the trial process. However, in each case, the distinctive feature in these scenes is the unusual emphasis on the dominance of the judges over the other figures in the trial, including Christ. These artworks featuring trial scenes were commissioned and created when jurisdictional

⁵⁰⁰ Discussed at Derbes 1996: 73, note 6.

⁵⁰¹ It may derive from the Pistoia cross, possibly combined with elements from another source now lost. For a suggestion that the artist may have drawn upon a Cimabuesque source, see Derbes 1996: 73, note 6; and 76, note 10. The possible attribution of this work is considered in <http://www.santamariamadredellachiesa.it/public/file/file/11%20Crocifisso%20nella%20CHiesa%20di%20Santa%20Marta%20a%20Pisa.pdf>. [accessed 14 January, 2013]

disputes between Church and secular authorities remained unsettled, the Inquisition brought issues of justice, judgment and trials to the fore, and secular justice systems were adopting and developing new prosecution processes based on inquisition, with an enhanced role for the judge.

It may be possible to take this point – a connection between the choice of judge in these scenes and the realities of justice practice in the mid-late Duecento – further. Analysis above of scenes of the trials of Christ commissioned and produced in the region from the mid-Duecento indicates that from c. 1240, in a departure from earlier trial scenes, the focus is on those conducted not by Pilate, a figure of imperial and secular authority, but by those where the judges were non-Christian, the High Priests. One of the emotions most strongly evoked by contemplation of the trials of Christ is a sense of injustice, difficult to portray in art. Trial scenes featuring Pilate often convey that he attempted to apply formal Roman judicial procedures. The trial before the High Priests offers much more dramatic potential: a judge reacting with demonstrable anger, as Caiaphas does when rending his red robes, has clearly abandoned impartiality, in favour of injustice. In these trial scenes – and the departure from a previous emphasis on the role of Pilate as judge - we see visual evidence of an increased focus on the role and particularly the nature of those exercising judicial authority. These judges – acting without guidance or support – have failed to act as just judges. Significantly, these images of the trials of Christ feature partial judges and flawed trial procedure leading to manifest injustice.

It is possible to re-examine on this basis other works from c. 1240-c. 1300. For example, a tabernacle c. 1285-90, often attributed to the San Gaggio Master, includes scenes from the Passion cycle (Figure 77).⁵⁰² The main factor in the trial scenes in the crosses – the focus on the role of the High Priests at judges as Christ's trial – is missing in the scenes from the tabernacle. However, an increased interest in matters of law, trial and justice is expressed here too, evident in the more detailed treatment of the trial sequence in this work. There

⁵⁰² Oxford tabernacle shutter, with scene of Christ Before Herod (Oxford, Christ Church Museum, cat. no. 69), dated c. 1285-90. See James Byam Shaw. 1967. *Paintings by Old Masters at Christ Church Oxford. Volume 2* (Oxford: Christ Church), 29. Now possibly attributed to Grifo di Tancredi (active 1271-1303 in Florence): see Angelo Tartuferi. 2003. 'Grifo di Tancredi', *Dizionario Biografico degli Italiani - Volume 59* [http://www.treccani.it/enciclopedia/grifo-di-tancredi_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/grifo-di-tancredi_(Dizionario-Biografico)/) [accessed 14.1.2013]. Derbes' analysis of the tabernacle is at Derbes 1996: 75.

are two scenes of judicial procedure, featuring several figures of judicial authority. The focus is on the role of Pilate, and, unusually, Herod.

The first trial scene shows Christ before two men seated behind a judgment table, complete with paper, quill and inkwell; emphasising the procedural aspects of the trials (Figure 77a).⁵⁰³ Despite these formalities, the trial is located outdoors. The judicial figure wears a red cloak. This figure is difficult to identify; he is bearded, unusual for Romans at this time, and wearing a crown, which Roman procurators were not entitled to wear.⁵⁰⁴ That a servant holds a jug may indicate Pilate, preparing to wash his hands; however, its appearance as the first trial scene is incongruous.⁵⁰⁵ Behind this judge sits a High Priest, with head-shawl and beard.⁵⁰⁶ Christ stands to the right, hands bound before Him. This unusual feature may derive from late thirteenth-century Byzantine depictions of the trials, appropriated by Italian artists to allude to the Franciscan focus on Christ's physical suffering, or more explicitly to the importance of rope to the Order: Francis' rejection of possessions led him to adopt a rope to tie his robes.⁵⁰⁷ It may refer to Biblical accounts.⁵⁰⁸ However, as we shall see, it – as with other aspects of these trial scenes - may allude to contemporary practice. The scene of a second trial shows another crowned judicial figure, behind which sits a different High Priest with head-shawl and beard (Figure 77b). This judge, again in a red robe, may be identifiable as Herod, from the oriental-looking architecture. The appearance of Herod in a trial scene is highly unusual in trial scenes from Duecento northern Italy.⁵⁰⁹ Herod points at Christ, a further instance of this iconography associated with judges and authority figures. This sequence of trials may be intended to focus blame for condemning Christ away

⁵⁰³ The desk recalls the Rossano Gospels; see above.

⁵⁰⁴ This may indicate that there was no settled iconographic tradition for depicting the trial scenes. Schiller noted that Pilate would have had no right to wear a crown (Schiller 1972: 58).

⁵⁰⁵ The washing of Pilate's hands appears only in Matthew (27.24).

⁵⁰⁶ Interestingly, such a pairing – of Pilate on a judgment seat with a figure in a head-shawl behind and to his right – appears in a scene of the *Mocking of Christ* in another work of c. 1290-1300, now also attributed to Grifo di Tancredi, a *Triptych with wings including scenes of the Passion*, in the National Gallery of Scotland (NGL 022. 79A). Pilate wears a red cloak with miniver cape, and points.

⁵⁰⁷ See Derbes 1996: 81; 92-3. Derbes's argument in this regard is more convincing in relation to the appearance of a rope around Christ's neck in scenes of the *Way to Calvary* (see Derbes 1996: 116; 124).

⁵⁰⁸ In Matthew 27.2 and Mark 15.1, Christ was bound after the trial before the Priests, before being brought before Pilate. In John 18.12 Christ was bound when brought before the High Priests, and at 18:24 He was sent bound by Annas to Caiaphas. Luke was silent on the subject.

⁵⁰⁹ Sandberg-Vavalà's catalogue details no other trial scenes featuring Herod as judge in Duecento Passion cycles from northern Italy: Sandberg-Vavalà 1929a: 428-430. The trial before Herod appears only in Luke (23.7).

from Pilate; the crowns to associate these unjust trials with monarchs or tyrannical authority figures.

The changing iconography of these several trial scenes emphasised the importance of just legal systems, due process and, in particular, fair and impartial judges. The choice to feature the trial before High Priests may be attributable to the desire to evoke feelings of the injustice of the Passion, an impartial judge being, artistically, one of the best ways of achieving this. Even though most Duecento works featuring the trials were commissioned by religious institutions, they appear to reflect the increased interest in contemporary society with matters relating to justice. Moreover, many allude to contemporary practice. The trials of Christ are shown taking place in a recognisably urban environment, directly relevant to the communes of northern Italy. These scenes feature trials held outside, mimetic of actual practice in many towns and cities. In judicial proceedings in public, formal accoutrements or gestures would have assumed enhanced procedural importance in identifying judicial authority. The judge's red robe – present in all of the Duecento scenes above - may have been intended to allude to contemporary clothing worn by figures of secular and judicial authority. In most of these scenes (excluding Cross 434) Annas points; in the Oxford tabernacle, Herod does so. The type of judgment seat in many of these scenes appears similar to Papal or ecclesiastical thrones with footrests, or similar thrones used by secular rulers or authority figures.⁵¹⁰ Raising the judge above the accused was also significant; for example, the statue of Charles of Anjou, which is thought to have had a judicial function, was originally set upon a high podium, indicated by its disproportioned body (Figure 38).⁵¹¹

Similarly, the inclusion of ropes may allude to contemporary trial procedure. This is difficult to establish, as it is a detail unlikely to appear in court records. The jurist Alberto Gandino's *De maleficiis* (c. 1299), stated that, "a person to be tortured is led to the place of the torture, *his hands are bound behind him* [my italics], and the judge would say to him unless he confesses immediately he would torture him".⁵¹² However, such references are not conclusive of trial procedure, of which descriptions are rare. Many artworks feature

⁵¹⁰ See Chapter 2 on thrones and seated authority figures.

⁵¹¹ On the judicial function of the statue, see Gardner 1998. On its original position, see Claudia Bolgia. 2006. 'Arnolfo di Cambio. Florence', *The Burlington Magazine* 148/1237 (Apr.): 296-7.

⁵¹² Alberto Gandino, *Tractatus De maleficiis* 167, lines 24-30.

condemned men with arms bound behind their backs: for example, *St Nicholas saving the condemned men* (Figure 29h); a panel of the Venetian school (Figure 78)⁵¹³; the *Comune in Signoria* from the monument to Guido Tarlati in Arezzo Cathedral (c. 1327-1340; Figure 79); the captives led before Justice in Ambrogio Lorenzetti's *Good Government* fresco are similarly depicted (Figure 28). Possibly indicative of standard practice, these are scenes more of punishment than trial. However, some Passion scenes show Christ's arms apparently bound behind Him; for example, a *Pilate washing his hands*, thought to be of the Florentine school, c. 1320 (Figure 80).⁵¹⁴

The focus on the role and character of the judge, the most unusual factor in these mid-late Duecento images of the Trials of Christ, served to emphasise the qualities to be desired and distrusted in those exercising judicial functions. This is evident in the advice manuals on the qualities required of those exercising secular judicial authority, referred to above. The enhanced role of the judge arising from the transition to inquisitorial legal processes would have ensured that the person responsible for administering justice was of particular interest at this time. Their power to determine appropriate punishment was enhanced by the wide discretion afforded judges under Roman law in that regard. The scenes of the trial before the High Priests appear from the mid-Duecento onwards – substantially contemporaneous with the adoption of the *inquisitio* process into the secular justice system, and its markedly increased use in the period c1230s-1280s.⁵¹⁵ The change in iconography testifies both to an increased interest in matters of legal procedure and to concern at the dangers of having the wrong people exercising those enhanced judicial powers: a fear of partial, angry judges, presiding over sometimes unfair proceedings.

The selection of the figures exercising judicial power in the scenes of the trials of Christ may also have had social and political significance. Duecento images giving an active role to the High Priests occur mainly in Tuscan areas, where secular authorities ran the republican city-

⁵¹³ Venetian School, *Crucifixion surrounded by twenty scenes from the Infancy and Passion of Christ and the lives of the Saints*. For a bibliography of this work, see Peter Seiler, 'Duccio's *Maestà*: the Function of the Scenes from the Life of Christ on the Reverse of the Altarpiece: A New Hypothesis', in Schmidt 2002: 251-269, esp. 258, note 54.

⁵¹⁴ I thank Iva Lisikewycz, Manager of Curatorial Affairs at the Detroit Institute of Arts for this image.

⁵¹⁵ For scholarship on this point, see, for example: Blanshei 1982; Blanshei 1983; Stern 1994; Jones 1997: 378; Hyams 2000; Dean 2001; Dean 2007; and Peterson 2008.

states. In many such towns and cities, judges had assumed greater social and political importance, playing a role in communal authorities from the Duecento, although some cities (including Florence, Siena and Bologna) specifically prohibited judges from holding communal office.⁵¹⁶ Many judges also acted as podestà, the chief magistrate who exercised the powers of law enforcement within the territory of towns or cities in northern Italy. This, and the potentially destabilising impact of jurisdictional conflicts, could have made associating secular and republican judges with injustice unpopular. Featuring trial scenes involving non-Christian judges may have been a means of dissociating a secular judge, Pilate, from presiding over what could be regarded as the greatest miscarriage of justice (Pilate may even have been associated with the Roman law which by the mid-Duecento provided the basis of much of the contemporary legal system in northern Italy). The crowns evident in the Oxford tabernacle may have been intended to allude to specific types of secular rulers, the despot or tyrant especially feared in the city-states. Against a background of on-going jurisdictional conflicts between papal, ecclesiastical and secular authorities, many of the works considered from the mid-Duecento were commissioned by religious authorities and may contain a message of the fallibility of earthly justice.⁵¹⁷ Such works may represent an attempt, through art, to argue that non-Christian and authoritarian secular rulers could not be relied on to conduct fair trials.

3.4 Trecento visual representations of the trials of Christ

These themes – a focus on the role and character of the judge, in ensuring fair trials and acknowledging the importance of justice in ensuring a peaceful society - can also be discerned in images of the trials of Christ commissioned and produced in the Trecento. It is not possible within the confines of this thesis to analyse in detail all such images.⁵¹⁸ The intention is to focus upon certain examples from which to draw more general conclusions, and to propose an alternative way of looking at these images: that the enhanced artistic treatment of the trials of Christ was prompted by contemporary socio-political factors, including political and social instability, and changes in the administration of justice, which together made issues relating to trial and justice of increased and increasing importance. In

⁵¹⁶ On the interaction of jurists and communal politics, see Menzinger 2011: 40-54.

⁵¹⁷ On jurisdictional conflicts between papal, ecclesiastical and secular authorities, see Chapter 1.

⁵¹⁸ Sandberg-Vavalà's comprehensive catalogue of Trecento works details 26 works featuring a trial before Caiaphas, Annas, Herod or Pilate: Sandberg-Vavalà 1929a: 430-437.

particular, the focus upon the role of the judge, evident in works from c. 1240, is developed further by the choice of artists and their patrons to commission and produce more detailed images of the trials. It seems that they sought to use images featuring the religious iconography of the trials of Christ to make or emphasise points relevant to the administration of justice in secular courts.

c. 1300-1350

Giovanni Pisano's pulpit at Pisa Cathedral (1302-11), can be interpreted as a meditation on the nature of justice, both divine and human, and of the need for justice to prevail. The pulpit included twenty-two episodes from the Life and Passion of Christ. In addition to a scene of Divine Justice in the *Last Judgment*, it deals with earthly justice in a scene of Christ before the Sanhedrin (Figure 81). Although the Trial before Pilate does not appear, unusual emphasis is placed on the trial by depicting three High Priests. Indeed, it is possible that one of the priests is depicted in the Betrayal, holding Christ's shoulder as if to take Him before the Sanhedrin. The image at top right shows three High Priests, furthest left is Caiaphas rending his robe. All three are bearded and wearing head-shawls. To their left is Christ, hands unbound; one raised, indicating speech, or deflecting a blow from the figure to His left. The appearance of Caiaphas encourages reflection on human justice, or injustice. Pisano also depicted the *Last Judgment*, the embodiment of divine justice. Divine justice is immutable and correct, whilst human justice may be exercised by just and unjust rulers, or judges, with the consequences of the latter being evident in the scenes on the pulpit depicting Herod, the *Massacre of the Innocents*, and Caiaphas, the *Trial*. The seemingly jumbled chaotic appearance of the panel including the trial scene – strongly reminiscent of the disordered image of Hell in the *Last Judgment* - may then visually allude to the uncertainty consequent on injustice.

A further example is *Christ before the Sanhedrin* from Giotto's fresco cycle for the Scrovegni (Arena) Chapel, Padua, c. 1304-13 (Figure 82). Giotto depicted 36 narrative scenes around the walls of the chapel. The only trial scene is in the lowest tier. It is a conflation including both Caiaphas and Annas, which appears to continue the mid-late Duecento preoccupation with the trial before the High Priests to the exclusion of that before Pilate. This scene may have been chosen not for anti-semitic motives, but for its emphasis upon the need for

justice to prevail in society and in the judicial decision-making process. Indeed, it has been argued that the concept of justice is the key to understanding the fresco programme.⁵¹⁹ Some scholars suggest that Enrico Scrovegni - generally assumed to be the patron - commissioned the Chapel concerned at his possible fate given his family wealth had been derived from the money-lending activities of his late father, Reginaldo; usury – at that time, the charging of interest on moneys lent, rather than extortionate rates - was considered a mortal sin worthy of particularly vile punishment after death. A sinner commonly identified as Reginaldo appears in the seventh circle of Hell in Dante's *Inferno* (XVII, 64-75). This could leave Enrico concerned for his spiritual and temporal future.⁵²⁰ Enrico sought a fair and just system, both at Judgment Day – Divine Justice (the entire west wall depicts the *Last Judgment*) - and in the more immediate future – secular justice. Injustice could damn his soul to eternal torment and threaten his earthly wealth and safety. In this context, fear of unjust judgment, the selection of a trial before Caiaphas and Annas makes sense.

The scene includes familiar iconographical elements. Christ, with hands bound before Him, faces two bearded bare-headed Priests seated on a raised dais. Unusually, this trial takes place indoors; justice cannot therefore be publically seen to be done. The room appears claustrophobic, figures cramped in the small closed space; the atmosphere seems tense. Behind Christ, a soldier raises his arm to strike. Christ stares away from the judges, as if to dissociate Himself from what will happen. Caiaphas bares his chest in the familiar gesture. Caiaphas notoriously presided over an unfair and partial trial, becoming an exemplar of injustice. Jonathan Riess argued: “That *the scene of Christ before Caiaphas is unknown in Italian painting before Giotto* in itself points to the extraordinary importance of the meaning

⁵¹⁹ See, for example, Jonathan B. Riess. 1984. 'Justice and Common Good in Giotto's Arena Chapel Frescoes', *Arte Cristiana* 1: 69-80; reprinted in Andrew Ladis. 1998. *The Arena Chapel and the Genius of Giotto* (New York and London: Garland), 233-244.

⁵²⁰ Many scholars have used this link to explain what they perceive as an emphasis on usury in the frescoes. See, for example, Ursula Schlegel, 'On the Picture Program of the Arena Chapel', in Stubblebine 1969: 182-202; Derbes and Sandona 1998: 274-7, 288, note 9; and Anne Derbes and Mark Sandona. 2008. *The Usurer's Heart: Giotto, Enrico Scrovegni, and the Arena Chapel in Padua* (University Park, Pennsylvania: Penn State University Press). This has been challenged, by those who found no evidence that Enrico or his father practiced usury (see Benjamin Kohl, 'Giotto and His Lay Patrons', in Derbes and Sandona 2004 193–196, and Chiara Frugoni. 2008. *L'affare migliore di Enrico. Giotto e la cappella Scrovegni* (Turin: Einaudi)). Some doubt that Enrico would draw such attention to this aspect of his family's past: see, for example, Hyde 1966: 190; Gardner, 1991: 66; and Bruce Cole. 1993. *Giotto: The Scrovegni Chapel, Padua* (New York: George Braziller), although others believe that Enrico's will suggested concern at the source of his wealth (see Derbes and Sandona 1998: 289, note 21).

of injustice at Padua" [my italics].⁵²¹ This view is correct if only fresco is considered. As noted above, the scene appeared in the sixth-century Augustine Gospel, thought to be of Italian origin, and it appeared in painted crosses produced by Florentine artists, so it would be a scene with which Giotto could be expected to have been familiar.⁵²²

The importance of justice, divine and earthly, was reinforced not only in the *Last Judgment*, but also in personifications of Virtues and Vices in the dado to the narrative scene. *Justice* and *Injustice* appear in the centre, emphasising their importance to the overall programme (Figures 45 and 83). It has been suggested that *Injustice* is depicted as a judge in contemporary clothing, a crooked staff symbolising corruption.⁵²³ As noted above, it is not settled that judges had specific costume in the early Trecento,⁵²⁴ however, nor is the shaft of the staff crooked, although the hook at the top appears to mirror the figure's talon-like fingernails which gouge his flesh.⁵²⁵ The staff has been described as, "a nasty pruning hook, not a sceptre"; but it is difficult to see what connection this would have to injustice.⁵²⁶ Given the context of the fresco and the oppositions in the dado personifications, it is more probable that the figure was intended to allude to a judge, holding a judicial sceptre. The figure immediately next to *Injustice* personifies *Anger*, rending his clothing to bear his chest, eloquently evoking the actions of Caiaphas (Figure 69). It is difficult to more clearly convey contempt for corrupt and impartial judges than this juxtaposition.

Those contemplating the frescoes were intended to consider the importance of the role of judges and the need for just exercise of their power. This was an important message for Scrovegni personally, but Padua's socio-political background could have heightened the significance of such issues. Scholars have suggested that the despotic rule of Ezzelino da

⁵²¹ Riess 1984: 72.

⁵²² Similar points can be made regarding Hourihane's statement that this was, "one of the earliest examples of Caiaphas rending his garments" (2009: 269).

⁵²³ On *Injustice* as political allegory, see Wieruszowski 1944: 23.

⁵²⁴ Hargreaves-Mawdsley 1963: 4-6.

⁵²⁵ This was demonstrated by Laura Jacobus, in "'A Shining Star of Justice sent down from Heaven': Maddelena Scrovegni's vision of divine retribution", a paper delivered at The Trecento Seminar in Scotland: The Art of Justice, University of St. Andrews, 6 May 2011. An excellent image is available online, at http://www.academia.edu/2375677/A_shining_Star_of_Justice_sent_down_from_Heaven_the_imagery_of_justice_in_the_Arena_Chapel_and_Maddelena_Scrovegnis_vision_of_divine_retribution_Slides.

⁵²⁶ Judith N. Shklar. 1989. 'Giving Injustice its Due', *Yale Law Journal* 98/6 (Apr.): 1135-1151, at 1145; reprinted in 1990. *The Faces of Injustice* (New Haven, CT: Yale University Press), 15-50, at 46.

Romano (podestà 1237-56), and its subsequent overthrow, is referred to in the opposition of *Injustice* and *Justice* in the dado frescoes.⁵²⁷ Moreover, the role and importance of judges in Padua changed in the late thirteenth century. A new oligarchy gained control (as in many other city-states across northern Italy at the time) and members of the judiciary assumed political authority as well as dominating the intellectual life of the city around 1300.⁵²⁸ For example, a judge, Paolo da Teolo, as well as being associated with the Dominicans of S. Agostino who administered the Inquisition in Padua after 1302, was also connected to the bishop, acted for the commune in negotiations with Venice, arbitrated and gave counsel in the communal courts, and drew up legislation.⁵²⁹ Giovanni da Nono, another Paduan judge, served on the tribunals of the commune from 1310-1346. Paduan judges served as podestà in other towns and cities as well as holding communal office in Padua. The Paduan judge Lovato Lovati was podestà of Vicenza in 1291-2; his nephew Rolando da Piazzola, also a judge in Padua, held several official posts, acting as Paduan ambassador to Rome in 1303 and as vicar to the podestà of Bologna in 1322.⁵³⁰ Evidence of the prominence of judges in Paduan social and political life is the enlargement of the seat of judicial power in Padua, the Palazzo della Ragione, and its decoration with a complex fresco programme addressing issues of judgment and judicial power between 1309-13; substantially contemporaneous with the commissioning and decoration of the Arena Chapel.⁵³¹ The choice of trial scene in Scrovegni's chapel carefully dissociated the injustice of Christ's trial from figures of secular judicial authority, avoiding displeasing socially and politically powerful judges. The importance of justice, both divine and earthly, in understanding the decorative programme of the chapel is evident.⁵³²

Much as the Paduan fresco scheme alluded to the importance of justice, and the need for judges to exercise their powers fairly and impartially, similar themes are evident in Duccio's *Maestà* (Figure 84). However, it featured a new iconographical approach, giving "unusual

⁵²⁷ For example, Riess 1984, as above, and Mack Bongiorno 1968: 11-20 (both reprinted in Ladis 1998).

⁵²⁸ On judges in Paduan society, see John Kenneth Hyde. 1966. *Padua in the Age of Dante* (Manchester: Manchester University Press), 121-153.

⁵²⁹ See Hyde 1966: 135.

⁵³⁰ See Beneš 2011: 188, 194.

⁵³¹ On the programme of the Palazzo della Ragione, "placing processes of justice within cosmic dimension", see Riess 1984:75.

⁵³² For a theory that the chapel was intended to imitate the temple of Solomon, see Lubbock 2006: 53.

weight” to the trial scenes.⁵³³ Christ appears in two scenes before the High Priests, in two scenes before Pilate, and before Herod. In each case, the judge sits on a form of raised judgment seat, and gestures towards Christ. The trial before Annas takes place in a crowded room (Figure 84a). Those before the other judges are outside, before a portico. Civic justice was often dispensed in cathedral porticos from the twelfth century, which could be decorated with lion motifs, associated with justice.⁵³⁴ Caiaphas sits under the portico on his stepped judgment seat, rending his robes and turning from Christ (Figure 84b). Pilate wears a golden laurel wreath, red robe and holds a baton (Figure 84c). Herod is heavily bearded, crowned, with crossed legs (discussed below) (Figure 84d). The trial before Herod is a scene rarely represented in this period.⁵³⁵ Reasons for this are unclear. It may reflect the fact that it appears only in the Gospel of St Luke (23:8-10). It may be an artistic choice, the scene before Herod offering fewer dramatic possibilities. Alternatively, some scenes may be misidentified, there being little clear iconography associated with Herod that could not appear in another scene.⁵³⁶ Pilate, for example, is sometimes crowned, although this is incongruous for a procurator.⁵³⁷ Its inclusion in the *Maestà* evidences the comprehensive treatment of the trials of Christ. In fact, Duccio’s microcycle of the trial sequence is its most detailed depiction in extant medieval painting.⁵³⁸

The altarpiece was commissioned by the Opera del Duomo, and produced c. 1308-11 for the high altar of the cathedral in Siena.⁵³⁹ Many possible reconstructions have been suggested for the *Maestà*, dismembered in 1771; some produced narrative pathways which appear contrived and unrealistic, zigzagging wildly, others based on a boustrophedon reading;

⁵³³ White 1993: 291.

⁵³⁴ Examples include the Cathedrals in Verona, Piacenza, and Modena, the Porta dei Mesi of Ferrara’s cathedral, or the Porta da Mar of San Marco, Venice. See Christine Verzar Bornstein. 1988. *Portals and Politics in the Early Italian City-State: The Sculpture of Nicholas in Context* (Parma: Civiltà Medievale), esp. 32-49; and, Glass. 1997. On Venice, see Barry 2010: 7-62, esp. 48-52.

⁵³⁵ The trial before Herod probably appeared in the tabernacle c. 1295-1300 attributed to the San Gaggio Master, discussed above (Figure 77b).

⁵³⁶ For an example of the interchangeability of Herod and Pilate in a mid-Trecento fresco from Santa Maria Maggiore, Bergamo, see Hourihane 2009: 350. This may also be evident in a panel of *Scenes from the Passion of Christ, the Crucifixion, the Betrayal and the Trial before Pilate*, Williams College Museum of Art, discussed below.

⁵³⁷ See Schiller 1972: 63, footnote 49.

⁵³⁸ As noted in Florens Deuchler. 1979. ‘Duccio *Doctus*: New Readings for the *Maestà*’, *The Art Bulletin* 61/4: 541-549, 544.

⁵³⁹ On the commission, see Norman 1995b: 59-63.

some denied there was an intended order.⁵⁴⁰ The reconstruction proposed by John White will be adopted here: that the *Maestà* originally included one main scene and 58 narratives, with a further 30 individual figures (Figure 85).⁵⁴¹ The panel was double-sided.⁵⁴² The *Maestà* probably stood at the point separating the part of the Duomo accessible to the laity, who faced the main image, and the part reserved for clergy, who faced the rear of the work.⁵⁴³ Deuchler suggested seeing back and front was necessary to understand the work, requiring people to walk around it, introducing an element of active audience participation. However, it is suggested that this is not necessarily representative of contemporary ecclesiastical practice, which often reserved certain areas to the clergy.⁵⁴⁴ A more convincing reading suggests that the *Maestà* provided different imagery for these two audiences. The main frontal panel, facing the cathedral, was a devotional image for the people of Siena, *The Virgin and Child Enthroned in Majesty with Angels and Saints*. The rear, incorporating scenes of the Passion was a narrative cycle intended for the clergy. This combination of location and function impacted upon its design, with the bold, large-scale design of the Virgin Enthroned being visible from a distance, with the smaller scale Passion scenes intended for closer contemplation by the clergy.⁵⁴⁵ So, the unusually detailed depictions of the trial scenes appear deliberately located before the clergy.

Although the detailed trial sequence as a focus of meditation for the clergy would accord with the change in the nature of spirituality that many scholars have identified at this time, these scenes lack emotional intensity, making them ill-suited to this aim; they seem almost to seek a rational response. The emphasis on the Trials may instead have been intended through religious imagery to show the importance of justice in society by illustrating the consequences of a failure of justice in a recognisably urban setting, which would have

⁵⁴⁰ See Deuchler 1979: 541.

⁵⁴¹ White 1979: 102.

⁵⁴² On such altarpieces, see Donal Cooper. 2001. 'Franciscan Choir Enclosures and the Function of Double-Sided Altarpieces in Pre-Tridentine Umbria', *Journal of the Warburg and Courtauld Institutes* 64:1-54; and Dillian Gordon, 'Thirteenth and Fourteenth-Century Umbrian Double-Sided Altarpieces: Form and Function', in Schmidt 2002: 229-249.

⁵⁴³ On the location of the altarpiece, see Kees Van der Ploeg. 1993. *Art, Architecture and Liturgy: Siena Cathedral in the Middle Ages* (Groningen: E. Forsten).

⁵⁴⁴ This is explored by Seiler, who concluded that the Passion scenes were for private devotional contemplation, possibly for a wider audience than clergy alone (Seiler 2002: 251-269).

⁵⁴⁵ White 1979: 99.

reinforced the contemporary relevance of the scenes to Sieneese viewers.⁵⁴⁶ These trials seemingly take place outside, under a porch or portico; possibly referring to actual civic justice practice in Siena. Trial scenes from the Passion show the effects of unjust or weak rulers, decision-makers or law-givers, inviting viewers to contemplate the notion that without just rule, injustice, even tyranny, would prevail. The crowned figure of Herod would have alluded to the threat of 'tyrannical' rule by *signori*; it is notable that Herod is depicted in the *Maestà* with crossed legs in both the trial scene (Figure 84d) and the *Slaughter of the Innocents* (Figure 86), as this iconography may have alluded to tyrants.⁵⁴⁷ This was an important message in the context of the socio-political realities of early Trecento Siena.

An inscription on the step of the Virgin's throne on the front of the *Maestà*: 'O Holy Mother of God, grant peace to Siena and life to Duccio who has painted you thus', a plea for a peaceful society, testifies to the civic unrest experienced in medieval Siena.⁵⁴⁸ Many cities in the region had fallen to 'despotic' regimes, and the Nine, the oligarchy governing Siena 1287-1355, faced repeated threats to its authority.⁵⁴⁹ A government and city weakened from within by factional conflict would be less able to maintain peace and preserve the common good. Duccio's *Maestà*, through a comprehensive trial sequence, encouraged reflection upon the communal political philosophy of the need for justice as the basis of stable societies. However, although there was throughout the period under consideration near-constant civil unrest, the fact that the Nine relatively easily put down any threatened revolts suggests general satisfaction or at least acquiescence with their rule. Another important factor in maintaining peace was the likely inability of the polarised opposition to rally around a single unifying ideology. Arguably, oligarchic government cut across the social and economic divisions of Sieneese society, the majority perceiving life under the Nine as better than any alternative.

⁵⁴⁶ For the view that the architecture in Duccio's *Maestà* symbolised the breakdown in justice in Siena, see Lubbock 2006: 17-38, which addresses a justice subtext to the trial sequence, but our conclusions differ in several respects.

⁵⁴⁷ A connection between crossed-legs and tyranny was suggested by Michael Camille. 1989. *The Gothic Idol: Ideology and Image-making in Medieval Art* (New York: Cambridge University Press), 54. However, Judith Golden's research established that this feature is capable of several interpretations (Golden 2005).

⁵⁴⁸ *Mater Sancta Dei sis causa Senis requiei sis Duccio vita te quia pinxit ita*. On the importance of the Virgin to Siena's religious, civic and political life, see Norman 1995b: 55-82; and Norman 1999.

⁵⁴⁹ The reasons for the unrest are numerous; for an overview, see William M. Bowsky, 'The Anatomy of Rebellion in Fourteenth-Century Siena: From Commune to Signory?', in Martines 1972: 243.

The choice to depict the trial sequence in such detail is an anomaly requiring explanation. This thesis proposes that this *Maestà* had a quite specific message, a further subtext concerning justice. It is the particular positioning of the scenes featuring the trials specifically before the clergy in the Duomo (if that location is accepted) that might allow an alternative hypothesis for the detailed treatment of the trials. Significant threats to the Nine's ability to efficiently administer the justice system were posed by a history of serious disputes between secular and ecclesiastical authorities in Siena over jurisdiction, both that of ecclesiastical courts over the laity, but also lay jurisdiction over clergy.⁵⁵⁰ The issue of civil/ecclesiastical jurisdiction remained contentious in Siena, even into the 1320s.⁵⁵¹ Conflict was apparent at the time the *Maestà* was commissioned and produced. In 1309-10 Siena's communal authorities were still using statutes to support the authority of secular courts over ecclesiastic courts. Specific provisions threatened punishment for those who transferred claims from secular courts to ecclesiastical courts, or for bringing claims concerning secular issues to any forum other than the communal courts.⁵⁵² Against such a background, the Trial scenes were images of justice to be deployed for political ends.

By depicting the trial sequence in unprecedented detail, the *Maestà* - like the other images of the trials of Christ above - placed a distinct emphasis on the role and function of the judge. It encouraged contemplation of issues relating to injustice: the need for fairness in trial procedure, for an effective and impartial judicial system, and judges who would administer justice fairly. Siena's communal government, faced by threats to its jurisdiction from the Church, internecine violence threatening internal stability, and external threats to its security, sought to use scenes from the Passion to propagandise for the need for a strong and fair system of justice as the best means of securing the common good. It was also a plea for all parts of society – and specially the ecclesiastical and civic authorities - to work together to achieve that end. The trial scenes were important in causing contemporary viewers of this *Maestà* to contemplate the concept of justice and its importance to society, as well as focusing on the role and function of those exercising judicial authority. Making an

⁵⁵⁰ For further detail, see Bowsky 1981: 110-116.

⁵⁵¹ These conflicts are considered in some detail in Waley 1991: 130-132.

⁵⁵² Const. 1309-10, Dist. II, r.xix-xx.

altarpiece the medium for such a message demonstrated the contemporary belief that earthly justice required divine guidance. Here the indivisibility of sacred and secular is made plain.

A Crucifixion, Virgin and Scenes from the Life of Christ of the early fourteenth century, and attributed to the Venetian school, follows the Trecento preference towards a more comprehensive rendering of the trial sequence (Figure 87).⁵⁵³ The central image is of the Crucifixion, above an icon of the Madonna and Child. Of the accompanying sixteen narrative scenes, three address the Trials. To the lower left of the painting, Christ stands blindfolded with his hands free, one raised (Figure 87a).⁵⁵⁴ The judge is a bearded figure wearing robes and a cloak, seated outside, under a pointed arch. He is identifiable as Caiaphas by opening his robes; there is no sign of anger. Strikingly, and rather incongruously, this Jewish High Priest wears a bishop's mitre. Christ is held by a crowd of people, one possibly raising his hand, either to strike Christ or to draw Him to the priest's attention. A bearded figure in the crowd, in a white head-shawl, may be Annas.

The second scene, immediately to the right, shows a man seated before a round arch (Figure 87b). Wearing a crown, this judge may be Herod. He points, a typical judicial gesture. Christ is in a white robe, with no blindfold; He is again held by a crowd. Behind Christ stands the figure possibly identifiable as Annas, hand raised towards Christ's head. The third trial scene (the second image to the top right of the painting), shows a seated figure in an extraordinary hat resting his feet on a dais, before a pointed arch (Figure 87c). He gestures towards Christ with both hands. Although this iconography is obscure, the letters 'ECE OO?O': 'ecce homo' (?) identify him as Pilate.⁵⁵⁵ The decision to render the trial sequence in such detail may reside in religious feeling, or derive from an artistic model such as Duccio's *Maestà*, although arguably Venetian artists may have been more likely to have drawn upon the artistic schools of Padua, Bologna and Verona, rather than Siena. However, notably, in

⁵⁵³ Venetian school *Crucifixion, Virgin and Scenes from the Life of Christ*, early fourteenth century; Staatliche Museen zu Berlin. Discussed at Seiler 2002: 259-260.

⁵⁵⁴ Could 'hands free' suggest a non-Franciscan patron for this work? See Derbes 1996, 92. Also, if a 'hand raised' gesture was intended to indicate speech, this is a return to depicting the word of the Gospels and a departure from the approach taken in the *Golden Legend* (and, according to Lubbock 2006: 22, adopted by Duccio) which suggested Christ's silence in the trials.

⁵⁵⁵ See John 29.4-6.

this detailed sequence of scenes, and the particularly unusual iconography, attention is clearly drawn to the judge in each trial.

Again, the society in which this work was produced was one where notions of trial, punishment and justice were particularly acute. In many areas of Italy, judicial systems were operated by certain sectors of society to their own advantage. From 1298, Venetian government was controlled by a hereditary oligarchy, which exerted its influence over the criminal justice system. Guido Ruggiero has argued that class-bias was evident in the cases which the Venetian authorities chose to prosecute and the punishments handed down, that statute law was enacted erratically, and interpreted and applied equally randomly by judges, heavily influenced by the nobles.⁵⁵⁶ Overall, he regarded nobles as being disproportionately involved in perpetrating crimes against each other and against other members of society, concluding that "law and procedure merely defined the limits within which the more significant forces of politics, class, economics, and the perceptions of the nobility came into play".⁵⁵⁷ Although some of his conclusions have been criticised,⁵⁵⁸ Ruggiero's research revealed a tendency in the administration of criminal justice in Venice towards witness testimony, rather than confession procured by torture in certain categories of crime,⁵⁵⁹ and a general preference for relatively mild penalties (including fines and short terms of imprisonment) over capital punishment or physical mutilation.⁵⁶⁰ Perhaps the relatively dispassionate representation of the trial scenes might reflect such an approach towards the administration of criminal justice. In any event, the inclusion – and particular depiction - of Pilate once again focuses attention upon the legal nature of the trial, and the function of the judge.

⁵⁵⁶ See Ruggiero 1980; an historical study of criminal violence in Venice between 1290 and 1406, analysed archival materials, especially judicial records, examining the institutions of law enforcement and criminal adjudication, and penalties imposed by the courts.

⁵⁵⁷ See Ruggiero 1980: 26.

⁵⁵⁸ Critics include, Robert Finlay. 1982. *The Journal of Interdisciplinary History*. 13/2: 348-349; Thomas Kuehn. 1982. *The Journal of Modern History* 54/1:133-135; and Samuel Cohn, Jr. 1981. *Journal of Social History* 15/2: 298-301.

⁵⁵⁹ See Ruggiero 1980: 24.

⁵⁶⁰ See Ruggiero 1980: 53. Executions – when they took place - were usually by hanging, and were highly ritualized: see Barry 2010: 45.

Further Trecento artworks from northern Italy also focus on the role of Pilate. A panel *Scenes from the Lives of Christ and Saint John the Baptist*, attributed to an artist of the Riminese school, features a scene between the *Betrayal* and *Flagellation*; this may be the trial before Pilate, or Pilate presenting Christ to the Jews (a scene rarely depicted), or a conflation of these events (c. 1310; Figure 88).⁵⁶¹ Christ faces away from the judicial figure, His hands bound before Him, facing towards a crowd, including soldiers holding spears aloft (Figure 88a). This judge displays many features of judicial iconography: he wears the red robes of authority, holds a stick (the *baculus judicarius*) upright in his left hand and points to Christ with his right. He sits in a large canopied judgment seat, his legs crossed.⁵⁶²

Unlike the works considered above, several images commissioned or produced in or around Florence include scenes in which identification of the judge is unclear. Works attributed to the Florentine artist, Pacino di Bonaguida (active in Florence c. 1302-40) feature detailed scenes of the trials.⁵⁶³ His large panel painting *The Tree of Life* of c. 1310-15⁵⁶⁴ is a visual representation of the *Lignum Vitae*, an account to aid contemplation of the life, passion, and glorification of Christ, written c. 1260 by the Franciscan Bonaventure, structured using the device of a tree (Figure 19).⁵⁶⁵ Bonaventure divided the twelve branches of the tree into three groups of four; three for the mysteries; each of the four “fruits” of the mysteries containing four subheadings, aspects of the life of Christ corresponding to the fruits. The sixth ‘fruit’, which included the trial sequence, detailed Christ’s ‘Patience in Maltreatment’; the eleventh fruit (‘The Justice of His Judgment’) addressed Christ’s role as Divine Judge. Pacino’s medallions correspond to Bonaventure’s ‘fruits’ so closely, that its function as an aid to devotion or prayer is clear.

⁵⁶¹ I thank Laurence Kanter and Meghan Lynch of Yale University Art Gallery for their assistance, and a copy of this image. The panel is attributed to the Master of Vicchio di Rimaggio.

⁵⁶² On this aspect of judicial iconography, see Schiller 1972: 2: 62; Camille 1989: 54; and Golden 2005.

⁵⁶³ The work of Pacino di Bonaguida is highlighted in Christine Sciacca. 2013. *Florence at the Dawn of the Renaissance: Painting and Illumination, 1300-1350* (Los Angeles: Getty Publications), which accompanied an exhibition of the same name at the J. Paul Getty Museum, Los Angeles (November 2012 - February 2013). I thank Lauren Rabb, Curator of Art, University of Arizona Museum of Art, for bringing this to my attention.

⁵⁶⁴ Now in the Accademia, Florence (no. 8459), it was originally from the Franciscan Convent of the Poor Clares at Monticelli, Florence.

⁵⁶⁵ “Since imagination aids understanding, I have arranged [the passages] in the form of an imaginary tree”: Bonaventure, *Lignum vitae*, 120. 1902. For English translations, see Saint Bonaventure. 1978. *Bonaventure: The Soul's Journey into God, the Tree of Life, the Life of Saint Francis*, trans. Ewert Cousins (New York: Paulist Press).

One 'branch' of Pacino di Bonaguida's tree includes three scenes of the trials, a further instance of the comprehensive approach taken by some Trecento artists and their patrons (Figure 89). Each trial is before a single judge. However, identifying the judges is not straightforward. The first shows Christ in pink robes, hands bound before Him with a long, draped rope, before a figure on a seat with two steps. This judge wears a red cloak, dark/blue robe and white head-shawl; again we see a judicial figure in the red robes associated with contemporary secular and judicial authority. He is heavily bearded and points to Christ. The second scene again shows Christ before a judge wearing a red cloak and blue robe, with a head-shawl. He too is bearded, but less so than the first judge, and sits on a more elaborate seat, with a canopy. A soldier raises his hand to hit Christ. The third scene appears to incorporate the denial of Saint Peter. Christ in white robes faces a different judge, also wearing a red cloak and blue robe, but bearing a sceptre, or *baculus judicaries*, an emblem of judicial office.

Extrapolating from the Biblical accounts, the first trial could be before Annas, the second Caiaphas, and the third may be Herod or Pilate: a sequence of Annas-Caiaphas-Herod/Pilate. However, the next scene, of the Flagellation, is presided over by a man on a tall brick structure, holding a scroll; he resembles the second judicial figure, which must then be Pilate.⁵⁶⁶ The sequence then appears to be Annas/Caiaphas-Pilate-Herod-Pilate. If so, Pilate is depicted in a head-shawl like the Jewish High priest, a phenomenon noted elsewhere.⁵⁶⁷ The possibility of different readings of these scenes is evident in what appears to be a discrepancy between Hourihane's text and the caption accompanying the scenes. His text refers to the sequence as Annas-Caiaphas-Herod-Pilate.⁵⁶⁸ However, the caption to the image reads, "Christ before Caiaphas (lower left), Christ before Pilate (second roundel from left), Christ before Herod (third roundel from left), and the Flagellation": a sequence of Caiaphas-Pilate-Herod-Pilate.⁵⁶⁹ From the above analysis, it is clear that an established iconography existed which, if used, could have helped to identify the judge in each case. That the trials occupy three scenes indicates their importance to the work, making the lack

⁵⁶⁶ This is commented upon by Sandberg-Vavalà 1929: 432 note 2.

⁵⁶⁷ See Hourihane 2009: 290-5; 350-1.

⁵⁶⁸ Hourihane 2009: 272.

⁵⁶⁹ Hourihane 2009: Fig. 127, 273.

of clarity in the identity of the judicial figure perplexing. Was it considered sufficient in these scenes to represent a trial as a confrontation between accused and judge?

A similar difficulty in identifying particular judges is also evident in a *Tabernacle with Scenes from the Life of Christ*, c. 1325, by Pacino di Bonaguida (Figure 90).⁵⁷⁰ Previously known as a Custodia or Ciborium, it consists of five small wooden vertical panels framed together, thought to be a custodial to keep the Eucharist. The trial scene shows a soldier, holding Christ's arm (Figure 90a). Christ, unbound, gesturing with one hand, stands before a third figure. This man is bare-headed, bearded, and seated on a huge throne with a large dais or step for the feet. He is not shown rending his shirt, as Caiaphas traditionally does; it may be Pilate (the beard would be incongruous, although not unprecedented); alternatively, it may be Herod. Although his identity is obscure, his judicial role is clearly represented: he is enveloped in a strikingly large red robe, holding a judicial sceptre in his right hand, and from his elevated position points towards Christ, the accused.

The lack of clarity regarding the judge is also evident in a further work produced in Florence by Pacino di Buonaguida, a three-part altarpiece, known as the *Chiarito Tabernacle*, commissioned in the 1340s by a layman, Chiarito del Voglia, to depict his visionary experiences (Figure 91).⁵⁷¹ The left wing shows scenes from the Passion.⁵⁷² A scene (middle-left wing, second from bottom) appears to show a trial taking place outdoors (Figure 91a). Christ stands to the left, a soldier next to Him. Behind those two figures is a man on a tower-like structure. He wears a red cloak, the contemporary signifier of judicial and secular authority. He points towards Christ. Identifying this judicial figure is problematic as its face and that of the soldier have been crudely scored and defaced. It could be Pilate, or Herod.⁵⁷³ The crowd he faces is headed by a robed figure with a prominent beard, possibly a High Priest. Several figures in the crowd gesture towards the judge, as if to influence his judgment. This may allude to the Jewish role in securing the death sentence for Christ, or

⁵⁷⁰ For attribution, see Richard Offner. 1963. *A Critical and Historical Corpus of Florentine Painting*, section III, vol 6 (New York), 149-152, Plate xvliii (now in the University Art Gallery, Tucson).

⁵⁷¹ The tabernacle may originally have been intended for a female religious audience; for example, on the right panel, only nuns receive the golden light: see Christopher R. Lakey. 2012. 'The Curious Case of the "Chiarito Tabernacle": A New Interpretation', *Getty Research Journal* 4: 13-30.

⁵⁷² The side scenes have received little attention, as scholars have mainly focussed upon the central panel.

⁵⁷³ Lakey prefers the identification as Herod (Lakey 2012: 22). The scene may represent Pilate presenting Christ to the Jews, although this was relatively rarely depicted.

simply a dramatic and concise artistic rendering of the trial sequence. In any event, despite his dominant position in the scene, the judge appears as a weak figure influenced by baying crowd, possibly emphasising the need for the strong and impartial exercise of justice.

A similar lack of clarity in the representation of the judicial figure presiding over the trial of Christ is evident in an embroidered altar frontal cloth, by Geri di Lapo, also a Florentine, the border of which included scenes from the life of Christ (c. 1322-57; Figure 92).⁵⁷⁴ Under a portico stands a group of people: to the left are three soldiers, one pointing a sword at Christ, who stands, hands bound before Him, facing a figure who is seated (although not enthroned) on a dais or step. He gestures towards Christ with his right hand, and holds in his left hand a stick, a feature of judicial iconography. The figure wears brownish robes; his head is also covered, by a shawl or cowl. His robes part across his chest to reveal bright green and blue clothing beneath, but this does not appear to be the angry rending of the robes associated with Caiaphas.

The choice to depict certain of the trials, or a specific judge, and in a particular fashion is a conscious one. These Trecento images either do not represent the trials before the High Priests, or do so without intimations of anti-Semitism, or leave the identity of the judge unclear. This last point - the lack of clarity in the judge presiding in these works - deserves more attention than it has received, given how specific trial scenes produced by Florentine artists in the Duecento (and by significant artists such as Giotto in the early Trecento) were on the point, or the tendency towards more detailed treatments of the trial sequence in the Trecento in Duccio's *Maestà* and works influenced by it. As will be seen in Chapter 4, it also contrasts markedly with other Trecento works which make the identity of the judge of paramount importance. Viewed as a deliberate and intentional choice, the depiction of a judge who could not clearly be identified appears intended to focus attention more generally on the judge's role. These scenes carry a message about the importance of and need for the just exercise of secular and judicial authority. This may have been a response to the contemporary socio-political situation.

⁵⁷⁴ Now in the Collegiate Church of Santa Maria de la Seo in Manresa, Catalonia. It is discussed in David van Fossen. 1968. 'A Fourteenth-Century Embroidered Florentine Antependium', *The Art Bulletin* 50/2 (Jun.): 141-152. He notes as convincing a suggested date of c. 1346-8, and an attribution of the design to the workshop of Bernardo Daddi.

Florence's usually turbulent politics appears to have worsened from c. 1320s, leading to the decision to forfeit independence and seek stability in foreign rulers, such as Robert of Naples (*signore* of Florence 1313-22) and his son, Charles of Calabria (1325-28). Thereafter, a merchant 'oligarchy' took control, closely associated with the Mercanzia formed by the five major guilds. Florence's economic situation was badly affected in the 1330s by the bankruptcies of several banking houses, and on-going territorial battles. In 1340 there was a failed coup and the Florentine elite invited Walter of Brienne, the Duke of Athens, to take control in 1342. Although strong leadership had been a quality sought in Walter, his reign would be characterised as 'despotic', particularly in relation to the financial demands he made of its citizens.⁵⁷⁵ His 'tyrannical' rule, whilst welcomed by many of the lower classes, led to his violent expulsion from Florence in 1343. This was commemorated in a fresco in the Stinche, Florence's prison, of *The Fall of the Duke of Athens* (1344-5), of which a fragment survives in the Palazzo Vecchio, Florence (Figure 93).⁵⁷⁶ Against such a background, the need for respect for law and order was a social imperative. The role of the judge in ensuring justice and the common good became especially important. This series of images of the trials of Christ from early-mid Trecento Florence demonstrate that identification of the judge was unimportant, when compared to his actions.

A tendency to once again depict the trial before Pilate, as was popular prior to the mid-Duecento, is evident in Pietro Lorenzetti's panel *Christ before Pilate* (Figure 94).⁵⁷⁷ In the context of the choice of trial scene, it may be significant that Lorenzetti was a Siennese artist, not Florentine, and the scene may have alluded to trial scenes in Duccio's *Maestà*; there is a similarity in colour and structure, although the architectural features are different. As a single scene, it does not appear to follow Duccio's extensive approach to the trials;

⁵⁷⁵ On a link between the rejection of *estimo*, a direct tax on land and property imposed on Florentine citizens, and the overthrow of Walter of Brienne, see David F. Burg. 2004. *A World History of Tax Rebellions: An Encyclopedia of Tax Rebels, Revolts, and Riots from Antiquity to the Present* (New York: Routledge), 113.

⁵⁷⁶ Now attributed to Andrea di Cione (Orcagna), *The Fall of the Duke of Athens* is discussed in Wieruszowski 1944: 14-33, at 25; Edgerton 1985: 41, 78-85; and Matteo Ferrari, in Donato and Parenti 2013: 212-3. For a bibliography see Ferrari 2013: 213. Interestingly, Edgerton speculates that the left-evil /right-good symbolism of Last Judgment iconography was intended to underpin this fresco (Edgerton 1985: 41).

⁵⁷⁷ The original location and date are unknown. Possibly c. 1335: Lorenzetti was active 1320-44, and assumed to have died c. 1348.

however, it may have been part of a larger work, with more detail.⁵⁷⁸ Christ stands in a portico, hands bound, before an enthroned figure. Behind Christ stands a High Priest, in a head-shawl. Perhaps lacking the space (available to Duccio, for example) to develop a justice theme over several scenes, this trial scene instead created a similar focus on the role of the judge by simply elevating Pilate on a raised judgment seat, to dominate over all the other figures in the scene, including Christ. This judgment seat features lions-heads on the armrests, iconography long-associated with judges and justice.⁵⁷⁹ Despite the judge, Pilate, wearing classical Roman dress and a gilded laurel wreath on his head, it is notable that his robe is red, retaining the allusion to contemporary iconography to reinforce his judicial authority evident in almost all of these trial scenes from the first half of the Trecento.

c. 1350-c. 1400

Several trial scenes from the latter half of the fourteenth century reveal variety in the choice of judge and their depiction.

In a work thought to be of the Venetian school of *Christ Before Herod, the Crucifixion and the Flagellation*, the trial takes place in a claustrophobically crowded room (c. 1350-80; Figure 95).⁵⁸⁰ There are several soldiers in armour, one of whom stands in profile, holding the end of a rope which is looped around the neck of Christ, who stands with hands bound before Him (Figure 95a). The spacing around him draws attention to the judge, who is bearded and wears a golden crown. He is portrayed with many judicial attributes: he wears the red robe associated with secular and judicial authority, here with a black shawl around his neck. He holds a sceptre in his right hand, pointing to Christ with his left. The judgment seat is backless, like a marble bench, with footrest and step; it raises him above the other figures in the scene. It is catalogued as the Trial before Herod, an identification complicated by the absence of specific iconography associated only with the king. The judge's feet seem

⁵⁷⁸ It may have formed part of a portable altarpiece, possibly of four panels, one of which may be in the Metropolitan Museum of Art in New York (see 2008. "Pietro Lorenzetti. The Crucifixion (2002.436)". In *Heilbrunn Timeline of Art History*. New York: The Metropolitan Museum of Art, 2000–. <http://www.metmuseum.org/toah/works-of-art/2002.436> (September).

⁵⁷⁹ On the lion-headed throne motif, see Chapter 2.

⁵⁸⁰ *Three Scenes from Christ's Passion*; now in the National Gallery of Slovenia, Ljubljana (NG S 1797). There are some resemblances (much simplified) to the room in Giotto's *Christ before the Sanhedrin* in the Scrovegni Chapel, in the dark wooden ceiling and the three apertures in the walls, two on the rear wall, and one to the left.

to be crossed, possibly a further example of the connection between the iconography of the crossed-legged judge and Herod. The crown would suggest that it is not a high priest. A bearded Pilate would be incongruous but not unprecedented: see, for example, the tabernacle c. 1285-90, where Pilate is bearded, and crowned (Figure 77a). A judge is also crowned in a panel by an unknown Italian artist of the Venetian school; he wears red robes, enthroned on a dais, pointing at Christ, who gestures back, despite being closely guarded (c. 1300-1330s; Figures 96 and 96a).⁵⁸¹ The reference in Luke 23: 11 to Herod “and his men of war”, could support the identification of the judge in these Venetian panels as Herod.

Featuring only the trial before Herod is a rare departure from the more usual focus on Pilate or the High Priests. Without knowing its original location, one cannot determine whether the inclusion of Herod was intended to allude to a contemporary authority figure, a *signore* or tyrant. The Slovenian panel has further unusual features. The rope around Christ’s neck – which does not appear in any of the Biblical accounts - is highly unusual in a trial scene; it is more common in scenes of the Christ on the Way to Calvary, for example.⁵⁸² Also, to the right of the trial scene, there appears to be half of a male figure; we see the feet in black pointed shoes turning to the right, away from Christ and the judge. The head is not featured, making it unidentifiable. However, this may have been intentional, rather than the result of damage to the panel. The scene itself includes a form of architectural frame, which covers half of this figure, and as it is in the original frame, it must be assumed that the panel has not been cut down. Therefore, it seems as though this man is intentionally depicted as walking out of the scene. Significantly, he wears a red robe, and a white shoulder cape, often associated with contemporary authority figures (discussed below in relation to a work from Verona). The account in the Gospel of Luke of the trial before Herod is of disordered and partial proceedings: Christ was “vehemently accused” by the High Priests (Luke 23: 10) and then “set at nought” and mocked by Herod and his men of war (23: 11). The decision of the man in the red robe and white shoulder cape, which mark him out as a contemporary

⁵⁸¹ *Scenes from the Passion of Christ, the Crucifixion, The Betrayal and the Trial before Pilate*. Correspondence with the Museum confirms that the judge has been variously identified as both Herod and Pilate by art historians. I thank Lisa Dorin and Hillary Reder of the Williams College Museum of Art for their assistance.

⁵⁸² Derbes 1996: 135, links this feature specifically to Franciscan ritual. Further research is needed on this iconography.

figure of secular and judicial authority, to walk away could therefore be read as a rejection of this unjust trial and abuse of the accused.

Also from northern Italy, an artist or artists working in Verona around the third-quarter of the fourteenth century, possibly belonging to the workshop of the artist Turone di Maxio da Camagno, depicted a series of trial scenes as part of an *ancona* or altarpiece with 36 Bible scenes, including a *Last Judgment* (Figure 97).⁵⁸³ It is unclear which judge presides over the first trial scene of the sequence. Sandberg-Vavalà interpreted it as the trial before Caiaphas, although none of the traditional attributes of the high priest features.⁵⁸⁴ The sequence of trials in the Biblical accounts would suggest that it is not Herod; but his appearance with beard and crown is similar to that in a scene of the *Massacre of the Innocents* (Figure 97a). Before His first judge, Christ appears to have His arms unbound, but is held by a rope by a soldier; a similar feature to Figure 95. He faces the judge; behind Him stand soldiers with shields and spears (Figure 97b). Then Christ appears with Pilate in a scene of the Flagellation; Pilate represented as a judicial figure, pointing (Figure 97c). Next, Pilate presents Christ to the Jews, His hands bound before Him, the rope held by a soldier standing behind Christ (Figure 97d). Pilate, wearing a striking hat, gestures towards Christ whilst looking at a man who wears flowing robes and head-shawl, with a white beard and moustache, possibly Caiaphas. There is then a further trial scene (Figure 97e), of Christ before Pilate (identifiable by the same clothing as the preceding scene); again, a judicial figure, pointing.

The judicial figures in each scene are seated in similar throne-type structures, with a baldachin of the same material, and a step. In each case, the judges wear contemporary dress – making the scenes more relevant to the realities of the contemporary viewer - but their clothing differs. The first judge wears a red cloak, again alluding to the red robes associated with law and authority, with a black robe or tunic underneath, featuring many self-coloured buttons on the sleeve. He is bearded and may be bare-headed, although this is difficult to establish, owing to a line of damage to the panel. Pilate wears a belted red tunic

⁵⁸³ The painting is now in the Museum of Castelvecchio, Verona. For a discussion of possible artistic influences on the work, see Evelyn Sandberg Vavalà. 1929b. 'A Chapter in Fourteenth Century Iconography: Verona', *The Art Bulletin* 11/4: 376-412.

⁵⁸⁴ Sandberg-Vavalà 1929b: 434.

under a darker maroon or purple cloak; his shoulder cape, robe and hat, are trimmed with white.

The red robes with white trim are particularly striking. ‘Scarlet’ robes trimmed with white fur or shoulder cape (often ermine, miniver, or vair, a fur like miniver, used for lining and trimming garments) were particularly associated with teachers at universities, and doctors of law in the Duecento and Trecento. It was also associated with lawyers and judges. The jurist and Papal Advocate Bernardino di Albertino (Porrina) was depicted in such robes in a fresco portrait in his tomb in Casole d’Elsa (first quarter-fourteenth century; Figure 70). *The Dispensing of Justice* from the Palazzo della Ragione in Padua (c. 1370s) features lawyers in red and white (Figure 99). Boccaccio’s *Decameron* refers to judges or lawyers in flowing robes of scarlet and vair.⁵⁸⁵ This iconography appears in many trial scenes including, for example, *Pilate Washing his hands* in the Paduan Baptistery frescoes (c. 1376-8; Figure 100). In the Trecento, the Gonfaloniere of Justice in Florence wore a scarlet robe, lined and trimmed with miniver.⁵⁸⁶ The shoulder cape (or tunic lining) of white fur is often represented, as here, by a pattern of escutcheon- or bell-shaped figures (a patterning still used in heraldry). This appears in the representation of Emperor Maxentius in Margarito of Arezzo’s *Madonna and Child* c. 1260s (Figure 29f). Saints are depicted in miniver shoulder capes in a fresco in the crypt of S. Pietro, Tuscania (c. 1315-20; Figure 101). It was even worn by a personification of the commune of Siena in a *biccherna* cover, *The Commune of Siena Receiving Tributes* (1364; Figure 102). The *Adoration of the Magi* in the Verona *ancona* shows one of the kings in the distinctive red and white cloak (Figure 103). This indicates that a combination of red robes and a shoulder cape trimmed with fur could be used by artists to depict not only lawyers and doctors, but authority figures in general (albeit that Maxentius could be argued to have been acting in a judicial capacity in Margarito’s scene).⁵⁸⁷

The iconography suggests that these scenes could depict different stages of the trial sequence, the use of specific judicial accoutrements cleverly indicating progression through the trial process. So, the absence of signifiers of judicial authority in the first scene would

⁵⁸⁵ “.. e con gli scarlatti e co’ vai e con altre assai apparenze grandissime”: Boccaccio, *Decameron* day 8, story 9.

⁵⁸⁶ Hargreaves-Mawdsley 1963: 13.

⁵⁸⁷ A man, naked apart from a red hat trimmed with the same patterned fur as his shoulder cape is dragged towards Hell in Giotto’s *Last Judgment* in the Arena Chapel, Padua.

indicate that the trial has not yet started, or the judge is unready to give a verdict. The donning of the shoulder cape in the later scenes would then indicate a judge acting in a judicial role.⁵⁸⁸ The use of attire or attributes was particularly important in indicating the exercise of a judicial function given the possibility that legal proceedings might not take place in a specific location. The final scene of the sequence also features attributes associated with the administration of justice: the judge holds a stick (the *baculus judicarius*), in one hand and points with the other. Even in such relatively sparse scenes there is an intention to represent contemporary realities of the administration of justice, with the focus on the judge.

The choice of trial scenes hints at either an original approach or a different source of compositional derivation. However, it might allude to the prevailing political situation in Verona. The city came under the sole control of Mastino della Scala in 1262 and the Scaligeri retained control until 1387. By 1351, Verona was governed by Cangrande II della Scala, often perceived as the 'archetypal' tyrant; much of his unpopularity stemmed from overtaxing the people of Verona. He was eventually murdered by his brother. The work under consideration, therefore, would have been completed in Verona under the rule of the Scaligeri, which might have made these scenes a deliberate and intentional – if opaque – linking of injustice and a partial administration of justice with absolute or tyrannical rule. Once again, as in several of the Duecento images considered above, we see that the selection and depiction of the figures exercising judicial power in the scenes of the trials of Christ may have had social and political significance. Like many of the works considered from the mid-Duecento and Trecento, this work was most likely commissioned by a religious establishment as patron and may contain a message of the fallibility of earthly justice.⁵⁸⁹ Again, this work may represent an attempt, through art, to argue that authoritarian secular rulers could not be relied on to conduct fair trials.

⁵⁸⁸ This may have been pan-European judicial practice: a devotional booklet c. 1330-40 from Germany (lower Rhine or Westphalia (now in the Victoria and Albert Museum, London (INV.11-1872)) included a scene of Christ before Pilate, where Pilate wears a similarly-patterned shoulder cape, removed in the scene of Pilate washing his hands.

⁵⁸⁹ On jurisdictional conflicts between papal, ecclesiastical and secular authorities, see Chapter 1.

These scenes emphasised the role of the judge; the choice of judge in a particular trial scene often conveying specific meaning. Pilate was associated with legal authority, but also weakness and injustice, and in certain circumstances this association could be undesirable. This was particularly the case in cities such as Padua, where many were legally qualified.⁵⁹⁰ This could explain why Giusto Menabuoi's extensive (and much restored) fresco cycle, for the Padua Baptistery, c. 1376-8, reverted to the trial before the High Priests (Figure 104). The decision not to feature Pilate may allude to Giotto's Arena Chapel frescoes; there are some visual similarities, particularly in the colour of the High Priests' robes, for example. However, it is suggested that the choice could be linked to the patron of the work. The frescoes were commissioned by Fina Buzzacarina, the wife of Francesco il Vecchio Da Carrara, signore of Padua in the late Trecento.⁵⁹¹ She and other members of the ruling family appear in the frescoes. Depicting Christ tried only by religious figures may be linked not only to the importance of law and lawyers in Padua, noted above, but specifically to the history of the Buzzacarini family. Many members were judges in Padua, as well as professors or doctors of law, from the mid-Duecento. To Hyde, the family, "epitomise the greatness of the Paduan judiciary in the days when the judges were the leaders of the commune".⁵⁹² In these circumstances, the choice to depict only the trial before non-secular judges seems politic. Pilate appears in the frescoes in red robes and white shoulder cape, recognizably with secular judicial authority, but washing his hands (Figure 100). The choice of judge for the trial scene again distanced secular judges from association with injustice and partial judging.

The picture to be drawn from the Trecento depiction of the trial scenes is unclear, although there are discernible differences to Duecento images. Surviving artworks seem to suggest that, after a period of some fifty years when, arguably, much Trial iconography had focussed on the trial before Caiaphas or the High Priests, there was a more comprehensive artistic treatment of the trial scenes. Some works feature all the trials before the High Priests,

⁵⁹⁰ On judges in Paduan society, see Hyde 1966: 121-153.

⁵⁹¹ On Carrara patronage in Padua generally, see Norman 1995a: 155-175. On Fina Buzzacarina as patron, see Catherine King, 'Women as patrons: nuns, widows and rulers', in Norman 1995b: 243-266; and Benjamin G. Kohl. 2001. 'Fina da Carrara, n e Buzzacarini: Consort, Mother and Patron of Art in Trecento Italy', in *Beyond Isabella' Secular Women Patrons of Art in Renaissance Italy*, ed. by Sheryl E. Reiss and David G. Wilkins (Kirkville, Mo.: Truman State University Press), 25-35.

⁵⁹² Hyde 1966: 150-153.

Herod and Pilate, a significant departure from previously more selective approaches. In a further change, the trial before Pilate is more frequently depicted: of 26 Trecento works featuring trial scenes, 18 included Pilate; of those, 12 featured only the trial before Pilate.⁵⁹³

The concentration in the later-Duecento on the role of the High Priests is less notable into the Trecento. Fewer scenes depict only the trial before Caiaphas and/or Annas, although this does not disappear entirely: it features in Giovanni Pisano's Pisan pulpit (1302-11; Figure 81), for example, and the Scrovegni Chapel frescoes (1304-13; Figure 82).⁵⁹⁴ Other Trecento works depict all three trials, even the rarely represented trial before Herod, a comprehensive treatment of the role of the judge in the fate of Christ: examples include the *Maestà* from Siena (c. 1308-11; Figure 84d), an early-Trecento panel of the Venetian School (Figure 87), and possibly the later-Trecento *ancona* from Verona (Figure 97b). Some Trecento scenes of the trials of Christ feature only the trial before Pilate, the representation of legal authority at the trial which officially condemned Christ, as was popular prior to the mid-Duecento; examples include the panel attributed to an artist of the Riminese school, *Scenes from the Lives of Christ and Saint John the Baptist* (c. 1310; Figure 88), and Pietro Lorenzetti's *Christ before Pilate* (c. 1335?; Figure 94). In some works the identity of the judge is uncertain; as in the panel, *Scenes from the Passion of Christ, the Crucifixion, The Betrayal and the Trial before Pilate* (c. 1300-1330s; Figure 96), and the several works of Pacino di Bonaguida (Figures 89, 90 and 91). There seems to be no particular geographic, geopolitical or chronological thread to explain these variations; but in all cases the specific iconography associated with judging ensured that these were seen as images of justice in action.

My analysis has shown that in each case, what these works, from Duecento and Trecento, have in common is a specific focus on these as scenes of a trial: on judge and accused. In many of these scenes, the choice of judge could be linked to the contemporary socio-political realities of its artist, patron, location or a combination thereof. In cities like Padua, where judges wielded considerable social and political importance, representations feature

⁵⁹³ Sandberg-Vavalà 1929a: 430-437.

⁵⁹⁴ A scene of *Christ before Caiaphas* also features in a fresco in San Gimignano, on the right wall of the nave of the Collegiate Church of Santa Maria Assunta, part of a cycle of *Episodes from the Infancy and Passion of Christ*; dated c. 1330s-1340s (?); attributed by Vasari to Barna di Siena (*Vita*, vol 1).

the trial of Christ taking place not before someone in the contemporary clothing associated with secular judicial authority, but before the High Priests: in Giotto's Scrovegni Chapel frescoes (1304-13; Figure 82), for example, or Giusto Menabuoi's fresco cycle in the Baptistery scenes (c. 1376-8; Figure 104). In Florence, a city experiencing social and political upheaval, the tendency was to emphasise the role of the judge in maintaining law and order, over the need for specific representation: see, for example, several works of Pacino di Bonaguida (Figures 89-91), or the altar cloth of Geri di Lapo (Figure 92). The *Maestà* (c. 1308-11; Figure 84) addressed socio-political concerns of its Sieneese patrons and audience. An intention to make the message relevant to the contemporary audience can be seen in the use of readily-recognisable clothing or judicial attributes.

Specifically, these scenes of the *Trials of Christ* invite viewers to consider the judicial process, provoking comparison on the nature of the trial and the actions of the judge. Changes in the iconography of the Trial scenes, given the different locations for which the works were commissioned, and the different patrons, may be significant of a common underpinning: a response to new and specific developments in the law and in the secular justice system, which gave judges greater power and wide discretion in the administration of justice. These images are grounded in cultural and socio-political realities: the new and increasing emphasis on the judge in the *inquisitio* prosecution procedure from the early Duecento is mirrored in the artistic representation of the trials of Christ after that period.

Conclusion

Judgment and issues of justice were key elements of the narrative in the artistic representation of the trials of Christ, c. 1250-1400, a period, it must be remembered, significant as a time of transition in the secular justice system in northern Italy: the changing iconography in these scenes must be read as responses to these changes. This chapter has established that the specific iconography of scenes of the *Trials in the Passion of Christ* in northern Italian art from c. 1240, alludes to increasing contemporary interest in the administration of justice, an intrusion of the secular system into an image of the divine. Attention in these trial scenes is deliberately drawn to the judge. The appearance of the judge in red cloak or robe – readily identifiable to a contemporary audience – ensured that these would be read as scenes of legal procedures: judge and accused. The choice of judge appears to be an intentional device, through which messages could be conveyed, regarding the nature of justice, and the importance of judges, and the need for them to be strong, fair and impartial.

These trial scenes incorporate the need to respect judicial authority, and its role in maintaining social stability to further the common good. The change in the iconography can then be seen as a socio-political use of religious imagery, but also, once again, an interrelationship between secular and divine notions of justice can be discerned in these works. The inadequacies of the various human figures exercising judicial authority in scenes of the trials of Christ must inevitably invoke allusion or comparison to Christ-Judge, exercising perfect Divine Justice in scenes of the Last Judgment. Scenes of the *Trials of Christ* offer a uniquely important example of earthly justice and, in the Christian world, the ultimate example of justice administered by unjust or weak judges. In all of these cases, a point is made that the role of the judge is crucial in ensuring justice. Unfair and partial judging would lead to injustice.

Chapter 4: Secular and judicial authority in Northern Italy

Introduction

Chapter 3 suggested that scenes of the *Trials in the Passion of Christ* from northern Italy, from c. 1240-1400 evidenced an increased interest in figures of secular and judicial authority, and particularly the role of the judge in presiding over unfair or unjust trials. It argued that many of the interests and concerns articulated in these images were attributable to changes to the secular legal process by adopting the *inquisitio* prosecution procedure, which enhanced the role of the judge, and gave him wide discretion in investigation and punishment, making the character of those exercising these powers of increased significance. Expanding thereon, this Chapter explores how civic values and concerns about the administration of justice arising from the enhanced role and status of the judge were articulated in the period c. 1250-1400, by presenting case studies examining the use of certain images of justice to address the qualities needed and expected of those exercising secular and judicial power. The case studies offer a fresh perspective on works relatively little studied as images of justice.

The first case study addresses the qualities to be sought in a judge, and also the concept of Justice as a Virtue, in the context of a fresco, *The Tribunal of Brutus the Good Judge*, commissioned for a secular location, the audience hall in the premises of the Arte della Lana (Wool Guild) in Florence (c. 1330s-1340s). Here it is suggested that one can take further Jill Harrison's conclusion that the fresco is "innovative and influential not only in artistic terms, but also in the way it engages with contemporary debates on collective and individual identity and responsibility".⁵⁹⁵ A visual analysis offers a new perspective on the central figure of a judge, the cardinal virtues that surround him, and the male figures they face. It is argued that the fresco articulated the importance of the role of the judge, offering guidance to those exercising the judicial functions of the patrons of the work, the Arte della Lana, of the qualities they should possess and the difficulties they might face, and to those appearing before a figure of secular and judicial authority on what they could expect of the judge and how they ought to behave.

⁵⁹⁵ Harrison 2012: 134.

The second case study then explores whether and to what extent those same themes impacted upon the artistic representation of a figure of secular and judicial authority in the context of a lesser-studied work, the *Madonna and Child Enthroned with the Theological and Cardinal Virtues*, from San Miniato al Tedesco (c. 1393). Visual analysis shows that the figures of the Virgin and Child are additions of a slightly later date. Therefore, it is argued that – in its original state – this fresco too treated the theme of a figure of secular authority flanked by the Virtues, and that this depiction of a just ruler supported by justice in his government shares iconographical elements with the *Brutus* fresco. Exploration of both the differences between these two artworks and of their shared meanings addresses the use of images in affirming civic values and contemporary expectations of secular and judicial authority, offering visual models to guide and inform.

4.1 Brutus the Good Judge

This part of Chapter 4 consists of a case study analysis of a fresco of *Brutus the Good Judge* in the premises of the Arte della Lana in Florence (Figure 105).⁵⁹⁶ The date of the fresco is unknown, as is the name of the artist.⁵⁹⁷ Most scholars suggest a date c. 1330s-1340s.⁵⁹⁸ The clothing of the male figures in the fresco, for example, the high-necked, tight-sleeved sub-tunic and wide over or super tunic or *robe*, appears typical of this time.⁵⁹⁹

The Arte della Lana

The Arte della Lana, or Guild of Wool Merchants, was one of the seven major guilds in late-medieval Florence.⁶⁰⁰ The Guilds were civic, political, religious, and commercial bodies. In the early Trecento, political power in Florence was exercised by the Priorate, comprising a representative from each district of the city, who had also to be a member of a guild; guild membership was therefore inextricably linked to Florentine politics. The wealth and power of the Wool Guild is attested to in Giovanni Villani's *Nuova Cronica*.⁶⁰¹ It grew rapidly from 1320s, largely owing to a change in product from cheaper textiles to luxurious woollens.⁶⁰²

⁵⁹⁶ I thank the Società Dantesca for permission to study and photograph the frescoes, and for a copy of Barbara Banchi, Marisa Boschi, Laura Breccia, Paola Lauretta and Giovanna Puletti. 2009. *Il Palagio dell'Arte della Lana dalle origini ad oggi* (Florence: Società Dantesca Italiana). The frescoes have been the subject of several programmes of restoration, most recently in the early 1990s (Banchi et al 2009: 46-7). As such, the condition of the fresco, and attempts at restoration, mean that observations cannot be definitive.

⁵⁹⁷ The date of the fresco is discussed below. Authorship is uncertain. A documentary record dated 18 December 1337 of a payment by the Consuls of the Guild to a painter, Francesco Cennamelli of Volterra, possibly relates to the commission of the *Brutus* fresco but cannot be definitely connected to the work (Banchi et al, 2009: 64). For other possibilities, see Harrison 2012: 127 note 3.

⁵⁹⁸ Riess 1984: 80, note 38: c. 1335. Harrison 2012: 130, suggested c. 1332-42, preferring the latter date because she interprets the fresco as referring to an implied association between Brutus and Hercules as challengers of oppression, especially important under the rule of the Duke of Athens in 1342-3 (Harrison 2012: 137). A terminus ante quem of 1337 was suggested in Breschi 2011: 122. Donato favours the 1340s (Donato 2013: 24).

⁵⁹⁹ Scott 2007: 93.

⁶⁰⁰ There is a vast literature on the guilds in Trecento Florence. Alfred Doren. 1940. *Le arti fiorentine* trans. G.B. Klein (Florence: Felice le Monnier) is the standard reference. For an introduction to the Florentine guild system, see Richard A. Goldthwaite. 2009. *The Economy of Renaissance Florence* (Baltimore: The Johns Hopkins University Press), 341-407 (the Wool Guild is addressed at 342-8). On the wool industry generally, see Goldthwaite 2009: 267-281. For a detailed study of the Wool Guild in Florence in the Trecento, see Hidetoshi Hoshino. 1980. *L'arte della Lana in Firenze nel basso medioevo: Il commercio della Lana e il mercato dei panni fiorentini nei secoli XIII-XV* (Florence: LS Olschki).

⁶⁰¹ Giovanni Villani, *Nuova Cronica*, book xii 94. He estimated the total annual value of production in the 1330s at 1,200,000 florins, not including profits. Villani's social and political background might have contributed to his generally critical view of the power of guilds and guildsmen in Florence in the 1340s. On Trecento chroniclers, see Green: 1972; and Dale, Williams Lewin, Osheim: 2007.

⁶⁰² John Munro argues that after what he terms the 'First Florentine Textile Crisis' of the 1320s, the Arte della Lana experienced rapid expansion, which he attributed largely to this radical transformation: see *The Dual*

Matriculation figures for 1332 indicate that the Guild had 613 members in 200–300 firms.⁶⁰³ However, membership was limited and many more would have been subject to regulation by the Guild. It is estimated that in the second quarter of the Trecento at least 10,000 artisans and workers would have had some involvement in the wool trade.⁶⁰⁴ Other accounts suggest that roughly one-third of the population was involved in the wool industry in some form.⁶⁰⁵ This can be set in the context of a population of Florence estimated at c. 100,000 around 1300,⁶⁰⁶ and c. 120,000 with a further 280,000–320,000 in the *contado*, in the mid-Trecento.⁶⁰⁷ The power and status of the Wool Guild led the communal authorities to give it exclusive patronage for the construction of the cathedral from 1331, illustrating how the interests of the secular, religious, and commercial bodies in Florence could overlap.⁶⁰⁸

Guilds within Florence were organized with their own laws, council, assemblies and judges to regulate the members' activities. Historians have disagreed on the extent to which the Florentine communal authorities accepted the independence or autonomy of the guilds in the Trecento.⁶⁰⁹ Such powerful independent organisations could potentially limit or even threaten the power of the communal authorities. However, equally, they provided an alternative point of allegiance to the family unit, or political faction, which were implicated in much of the internecine violence that threatened to destabilise Florentine society. To an extent, communal authorities would delegate or share some of the responsibility to other fora for certain matters, including the settlement or arbitration of disputes, to further the

Crises of the Late-Medieval Florentine Cloth Industry, c. 1320 - c. 1420. Working Paper no. 487 (13 May 2013). Available online at <http://www.economics.utoronto.ca/index.php/index/research/workingPaperDetails/487> [accessed 17 June 2013].

⁶⁰³ *Arte della Lana*, 19, ff.1-4, 25-6 (John M. Najemy. 1979. 'Guild Republicanism in Trecento Florence: the Successes and Ultimate Failure of Corporate Politics', *The American Historical Review* 84/1 (Feb.): 53-71; 59, note 21).

⁶⁰⁴ John Najemy. 2006. *A History of Florence, 1200-1575* (Oxford: Blackwell), 100.

⁶⁰⁵ Villani *Cronica*, XI, 94.

⁶⁰⁶ Waley 1969: 35.

⁶⁰⁷ Estimated by David Herlihy and Christiane Klapisch-Zuber. 1985. *Tuscans and Their Families: A Study of the Florentine Catasto of 1427* (New Haven: Yale University Press), 65; 68-69.

⁶⁰⁸ For an interesting view that the supervision of the building of the Cathedral by committees and guilds was a political manoeuvre, intended by communal authorities to challenge the control magnate families exerted over the bishopric and the Cathedral chapter in Florence, see Najemy 2007: 183-210.

⁶⁰⁹ The various viewpoints are analysed by Najemy 1979: 53-71. In certain matters at least, the commune gave guilds greater independence in the Florentine Statutes of 1322-5 than those of 1415 (on the latter, see Stern 1994: 83).

aim of promoting the 'honour and defence and exaltation of the peaceful and tranquil state of the Lord Podestà, the Lord Captain of the People and the Priors and the Standardbearer (Gonfaloniere) of Justice, and of the Guilds and Guildsmen of the City and District of Florence and of all the Florentine People'.⁶¹⁰ To that end, many guilds – including the Wool Guild - could pass their own statutes, which provided for resolution of disputes through law and impartial adjudication.⁶¹¹

The Council of the Wool Guild consisted of 48 members. The names of the Consuls were chosen every four months. The Consuls were supported by various officials, including a judge.⁶¹² Tribunals of the guilds were permitted to exercise quasi-judicial functions in disputes between members and their trading partners, or internal disputes between members. Indeed, many guilds tried to ensure that their members litigated exclusively in the guild courts.⁶¹³ They had both civil and criminal jurisdiction.⁶¹⁴ Consuls of important guilds like the Arte della Lana had the right to imprison, torture, and even issue sentences of corporal and capital punishment; such sentences were handed out, for example, in 1310, in response to dispute between guild members.⁶¹⁵ The 1317 statutes (the earliest surviving statutes of the guild) confirmed the autonomy of the guild consuls, giving them authority to review and increase their own sentences. There is evidence that justice administered by the Arte della Lana over those subject to its jurisdiction could be more severe than in communal courts: a conviction for stealing wool could be punished by the offender being dragged through the streets before being hanged; whereas thieves convicted in communal courts were frequently merely fined.⁶¹⁶ In addition, decisions of the Guild's judge were not subject to appeal, either within the Guild or to a communal court.

⁶¹⁰ Preamble to the Ordinances of Justice, July 1295, in Benjamin G. Kohl and Alison Smith. 1995. *Major Problems in the History of the Italian Renaissance* (Lexington, Toronto: D.C. Heath and Company), 140.

⁶¹¹ A. M. E. Agnoletti. 1940. *Statuto dell'Arte della Lana di Firenze (1317–1319)* (Florence: F. Le Monnier), 19, 84 (see Najemy 2006: 43).

⁶¹² Banchi et al 2009: 40.

⁶¹³ Stern 1994: 82.

⁶¹⁴ Stern 1994: 87.

⁶¹⁵ See Statute *Lana*, 5, bk.I, rub.16 (1338) (in Marvin B. Becker. 1960. 'The Republican City State in Florence: an inquiry into its origin and survival (1280-1434)', *Speculum* 35/1 (Jan.): 39-50, at 45, note 31).

⁶¹⁶ *Archivio del Giudice degli Appelli*, 124, I, f.88r; IV, f. 16; V, f.3r (Becker 1960: 39-50, at 45, note 32).

Clearly, those exercising the judicial powers of the guild had wide powers, and their decisions could impact upon wider Florentine society. Given the number of people within Florence subject to the authority of the Guild, internal tensions – such as those in 1311 between members of the guild drawn from elite families, who wanted control over membership and appointment to the consulate of the guild, and those representing more *popolo*-aligned members, had the potential to spill over into civic disruption.⁶¹⁷ Villani's *Cronica* described the tribunal's decisions as having "often given rise to protests that have not yet ceased and from which many scandals might still ensue".⁶¹⁸ In these circumstances, exercise of judicial power by the guild was of interest to many people.

The Audience Hall of *Il Palagio dell'Arte della Lana*: divine and secular imagery

Around 1308, the Arte della Lana acquired new premises next to Orsanmichele.⁶¹⁹ Offices occupied the ground floor; a large room comprised most of the first floor; the second floor housed a prison, for those found to have breached the rules or written statutes of the guild.⁶²⁰ The building was nearly destroyed by fire in 1331, and the reconstruction produced a large first floor hall with ceilings of two spans of crossed arches.⁶²¹ This seems to have been a multi-functional space, used as the court or tribunal hall and audience chamber of the Guild. The room features fresco decoration on all walls, with a mixture of religious and secular imagery. The judicial nature of some of the proceedings in the room is evidenced by the variety of frescoes in the room which feature relate to in some form.

⁶¹⁷ Villani *Cronica*, book x, 30. There are indications that, by 1330s, the guild was increasingly controlled by its elite members. For example, by 1333, artisans were prohibited from holding guild offices, which were reserved for the *lanaiuoli* or merchant-entrepreneurs, of which there were over 600; however, most *lanaiuoli* were from non-elite families, making it difficult to reach conclusions on demographic shifts in control of the guild (see Najemy 2006: 99-100).

⁶¹⁸ Villani *Cronica*, book x, 30.

⁶¹⁹ The headquarters of the guild since 1308 (evidenced by a plaque at the site), the building was constructed around the turn of the Trecento. In the early twentieth century, the building underwent major restoration and became the headquarters of the Società Dantesca Italiana.

⁶²⁰ Banchi et al 2009:14. That the Guild premises included a prison enhanced the guild's independence from the commune. On the penal use of imprisonment, see Chapter 2.

⁶²¹ Banchi et al 2009: 51. See also Villani *Nuova Cronica*, book XI, 18-23.

a. Divine justice imagery

The south wall features images of Divine Justice.⁶²² These are badly damaged, which may suggest that certain frescoes survived the fire and pre-date the 1330s reconstruction, or that these have not been subject to the same level of restoration as the *Brutus* fresco (Figure 106). There is a fresco of the *Virgin and Child Enthroned*, which as an image of Divine Justice was considered in Chapter 2 above. Above them, Christ-Judge holds a sword aloft, and a book open to the Book of Revelation. Again, the reference to Divine Justice is implicit in this imagery, despite the secular nature of many of the proceedings taking place in the chamber.

This sacred/secular duality is reinforced by frescoes of patron saints, both flanking the image of the Divine-Judge on this south wall, and facing that of Brutus, a secular judge, on the east wall (Figure 107).⁶²³ As noted above, patron saints held an important place in the late-medieval city-states.⁶²⁴ Their images were used to articulate social, cultural, and political power. Moreover, they could be simultaneously civic and religious figures, mediating between the human and the divine. The patron saints flanking the image of Christ-Judge were of special significance to Florence (San Zanobi) or the Guild itself (San Stefano).⁶²⁵ Those on the east wall were, from left to right, San Martino; San Pancrazio; San Pietro, and Sant' Agostino. Some of these patron saints represented particular districts of Florence connected to the Guild or its members, whilst others could be associated with legal proceedings.⁶²⁶

Interaction between the secular and judicial proceedings of the room and the divine is also supported in the decoration of the ceiling. Ceiling roundels feature the four Evangelists to one half of the vaulted room (that in which the *Brutus* fresco is located; Figure 108) and the

⁶²² On possible dating to c. 1320s, and attribution, see Miklós Boskovits. 1984. *A Critical and Historical Corpus of Florentine Painting, III.9, The Fourteenth Century. The Painters of the Miniaturist Tendency* (Florence: Giunti), 19, 154-5.

⁶²³ For a detailed description of this aspect of the fresco scheme, see Harrison 2012: 131-3.

⁶²⁴ On the role of patron saints, see Chapter 1.

⁶²⁵ The Guild was to commission a statute of San Stefano in the fifteenth century for the exterior of Orsanmichele.

⁶²⁶ See Banchi et al 2009: 56; and Harrison 2012: 132-133.

four Cardinal Virtues to the other (Figure 109).⁶²⁷ These images indicate both that the divine figures were intended to look down and oversee the proceedings in the audience hall, to support those proceedings and the actors within them. The presence of such images, and the apparent parallels between the depiction of the virtues and the evangelists, seems to conflate sacred and secular elements, implying a relationship between the secular justice of the proceedings in the room and divine justice.

b. Secular justice imagery

The theme of justice, its importance to the guild and to the function of the room, is most magnificently depicted in the large fresco on the west wall (Figure 105). Morpurgo identified the main figure as one from ancient Rome, Lucius Junius Brutus, surrounded by personifications of the Cardinal Virtues, defending the judge from attack by male figures, displaying behaviours threatening to the judge and the legal proceedings taking place: “dell’avvocato mellifluo, dell’arrichito senza scrupoli, del perfido cavillatore, del nobiluomo condannato, che minaccia e bestemmia”.⁶²⁸ He set the fresco in the context of other Trecento works, both artistic and poetic, and proposed several possible artistic precedents, from a fresco by Giotto for the Bargello, now lost (discussed below), to a copy of the Statutes of the Guild from 1333, containing an illuminated letter featuring the Divine Judge and patron saints of the Guild.⁶²⁹

The depiction of a figure from ancient Rome, as the centre point of a fresco by a Trecento artist commissioned by the Wool Guild of Florence is part of a move evident across much of the Italian peninsula towards the appropriation of Roman history. City-states consciously sought to recall the virtues and political institutions of republican Rome, which located the cause of despotic government or tyranny in the vices which led to social division between citizens. Many cities sought to reinforce or manufacture a foundation myth, a link to ancient Rome.⁶³⁰ Contemporary Florentine chronicles suggest a belief that Florence was heir to

⁶²⁷ These most likely post-date the fire of 1331, and have been attributed to the same artist who illuminated the initial letter of the Statutes of the Guild from 1333, referred to in Morpurgo 1933: 163, and Banchi, et al 2009: 56.

⁶²⁸ Morpurgo 1933: 163.

⁶²⁹ R. Archivio di Stato in Firenze: Arte della Lana, Statuti, n.4; referred to in Morpurgo 1933: 163.

⁶³⁰ Beneš 2011 explored the role of the classical foundation myth in late medieval Italy. Although her case studies focus on Padua, Genoa, Siena, and Perugia, many points are of more general application to the

republican Rome. The anonymous *Chronica de origine civitatis* (pre-1230s) attributed Florence's origins to Roman builders, who modelled it on Rome.⁶³¹ This idea found visual expression in a manuscript illumination by Pacino da Bonaguida c. 1341-8, *The Rebuilding of Florence by Charlemagne and the Romans* (Figure 110). Anita Moskowitz suggested that "the members of the upper bourgeoisie who controlled the Campanile project were experiencing a new consciousness of the Roman past of their city".⁶³² Given the role played by the Arte della Lana in controlling the Opera del Duomo from 1331, it is credible that they sought also to express the same in the decoration of their assembly hall.

Brutus

Lucius Iunius Brutus, one of the first two Roman consuls in 509 BC, was a key figure in the transition from monarchy to Roman Republic. He was reputed to be responsible for the expulsion of the last Roman king, Tarquinius Superbus. His reputation for judicial probity lay partly in the belief that he had ordered the execution of two of his own sons for allegedly plotting the return of the royal family.⁶³³

Rather than indicating that harsh, punitive justice should be expected at hearings in the room, Brutus may have been intended more to encourage identification with specific Roman heroes or virtues. There was at the time an interest in the figures of ancient Rome as exemplars, for moral instruction. His heroism is noted in many Trecento works, including Dante's *De monarchia*⁶³⁴ and Boccaccio's *De casibus virorum illustrium*.⁶³⁵ Petrarch included Brutus in *De viris illustribus*, biographies of ancient figures who, he believed, could set a

communes of north and central Italy. On cultural transmission between late medieval Florence and Rome, as reflected in coinage, see William R. Day Jr. 2011. 'Antiquity, Rome, Florence: coinage and transmission', in *Rome Across Time and Space. Cultural Transmission and the Exchange of Ideas, c. 500-1400*, ed. by Claudia Bolgia, Rosamond McKitterick, and John Osborne (Cambridge: Cambridge University Press), 237-261.

⁶³¹ Nicolai Rubenstein. 1942. 'The Beginnings of Political Thought in Florence: a study in medieval historiography', *Journal of the Warburg and Courtauld Institutes* 5: 198-227.

⁶³² Anita Fiderer Moskowitz. 1983. 'Trecento Classicism and the Campanile Hexagons', *Gesta* 22/1: 49-65, 61.

⁶³³ See the entry on Brutus in Simon Hornblower and Anthony Spawforth. 2003. *The Oxford Classical Dictionary* (3rd ed.) (Oxford and New York: Oxford University Press), 787-8. The account appeared in Livy, *The Early History of Rome Volume 1*, Book 1.60-2.5.

⁶³⁴ Dante *De monarchia* IV:v.

⁶³⁵ Boccaccio *De casibus virorum illustrium* IX:xxii.

moral example.⁶³⁶ Through the use of images of such men, contemporary viewers were to be encouraged to emulate their virtuous behaviour.⁶³⁷

A secular figure, Brutus would be a suitable image of judging for the proceedings of the guild. Also, his republican affiliations may have appealed on politico-ideological grounds to the members of the guild. He was revered as a *liberator*.⁶³⁸ A lost inscription recorded in manuscripts as located below the image of Brutus indicated his attraction:

Brutus was the first consul of the Romans, and had in himself the four virtues, Prudence, Justice, Fortitude and Temperance; and through his goodness and uprightness, after his death the Romans, in memory of him, as an example to all the cities, made a statue in his image, and inscribed it with a verse that read as follows:
*From Brutus, first Consul of the Romans | Prudent, just, strong, temperate | Take an example, each Consul.*⁶³⁹

The fact that many officeholders within the guilds were at this time known as ‘consuls’, would emphasise the appeal of this tradition.⁶⁴⁰

Brutus dominates the lunette (Figure 111). He is seated on a long plain stone or marble bench, unlike the quite ornate throne of the Madonna and Child on the south wall. Brutus’s

⁶³⁶ Petrarch’s intentions for *De viris illustribus* were addressed in Benjamin Kohl. 1974. ‘Petrarch’s Prefaces to de Viris Illustribus’, *History and Theory* 13/2: 132–144. Petrarch worked on several versions; it is thought his bibliographies of figures from Republican Rome date from c. 1337–8. See, in addition, Theodor E. Mommsen. 1959. ‘Petrarch and the Decoration of the Sala Virorum Illustrium’, in *Medieval and Renaissance Studies*, ed. by E.F. Rice (Ithaca, New York: Cornell University Press), 130–74.

⁶³⁷ For further discussion of the *uomimi famosi* see Christiane L. Joost-Gaugier. 1982. ‘The Early Beginnings of the Notion of the Uomimi Famosi and the De Viris Illustribus in Greco-Roman Literary Tradition’, *Artibus et Historiae*, 3/6: 97–115; Christiane L. Joost-Gaugier. 1985. ‘Poggio and Visual Tradition: ‘Uomimi Famosi’ in Classical Literary Description’, *Artibus et Historiae* 6/12: 57–74; and Maria Monica Donato, ‘Gli eroi romani tra storia ed exemplum: I primi cicli umanistici di Uomini Famosi’, in Settis 1985: vol 2, 97–152.

⁶³⁸ In a letter from Petrarch to Cola di Rienzo; see Ernest Hatch Wilkins. 1961. *Life of Petrarch* (Chicago, Illinois: University of Chicago Press), 64.

⁶³⁹ “Bruto fu primo consolo de’ Romani, et ebbe in sè le Quattro Virtù, cioè Prudentia, Giustizia, Fortezza e Temperanza; e per la sua bontà e drittura, doppo la sua morte li Romani, a memoria di lui, per exemplo di tutta la città, fecero una statua a sua imagine, e titolârlo di uno verso che diceva così: Da Bruto, primo Consol de’ Romani / prudente, giusto, forte, temperato / Exemplo prenda ciascun Consolato”. Morpurgo refers to *Le Antiche Chiose Anonime all’ Inferno* (Morpurgo 1933: 149–150), a Trecento gloss to Dante’s *Inferno* (1900. *Le Antiche Chiose Anonime All’ Inferno Di Dante Secondo Il Testo Marciano*, ed. by Giuseppe Avalle (ital. Cl. IX, Cod. 179) (Città di Castello: S. Lapi)). Donato refers to a *Chiose Selmaine*, dated pre-1337 (Donato 2013: 25). See also Breschi 2011: 122.

⁶⁴⁰ They were referred to as such in the Preamble to the Ordinances of Justice, July 1295, for example (see Kohl and Smith 1995: 139–141). Breschi noted, per Davidsohn, that the seven leaders of the Guild, and, by virtue of office, members of the Guild’s court were termed, ‘consuls’ (Breschi 2011: 123, note 31).

bench seems appropriate to the secular, commercial nature of the guild. It may have mirrored seating arrangements in the chamber. His feet rest on a step. If standing, he would tower over the other figures. Rather than wearing contemporary clothing, his centrally-fastened tunic and robe emphasise Brutus's republican, Roman and timeless qualities. He is a virile, masculine presence, with longish dark hair, beard and moustache. The depiction of the face is of finer quality than the relatively crude work of his hands and robes. He stares not at the viewer, but to his left; possibly towards those sitting in the room, including those appearing before the tribunal. This reinforces the focus of the fresco on the administration of justice, and the role of the judge.

As noted above, the character and attributes of those exercising judicial authority assumed particular importance with the introduction of the inquisitorial system, but a particular episode in Florentine history might have exacerbated concerns over judicial conduct.⁶⁴¹ In 1295, a corrupt judge in the podestà's court, allegedly bribed by Corso Donati or his supporters, coerced a notary into making a false record. This duped the newly appointed podestà, Giovanni Lucio from Como, into unjustly acquitting Donati on charges of murder and violent behaviour when pursuing a vendetta in breach of the provisions of the Ordinances of Justice (1293-5). This led ultimately to factional violence between the Black and White Guelfs. An outbreak of serious civic unrest in 1301 brought the banishment from Florence of many Whites, including Dante. Political theorist and Dominican, Remigio de' Girolami, preached a sermon to the Florentine Priors, offering advice on how to govern and counselling on the need for them to exercise their judgment *in comune* and for the common good (*pro bono communis*).⁶⁴² His *De bono communi* (c. 1302) addressed divisions within Florentine society, between Church and laity, Guelf and Ghibelline, artisan and the 'great men' (*grandi*). He called for men to put the good of the community over personal interest,

⁶⁴¹ A degree of caution is required with relying as here on such details from Dino Compagni's *Cronica* (I.16, 36-37), given its anti-magnate, pro-popular government stance, and seemingly anti-lawyer sentiment. However, Villani's *Nuova Cronica* addressed many of the same events, in largely similar detail (Book VIII, 39 on divisions between Black and White Guelfs; Book VIII, 71 on the fire in Florence). See Dino Compagni. 1986. *Dino Compagni's Chronicle of Florence* trans. Daniel Bornstein (Philadelphia: University of Pennsylvania Press).

⁶⁴² See Sonia Gentili. 2001. 'Remigio de' Girolami', *Dizionario Biografico degli Italiani - Volume 56* [http://www.treccani.it/enciclopedia/remigio-de-girolami_\(Dizionario-Biografico\)](http://www.treccani.it/enciclopedia/remigio-de-girolami_(Dizionario-Biografico)) [accessed 25 March 2013]. See also Charles T. Davis. 1960. 'An Early Florentine Political Theorist: Fra Remigio de' Girolami'. *Proceedings of the American Philosophical Society* 104/6: 662-676.

indicating the contemporary fear of faction and its threat to the city's stability.⁶⁴³ By 1304 continued factional violence had brought the city to the brink of civil war, and was the cause of a huge fire which destroyed the centre of Florence. The role of a corrupt judge in causing this violence would make the search for strong judicial role models understandable.

The stance of Brutus the judge is direct and frontal, emphasising the strength, stability, and *gravitas* of the figure.⁶⁴⁴ Similar confident, authoritative figures appeared in other secular imagery: the relief of the *Comune in Signoria* from the tomb of Guido Tarlati in Arezzo (1330; Figure 79); the figure of *Ben comune* in Ambrogio Lorenzetti's fresco in the Palazzo Pubblico, Siena (1337-40; Figure 112), or on covers of Sienese account books (1344, attributed to Ambrogio Lorenzetti; Figure 113; see also Figure 102). The depiction of *Law* from the Campanile in Florence (1340s; Figure 114) is a similarly seated figure of a judge, robed and facing frontally, but flanked by supplicating and attentive figures, markedly different to those surrounding Brutus. Several of these images – possibly including the *Brutus* fresco – are thought to date from the 1340s, when a deteriorating social, political and economic situation may have promoted a new emphasis on law and order in Florence, so representations of legal authority would need to convey a message of strength.⁶⁴⁵ It can reasonably be assumed that the image of Brutus was intended to recall such allusions to those in the guild hall.

Power and authority could be established by “conventional indicators of rulership”, including a frontal seated position, long robes and a cloak.⁶⁴⁶ Such imagery draws on the iconography associated with secular rulers.⁶⁴⁷ Images were expected to reveal not only the appearance but also the character or personality of an individual.⁶⁴⁸ Secular authority figures tended to be depicted so that the bodily position and the relationship of the figure to the ground could convey certain qualities; “the inner character mirrored in the outward

⁶⁴³ See Hyde 1972: 273-307, at 284-5.

⁶⁴⁴ On the imagery of seated authority figures, see Gardner 1998; Little 2005: 91-108; and Chapter 2.

⁶⁴⁵ Moskowitz 1983: 49-65. Florence's difficulties in 1340s are discussed in Chapter 3, above.

⁶⁴⁶ Bolton and Meek 2007: 5.

⁶⁴⁷ See Chapter 2 for examples.

⁶⁴⁸ This is apparent from contemporary texts; for example, Petrus de Abano's commentary on Aristotelian *Problemata physica*, *Problema 64* (pre-1310), addressed in Eva Frojmovič. 2007. 'Giotto's Circumspection', *The Art Bulletin* 89/2: 195-210, at 204.

appearance”.⁶⁴⁹ For example, as noted above, seating crossed-legged can be interpreted as indicating a tyrant.⁶⁵⁰ A firm stance - seated, forward-facing, feet grounded - could echo the strong character of the person represented, conveying a sense of goodness or virtue, giving the stance an ethical dimension. Papal imagery featured this iconography; for example, the statue of Pope Boniface VIII for his tomb monument by Arnolfo di Cambio (c. 1296-1300; Figure 115).⁶⁵¹ Representations of religious figures also drew on these associations; the statue of San Zeno, in Verona, for example (Figure 36), or the tomb of Guido Tarlati, Bishop of Arezzo (Figure 79). It could also be used for the personification of abstract concepts, such as *Ecclesia* or *Filosofia* (Figure 44), *Justitia* (Figures 45 and 47), or the Virtues from the Florentine Campanile (Figure 116).

Ultimately, such depictions of seated authority figures allude to images of Christ-Judge in *Last Judgment* scenes, where He is seated, front-facing, robed, staring forwards, often holding a scroll or raising His hand in blessing.⁶⁵² Similarly, the personification of *Law* from the Florentine Campanile appears to ‘bless’ the litigants in a gesture reminiscent of *Last Judgment* imagery (Figure 114).⁶⁵³ Similarities to imagery of the Divine Judge suggest that the patrons of the *Brutus* fresco sought to justify the exercise of authority, and most particularly judicial decision-making in their hall, by invoking divine justice. By incorporating the characteristics of an iconic, seated frontal pose, into this depiction of a judicial figure, the fresco creates associations between the religious imagery of the Divine Judge, contemporary depictions of secular kingship, and the exercise of judicial authority in the hall of the Arte della Lana. The models for those acting as judges in that room could not be clearer.

⁶⁴⁹For further discussion, see Joseph Manca. 2001. ‘Moral Stance in Italian Renaissance Art: Image, Text, and Meaning’, *Artibus et Historiae* 22/44: 51-76. The quotation is Manca 2001: 53. Although Manca addressed mainly post-Trecento examples, some points are of general application. As he addresses Giotto as “a precursor to the Quattrocento in the representation of moral gravity” (p.55), a possible connection of the *Brutus* fresco to the work of Giotto (discussed below), make Manca’s arguments relevant to the current discussion. Manca 2001: 55.

⁶⁵⁰ On a possible connection between crossed-legs and tyranny, see Camille, 1989: 54. See Herod’s crossed feet in Duccio’s *Maestà*, in the *Trial of Christ* (Figure 84d) and the *Slaughter of the Innocents* (Figure 86). For further examples, including an image of Nero in a painting of the *Fall of Simon Magus* (Siena, late Duecento), see Golden, 2005: 93-5.

⁶⁵¹ Now in the Museo dell’Opera del Duomo, Florence.

⁶⁵² See Chapter 2 for examples.

⁶⁵³ See Moskowitz 1983: 49-65; 61.

The manner in which Brutus holds his staff seems to be a visual parallel to the sceptre in secular kingship iconography, intended to make the enthroned ruler a living likeness of the enthroned Christ. The staff or stick in his right hand may also allude to a contemporary attribute of those involved in the administration of justice.⁶⁵⁴ It appears in Giotto's *Injustice* in the Scrovegni Chapel (Figure 83), the scene of the *Comune in Signoria* from the Tarlati tomb (Figure 79), and several other images of judges in scenes of the trials of Christ (see Chapter 3). It references the judicial sceptre (*baculus judicarius*), a badge of judicial office, or a wider symbol of authority. It appears in several near-contemporary images of podestà; for example, Nicola Pisano's 'Il Podestà Matteo da Correggio', Fontana Maggiore, Perugia c. 1278 (Figure 117).⁶⁵⁵ Nicola Pisano's image of *Justitia* from the pulpit in the Duomo, Siena, also holds a form of *baculus judicarius*, an unusual feature for the Virtue (Figure 118).⁶⁵⁶ It may have been actively used in proceedings, or held ceremonial or symbolic significance.⁶⁵⁷ Its inclusion in the fresco would reinforce the link with those exercising judicial authority on behalf of the guild in that room. Cupped in Brutus's left hand is a small object, which is not easily identified; it may be a bowl or box. It may have been intended to represent something specific to the guild, such as a seal, but encourages parallels with secular kingship images, where a left hand holds an orb.⁶⁵⁸

The choice of *Brutus the Good Judge* evidences the concern to demonstrate the ideals and values sought from those exercising judicial authority on behalf of the Guild. The judge had to be strong, impartial, and fair, valuing justice over his own concerns. Jacopo da Voragine's view that "Roman judges and consuls were more concerned with the state than their own affairs" typified a late-medieval association of these qualities with Roman models.⁶⁵⁹ The image of Brutus would offer guidance to those acting as judge in the Guild hall, whilst the pose adapted from images of Christ-Judge assured those appearing before the judge that his

⁶⁵⁴ The fresco suggests that the staff was painted over at some point. It may once have been highlighted in metal leaf, gold ('auri') or gilded tin ('stangari aureati'), since lost.

⁶⁵⁵ See also an image from a Sienese statute book (Archivio di Stato, Statuti di Siena 20, c.73r): see, Seidel 2012: 130-131, figs, 76 and 77.

⁶⁵⁶ Seidel 2012: 122-32.

⁶⁵⁷ Discussed further below (note 683).

⁶⁵⁸ It appears to contain small round objects, possibly coins? Morpurgo suggested it could be a seal or brand, possibly weights on a scale (Morpurgo 1933: 148). Harrison identified it as a civic seal (Harrison 2012: 134).

⁶⁵⁹ Jacopo da Voragine, *Cronica della città di Genova dalle origini al 1297* (c. 1295-7), trans. Stefani Bertini Guidetti (Genoa: ECI, 1995), 402, which echoed Cicero's *De officiis* (I.85-6): see Beneš 2011: 77, note 72.

exercise of lawful authority derived ultimately from God, an allusion reinforced by the juxtaposition of divine and secular justice imagery in the hall.

Aside from the figure of the judge, a justice subtext is implicit throughout the fresco, including the Cardinal Virtues and their interaction with male 'opposites'.

The Cardinal Virtues

Brutus is flanked by eight paired figures: four male and four female (Figure 105). The female figures are personifications of the Cardinal Virtues.⁶⁶⁰ The *cartelli* do not precisely clarify the identity of these figures, which might presuppose an audience familiar with the iconography; however, some are unusual representations. They are of equal stature to their male counterparts. The Virtues are winged, possibly more appropriate to a religious setting than an essentially secular location and fresco.⁶⁶¹ This feature of the *Brutus* fresco would appear to conflate sacred and secular elements. It may be intended to underline the parallel between the Virtues and the four Evangelists, echoing their juxtaposition in the ceiling roundels.

The conflation of sacred/secular is also inherent in the Virtues themselves. Although deriving from classical philosophy, from Plato, Aristotle and Cicero, where they indicated how to live a moral life, the Cardinal Virtues were also central to Christian theology. Their role in leading man to a good life was expressed in the Book of Wisdom (8, 7), "if a man love righteousness her labours are virtues: for she teacheth temperance and prudence, justice and fortitude: which are such things, as men can have nothing more profitable in their life". The Cardinal Virtues were perceived as coming from God, together with the Theological and other minor virtues. Moreover, exegetical tradition linked Christ with the Virtues. Early

⁶⁶⁰ On the iconography of the cardinal virtues generally, see, Colum Hourihane. 2000. *Virtue and Vice: The Personifications in the Index of Christian Art* (Princeton: Princeton University Press), 324-330; and, Helen F. North. 1974. "'Iconography of the Cardinal Virtues', Temperance (Sōphrosynē) and the Canon of the Cardinal Virtues', in *Dictionary of the History of Ideas*, 4 vols (New York: Charles Scribner's Sons), vol 4, 366-78. On the Trecento, see Helen F. North. 1980. *From Myth to Icon. Reflections of Greek Ethical Doctrine in Literature and Art*. (Ithaca and London: Cornell University Press), 214-230.

⁶⁶¹ Giotto's virtues for the Arena Chapel, a religious location, were un-winged. Similar winged virtues feature in Andrea di Bonaiuto's, *The Triumph of Saint Thomas*, Spanish Chapel, Santa Maria Novella, Florence (c. 1365-8): see Julian Gardner. 1979. 'Andrea di Bonaiuto and the Chapterhouse Frescoes in Santa Maria Novella', *Art History* 2: 107-138.

theologians wrote how Christ encompassed all of God's virtues.⁶⁶² St. Ambrose (330s-397 AD) referred to the cardinal virtues,⁶⁶³ as did St Augustine (354-430 AD).⁶⁶⁴ Contemporary theologians also linked religious belief to the cardinal virtues. For Aquinas, religious belief itself was a virtue, one that could be encompassed under justice, as it involved man giving God his due.⁶⁶⁵ However, these Virtues were not necessarily present: "Man cannot simply 'be' virtuous, but must exercise the virtues in order to possess them".⁶⁶⁶ This need for man to actively engage in virtuous behaviour underpins the artistic representation of Brutus as judge, and of the oppositions between the personifications of Cardinal Virtues and the characters that they face in the fresco.

This is not a static representation of the Cardinal Virtues. Instead, they engage in dynamic struggle, beset by male figures. These are particular and rather unusual. They are not the traditional counterparts to the Virtues, the vices from the *Psychomachia*; nor are they representative of the seven deadly or Cardinal sins.⁶⁶⁷ However, this is a struggle between moral values. The Virtues protect Brutus the judge from particular aspects of Florentine society, personifications of behaviours opposing the Virtues, and those likely to bring someone before the guild tribunal. Morpurgo termed these, the Flatterer, the Corrupter, Arrogance, and a swindler. Clearly, there was a message here for those appearing before the court. However, my study suggests that the male figures may have had further purposes: by indicating these behaviours as threatening the judge, the fresco also warned by example those administering justice in the chamber of their need to remain virtuous to judge justly.

The use of artistic imagery and inscription to advise or admonish those exercising official powers is also a feature of Simone Martini's *Maestà* (1315), in the Council Chamber of the

⁶⁶²The works of Ambrosiaster and Jerome on this point are noted in Anne-Marie Bouché, 'The Spirit in the World: The Virtues of the Floreffe Bible Frontipiece: British Library, Add. Ms. 17738, ff.3v-4r', in Hourihane 2000: 42-65.

⁶⁶³ Ambrose *De officiis*, Book 1, Chapter 24, paragraph 115.

⁶⁶⁴ St. Augustine of Hippo 'The Christian Definition of the Four Virtues', *Of the Morals of the Catholic Church*, Chapter 15 (A.D. 388).

⁶⁶⁵ Aquinas *Summa*, II-II, 81.1.

⁶⁶⁶ Bouché 2000: 51.

⁶⁶⁷ The *Psychomachia* of Prudentius, c. late fourth century. On the Virtues and Vices, see Katzenellenbogen 1939. On paired opposition, and the notion of 'divide and conquer' in the medieval discourse on virtues and vices, see Starn and Partridge 1992: 42.

Palazzo Pubblico in Siena. It includes an injunction from the Book of Wisdom, in Latin (traditionally, the language of the law), “Love justice, you who judge the earth”.⁶⁶⁸ Addressing the Nine, ruling authority of Siena and patrons of the work, who occupied the room for political and judicial functions, it set the standard for them to apply. Vernacular inscriptions on the base of the Virgin’s throne also exhorted the Nine to govern with wisdom and justice. The same instruction appeared in Latin in Ambrogio Lorenzetti’s fresco cycle in the Sala dei Nove, Palazzo Pubblico, Siena.⁶⁶⁹ It formed the first line of Remigio de’ Girolami’s *De iustitia* (c. 1295).⁶⁷⁰ A similarly didactic injunction appeared in a copy of the 1333 Statutes of the Arte della Lana: “fa’ misericordia, fa’ justitia”.⁶⁷¹

The fresco’s didactic intent is clear as the exchanges between the characters are supported by *cartelli*, but these are problematic. Only the upper examples are now visible, and may have been subject to amendment or alteration. The lower pairings have been lost. Giancarlo Breschi detailed what is currently decipherable, and a level of reconstruction is possible.⁶⁷² Morpurgo noted references to the cartelli in manuscripts from the late Trecento and early Quattrocento which, overall, may provide a near-complete record of what is now lost, but an element of caution is required. In any event, the *cartelli* indicate that the patrons anticipated a literate audience for the frescoes.⁶⁷³ To an extent, the *cartelli* prescribe the meaning of the fresco. The use of the vernacular may have distanced the message of the fresco from the Latin of religion or law. It may have echoed contemporary poetry and literature, which was being produced in the vernacular.⁶⁷⁴ More importantly, it sent the message directly to those engaged in the commercial world of the Wool Guild.

⁶⁶⁸ The Latin inscription reads, ‘[D]ILIGI/TE IUSTI/TIAM Q[U]I IUDICA/TIS TER/RAM’. The opening verse of the Book of Wisdom, it is also translated as “Judge wisely, you who rule the earth”.

⁶⁶⁹ On the theme of justice in the Siennese frescoes, see Norman 1995b; 145-67.

⁶⁷⁰ The first line reads ‘Incipit tractatus eius de iustitia. “Diligite iustitiam qui iudicatis terram” *Sap. 1*’. See O. Capitani. 1960. ‘L’incompiuto «tractatus de iustitia» di fra’ Remigio de’ Girolami’, *Bullettino dell’Istituto storico italiano per il Medio Evo e Archivio muratoriano* 72: 91 – 134, at 125.

⁶⁷¹ R. Archivio di Stato in Firenze: Arte della Lana, *Statuti*, n.4; referred to in Morpurgo 1933: 163.

⁶⁷² See, Breschi 2011: 121. Breschi would appear to acknowledge the majority of Morpurgo’s reconstruction of the *cartelli*, and that will be adopted here.

⁶⁷³ On the use of inscriptions, see Starn and Partridge 1992: 30-38.

⁶⁷⁴ The *tituli* are unusual, but Breschi demonstrates that they have ‘dantesque’ echoes, and can be sited within contemporary poetic tradition (Breschi 2011: 133-5).

a. Prudence and her counterpart

On the upper step, to the left of Brutus, stands a female figure, identified as Prudence (Figure 119).⁶⁷⁵ In contemporary philosophy, Prudence was a rational, intellectual virtue that aids good judgment. Without prudence, one could act thoughtlessly, make rash decisions or reject the guidance of wise counsel. Her position, at the right hand of the judge, emphasised the importance of these qualities to those appearing before the guild's court, but, equally, to those exercising judicial authority in the room.

The fresco here is abraded. Prudence seems older than the other female figures. She carries a book. This may be a traditional but relatively uncommon attribute, the book of laws or Scripture.⁶⁷⁶ It is not unprecedented - in the Scrovegni Chapel, Prudence has an open book on a lectern.⁶⁷⁷ However, it resonates with the fact that books are held by Christ, by the evangelists in the ceiling roundels, and by two of the patron saints; this interesting emphasis on the written word may indicate its importance to the guildsmen and the proceedings held in the room.⁶⁷⁸ Including a book of Scripture or laws is an interesting choice for a secular location, an allusion to the sacred missing in other traditional attributes of Prudence, such as the snake or mirror, or her two faces, looking both forwards and back, which features in the ceiling roundel of Prudence (Figure 120). She wears robes (their original colour is hard to distinguish), with her head covered in a wimple and chin-cloth.⁶⁷⁹ There is some foliage on her forehead (discussed further below). Although difficult to distinguish, given the condition of the fresco in this area, she may wear some form of bit or bridle in her mouth (Figure 121). Neither Morpurgo nor Harrison refers to this feature. Intriguingly, it is more commonly associated with the Virtue of Temperance.⁶⁸⁰ It features in Giotto's Arena Chapel fresco

⁶⁷⁵ Morpurgo 1933: 145.

⁶⁷⁶ Hall 1974: 254-5. On representations of the Virtue of Prudence, see, Hourihane 2000: 278-283.

⁶⁷⁷ On which imagery, see Frojmovič 2007: 204-5.

⁶⁷⁸ The civil jurisdiction of guild consuls was extensive in relation to cases involving merchants' account books; the consuls would assess evidence from such account books, even in cases before the communal courts (see Stern 1994: 86).

⁶⁷⁹ The wimple often indicated a married woman: Scott 2007: 92. It also appears in other personifications of the virtue of Prudence, including San Miniato al Tedesco, discussed below.

⁶⁸⁰ Hall 1974: 296-7.

(Figure 122), or other representations of the virtues, such as *King Robert Enthroned among the Virtues* (Figure 123).⁶⁸¹

Depicting Prudence in such a 'scold's bridle' could be in keeping with the exchange with her male 'opposite' in the *cartello*. He says:

This Hall was never occupied by anyone as virtuous as you are; therefore, I pray that you hear the truth I am about to utter.⁶⁸²

This attempt to appeal to the senses with seductive words is met by Prudence, who rebuffs his attempt to flatter or cajole a favourable verdict:

Flattery and prayers enter easily and strongly affect a fool's mind; but those who truly cherish the truth do not speak the way you do.⁶⁸³

As the man is associated with uttering unwise words, the scold's bridle may indicate by contrast how careful – or prudent - she is to avoid that flaw.

The traditional opposition to prudence is folly. Her *cartello* refers to "*folli*", but the man shows none of the traditional attributes of folly (Figure 124).⁶⁸⁴ He may have been intended to refer to someone appearing before the tribunal. He is dark-haired, with a prominent nose, wearing red robes with white lapels (*languettes*), a red and white pointed hood hanging loose at his back and a white coif (head-covering). Intriguingly, the male figure appears to bear resemblance to imagery associated with Dante Alighieri.⁶⁸⁵ There are similarities with other Trecento Florentine images often assumed to be 'likenesses' of Dante, from the Bargello Magdalene Chapel, for example (Figure 125), or perhaps most markedly in a fresco from the Palazzo dell'arte dei giudici e notai (Hall of the Judges and

⁶⁸¹ On the virtues and vices in the frontispiece portrait of King Robert, see Michelle M. Duran. 2010. 'The Politics of Art: Imaging Sovereignty in the Anjou Bible at Leuven', in *The Anjou Bible: a royal manuscript revealed*. Naples 1340, ed. by Lieve Watteeuw & Jan Van der Stock (Paris: Peeters), 73-93.

⁶⁸² *Non tenner questo luogo mai alcuni | per virtù come voi degni di loda, | onde il ver mio da voi prego che s'oda*. The translation of the inscription is adapted from Banchi et al 2009: 58-61.

⁶⁸³ *Lusinghe e prieghi nelle menti folli | operan molto et entran di leggero, | ma come tu non parla chi ama il vero*. Morpurgo reported that in "*una delle copie antiche*" the last verse read "*ma qui se vince col baston del vero*", without further detail (Morpurgo 1933:5). If correct, this would direct attention to the central judicial figure holding a stick, possibly suggesting that it may have played a part in the Arte's court process, indicating judgment being passed in favour of one party or another, for example.

⁶⁸⁴ On Folly, see Hall 1974: 255.

⁶⁸⁵ Morpurgo (1933: 142) and Harrison (2012: 135) noted this without addressing the intriguing question of *why* the resemblance appears.

Notaries Guild), Florence (Figure 126).⁶⁸⁶ There the 'Dantesque' figure occupies a similar position in the top left under an arched frescoed surround as in the *Arte della Lana* fresco. We can see similarities in profile (especially the nose), in the lines from nose to chin and in the clothing; red robes and white 'lapels' (Figure 127) and, from the 'Dante' in the Bargello, similar headwear, with white linen coif below. Other possible facial likenesses include one of the Blessed in the *Last Judgment*, Strozzi Chapel, Santa Maria Novella in Florence (Figure 128), and a witness to the *Raising of Drusiana*, Sant' Agostini, Rimini.⁶⁸⁷

Similar dress can be seen in contemporary images, the citizens in Ambrogio Lorenzetti's *Good Government*, for example (Figure 129). The clothing may indicate a lawyer: Morpurgo termed him 'l'avvocato'. It appears similar to the contemporary costume of doctors of law, evident in the Tomb of Cino da Pistoia in Pistoia Cathedral (1337; Figure 130), *Porrina* (Figure 70), a teaching scene in Ambrogio Lorenzetti's *The Good City* (c. 1337-40; Figure 98), and tombs of doctors of law at Bologna (Figure 131).⁶⁸⁸ However, as discussed in Chapter 3, specific clothing for legal practitioners developed only in the later Trecento; in the Duecento to mid-Trecento, lawyers were often represented in clothing associated with authority figures generally.⁶⁸⁹ This would include red robes, often with white trim or features, so a contemporary audience would likely have made an association between this man and a figure of authority. Although not a lawyer, as a Florentine politician, Dante would have been an authority figure entitled to wear red/scarlet clothing.

There are, of course, difficulties in assuming an intention to create a portrait likeness in a fresco of this date.⁶⁹⁰ The reappearance of genuine distinctive portrait likenesses in Europe

⁶⁸⁶ The image of 'Dante' appears in a fresco restored relatively recently under the supervision of Maria Monica Donato. Possibly part of a cycle of illustrious figures, Dante may have featured in a scene of four famous poets (with Boccaccio, Petrarch, and Zanobi da Strada), which may date the fresco later than 1375 (Petrarch died in 1374, Boccaccio in 1375). See Maria Monica Donato. 1986. "'Famosi cives'". Testi, frammenti e cicli perduti a Firenze fra Tre e Quattrocento', *Ricerche di storia dell'arte* 30: 27-43.

⁶⁸⁷ The latter referred to in Margaret Plant. 1981. 'Portraits and Politics in Late Trecento Padua: Altichero's Frescoes in the S. Felice Chapel, S. Antonio', *The Art Bulletin* 63/3: 406-425, 409 note 19.

⁶⁸⁸ On the iconography of the tombs of doctors of law at Bologna, see Robert Gibbs. 1990. 'Images of Higher Education in Fourteenth Century Bologna', in *Medieval Architecture and its Intellectual Context. Studies in Honour of Peter Kidson*, ed. by Eric Fernie and Paul Crossley (London: The Hambledon Press), 269-82; and Martina Schilling, 'Celebrating the Scholar and Teacher', in Bourdua and Gibbs 2012: 117-143, at 128-132.

⁶⁸⁹ Hargreaves-Mawdsley 1963: 4-6.

⁶⁹⁰ On portraiture in the Trecento, see Gombrich 1979: 471-483; Polzer 1964; and Georgia Sommers Wright. 2000. 'The Reinvention of the Portrait Likeness in the Fourteenth Century', *Gesta* 39/2:117-134. She addresses

is generally dated to the fifteenth century.⁶⁹¹ The image of 'Dante' in the *Brutus* fresco may not meet criteria for identifying 'early intentional likenesses'; 'particularized characterisation' may be more apt.⁶⁹² The similarities may suggest an archetype from which such images of 'Dante' derived.⁶⁹³ A visual likeness for the Arte's assembly hall may have been intended to call to mind Dante himself, or a generic 'type' of which he was representative, a form of 'visual shorthand'.

Dante's relationship to Florence at this time was complex. Banished in 1301 and sentenced in 1302 to death by burning if he returned without paying a fine he perceived as unjust, Dante died in 1321 without returning to Florence.⁶⁹⁴ His literary reputation in Florence developed slowly from c. 1330-1350s. Boccaccio's *Trattatello in laude di Dante* was written c. 1351-5.⁶⁹⁵ An early version of Giovanni Villani's *Cronica* included a form of biography of Dante, shortened in a revised edition of 1322; Villani's cautious approach might indicate that Dante's standing in Florence remained compromised: "This Dante, because of his knowledge, was somewhat haughty and reserved and disdainful, and after the fashion of a philosopher, careless of graces and not easy in his converse with laymen".⁶⁹⁶ There is a connection between Dante and words. Politicians and imprudent behaviour seem implicitly linked: "according to the general opinion, he who knows and attends to his own affairs is prudent, while statesmen are busybodies".⁶⁹⁷ This male figure points to himself, indicative of speech. Might therefore a Trecento patron or artist have thought a Dantesque image appropriate to represent someone associated with words and politics, driven by strong emotion, likely to speak unwisely: imprudent?

the possibility of portrait likenesses of, amongst others, Pope Boniface VIII (on which, see also Gibbs 2011: 166-189).

⁶⁹¹ John Pope-Hennessy. 1966. *The Portrait in the Renaissance* (New York: Pantheon), 4.

⁶⁹² Sommers Wright suggests as a suitable test: "two or more securely identified images ... documented or ... presumed on good evidence to have been made within the lifetime of the person portrayed; [which] resemble one another" (2000: 118).

⁶⁹³ The question of the origin of the well-known image of 'Dante' has been considered by many, including Richard Thayer Holbrook. 1921. *Portraits of Dante from Giotto to Raphael* (London: Philip Lee Warner) and Gombrich 1979.

⁶⁹⁴ This sentence was formally revoked by the city council of Florence in June 2008.

⁶⁹⁵ The critical contemporary reception of Dante's work, and whether Boccaccio's *Trattatello* was intended as a defence of Dante are addressed in Todd Boli. 1988. 'Boccaccio's *Trattatello in laude di Dante*, Or Dante Resartus', *Renaissance Quarterly* 41/ 3: 389-412.

⁶⁹⁶ Villani *Cronica*, Book IX, 136.

⁶⁹⁷ Aristotle *Ethics*, Book VI, 8. The major part of the Aristotelian corpus had been translated into Latin by this time. His philosophy was studied at Paris by the mid-Duecento, and was well-known by the Trecento.

If so, this may cast some light on the appearance of foliage in the headdress of Prudence, the significance of which is otherwise problematic (Figure 121).⁶⁹⁸ It seems to be laurel, traditionally associated with victory in ancient Rome and linked to poets in ancient Greece. In Trecento Italy, it retained associations with success and poetry, as well as being a symbol of virtue. In Boccaccio's *Decameron*, narrators of the stories are crowned with a laurel wreath. Its appearance could be a specific reference to Dante's longing to receive a laurel wreath in the Florentine Baptistery, in recognition of his poetry and a triumphal return to the city. In 1319 a Professor of Literature at the University of Bologna wrote an eclogue in Latin offering Dante an opportunity to receive a laurel wreath in Bologna instead; Dante's elegant refusal appears in the first of two Latin eclogues he wrote in reply.⁶⁹⁹ Dante's poetry evidences his intention to wait for an invitation from Florence.⁷⁰⁰ Given the probable dating of the fresco to the second quarter of the fourteenth century, might the laurel leaves on a figure wearing a bit or bridle, and holding a book, in fact be a 'teasing' reference; that (unlike Dante) only those who watch what they say may be accorded the laurel in Florence?

So, this pairing may depict Prudence admonishing one guilty of imprudent actions or words, a message relevant to contemporary Florentine society and politics, but also to proceedings in the audience chamber. The dialogue warns those appearing before the court that blandishments will not coax a favourable judgment from the judges. No less significantly, it also warned those administering justice that theirs should not be the 'fool's mind' influenced by the unwise words of those appearing before them.

⁶⁹⁸ I thank Jill Harrison for her observation that all the female figures wear some form of headdress, probably foliage, but not all identifiable.

⁶⁹⁹ Dante *Eclogues* (1, lines 48-51). For further detail, see Dante Alighieri, Giovanni del Virgilio and Wilmon Brewer. 1927. *Dante's Eclogues (the poetical correspondence between Dante and Giovanni del Virgilio)* trans. Wilmon Brewer (Boston: Cornhill).

⁷⁰⁰ Dante, *Paradiso*: Canto XXV (1-9): "If e'er it happen that the Poem Sacred, | To which both heaven and earth have set their hand, | So that it many a year hath made me lean, | O'ercome the cruelty that bars me out [...] will I return, and at my font | Baptismal will I take the laurel crown". Although this argument is convincing, some scholars doubt that Dante intended to refer to a literal laurel crown; see Aldo Finco. 1976. 'Dante and the Laurel Crown', *The South Central Bulletin* 36/4 (Winter): 141-143.

b. Justice and her counterpart

Opposite Prudence, and on the upper step of the bench, level with Brutus, a further confrontation takes place between the Cardinal Virtue of Justice and her male opponent (Figure 132). Morpurgo interpreted this scene as 'Justice and the Corrupter/Briber'. Justice, a winged female figure, her long fair hair tied back, head uncovered, gathers her striking red dress, to facilitate movement. She lunges forwards, drawing back her sword, aimed towards the throat of a man facing her. He stands lower than the female figure, to one side of the seat. Wearing a green/blue robe, cloak and hat, he holds a bag or purse in his hands.

This vignette is clarified by inscriptions above the figures, which remain legible. That above the man reads:

I can compensate those who serve my interests well, | therefore if your judgment
give/s me what I seek, | no one will be any worse off.⁷⁰¹

His attempt to bribe the judge, with money from the purse, is rebuffed by Justice:

You deserve a shameful death! | Here sentences are not for sale [for gold]; | rather,
everyone receives what he deserves.⁷⁰²

Justice in the *Arte della Lana* fresco is an unusual representation of the Virtue. She is not enthroned and does not wear a crown (unlike the image on the ceiling of the same room), yet she is winged. She does not carry the scale or balance, and holds her sword aggressively. A strikingly similar depiction of Justice is Ambrogio Lorenzetti's *Distributive Justice* in the Sala dei Nove, Siena (Figure 133). Their red robes, red wings and braided fair hairstyles are virtually identical, each dynamically wielding a sword as an instrument of justice (Figure 134).⁷⁰³ This raises the possibility that what is depicted is Justice in action: harsh, punitive; the type of justice associated with Lucius Junius Brutus, a father who ordered the execution of his own sons.

⁷⁰¹ *Io posso meritar ben chi mi serve, | Onde se giudicate quel ch'io cheggio | Non ne verrà alcun di voi di peggio.*

⁷⁰² *Tu se' di morte vergognosa degno! | Qui giudicio per oro non si vende, | ma quel ch'è suo a ciaschedun si rende.*

⁷⁰³ The hairstyle and gown are also similar to the relief of *Justitia* from the Florentine Campanile (c. 1335-8; Figure 46)

The conceptual and philosophical underpinnings of the contemporary notion of justice are a source of much scholarly disagreement, as discussed in Chapter 1. While acknowledging that aspects of that debate inform interpretation of *Justice* in the fresco, subsequent scholarship has perhaps evidenced some unwillingness to specify particular sources for Trecento political allegories.⁷⁰⁴ It would appear unlikely that those commissioning the fresco, or those working to create it, would feel compelled or constrained to adopt either a conception of justice deriving wholly from what might be termed a ‘Greek root’, for example based on the writings of Aristotle and his interpretation by Aquinas, or a ‘Roman root’, deriving from Seneca and Cicero, to the exclusion of the other. In any event, both Aristotle and Cicero wrote on the importance of justice to society, and saw it as the paramount virtue, and this had been discussed and interpreted and elaborated upon by many contemporary scholars.⁷⁰⁵ The contemporary notion of justice was a complex, nuanced concept, informed by understanding and awareness of many sources.

The importance of the inscriptions in understanding the fresco programme should not be overlooked. The focus of the image of Justice is punishment, but the inscription above her encounter with the purported briber - *ch'è suo a ciaschedun si rende* - relates to justice meting what is due, an important concept in Roman law. The Roman jurist Ulpian's statement, ‘To live honourably, to harm no one, to give to each his own’,⁷⁰⁶ was incorporated into Justinian's *Digest* (1.1.10), and was influential on thirteenth- and fourteenth-century legal codes and philosophies of justice. The opening sentence of the Ordinances of Justice (1293), generally considered as representing the beliefs of the guildsmen and the non-elite community of Florence stated: “justice is the constant and perpetual desire to give each one his due ...”⁷⁰⁷ This notion of justice seems to underpin the image of the virtue.

The emphasis in the representation of Justice seems to be on the legal aspects of the proceedings taking place there. Her red robes allude to clothing frequently associated with

⁷⁰⁴ For the view that Ambrogio Lorenzetti's *Buon Governo* frescoes, “lend themselves to a variety of interpretations – indeed, [...] they positively invite them”, see Starn and Partridge 1992: 39.

⁷⁰⁵ Cicero *De officiis* Book I.7 and 3.6.28. Aristotle regarded Justice as encompassing all the other virtues (*Ethics*, Book V).

⁷⁰⁶ *Honeste vivere, alterum non laedere, suum cuique tribuere.*

⁷⁰⁷ *Quoniam Iustitia Est Constans Et Perpertua Voluntas Ius Suum Unicuique Tribuens.*

the law (see Chapter 3). The personifications of Justice in the Paduan Salone (Figure 58), Lorenzetti's Sienese fresco (Figure 133), and *King Robert enthroned among the virtues* in the Anjou Bible also wear red robes (Figure 42). This may help to clarify the identity of her male counterpart: he is not Injustice, traditional vice to the virtue of Justice, but a citizen whose activities relate more directly to what was perceived as unjust in that guild hall. His moneybag or purse carried unfavourable associations with avarice, even usury, appearing similar in shape to that held by Giotto's *Invidia* (Figure 135) and a marginal drawing to a Brescian statute on gambling.⁷⁰⁸ In attempting to bribe the judge, we see the actions of an unjust man, who both: "breaks the laws ... and ... takes more than his share", in attempting to receive more 'justice' than he deserved.⁷⁰⁹

Equally, a judge who accepted a bribe would take more than his share, making him also unjust. Such an individual clearly posed a threat not only to the strength and survival of the guild, but to the common good of Florence itself. The position is clear: justice is not for sale; nor will judicial corruption be permitted. The Virtue of Justice will both repel attempts to corrupt the judge, and shield that judge from temptation.

c. Fortitude and her counterpart

On the lower step two further confrontations take place. To the judge's right, a female figure engages in dialogue with a man to her right (Figure 136). The Virtue is represented by a young winged female in yellow robes, her hair neatly coiled. Her hand rests on a column, a traditional attribute of the Cardinal Virtue of Fortitude.⁷¹⁰ The representation of the fluted column with ornate capital could reinforce the references to classical Rome in the fresco, as "monolithic cylindrical columns were explicitly or patently 'Roman'".⁷¹¹

⁷⁰⁸ See Archivio Stato di Brescia, Comune, *Statuti*, 1004, 1/2, c.101 v. On this image, and the contemporary associations of such purses, see Giuliano Milani. 2011. 'Before the Buongoverno. The Medieval Painting of Brescia's Broletto as Visual Register', in *Zwischen Pragmatik und Performanz. Dimensionen mittelalterlicher Schriftkultur*, ed. by Christoph Dartmann, Thomas Scharff, Christoph F. Weber (Turnhout: Brepols Publishers), 319-350; see figure 7 on 349; 324-5.

⁷⁰⁹ Aristotle *Ethics* Book V.1.

⁷¹⁰ The pillar (sometimes broken) is thought to derive from Samson: Hall 1974: 127. On representations of the Virtue of Fortitude, see also Hourihane 2000: 205-209.

⁷¹¹ Dale Kinney, 'The Discourse of Columns', in Bolgia, McKitterick and Osborne 2011: 182-199, at 183.

She gives a pointed sideways glance to a man in fine robes, neatly-trimmed beard and moustache, of whom she seems wary. The traditional opposition to Fortitude is cowardice or inconstancy, but the finery of his attire (and the bravado and bluster in his possible words) suggests he may be intended to represent, per Morpurgo, Arrogance.⁷¹² Detail of his left hand is now lost. His right hand holds an object that is hard to identify (Figure 137). Morpurgo was uncertain, but suggested it could be a glove.⁷¹³ Harrison also referred to it as a glove.⁷¹⁴ Breschi too saw it as “un guanto”.⁷¹⁵ Removing a glove would be a contemporary mark of respect, appropriate to the function of the room.⁷¹⁶ Yet this commonly accepted identification is incorrect: if we look closely, we can see that in fact, his right hand rests on the hilt of a concealed sword or dagger, as if to draw it from under his robe; the edge of the blade is just visible.⁷¹⁷ Far from being a gesture of respect, his is inappropriate and threatening behaviour. This reading appears borne out by the inscription, as with that between the other pair on the lower step, reconstructed from near-contemporary sources:

Male figure: I can truly see how I am abused; but if I'm allowed to live, all this will not go without vengeance (alternatively, ‘... without revenge’).⁷¹⁸

Fortitude responds: If you could understand that here any fury or threat are worth nothing, you would see that your words can be an obstacle only to yourself.⁷¹⁹

The man deserves further examination, as he may provide valuable evidence about how closely the fresco reflects contemporary Florence. He is visually distinctive; his patterned robes contrast with the plain robes of the other figures. The gold-coloured lining to the cape draped over his shoulder, and a matching hat trimmed with the same material, may be a fine example of wool-work, or embroidered fabric, luxurious silk, or fur. Such opulent dress is interesting, given the location of the fresco, and the fact that much Florentine wealth

⁷¹² Morpurgo 1933:147.

⁷¹³ Morpurgo 1933:144-5.

⁷¹⁴ Harrison 2012: 135.

⁷¹⁵ Bresch, 2011: 118.

⁷¹⁶ On the significance of the gesture of removing glove(s), and its appearance in Trecento art, see Thomas de Wesselow. 2009. ‘The form and imagery of the ‘New Fresco’ in Siena’s Palazzo Pubblico’, *Artibus et Historiae* 30/59: 195-217, at 200-202.

⁷¹⁷ The significance of the gesture is clarified by comparison to another contemporary image of a man holding a weapon hilt: see Figure 138.

⁷¹⁸ *Io veggio ben com’io ricevo torto; | ma se per caso Morte non m’affretta | questo non passerà senza vendetta.* Morpurgo 1933: 6 (n 1) noted discrepancies between the various accounts regarding these *cartelli*, so what we now see may differ from the original text.

⁷¹⁹ *Se tu sapessi come fa per nulla | qui ogni furia e ogni minaccia, | sapresti che’l dir tuo te solo impaccia.*

came from wool. Artists in the Trecento often used colour and details of dress to convey meaning. His brightly coloured and patterned clothing distinguish him from the sober colours, such as blue, brown or grey, considered most fitting for respectful citizens.⁷²⁰ Attire marks him out as a noble, or a magnate, one of those targeted by Florence's anti-magnate legislation, and considered responsible for much of the unrest that threatened to destabilise Trecento Florence.⁷²¹

This male figure may have been intended to represent those supportive or capable of tyrannical rule, even an allusion to the regime of Walter of Brienne, the Duke of Athens.⁷²² The profile, with dark beard and moustache, may bear some resemblance to the Duke of Athens in the fresco from the Stinche (Figure 139). Allusions between this figure and social evil or wrong may be reinforced by its resemblance to the personification of *Injustice*, one of the Vices in the dado of Giotto's Arena Chapel frescoes (Figure 140a). The profiles are similar, the nose, chin and beard especially. A profile view can be associated with evil.⁷²³ Whilst interpretation of Giotto's *Injustice* is hampered by loss of the inscription, the image itself conveys much meaning. Whilst *Justice* appears timeless, intended to refer to a cardinal virtue of eternal importance, *Injustice* appears temporal (Figures 45 and 83). His clothing is contemporary. The relief scene under *Injustice* is rendered with more rounded dimensions than that under *Justice*, increasing the realism of its image of the effect of injustice in contemporary society.⁷²⁴

⁷²⁰ Typical Trecento male dress shown in, for example, a Florentine manuscript c. 1300 (Rasis, *Liber medicinalis Almansoris* translated into Italian by Zuccherò Bencivenni: Florence, Biblioteca Medicea Laurenziana, MS Plut.73.43, f.6v.), and a *Treatise on the Vices*, from North Western Italy, possibly Genoa, c. 1330-1340, by the Master of the Cocharelli Codex (British Library, Add. MS 27695, f. 2v): see Scott 2007: 93-96; and Ambrogio Lorenzetti's *Good Government* (Figure 129).

⁷²¹ On anti-magnate legislation see Carol Lansing. 1991. *The Florentine magnates: lineage and faction in a medieval commune* (Princeton: Princeton University Press), 201-207; and Andrea Zorzi. 1995. 'Politica e giustizia al tempo degli ordinamenti antimagnatizi', in *Ordinamenti di giustizia fiorentini. Studi in occasione del VII centenario*, ed. by Vanna Arrighi (Florence: Ministero per bene culturali e beni ambientali), 105-147. On the fading fortunes of the magnates in Trecento Florence, see Marvin Becker. 1965. 'A study in political failure: the Florentine Magnates, 1280-1343', *Medieval Studies* 27: 246-308.

⁷²² On the Duke of Athens, see Chapter 3.

⁷²³ On this association, see Ruth Mellinkoff. 1991. *Outcasts: Signs of Otherness in Northern Medieval Art of the Late Middle Ages* (Berkeley: University of California Press), vol 1, 211-12. This connection may be reinforced by *Injustice* facing towards Hell in the Arena Chapel *Last Judgment*.

⁷²⁴ On the relief, see Péter Bokody. 2011. 'Justice, Love and Rape: Giotto's Allegories of Justice and Injustice in the Arena Chapel, Padua', in *The Iconology of Law and Order (Legal and Cosmic) Papers in English and American Studies XXI: Eastern and Western Traditions in European Iconography* ed. by Anna Kérchy, György E. Szöny, and Attila Kiss (Szeged, Hungary: JATEPress), 50-61.

Similarly, in the *Brutus* fresco, the appearance and actions of this man seem intended to connect to the social and political concerns of mid-Trecento Florence. Both he and *Injustice* hold the hilt of a weapon (Figure 140b). Jules Lubbock suggested that by showing *Injustice* with his hand on his sword, Giotto intended a reference to an absence of Christian self-restraint which could cause a man to take personal revenge or vendetta against aggressors.⁷²⁵ The *cartello* specifically refers to ‘vendetta’, often associated with the elite social classes to which the male figure seemingly belongs.⁷²⁶ Here the rash grab towards his weapon could allude to the code of private justice which had led to internecine violence contributing to social and political instability. *Vendetta*, outside or beyond the control of the formal justice system, presented a challenge both to the communal authorities and to judicial authority. Feuds could survive for several generations, and across several degrees of kinship, despite the introduction in many cities of legislation intended to curb it. Communal authorities may have introduced legislation to move magnate conflict from ‘street to courtroom’, as internecine violence was particularly common among the noble classes, and posed a potentially destabilising threat to communal society. Historians disagree over who was chiefly responsible, but few question the extent of the problem in Florence. The chronicle of the Florentine Donato Velluti includes at least six vendetta stories, for example.⁷²⁷

Florence legislated extensively to control acts of private revenge, including the Ordinances of Justice, and by subsequent communal statutes throughout the fourteenth and fifteenth centuries.⁷²⁸ Dino Compagni’s *Chronicle*, a detailed account of Florentine history between c. 1280-1312 expressed concern at factionalism and a belief that failure to follow the Ordinances of Justice endangered not only its citizens, but the city too, placing it and them

⁷²⁵ Lubbock 2006: 79.

⁷²⁶ The literature on the prevalence within Italian communal society of feuding or vendetta is extensive. See the bibliography in Jansen 2004: 327-344, at 328 note 4; and see Spierenburg 2008: 12-113, especially on the connection between vendetta and young aristocratic males.

⁷²⁷ *Cronica domestica di Messer Donato Velluti* c. 1367-70. He was gonfaloniere of justice in Florence in 1351. See <http://www.treccani.it/enciclopedia/donato-velluti/> [accessed 8 July 2013]. On these accounts of vendetta, see Trevor Dean. 1997. ‘Marriage and Mutilation: Vendetta in Late-Medieval Italy’, *Past and Present* 157: 3-36.

⁷²⁸ On the Ordinances of Justice (1293), see, for example, Najemy 2006: 81-87. On the treatment by contemporary jurists of revenge and vendetta, see Dean 2007: 123-132.

in danger of punishment by divine justice.⁷²⁹ Similar laws were also passed by other communal authorities, but the approach of the Florentine authorities was in some ways atypical.⁷³⁰ Communal statutes introduced in 1325 prohibited those exercising judicial authority from bringing proceedings against lawful vendetta.⁷³¹ The intention was to permit feuding between those personally involved (so, the victim and the original aggressor (the *primus offensor* or *principalis* in the words of the statutes)), but make unlawful its extension to other members of the feuding families. Unlawful vendetta resulting in death would be punished by beheading and forfeiture of assets; in the case of other revenge assaults, the ordinary penalty would be doubled. The statutes made vendetta a matter controlled and regulated by the communal authorities, potentially taking it outside the jurisdiction of the guild tribunal; his actions, therefore, may present a threat to the guild's ability to exercise its judicial function.

The fresco encounter therefore alludes to the danger posed to Florentine society by those who refused to submit to legitimate authority. His action towards his sword/dagger hilt recalls the words of Dino Compagni's *Chronicle*: "Arise wicked citizens full of discord: grab sword and torch with your own hands and spread your wicked deeds".⁷³² So in this male figure (who may now perhaps be better termed 'Vengeance') we see a man seeking revenge because he has been wronged. Fortitude casts a side-long gaze towards him as her outstretched hand touches her pillar. Her gesture establishes a visual link between the man and the pillar, symbol of fortitude, as if to encourage him to be strong and to rely on lawful means to secure redress.

⁷²⁹ Dino Compagni. 1986. *Chronicle of Florence*, trans. by Daniel Bornstein (Philadelphia: University of Pennsylvania Press), 33. Compagni was actively involved in the government of Florence, acting as gonfalonier of justice in 1293. After siding with the White Guelfs he was barred from public office after their defeat in 1301. See Girolamo Arnaldi. 1982. 'Dino Compagni', *Dizionario Biografico degli Italiani - Volume 27* <http://www.treccani.it/enciclopedia/dino-compagni/> [accessed 25 March 2013].

⁷³⁰ See Carole Lansing, 'Magnate Violence Revisited', in Law and Paton 2009: 35-47. For the suggestion that Florentine anti-magnate legislation may have been intended to encourage magnates to join the *popolo*, to enable them to take part in the city's political life, see Klapisch-Zuber 2006. For a comparison of the statutory approach in Florence to other towns and cities in Trecento northern and central Italy, see Dean 1977.

⁷³¹ Caggese 1910-12: vol 2, 278; see Dean 2000: 188.

⁷³² Compagni 1986: 33. On the importance of justice to maintaining a peaceful city as an "overarching theme" of Compagni's *Cronica*, see Teresa Pugh Rupp. 2008. "'If you want peace, work for justice': Dino Compagni's *Cronica* and the Ordinances of Justice", in *Florence and Beyond: Culture, Society and Politics in Renaissance Italy*, ed. by Daniel E. Bornstein, John M Najemy (Toronto: University of Toronto Centre for Reformation and Renaissance Studies), 323-338.

d. Temperance and her counterpart

In front of Justice, on the lower step, stands another winged female figure, clad in an ivory robe with a blue/green lining (Figure 141). She points with her left hand to her neck, and holds the red robe of the man before her with her right. Her hair is fair, and coiled around her head in a plait or garland. Her appearance seems classically influenced, particularly Roman. Her gown and hairstyle resemble *Pax* from Ambrogio Lorenzetti's *Good Government* fresco (Figure 17). Morpurgo identified her as Temperance.⁷³³ However, she does not feature the usual attributes of Temperance: a bridle, or a sheathed sword (as in Giotto's Arena Chapel dado programme; Figure 142), or pouring water between vessels (in San Miniato al Tedesco (see below), or carrying a branch (Andrea Bonaiuti's frescos for the Spanish Chapel of Santa Maria Novella, Florence).⁷³⁴ Nor does she appear temperate in her actions: she commands attention, grabbing the cloak, pointing to her chest/neck, possibly indicating speech (Figure 143).⁷³⁵

Her actions restrain her male counterpart, as though by grabbing his gown she impeded his attempt to leave. This male figure seems quite elusive. Morpurgo did not name him.⁷³⁶ Harrison referred to a 'swindler'.⁷³⁷ Breschi referred to him as the "uomo occulto" – a 'hidden man', or "un uomo doppio" – a 'double man'.⁷³⁸ He may be a litigant, or other individual appearing before the guild tribunal. He is bearded, in a dark red/pink gown with a high neck and matching soft hat. He holds up his right hand to his chest in an unusual gesture. It may be tentative, unconfident, intended to indicate to Temperance that his activities need not concern her. It rather conceals from her the two objects that he holds in his left hand (Figure 144). One on top of another, flat, and white, these may be papers, or scrolls, relevant to his case, or account books, appropriate to businessmen having dealings with the guild.⁷³⁹

⁷³³ Morpurgo 1933:148.

⁷³⁴ On representations of the Virtue of Temperance, see, Hourihane 2000: 293-297; and North, 1980: 177-269. This fresco is not referenced in North's 'Appendix of Unusual Attributes of Temperantia' (at 265-6).

⁷³⁵ This gesture may also have appeared in the lost fresco by Giotto, from the Bargello (discussed below).

⁷³⁶ Morpurgo 1933:148.

⁷³⁷ Harrison 2012: 136.

⁷³⁸ Breschi 2011: 119.

⁷³⁹ On contemporary account books and financial records, see Goldthwaite 1993: 37.

This is not a figure driven by traditional opposites to Temperance, strong desire or lust. Instead he may be a man whose intemperate business activities - an expression of excessive desire for what he could not gain legitimately - may threaten the common good. Fraud and deception were perceived as serious crimes in contemporary statutes, and could be tried in guild courts at this time.⁷⁴⁰ The Roman law concept of the crime of *falsum* (falsity) was wide, covering any form of counterfeiting, including forgery or falsifying documents. Dante consigned the fraudulent to Circle 8 of *Inferno*, and referred to Adamo of Brescia, burnt to death outside Florence in 1281 for causing a financial crisis by counterfeiting Florentine florins in lower-grade gold.⁷⁴¹

However, this enigmatic exchange may be a visual allusion to a particular crime, that of defaulting and fleeing debt.⁷⁴² This involved a debt of over 100 lire, usually money entrusted to a businessman to conduct business. Visual analysis of the exchange between Temperance and the man supports this reading. His hand gesture may indicate a dismissal or negation of the matters in the account book, his intention to default on the debt that he owes. The manner in which he holds the account books suggests that he tries to shield them from her gaze as he attempts to flee from the court. His movement towards the edge of the scene is clearly indicated, his positioning lower than the other figures suggesting that already he had taken a step away. The action of Temperance – grabbing his cloak to prevent him fleeing the jurisdiction of the guild to evade justice for his crime – seems also to support this construction. If convicted of such an offence he would face severe consequences, because of its negative impact upon trade. This was a crime within the jurisdiction of the consuls of the Arte della Lana.⁷⁴³ The guild statutes regulated treatment of defaulting and fleeing; punishments could include a significant fine, which the debtor's descendants could be required to pay off or leave Florence.⁷⁴⁴ On this reading, he could be both swindler and “uomo occulto” – 'hidden man'.

⁷⁴⁰ See Stern 1994: 90 on the treatment of fraud in fourteenth and fifteenth century Florence.

⁷⁴¹ Dante *Inferno* Canto 30: 70-75.

⁷⁴² On this crime, see Stern 1994: 82-86.

⁷⁴³ As permitted under the Florentine *Statuto del podestà dell'anno 1325*. By the 1415 statutes, it was reserved to the higher jurisdiction of the communal courts, possible evidence of declining autonomy of the guild consuls: Stern 1994: 84.

⁷⁴⁴ Stern stated that “a defaulting and fleeing debtor even had his picture painted on a wall of the Podestà's palace”, but gave no details of this example of the *pittura infamante* (Stern 1994: 83).

The lost inscription is thought to have read:

I'm afraid of pursuing my rights in front of you, because some of you might have felt offended by my actions in the past.⁷⁴⁵

The Virtue replies:

Don't be afraid of being wronged in any way here, even though in the past there might have been some personal offence; this sort of crime doesn't count on the scale.⁷⁴⁶

We have here a reference to a balance or scale, emphasising the theme of justice in the fresco. The traditional attributes of Justice - the sword and scales - can be interpreted as representing two functions. Contemporary theories of justice distinguished between distributive justice and commutative justice.⁷⁴⁷ In each case the aim of justice was to establish a kind of 'proportion'. The scales represent equitable distribution; the sword represents punishment or retribution. In the Wool Guild fresco, Justice carries a sword, and yet, no scale or balance appears in the fresco. However, the fresco has been subject to alteration over the centuries, and possible artistic precedent for the *Brutus* fresco suggests that scales might have been included originally. A lost fresco by Giotto for the Palazzo del Podestà (the Bargello) incorporated such a feature.⁷⁴⁸ According to Vasari,

While work was progressing on the campanile, Giotto painted ... in the great hall of the Podestà of Florence ... the Commune, plundered by many. The figure is represented as a judge seated with a sceptre in hand, the balanced scales of justice over his head, and attended by the four Virtues, namely Fortitude with the soul, Prudence with the laws, Justice with arms, and Temperance with the word.⁷⁴⁹

The date of the fresco is unknown. It may date from as early as c. 1320.⁷⁵⁰ Alternatively, Giotto was appointed on 12-13 April 1334 as master-in-charge of the Florence duomo by the

⁷⁴⁵ Morpurgo reconstructed the lost inscription based on largely on the early Quattrocento Marucelliano manuscript, as *lo temo di seguir dinanzi a voi | la ragion mia, perché già forse avvenne | ch'offeso alcun di voi da me si tenne* (1933: 146). The translation is by Banchi et al 2009: 61.

⁷⁴⁶ *Non temer torto qui ricever mai | ben che ci fosse singulare offesa, | chè quell, bilancia dritta mai no pesa.*

⁷⁴⁷ This distinction is evident in the works of Aristotle, Cicero (*De inventione*) and Aquinas (*Summa* II-II.61).

⁷⁴⁸ For a bibliography of this lost work, see Georgina Pelham, 'Reconstructing the programme of the tomb of Guido Tarlati, Bishop and Lord of Arezzo', in Cannon and Williamson 2000: 71-116, at 82, note 62.

⁷⁴⁹ Vasari, *Lives of the Artists Volume 1* (London: Dent, 1927, revised ed. 1963), 74.

⁷⁵⁰ Harrison 2012: 127, note 4.

Arte della Lana, which in 1331 took over direction of the Opera del Duomo and exclusive patronage for the construction of the cathedral.⁷⁵¹ Giotto probably remained in Florence, and may have worked on the lost fresco, whilst working on the duomo until his death in 1337. Giotto's Bargello fresco as a common artistic precedent may also help to account for certain similarities between the *Brutus* fresco and the Arena Chapel frescoes, and aspects of Ambrogio Lorenzetti's *Good Government* fresco, particularly the figure of Justice. Ambrogio Lorenzetti was in Florence in 1327, and by 1335 was working in Siena; the Palazzo Pubblico frescoes are usually dated to 1337-40.

The 1330s-1340s were a particularly turbulent time for Florence. As noted in Chapter 3, this is evident in the decision to forfeit independence and seek stability in foreign rulers, such as Charles of Calabria, *signore* from 1326-1336, and the Duke of Athens. Brutus's role in the violent replacement of monarchy by republic may have appealed to Florentine patrons commissioning art around the time of the rule and expulsion of the 'tyrannical' Duke of Athens in 1342-3. The period was also difficult for the Arte della Lana. It aimed to control all aspects of the wool trade in Florence, but not everyone in the trade could become members of the guild. Many subordinate artisans (*sottoposti*) were excluded from membership, but were subject to its regulations. This was a long-standing point of contention. In 1317, consuls of the guild noted that lowly members of the trade (wool-beaters and carders and combers) had created 'conventicles' against the Guild, under the pretext of a confraternity at S. Marco.⁷⁵² In 1324 and again in 1338 the Arte della Lana forbade any *sottoposti* of the *lanaiuoli*, or their employees, to organize their own guilds on penalty of being prohibited from working in the wool industry.

Concern at the threat posed by the ambitions of lower-class wool workers spread beyond the Guild to the city: Florentine statutes of 1324/5 stated that

any persons from any guild in the city of Florence, *and especially of the Arte della Lana* [my italics]... are prohibited from meeting together in any place, or on any

⁷⁵¹ Giovanni Villani *Cronica* book xii, 94.

⁷⁵² *Statuto dell' Arte della Lana di Firenze* (1317-19), Agnoletti 1940-8: 203.

occasion whatsoever, or draw up constitutions and statutes of a fraternity under whatsoever name.....⁷⁵³

The threat of social instability was perhaps encouraged by the actions of Walter of Brienne in 1343, who allowed the *sottoposti* to form their own associations. After his expulsion from Florence, moves towards wider worker representation were overturned.⁷⁵⁴ In 1345 a wool worker, Ciuto Brandini was sentenced to death and hanged because “he had deliberated with many others, [who were] seduced by his words, to form with the greatest possible number a fraternity among the carders and combers and the workers of the Arte della Lana”.⁷⁵⁵ Against such a background, matters of peace, law and justice would have been important to those members of the guild who commissioned the fresco of *Brutus, the Good Judge* for the room in which they administered justice.

The *Brutus* fresco can be interpreted as a response to such contemporary Florentine socio-political concerns, and to changes in the justice system. As discussed in Chapter 3, the *inquisitio* process introduced into the secular justice system placed significant emphasis on the role of the judge within legal proceedings. This procedure in the Guild tribunal would have given a judge the power to investigate allegations, hear and obtain evidence, and pronounce sentence. He had wide discretion in awarding punishment; those appearing before the Guild tribunal would no doubt have been aware of the presence of the prison on the floor above the audience hall. Moreover, there was no right of appeal against the decisions of the Guild judges, making the character of those exercising these powers of increased significance. Concern at the standards of behaviour expected of those exercising secular and judicial authority is evident in diverse contemporary sources. Several treatises offered advice on judicial behaviour; the *Brutus* fresco offers moral instruction in visual form. If we recall the advice of Brunetto Latini on the qualities to be desired in a judge, “loyal and stable, incorruptible, trustworthy and not too naïve, nor enmeshed in evil vices”, these appear personified in the image of Brutus. Through their fresco programme, the Arte

⁷⁵³ *Statuto del Podestà dell’Anno 1325* ii, r. lvii, 292-3.

⁷⁵⁴ On Florentine reaction to the expulsion of the Duke of Athens, and its impact in strengthening loyalty to traditional institutions and liberties, see Nicolai Rubinstein. 1952. ‘Florence and the Despots. Some Aspects of Florentine Diplomacy in the Fourteenth Century’, *Transactions of the Royal Historical Society* 2, 21-45.

⁷⁵⁵ On Ciuto Brandini, see *Dizionario Biografico degli Italiani - Volume 14 (1972)* [http://www.treccani.it/enciclopedia/ciuto-brandini_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/ciuto-brandini_(Dizionario-Biografico)/) [accessed 31 March 2013].

della Lana sought to reassure people appearing before its tribunal that those exercising judicial authority on behalf of the Guild were aware of the standards expected of them.

4.2 The Madonna and Child Enthroned with the Theological and Cardinal Virtues, San Miniato al Tedesco

This second part of Chapter 4 addresses another Trecento fresco, in San Miniato al Tedesco (Figure 145).⁷⁵⁶ In a new interpretation, it is analysed as an image of justice. The aim of the analysis is to explore the extent to which the fresco – in its original state - associated a figure of secular authority with the Cardinal Virtues, and would have engaged with many of the same themes on the need for just exercise of authority as appeared in the Brutus fresco. The fresco is considered in its social, political and historical context. The intention is that the congruence of these distinct artistic programmes - from different locations, with diverse patrons and artists - will reveal shared meanings, relating to civic values and contemporary expectations of those exercising secular authority. In addition, each similarly evidences an interrelationship of secular and sacred.

San Miniato al Tedesco

San Miniato was a small city within the *contado* of Florence (see map, Figure 146). The town's Germanic origins around the eighth century are evident in its name; Otto I, Romano-German Emperor, built a castle in the town in the tenth century. It had status as "seat of the imperial vicariate furnished with jurisdiction over central Italy" from the tenth century.⁷⁵⁷ It had strong links to Frederick I and in 1217 Frederick II was to make it a stronghold, constructing the 'Rocca' or fortress which towers over the town.⁷⁵⁸ Its hilltop location between Florence and Pisa on the main route to the sea, and on the Via Francigena, on the pilgrims' route from France to Rome, gave the town strategic importance, and wealth: in 1217 Frederick II granted it the right to levy a toll on goods passing along the road leading between Florence and Pisa.⁷⁵⁹

⁷⁵⁶ I wish to thank Dr Luca Palozzi, for both bringing the fresco to my attention, and for providing the images and the translation of the inscriptions.

⁷⁵⁷ Francesco Salvestrini. 2000. 'San Miniato al Tedesco: the Evolution of the Political Class', in *Florentine Tuscany*, ed. by William J. Connell and Andrea Zorzi (Cambridge: Cambridge University Press), 242-263, at 243.

⁷⁵⁸ Frederick II is alleged to have had his chancellor Pier delle Vigne imprisoned in the Rocca for treachery; see Dante *Inferno* Canto 13: 58-78. On Frederick II and cities such as San Miniato, see Jones 1997: 338-343.

⁷⁵⁹ Salvestrini 2000: 246-8.

It came under Florentine jurisdiction in 1347. In 1369-70 it rebelled. Florence blamed the rebellion on local nobles, and some were hanged. San Miniato was not large (comprising around 772 families, c. 1383) but it was a typically polarised society.⁷⁶⁰ Despite Florence introducing anti-magnate legislation in 1359, the approximately ten leading families had remained important. This provoked faction, as citizens supported the competing families. Further social division occurred, not always on class lines, between those supporting Guelph or Ghibelline parties.⁷⁶¹ After regaining control in 1370, Florence sought to achieve in San Miniato, “a rapid and almost total substitution”, with a more popular regime, of a well-established local elite, an aristocratic class which had held power since the early Duecento.⁷⁶² As part of this policy, Florence assumed *de facto* control of its legal system, reforming the statutes and appointing a Florentine as Vicar, a role intended to replace that of the Podestà. As such, the Florentine Vicar in San Miniato would have powers of law enforcement, both in terms of ‘policing’ and administering justice.⁷⁶³ He was therefore a figure of secular and judicial authority, with considerable control over legal and civil affairs in the city. It appears that many of the officers sent by Florence abused these powers, being inept and corrupt, leading to social discontent within San Miniato.

Social and political instability was exacerbated by excessive fiscal demands from Florence.⁷⁶⁴ Historians debate Florence’s fiscal policies towards its *contado*, but most regard them as exploitative.⁷⁶⁵ The research of Marvin Becker indicated a continuity of treatment from c. 1345 almost until the end of the Florentine republic, with fiscal policy towards the *contado* influenced by Florence’s need to address its debt. A study of Florentine legislative decisions 1348-1427 indicated significant differences in taxation policy across the *contado*, some areas or classes receiving relatively benign treatment, others treated more harshly.⁷⁶⁶ Florentine fiscal policies in San Miniato appear to an extent motivated by socio-political concerns. After the rebellion, Florence had confiscated property and subjected many of the

⁷⁶⁰ Salvestrini 2000: 246, note 9.

⁷⁶¹ Salvestrini 2000: 256.

⁷⁶² See Samuel Cohn. 2003. ‘The Other Florence within Florence’ in *Beyond Florence. The Contours of Medieval and Early Modern Italy*, ed. by Paula Findlen, Michelle M. Fontaine and Duane J. Osheim (Stanford: Stanford University Press), 33-44, at 43, note 31.

⁷⁶³ On the powers of podestà, see Chapter 2.

⁷⁶⁴ On these fiscal demands, see Salvestrini 2000: 255-8.

⁷⁶⁵ For a discussion of the historiography, see Cohn 2003: 33-44.

⁷⁶⁶ See Cohn 2003.

larger landowners to near-punitive taxation. However, tax records indicate that some members of San Miniato society, particularly the *popolani grandi*, such as merchants and notaries, were flourishing.⁷⁶⁷

Many refused to pay the taxes demanded by Florence; repeated outbreaks of plague from 1348 onwards may have left some unable to do so. Marked population decrease, down from c.5000 before the mid-Trecento to c.2700 around 1383, created a vicious circle of rising demands and fewer people to meet them.⁷⁶⁸ Food shortages contributed to social unrest: San Miniato had to request grain from Florence in 1388.⁷⁶⁹ Tax inequality and fiscal demands led to further discontent in 1378 and a revolt by the magnates in 1389, during which the Florentine Vicar was forced from San Miniato. Florence reasserted its authority, but the position was unstable. Franco Sacchetti, Vicar in 1392-3, expressed continued concern at the potential for further social disturbance. This appeared to be justified, as there was another revolt in the mid-1390s.⁷⁷⁰

The fresco of *The Madonna and Child Enthroned with the Theological and Cardinal Virtues*

It is against this background that we consider a fresco, in one of two main rooms on the ground floor of the Palazzo Comunale (town hall) of San Miniato (Figure 145). It is in a large rectangular-shaped vaulted room, which bears some resemblance to that in the premises of the Arte della Lana. Here too the room had many functions, including audience chamber.⁷⁷¹ The fresco appears in a bay, which provided its semi-circular shape, again similar to the *Brutus* fresco. Other frescoes in the hall are civic or secular; emblematic heraldic images also appear. Of the five immediately surrounding the lunette, the upper three appear identical and feature hunting horns (discussed below). Those to the sides are abraded, making identification difficult.⁷⁷²

⁷⁶⁷ Salvestrini 2000: 256.

⁷⁶⁸ Salvestrini 2000: 246, note 9. See also Cohn, 2003: 36.

⁷⁶⁹ Salvestrini 2000: 251, note 35.

⁷⁷⁰ Salvestrini 2000: 254, note 50. In Salvestrini's view, Florence adopted a harsher policy of subjugation at San Miniato than it had previously over its dominions (2000: 245).

⁷⁷¹ Guardini and Fiumalbi 2012: *Prima parte*.

⁷⁷² That to the right side appears to feature a red heraldic beast, rampant, on a darker shield; this may be San Miniato's civic emblem, which is now a lion rampant on a red shield. It is difficult to identify any recognisable elements in that to the left. Others in the room may be familial or civic arms.

The fresco - as it appears today - features the Theological and Cardinal Virtues surrounding a figure of the *Madonna Lactans*.⁷⁷³ All of the Virtues have wings and polygonal haloes. The Theological Virtues appear above the Virgin and Child (Figure 147). Faith holds her traditional attribute of the cross. Hope, directly opposite with hands clasped in prayer, gazes at a tiny *tondo* head of Christ, an unusual representation. Between them, Charity is depicted higher than the others, the foremost of the Theological Virtues. She holds a heart in her right hand. *Charity* in the dado of Giotto's Arena Chapel fresco is generally believed to be the first representation of this iconography in Italian art (c. 1304-10; Figure 148), which was then to appear in other Florentine images of the virtue of Charity, including Andrea Pisano's reliefs for the bronze door of the south porch of the Baptistery (c. 1337; Figure 149) and in Orcagna's *Charity* for the tabernacle in Orsanmichele (1359; Figure 150). It has been noted that the iconography changed around the mid-Trecento, from depicting the heart with the tip pointing upwards (upside-down, in effect), to being held by the tip, the base pointing upwards, the more realistic position.⁷⁷⁴ However, in the San Miniato fresco the tip points upwards, perhaps indicating an earlier-Trecento artistic model for this attribute.⁷⁷⁵ She holds a scroll in her left hand, which reads, "Who in this world govern us | Has to be adorned by these women | And as a reward I give them eternal life".⁷⁷⁶ This intertwining of virtuous secular rule and the promise of eternal life, conveyed by a Theological Virtue, is an interesting conjunction of sacred and secular in a town hall.

The Cardinal Virtues flank the central figure (Figure 151). Prudence and Fortitude are on the upper step of the dais of the seat. Justice, in front of Prudence, and Temperance, before Fortitude, stand on the lower step. Each Cardinal Virtue is recognisable by her attributes, which differ in some respects to those in the *Brutus* fresco. Prudence, wearing a wimple, holds not the book of scripture of the *Brutus* fresco, but points to a mirror (now faded), also a traditional attribute of the Virtue (Figure 152). In addition, behind her head, to the left, is another head, of a grey-bearded old man. This indicated that Janus-like, Prudence looks in

⁷⁷³ On the *Madonna Lactans*, see Beth Williamson. 1998. 'The Virgin *Lactans* as Second Eve: image of the Salvatrix', *Studies in Iconography* 19:105-138.

⁷⁷⁴ See Pierre Vinken. 2001. 'How the heart was held in medieval art', *The Lancet*, 358 (December 22/29), 2155-7.

⁷⁷⁵ This point is not addressed by Guardini and Fiumalbi.

⁷⁷⁶ *Chi in questo mondo meco ci governa | Ornar di fama il fo da queste donne | e poi per premio li do vita eterna.*

two directions simultaneously.⁷⁷⁷ Temperance more traditionally ‘tempers’ wine with water by pouring between two vessels, rather than signifying her words. Fortitude carries a spear and shield. Justice appears again in red robes, here holding the traditional attributes of sword and scale (Figure 153). Her fair hair hangs loose, and she stares, directly engaging the viewer. There are indications that the Cardinal Virtues originally wore crowns or, in the case of Fortitude, a helmet. The juxtaposition of halo and crown appears incongruous, possibly evidence of later additions.⁷⁷⁸ Polygonal haloes were often reserved for allegories.⁷⁷⁹

This presence of religious imagery in a civic space is found also in other town halls, such as the Palazzo Pubblico, Siena, where Simone Martini’s *Maestà* is located. However, as one may have guessed from the inscription held by Charity, the Virgin is a later addition, replacing the original central figure. If we look closely, to the right hand side of the Virgin, we notice traces of a right arm and a red sleeve (Figure 154).⁷⁸⁰ It is possible that this substitution was intended to enhance the religious aspect of the fresco. Although it is not certain, the changes may date after 1399, to acknowledge a religious function of the building, when the Oratory (above which the audience chamber featuring the fresco is situated) received the *SS. Crocifisso di Castelvechio*.

The inscription

The identity of the lost central figure is revealed in the inscription below the image.⁷⁸¹

How impeccable and ‘blessed’ [by God] his work was, | is demonstrated, *lector* [‘reader’], by the seven women | who are the columns of his government, | which [the columns] assured him eternal reputation. | Those [the governors] coming after him, should consider | the ‘improvements’ which he brought with him [to San Miniato], and [the fact] that everyone, man or woman, loved him; | [moreover] he

⁷⁷⁷ See Hall 1974: 254-5. Prudence with two faces – both female - features in the ceiling roundel of the Arte della Lana (Figure 120; referred to above). Prudence also has two female faces in the frontispiece portrait of *King Robert* in the Anjou Bible (Figure 42).

⁷⁷⁸ Discussed at Guardini and Fiumalbi 2012: *Terza parte*.

⁷⁷⁹ See Mark J. Zucker. 1978. ‘The Polygonal Halo in Italian and Spanish Art’, *Studies in Iconography* 4: 61-78. In this context, it may be worth noting that the Virtues in the portrait of *King Robert* in the Anjou Bible are identified by inscriptions in polygonal haloes (Figure 42).

⁷⁸⁰ This was noted by Guardini and Fiumalbi 2012: *Quarta parte*.

⁷⁸¹ The inscription is thought to be contemporaneous with the fresco: see Guardini and Fiumalbi 2012: *Quarta parte*.

never wrung out [of them, of the inhabitants of San Miniato] not a coin. In 1393 he exercised the vicariate, and everybody was happy with him. | He kept the peace and [kept] everybody in good condition. | In his court vices did not take root, | for he followed the virtues which you see to the side. | Therefore, everybody – young and old - will always owe a debt of gratitude to him | and, for love of him, to all the Guicciardini.⁷⁸²

The subject matter and iconographical intention of the fresco are clear in the inscription. It confirms that the fresco was commissioned in 1393 in praise of a Vicar of the city. Therefore, in its original state, the scene would have been of the Cardinal and Theological Virtues surrounding a figure of secular authority. This iconography is similar to that in the *Brutus* fresco (Figure 105), and images such as the portrait of *King Robert enthroned among the virtues* in the Anjou Bible (Figure 42). It would also have drawn upon the well-known iconography of seated authority figures, discussed above, and the associations that conveyed. The seat is not a throne as one might expect in an image of the Virgin and Child, or a monarch, but a plain stone or marble seat or bench. It is similar to that in the *Brutus* fresco and suitable for a figure of secular authority. Although it may appear that the Theological Virtues could be later additions, intended with the image of Virgin and Child to provide a religious aspect to the fresco, a reference to ‘seven women’ in the inscription makes this unlikely.

The date and the reference to a family name, Guicciardini, indicate that the image of the Virgin and Child replaced a representation of Luigi Guicciardini.⁷⁸³ This identification of the central figure permits a re-interpretation of the fresco, from a new, legal perspective. Luigi Guicciardini was a Florentine, and was Vicar of San Miniato in 1393, for six months. A

⁷⁸² Quanto fur l’opre sue perfecte et sancte | Ti dimostran, lector, le sette donne, | Del regimento suo ferme cholonne | Chel fan d’eterna fama triunfante. Esempro prenda chi verrà davante | Del gran guadagno che secho portonne, | Che i cor delli uomini tucti et de le donne | Volle, nè giammai tolse un vil bisante [= *a golden coin*]. Et nel novanta tre dopol trecento | Et mille, resse sì il Vichariato, | Che ciaschun fu da lui sempre contento. | In pace tenne tucti et in buono stato; | Fu in sua chorte ciaschun vitio spento, | Tenendo le virtù, che vedi, a lato. | Onde sempre obbligato | Gliè ciascheduno, et grandi et piccholini, | E, per suo amore, a tucti i Guicciardini.

⁷⁸³ See Vanna Arrighi. 2004. ‘Luigi Guicciardini’, in *Dizionario biografico degli italiani* – Volume 61, [http://www.treccani.it/enciclopedia/luigi-guicciardini_res-640c5bdb-87ee-11dc-8e9d-0016357eee51_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/luigi-guicciardini_res-640c5bdb-87ee-11dc-8e9d-0016357eee51_(Dizionario-Biografico)/) [accessed 24.02.2013].

statute of 5 September 1393, when Luigi assumed authority, indicated that the Vicar would replace and exercise the powers of the former podestà's role.⁷⁸⁴ As noted above, the podestà of a town or city was a form of magistrate, in charge of the law and judiciary. In the Duecento a series of manuals offered guidance to the podestà and the communal authorities appointing him on his administrative, judicial and executive duties. The *Arringhe* of Matteo dei Libri (1214-1275), or Orfino da Lodi's *De regimine e sapientia potestatis* (c. 1245), speak of *civilis sapientia* or wisdom in legislating and administering justice. Advice came from Filippo Ceffi's *Dicerie*, in the Trecento (c. 1330s), or Guido Faba, who, writing in the second quarter of the Duecento, advised the podestà to invoke God, the Virgin and the saints in his opening address, and to see it as his job to use the law as a barrier to man's wickedness or vice, illustrating the intersection of politics, law and religion in civic life and the role of those exercising secular authority.⁷⁸⁵

Jones noted that "all chief magistrates were invested in practice or principle with undivided, semi-sovereign powers, including jurisdiction".⁷⁸⁶ Therefore, as Vicar, Guicciardini was effectively the chief legal official in San Miniato. If he did not himself act as judge, his judicial appointees would administer justice for him. The full significance of Guicciardini's just-visible red sleeve has not previously been appreciated. As noted above, judges or other authority figures were frequently depicted in red robes. From c. 1317, the Gonfaloniere of Justice in Florence wore a scarlet robe, lined and trimmed with miniver.⁷⁸⁷ This would be appropriate here, as Guicciardini had been Florentine Gonfaloniere of Justice, and played a controversial role in the suppression of the Revolt of the Ciompi in 1378.⁷⁸⁸ However, nothing of that role appears in the inscription, which praises his ability to maintain the peace and stability of San Miniato. This would have been a notable achievement in the context of its recent turbulent social and political history. Therefore, here Guicciardini was depicted in his official role, as the secular and judicial authority of San Miniato.⁷⁸⁹

⁷⁸⁴ Salvestrini 2000: 252, and note 41.

⁷⁸⁵ Martines 1979: 124.

⁷⁸⁶ Jones 1997: 409.

⁷⁸⁷ Hargreaves-Mawdsley 1963: 13. On such robes, see Chapter 3.

⁷⁸⁸ Discontent amongst the Ciompi, wool workers who were not represented by a guild, provoked a popular uprising in Florence in 1378. On the complex Ciompi Revolt, see Cohn 2008; and Cohn 2004.

⁷⁸⁹ It is unfortunate that we have no indication whether he might have held symbols of office, or attributes specifically associated with the exercise of judicial authority.

The inscription refers to Guiccardini lessening fiscal demands on the city, in contrast to certain of his predecessors, clearly a popular move. This seems intended to convey a message from the citizens of San Miniato, to future Florentine governors. Although the inscription seems to indicate that the entire citizenry was in accord in its praise of Luigi Guicciardini, the patron(s) of the work are unknown. It is questionable whether all members of such a deeply divided society would have acted in accord to commission the fresco. The inscription also suggests that the citizens' gratitude to Luigi should extend to the whole Guicciardini family. This might suggest that a member or close supporter of the family commissioned the fresco, or encouraged its commission. They might even have paid for it, as a measure to raise Luigi's reputation (and the family name) after the Ciompi Revolt. The emblem of the Guicciardini family (three hunting horns) appears in the moulding above the fresco (Figure 155).

The artist of the fresco is unknown. The central image, the later addition, is usually attributed to Cenni di Francesco di ser Cenni (fl. 1369–1415).⁷⁹⁰ He completed most of his later works outside Florence, including a *St Jerome* for the Church of the SS Jacopo e Lucia in San Miniato (also known as the Church of San Domenico), which has been dated to 1411.⁷⁹¹ He may well have accepted another commission in the city. If the attribution is correct, it indicates a window for the replacement in the fresco of Luigi Guicciardini with the Virgin of c. 1393/4-1415. As noted above, the changes may date after 1399, to acknowledge an enhanced religious function for the town hall. Attribution of the surrounding Virtues is uncertain. Similarities between the faces of the Virgin and Prudence, for example, may suggest that the same artist was responsible for the entirety, perhaps in two phases. However, the Virtues (and, presumably, the original figure of Guicciardini) may be attributable to a different artist, possibly that identified by Offner as the Master of the Lazzaroni Madonna (active last half of the 14th century).⁷⁹² The artist produced several

⁷⁹⁰ This attribution, by Berenson, is generally accepted; see Guardini and Fiumalbi 2012. *Prima parte*, and Donato, 2013: 27.

⁷⁹¹ Now in the Museo Diocesano, San Miniato.

⁷⁹² Richard Offner. 1981. 'A Legacy of Attributions', *A Critical and Historical Corpus of Florentine Painting* supplement (New York), 37-38. Donato supports this possible attribution (Donato 2013: 27). On this artist, see M. Boskovits. 1975. *La Pittura Fiorentina alla vigilia del Rinascimento* (Florence: EDAM), 239-240, footnote 169, and the Fondazione Federico Zeri, Bologna (see the online catalogue

other works in San Miniato, including frescoes for the Oratory of Sant'Urbano, an *Annunciation* in for a room next to the sacristy and also worked on the Armaleoni chapel in the Church of SS. Jacopo e Lucia.⁷⁹³

Further support for the Master of the Lazzaroni Madonna as the original artist of the fresco may come from a visual comparison of the personification of Justice in the San Miniato fresco and that on the *verso* of a *Desco da Parto* (Birth Tray) dated c. 1380–1400, which reveals compelling similarities (Figure 156).⁷⁹⁴ The face and positioning of the arms holding the attributes of justice are almost identical, as are the octagonal haloes (Figure 157). The face of Justice from the San Miniato fresco and of the *verso* of the birth tray also appears on the *recto* side, second from the left in the foreground. *Deschi da Parto* seem to have become popular from c. 1380, particularly in and around Florence.⁷⁹⁵ The polygonal (dodecagonal) shape is typical of Trecento examples.⁷⁹⁶ It is not known who the *desco* was commissioned by or for. The arms have not been identified, although those to the left may be of a Florentine family, the Salviati.⁷⁹⁷ The *verso* of a *desco* was often decorated with allegorical figures, or personifications.⁷⁹⁸ The few extant birth trays are rarely attributable to specific artists, and are often categorised as workshop productions.⁷⁹⁹ This example has been variously attributed, to Cenni di Francesco di ser Cenni, and the circles of Lorenzo di Niccolò or Niccolò di Pietro Gerini, to whose circle the Master of the Lazzaroni Madonna is thought to have belonged.⁸⁰⁰ More recent attributions are to the Master of the Lazzaroni

http://fe.fondazionezeri.unibo.it/catalogo/ricerca.jsp?decorator=layout&apply=true&percorso_ricerca=OA&ti_po_ricerca=avanzata&mod_AUTN_OA=esatto&AUTN_OA=Maestro+della+Madonna+Lazzaroni&componi_OA=AND&ordine_OA=rilevanza [accessed 24 February 2013]].

⁷⁹³ Guardini and Fiumalbi 2012: *Prima parte*.

⁷⁹⁴ Catalogue number 58, in Sciacca 2013: 382-385. I thank Melissa E. Buron, Assistant Curator, European Art Department of the Fine Arts Museums of San Francisco, for her assistance with my queries on the *desco*.

⁷⁹⁵ Jacqueline Marie Musacchio. 1999. *The Art and Ritual of Childbirth in Renaissance Italy* (New Haven and London: Yale University Press), 62.

⁷⁹⁶ Musacchio 1999: 62. See also John Pope-Hennessy and Keith Christiansen. 1980. 'Secular Painting in 15th-Century Tuscany: Birth Trays, Cassone Panels, and Portraits', *The Metropolitan Museum of Art Bulletin* 38/1: 1-63, at 3, 5-11.

⁷⁹⁷ Sciacca 2013: 382, note 1.

⁷⁹⁸ Musacchio 1999: 66. Research from 1920s by Frank Jewett Mather (referred to by Musacchio 1999: 68) would appear to indicate that themes related to justice and judgment might have been popular for birth trays. Examples he gave included the *Justice of Trajan*, *Judgment of Paris* and *Solomon*. As it is difficult to see why this should be the case, the question should be further investigated.

⁷⁹⁹ Musacchio 1999: 68.

⁸⁰⁰ Sciacca 2013: 384-385. While there are some similarities between Justice in the San Miniato fresco, and a ceiling roundel of Justice by Niccolò di Pietro Gerini in San Felicità, Florence, close visual analysis reveals that

Madonna alone.⁸⁰¹ The similarities in representation of the image of Justice on the *desco* and the San Miniato fresco would indicate a common origin. There are also compelling similarities - particularly in the face, seated position and the drape of the gown across her knees – between this and the damaged *verso* image of a twelve-sided panel, probably a further *desco da parto* (Figure 159).⁸⁰² It is of an unidentified female allegorical figure, seated with a book on her lap; she holds aloft two scrolls, in a similar fashion to Justice (Figure 160).⁸⁰³ This may suggest a workshop to which the Master of the Lazzaroni Madonna was associated (Figure 161).

Between the depiction of Guicciardini, surrounded by the Virtues, and the programme of the *Brutus* fresco, there are significant differences. The *Brutus* fresco portrayed an timeless ideal, an exemplar, surrounded by the Cardinal Virtues; here we see a man, a contemporary figure, the civic official in charge of law enforcement in late-Trecento San Miniato, guided in his exercise of secular and judicial authority by the example of the Virtues. In the San Miniato fresco, the Cardinal Virtues stand grouped around the central figure: static, they lack the dynamic vitality and sense of active engagement of those in the Arte della Lana audience hall. The order of the Virtues differs to the *Brutus* fresco: Justice and Fortitude have exchanged places. In San Miniato, Justice appears in front of but below Prudence. She is not level with the central figure, standing before and below the step of the seat. Justice here is a traditional representation, readily identifiable as the Virtue; she appears more a personification of moral significance than the figure from the Arte della Lana fresco which dynamically engaged with contemporary issues. Although the inscription refers to Vices which could appear in a Vicar's court, there are none depicted, and there is no attempt to create a dialogue between virtue/vice, or central authority figure.

these are in no way as compelling as those between the San Miniato fresco and the *Desco da Parto* (Figure 158).

⁸⁰¹ Sciacca 2013: 385, note 13.

⁸⁰²The panel is in the Pinacoteca Vaticana, Rome (Inv. No. 40223). See Simona Pasquinucci and Barbara Deimling. 2000. In *A critical and historical corpus of Florentine painting by Richard Offner with Klara Steinweg. Section 4 v8. Tradition and innovation in Florentine Trecento painting: Giovanni Bonsi - Tommaso del Mazza* ed. by Miklós Boskovits (Florence: Giunti), 364-6, Plate LXVIII 1-2. It is attributed to circle of Tommaso del Mazza and dated to c. 1365-1370, an early date for *deschi da parto*. These similarities merit further research.

⁸⁰³ This may allude to the *orans* position, a prayer gesture from the Early Christian period: arms extended, elbows close to the sides of the body and hands outstretched sideways, palms up. Intended to imitate the position of Christ's arms on the cross, priests made the *orans* gesture during mass.

What is particularly striking is how a representation of a contemporary secular figure, the Vicar, could be replaced so successfully, by the figures of the Madonna and Child. Such a substitution could not be effected in the *Brutus* fresco without disrupting or losing the intended meaning of the programme. Even in its original state the San Miniato fresco was intended to combine sacred and secular imagery. The inclusion of the Theological Virtues makes the religious aspect of the fresco more immediately evident. Guicciardini's works are described as blessed by God. The scroll held by Charity explicitly offers the promise of life eternal to those who exercise secular authority in accordance with the Virtues. The iconography is an interesting example of a secular authority figure drawing on the religious associations of the Virtues to support his role.

However, despite these differences, there are shared meanings. While Guicciardini, unlike Brutus, is not explicitly visually threatened by vices, the inscription makes clear the role of the virtues shown at his side ('le virtù, che vedi, a lato') in suppressing the vices in Luigi's court.⁸⁰⁴ He, like Brutus, is therefore similarly defended from the vices by the Virtues. Moreover the inscription praises the seven virtues as the supports ('cholonne') to his government and his eternal reputation. This reference to the Virtues as 'cholonne', the columns on which Guicciardini's rule rested, appears to allude to the exegetical discourse of columns, whereby they could be seen as possessing not only physical qualities of strength, but also virtues – God-given properties – as a result of their capacity to support.⁸⁰⁵ Columns had allegorical meanings; for example, medieval texts described the evangelists as the columns carrying the structure of the Church (Isidore of Seville, *On Exodus*).⁸⁰⁶ According to Bede, "the four gilded columns that held up the curtain demarcating the Holy of Holies were construed as the angelic power and their principal virtues: justice, prudence, fortitude, and temperance".⁸⁰⁷ The role of the virtues in supporting a figure of secular authority draws comparison with the *Brutus* fresco, and vice versa. This supporting role may be apparent also in the ceiling roundels in the Arte della Lana audience chamber featuring the Virtues and the evangelists. In the frescoes secular and sacred imagery combine, with the effect of

⁸⁰⁴ The inscription refers to his 'chorte'.

⁸⁰⁵ Kinney 2011: 182-199.

⁸⁰⁶ On Isidore of Seville, see Kinney 2011: 190, note 31.

⁸⁰⁷ Bede *De tabernaculo* II.1157-90, 1269-1300, in Kinney 2011: 189, note 28.

converting a secular space – audience chambers in the premises of the Guild or in San Miniato’s town hall – into rooms which evidence the interrelationship of the secular and sacred in civic matters and of an inextricable link between secular and divine justice.

Despite the several and evident differences in location, patron and artist, as well as social, political and historical context, between these distinct artistic programmes – differences which are acknowledged and explored - there is a notable congruence between the images analysed in this chapter. Many of the same matters are addressed, indicating commonalities underlying the subject matter of the various artworks. By drawing together these ‘thematic threads’, the case studies demonstrate that the fresco in San Miniato engages with many of the same themes on the need for just exercise of authority as appeared in the *Brutus* fresco of the Arte della Lana in Florence.

Conclusion

This chapter sought to develop the notion of the interaction of sacred and secular justice, and the impact of the intrusion into images of justice of responses to changes in the contemporary secular justice system, by visually analysing and contextualising images addressing the role of those administering justice in and around mid- to late- fourteenth century Florence. The images addressed in this chapter have been interpreted as eloquent visual statements of an increased emphasis on those exercising secular and judicial authority arising from particular changes to the justice system.

Brutus and Luigi Guicciardini personify a concept of legal justice as that which directs the acts of the virtues surrounding him - Prudence, Justice, Fortitude and Temperance - to the common good. Brutus, in ordering the execution of his own sons, is an exemplar of placing the needs of the community above personal interest. His actions stand in contrast to the types of non-virtuous and non-lawful behaviours included in the fresco in which members of contemporary Florentine society may indulge, threatening the common good. He also stands as an exemplar of judicial probity, a reassurance to those seeking justice in that room: justice will be served by the actions of the judge, regardless of his personal desires. Similarly, the representation of Luigi Guicciardini, a figure of secular authority in control of administering justice, was intended to show that in his widely-admired execution of his official duties he was supported by the Virtues, who – as with the *Arte della Lana* fresco – kept vices from his court and ensured the ‘buono stato’ of San Miniato. The inscription reinforced the didactic intent of the fresco: future governors too must ensure that they exercised their powers in accordance with those qualities.

In each case, the image of the man with judicial authority – whether Brutus the judge, or Guicciardini the just ruler - is used to establish a norm, a behavioural standard. Brutus is an ideal, an exemplar for both those administering, seeking and facing justice in the court of the *Arte della Lana*. The additional dimension given to the *Brutus* fresco by the features identified here but hitherto overlooked – the unusual and dynamic figure of Justice, the weapon held by ‘Vengeance’, the bit and laurel of Prudence, the visual allusion to a specific

criminal offence – was intended and would have been appreciated by both the patrons of the work and its contemporary audience as speaking directly to the social, political and legal concerns that occupied them. In using classical styles and motifs for contemporary purposes, the fresco connected past to present, associating the legal proceedings in the guild's audience hall with Roman ideals. By contrast, Guicciardini is human, a figure of contemporary society and its politics; yet he too is able to offer an example to his successors by his willingness to be guided by the timeless Virtues in how he governed. This gave him the ability to bring peace and common good to a divided and troubled community, ensuring him eternal fame.

Legal justice, as represented by these men, contrasts with the female personification of Justice, who represents the distinct notion of Justice as a Virtue. This relates to giving to those what is due, governing how members of society relate to each other. It plays a two-fold role: justice is a virtue that a law-making authority (whether commune or guild) would like to instil in each of its members, but a function of the law itself is also to attempt to ensure justice or 'fairness' between those people. Given the location of the frescoes, it is likely that what was being heard would include disputes, on commercial but also private matters. A concept of justice as relating to a situation where someone owes some sort of debt to another is particularly relevant to the commercial and other dealings of the guild. To reinforce this, Justice in the *Arte della Lana* fresco is an unusual representation of the Virtue. Unlike the more traditional and readily recognisable image in San Miniato, she does not wear a crown; she does not carry the scale or balance. Attention has been drawn in the case study to the similarities between this representation and Ambrogio Lorenzetti's *Distributive Justice*: not only are their red robes, wings and hairstyles virtually identical, each dynamically wields a sword as an instrument of justice. This personification of Justice aggressively asserts its role in and importance to contemporary society.

Issues arising from changes to the legal system from the Duecento onwards are seen to pervade and shape the artistic representation of the imagery in these case studies. As with the images of the *Last Judgment* and the altarpiece of an Aretine confraternity considered in Chapter 2, and the scenes of the *Trials of Christ* in Chapter 3, this new legal perspective contributes to enhance understanding of late-medieval artworks. Interpreting the frescoes

in light of changes to the role and function of the judge in the administration of justice demonstrates why visual models for those exercising secular and judicial authority were perceived as necessary in the mid-late Trecento. In addition, the frescoes make it clear that - unlike the judges presiding over the flawed trials of Christ – Brutus, the Guild judges, Guicciardini, and his successors as Vicar, could and should rely on the virtues to guide them. This re-interpretation establishes that both the *Brutus* fresco of the Arte della Lana in Florence and the fresco in San Miniato, evidence a concern that those exercising secular and judicial authority must do so guided by the qualities of the virtues. The models of contemporary secular and judicial authority in these frescoes, surrounded by the Virtues, stand in marked contrast to those qualities associated with the judges in the scenes of the *Trials of Christ*, who acted without such support – unfairness, partiality and weakness: unjust judging leading to injustice. Contemporary views of the dangers of judges acting alone, without these virtues can be seen in Albertino Mussato's 1315 tragedy, *Ecerinis* and its association of such actions with a tyrant:

As single judge I shall end | All suits; my trusty hand will tremble at | No crime.

Assist me, O Satan.⁸⁰⁸

Each of the *Brutus* fresco of the Arte della Lana in Florence and the fresco in San Miniato affirms contemporary civic values and expectations of secular and judicial authority, offering visual models to guide and inform. Associating the figure of those exercising such authority with the Virtues effectively attributed them with those qualities, a sophisticated use of both sacred and secular symbolic imagery, to create powerful positive associations. The appearance of the Virtues in such places of civic and secular importance demonstrate that association with the virtues could be utilized to legitimate and support the exercise of secular authority, a political use of such images. The analysis here reveals these as complex images, articulating contemporary concerns to convey important messages about how those entrusted with enhanced powers to administer justice perform their role.

⁸⁰⁸ Joseph R. Berrigan. 1975. *Mussato's "Ecerinis" and Loschi's "Achilles"* (Munich: Wilhelm Fink), 26-7; see Joseph R. Berrigan, 'A Tale of Two Cities: Verona and Padua in the Late Middle Ages', in Rosenberg 1990: 67-80. On Mussato, see Marino Zabbia .2012. *Dizionario Biografico degli Italiani - Volume 77*. Available online at [http://www.treccani.it/enciclopedia/albertino-mussato_\(Dizionario-Biografico\)/](http://www.treccani.it/enciclopedia/albertino-mussato_(Dizionario-Biografico)/) [accessed 21 June 2013].

Significantly, contemporary viewers would also have recognised that the religious underpinnings to the concept of justice in the frescoes should not be overlooked. The *Brutus* fresco appears alongside roundels featuring the four evangelists, and the frescoes of the Madonna and Child, Christ and the Father, the Divine Judge. It cannot be read in isolation from these images. The guild, in commissioning the fresco programme for its audience chamber, included imagery which alluded to the inextricable link in contemporary thought between secular and sacred. This presence of the sacred in a secular environment also underpins the fresco in San Miniato: Guicciardini was to gain God's blessing, his activities watched over by the Theological Virtues. The frescoes offer allegories of justice which retained both secular and religious aspects. Therefore, this re-interpretation of the frescoes acknowledges their engagement to both the socio-political and legal realities of mid-Trecento Florence and San Miniato in the late-Trecento, and the secular and sacred aspects of the contemporary notion of justice.

Conclusion

This thesis sought to explore some of the ways in which images of justice were used to express and in some cases to promote social, cultural, political and religious aims and aspirations of those who commissioned them, in northern Italy between c. 1250-1400, and whether and to what extent this impacted upon their depiction. It contributes to the debate on the distinction between the terms 'sacred' and 'secular' in the late medieval period, exploring how analysing artworks can lead to a better and more nuanced appreciation of the application of those terms in relation to the contemporary notion of justice. Further, my research has indicated that what could account most comprehensively for certain changes in the use and depiction of such images may be found in specific aspects of a justice system in transition. In particular, through examination of a broad range of visual evidence, it has demonstrated the impact upon images of justice of the increasing specialisation of the legal process, and other aspects of the administration of justice arising from the adoption into the secular justice system of innovations from the procedures of the papal inquisition.

Close analysis has revealed the intrusion of aspects of the secular justice system into artistic representations of divine justice. My study indicates that changes in Last Judgment scenes towards more horrifying hells engage with changes in the administration of justice in northern Italy from the mid-thirteenth century; a system in transition, both in terms of changes in its practices but also – significantly - its jurisprudence. These images of divine justice indicating the punishment deemed appropriate for particular behaviours in hell, may also reveal some of the value judgments underpinning the contemporary criminal justice system. They indicated behaviours suitable for punishment: avoid those behaviours to avoid the consequences. Vivid, active, increasingly gruesome images of Hell in Last Judgment scenes – the artistic representation of Divine Justice – act as didactic images, specifically commissioned and designed to inspire and shape the behaviour of those viewing it. As such, an evolution of this iconography could serve the ends of both religious and secular patrons, potentially appealing both to those seeking to reinforce Christian behaviour and serving the secular demands of the governments of the city-states. In these increasingly vividly depicted horrors of hell, no less than in the imagery in the panel by Margarito of Arezzo, one can discern that not only do these images intentionally and actively engage with the notion of

secular justice, they are informed by and reflective of issues relating to contemporary justice systems and jurisprudence, indicative of a secular motivation to images of divine justice.

As with the images of the Last Judgment and the altarpiece of an Aretine confraternity, it is evident that a new perspective can be shed on the scenes of the *Trials in the Passion of Christ*: that issues – social, political, even religious – arising from changes to the legal system from the Duecento onwards, pervaded and shaped the artistic representation of the imagery. As has been shown, an explanation for the choice of judge featured presiding in the scenes of the *Trials of Christ* may lie in contemporary social, political, and legal realities. Awareness of contemporary issues relating to the administration of justice contributes to our understanding of changes in the iconography of these scenes. They may have been intended to legitimise trial by a particular type of judge; further they may represent a deliberate attempt by the patrons of those images to incorporate into Passion cycles the need for respect for rightfully and properly exercised authority, in judicial matters especially. More particularly, these scenes encourage reflection on the crucial role of the judge in ensuring justice.

It has been argued that “art historians ... generally assume that impartiality and anti-corruption norms were extant” in images such as the *Judgment of Cambyses*.⁸⁰⁹ By specific analysis and reinterpretation of several lesser-known artworks, my research has demonstrated that such norms are evident also in certain images of justice commissioned and produced in the Trecento. In situating these images of secular justice within the context of the political, social, and religious circumstances of late-medieval northern Italy, it is evident that they were adapted and exploited to articulate contemporary concerns relating to the administration of secular and judicial authority.

My reassessment of the images of *Brutus the Good Judge* and of the just ruler in San Miniato underlines not the differences in their portrayal of secular authority figures, but rather the similarities. We see that these figures do not act alone or without guidance. The use of parallel motifs in these two different images indicates the contemporary belief that

⁸⁰⁹ Resnik and Curtis 2011: 39.

those exercising secular and judicial authority had to be guided by the Virtues. Comparison with those in the scenes of the *Trials of Christ* evidence a contemporary belief that judges conducting trials without the counsel of the Virtues could perpetrate great injustice. These artworks address the need to respect judicial authority, and its role in maintaining social stability to further the common good.

In the images of the Trials of Christ, and the *Brutus* and San Miniato frescoes, much as in the images of divine justice considered in Chapter 2, we see combined religious and communal ideals. The changing realities of the justice system were integral to the development of all of these images. That contemporary realities of law and justice were thought appropriate matters for religious imageries is indicative of the duality of secular and sacred in the contemporary conception of justice. Images of 'divine justice' reveal the intrusion of aspects of secular justice practice; images of secular justice are underscored by the contemporary need to invoke the divine in matters of justice and judging. Human judges were demonstrably flawed without guidance from the virtues, and those virtues were expressions of the divine. Secular judges may be weak or partial, but Divine Justice is immutable. Secular judges therefore should aim to follow the example of the Divine-Judge. Throughout, the representations reveal a belief that earthly justice derives from Divine Justice, that the two concepts are indivisible. The human understanding of justice is set in the context of the divine.

By this study I have established that there is a demonstrable interdependence linking the image of justice not only to its expression in contemporary theological and philosophical thought, but also to the practical realities of the justice system. Analysing certain images of justice in detail has revealed that in many cases their content was directed to a particular set of values. Many of these images of justice – both secular and sacred – through their use, depiction, and changes in their representation, reveal evidence of a society and its practices and philosophy of justice in a process of transition. I do not mean to suggest that changes in a justice system will necessarily and inevitably produce changes in art, but the analysis offered here would suggest that these images articulated how important the concept and

practices of justice were to contemporary society, especially the communal and collective identity of the city-states of northern Italy.

As my research has shown, analysing the use and depiction of certain images produced in the period c. 1250-1400 indicates a belief that justice appeared to many the best means of ensuring just rule and a stable, peaceful society. Justice offered norms to live by; a justice system, a framework within which people could interact; justice, in the form of distributive justice, even governed the allocation of resources within a newly commercially vibrant society. People living through turbulent times cleaved to that which could offer peace and stability; for many, justice was linked to those qualities.

Justice is a fundamental ethical, moral, and political concept; it is also complex and ambiguous. It may refer to individual virtue, the order of society, the rights of the individual in a community, but also determine the fate of Man at Judgment Day. Close analysis of specific images of or alluding to justice makes clear the interconnectedness of the contemporary notion of divine and secular justice at this time. It is evident that oppositions such as sacred/secular, this worldly/next worldly, serve no place in the contemporary understanding of the notion of Justice. Instead, what emerges from an analysis of images of justice from northern Italy, c. 1250-1400 indicates a more sophisticated conception, an accumulation of learned references, comprised of a fusion of religious elements, from the Bible and the writings of Augustine and contemporary popes, and secular elements, deriving from the revival of the works of classical philosophers like Aristotle, and of Roman law, such as the works of Justinian, as well as ancient Roman authors like Cicero. The statement that “the communes were simultaneously religious and political entities”⁸¹⁰ may perhaps be regarded as a commonplace, but it remains true and of some significance when considering how the towns and cities of northern Italy perceived a concept such as justice.

These images of justice contain within them an interweaving of social, religious, political, and cultural concerns. By situating each of the images of justice addressed here within their context it has been possible to appreciate this full range of meanings. Equally, the ways in

⁸¹⁰ Thompson 2005: 3.

which justice was portrayed and interpreted reveal the attitudes, concerns and expectations of those who commissioned, produced and viewed them. Each artwork, and the circumstances of its commission and creation, is unique; but these images of justice reveal certain commonalities. Images of justice can be seen – in essence – as products of the context in which they functioned, and the social, political, religious, requirements that they fulfilled. These images of justice – whether commissioned for religious or secular spaces, by religious or secular patrons - articulate the legal, social and political structures and civic life of a particular region of Italy c. 1250-1400. They were manipulated to didactic effect, to promulgate values important to their patrons in the influential areas of religion, society, politics, and law.

It is hoped that this study will not only inform, but promote further analysis and discussion of these artworks, and of a fascinating aspect of late-medieval Italian history.

APPENDIX 1

SELECTED CANONS OF THE FOURTH LATERAN COUNCIL, 1215

Extracted from Tanner, Norman P, ed. 1990. *Decrees of The Ecumenical Councils, Vol. 1 (Nicaea I - Lateran V)* (Georgetown University Press. Washington, D.C.), pp. 230-266.

Fourth Lateran Council — 1215

★ 230

CONSTITUTIONS

1. On the catholic faith

We firmly believe and simply confess that there is only one true God, eternal and immeasurable, almighty, unchangeable, incomprehensible and ineffable, Father, Son and holy Spirit, three persons but one absolutely simple essence, substance or nature^a. The Father is from none, the Son from the Father alone, and the holy Spirit from both equally, eternally without beginning or end; the Father generating, the Son being born, and the holy Spirit proceeding; consubstantial and coequal, co-omnipotent and coeternal; one principle of all things, creator of all things invisible and visible, spiritual and corporeal; who by his almighty power at the beginning of time created from nothing both spiritual and corporeal creatures, that is to say angelic and earthly, and then created human beings composed as it were of both spirit and body in common. The devil and other demons were created by God naturally good, but they became evil by their own doing. Man, however, sinned at the prompting of the devil.

This holy Trinity, which is undivided according to its common essence but distinct according to the properties of its persons, gave the teaching of salvation to the human race through Moses and the holy prophets and his other servants, according to the most appropriate disposition of the times. Finally the only-begotten Son of God, Jesus Christ, who became incarnate by the action of the whole Trinity in common and was conceived from the ever virgin Mary through the cooperation of the holy Spirit, having become true man, composed of a rational soul and human flesh, one person in two natures, showed more clearly the way of life. Although he is immortal and unable to suffer according to his divinity, he was made capable of suffering and dying according to his humanity. Indeed, having suffered and died on the wood of the cross for the salvation of the human race, he descended to the underworld, rose from the dead and ascended into heaven. He descended in the soul, rose in the flesh, and ascended in both. He will come at the end of time to judge the living and the dead, to render to every person according to his works, both to the reprobate and to the elect. All of them will rise with their own bodies, which they now wear, so as to receive according to their deserts, whether these be good or bad; for the latter perpetual punishment with the devil, for the former eternal glory with Christ.

There is indeed one universal church of the faithful, outside of which nobody at all is saved, in which Jesus Christ is both priest and sacrifice. His body and blood are truly contained in the sacrament of the altar under the forms of bread and wine, the bread and wine having been changed in substance, by God's power, into his body and blood, so that in order to achieve this mystery of unity we receive from God what he received from us. Nobody can effect this sacrament except a priest who has been properly ordained according to the church's keys, which Jesus Christ himself gave to the apostles and their successors. But the sacrament of baptism is consecrated in water at the invocation of the undivided Trinity — namely Father, Son and holy Spirit — and brings salvation to both children and adults when it is correctly carried out by anyone in the form laid down by the church. If someone falls into sin after having received baptism,

^a three persons ... nature omitted in Cr.

he or she can always be restored through true penitence. For not only virgins and the continent but also married persons find favour with God by right faith and good actions and deserve to attain to eternal blessedness.¹

3. On heretics

We excommunicate and anathematize every heresy raising itself up against this holy, orthodox and catholic faith which we have expounded above. We condemn all heretics, whatever names they may go under. They have different faces indeed but their tails are tied together inasmuch as they are alike in their pride. Let those condemned be handed over to the secular authorities present, or to their bailiffs, for due punishment. Clerics are first to be degraded from their orders. The goods of the condemned are to be confiscated, if they are lay persons, and if clerics they are to be applied to the churches from which they received their stipends. Those who are only found suspect of heresy are to be struck with the sword of anathema, unless they prove their innocence by an appropriate purgation, having regard to the reasons for suspicion and the character of the person. Let such persons be avoided by all until they have made adequate satisfaction. If they persist in the excommunication for a year, they are to be condemned as heretics. Let secular authorities, whatever offices they may be discharging, be advised and urged and if necessary be compelled by ecclesiastical censure, if they wish to be reputed and held to be faithful, to take publicly an oath for the defence of the faith to the effect that they will seek, in so far as they can, to expel from the lands subject to their jurisdiction all heretics designated by the church in good faith. Thus whenever anyone is promoted to spiritual or temporal authority, he shall be obliged to confirm this article with an

¹ See *Expositio magni prophetae abbatis Joachim in Apocalipsim*, Venice 1527.

² See among others P. Fournier, *Études sur Joachim de Flore et ses doctrines*, Paris 1909, 32–37; E. Buonaiuti, *Gioacchino da Fiore. I tempi, la vita, il messaggio*, Rome 1931, 174–175; F. Foberti, *Gioacchino da Fiore . . .*, Florence 1934, 81–131; Abbot Joachim, *Liber contra Lombardum* (Scuola di Gioacchino da Fiore), ed. C. Ottaviano, Rome 1934; *Scritti minori di Gioacchino da Fiore*, ed. E. Buonaiuti (Fonti per la storia d'Italia, 78), Rome 1936, XX–LIII; Huck 131–132, 176–177, 272–274; F. Foberti, *Gioacchino da Fiore e il gioachinismo antico e moderno*, Padua 1942, 39–60; A. Michel, *DThC* 15/2 (1950) 1727–1730; F. Russo, *Un documento sulla condanna di Gioacchino da Fiore nel 1215*, *Archivio storico per la Calabria e la Lucania* 20 (1951) 69–73; E. Bertola, *La dottrina trinitaria in Pietro Lombardo*, *Miscellanea lombardiana*, Novara 1957, 129–135; M. Reeves, *The influence of prophecy in the later Middle Ages, a study in Joachimism*, Oxford 1969, 30–32; idem, *Joachim of Fiore and the Prophetic Future*, London 1976, 24–26.

³ Amalric of Bène (died 1204); see G. C. Capelle, *Autour du decret de 1210: III. Amaury de Bène*, Paris 1932; H. Grundmann, *Religiöse Bewegungen im Mittelalter . . .*, Berlin 1935, 374–375.

⁴ ch. 2, *Decretals*, I 1 (Fr 2, 6–7); see also Fliche 200; Tillmann 159, 203 (trans. Sax 195, 242); Maccarrone 287–288, 295.

oath. If however a temporal lord, required and instructed by the church, neglects to cleanse his territory of this heretical filth, he shall be bound with the bond of excommunication by the metropolitan and other bishops of the province. If he refuses to give satisfaction within a year, this shall be reported to the supreme pontiff so that he may then declare his vassals absolved from their fealty to him and make the land available for occupation by Catholics so that these may, after they have expelled the heretics, possess it unopposed and preserve it in the purity of the faith — saving the right of the suzerain provided that he makes no difficulty in the matter and puts no impediment in the way. The same law is to be observed no less as regards those who do not have a suzerain.

Catholics who take the cross and gird themselves up for the expulsion of heretics shall enjoy the same indulgence, and be strengthened by the same holy privilege, as is granted to those who go to the aid of the holy Land. Moreover, we determine to subject to excommunication believers who receive, defend or support heretics. We strictly ordain that if any such person, after he has been designated as excommunicated, refuses to render satisfaction within a year, then by the law itself he shall be branded as infamous and not be admitted to public offices or councils or to elect others to the same or to give testimony. He shall be intestable, that is he shall not have the freedom to make a will nor shall succeed to an inheritance. Moreover nobody shall be compelled to answer to him on any business whatever, but he may be compelled to answer to them. If he is a judge, sentences pronounced by him shall have no force and cases may not be brought before him; if an advocate, he may not be allowed to defend anyone; if a notary, documents drawn up by him shall be worthless and condemned along with their condemned author; and in similar matters we order the same to be observed. If however he is a cleric, let him be deposed from every office and benefice, so that the greater the fault the greater be the punishment. If any refuse to avoid such persons after they have been pointed out by the church, let them be punished with the sentence of excommunication until they make suitable satisfaction. Clerics should not, of course, give the sacraments of the church to such pestilent people nor give them a christian burial nor accept alms or offerings from them; if they do, let them be deprived of their office and not restored to it without a special indult of the apostolic see. Similarly with regulars, let them be punished with losing their privileges in the diocese in which they presume to commit such excesses.

“There are some who *holding to the form of religion but denying its power* (as the Apostle says)¹, claim for themselves the authority to preach, whereas the same Apostle says, *How shall they preach unless they are sent?*² Let therefore all

¹ 2 Tm 3, 5.

² Rm 10, 15.

those who have been forbidden or not sent to preach, and yet dare publicly or privately to usurp the office of preaching without having received the authority of the apostolic see or the catholic bishop of the place”¹, be bound with the bond of excommunication and, unless they repent very quickly, be punished by another suitable penalty². We add further that each archbishop or bishop, either in person or through his archdeacon or through suitable honest persons, should visit twice or at least once in the year any parish of his in which heretics are said to live. There he should compel three or more men of good repute, or even if it seems expedient the whole neighbourhood, to swear that if anyone knows of heretics there or of any persons who hold secret conventicles or who differ in their life and habits from the normal way of living of the faithful, then he will take care to point them out to the bishop. The bishop himself should summon the accused to his presence, and they should be punished canonically if they are unable to clear themselves of the charge or if after compurgation they relapse into their former errors of faith. If however any of them with damnable obstinacy refuse to honour an oath and so will not take it, let them by this very fact be regarded as heretics. We therefore will and command and, in virtue of obedience, strictly command that bishops see carefully to the effective execution of these things throughout their dioceses, if they wish to avoid canonical penalties. If any bishop is negligent or remiss in cleansing his diocese of the ferment of heresy, then when this shows itself by unmistakable signs he shall be deposed from his office as bishop and there shall be put in his place a suitable person who both wishes and is able to overthrow the evil of heresy.³

8. On inquests

“How and in what way a prelate ought to proceed to inquire into and punish the offences of his subjects may be clearly ascertained from the authorities of the new and old Testament, from which subsequent sanctions in canon law derive”⁴, as we said distinctly some time ago and now confirm with the approval of this holy council.

“For we read in the gospel that the steward who was denounced to his lord for wasting his goods heard him say: *What is this that I hear about you? Give an account of your stewardship, for you can no longer be my steward*⁵. And in

⁶ and he things omitted in *A M*.

¹ ch. 25, *Decretals*, V 1 (Fr 2, 747); see Fliche 208; Tillmann 157 (trans. Sax 192–193); Maccarrone 290–291. ² See Ez 3, 13; 33, 8.

³ ch. 13, *Decretals*, I 31 (Fr 2, 191); see Fliche 204–205; Tillmann 159 (trans. Sax 195); Maccarrone 293–294).

⁴ ch. 17, *Decretals*, V 1 (Fr 2, 738–739). ⁵ Lk 16, 2.

Genesis the Lord says: *I will go down and see whether they have done altogether according to the outcry which has come to me*¹. From these authorities it is clearly shown that not only when a subject has committed some excess but also when a prelate has done so, and the matter reaches the ears of the superior through an outcry or rumour which has come not from the malevolent and slanderous but from prudent and honest persons, and has come not only once but frequently (as the outcry suggests and the rumour proves), then the superior ought diligently to seek out the truth before senior persons of the church. If the seriousness of the matter demands, then the fault of the offender should be subjected to canonical punishment. However, the superior should carry out the duty of his office not as if he were the accuser and the judge but rather with the rumour providing the accusation and the outcry making the denunciation. While this should be observed in the case of subjects, all the more carefully should it be observed in the case of prelates, who are set *as a mark for the arrow*². Prelates cannot please everyone since they are bound by their office not only to convince but also to rebuke and sometimes even to suspend and to bind. Thus they frequently incur the hatred of many people and risk ambushes. Therefore the holy fathers have wisely decreed³ that accusations against prelates should not be admitted readily, without careful provision being taken to shut the door not only to false but also to malicious accusations, lest with the columns being shaken the building itself collapses⁴. They thus wished to ensure that prelates are not accused unjustly, and yet that at the same time they take care not to sin in an arrogant manner, finding a suitable medicine for each disease: namely, a criminal accusation which entails loss of status, that is to say degradation, shall in no wise be allowed unless it is preceded by a charge in lawful form. But when someone is so notorious for his offences that an outcry goes up which can no longer be ignored without scandal or be tolerated without danger, then without the slightest hesitation let action be taken to inquire into and punish his offences, not out of hate but rather out of charity. If the offence is grave, even though not involving his degradation, let him be removed from all administration, in accordance with the saying of the gospel⁵ that the steward is to be removed from his stewardship if he cannot give a proper account of it.”⁶

The person about whom the inquiry is being made ought to be present, unless he absents himself out of contumacy. The articles of the inquiry should be shown to him so that he may be able to defend himself. The names of witnesses as well as their depositions are to be made known to him so that both what has been said and by whom will be apparent; and legitimate exceptions and responses are to be admitted, lest the suppression of names leads to the bold bringing false charges and the exclusion of exceptions leads to false depositions being made. A prelate should therefore act the more diligently in correcting the offences of his subjects in proportion as he would be worthy of condemnation were he to leave them uncorrected. Notorious cases aside, he may proceed

¹ Gn 18, 21. ² Lm 3, 12.

³ See council of Constantinople I, canon 6; council of Chalcedon, canon 21 (see above pp. 33–34, 97).

⁴ See Jg 16, 30. ⁵ See Lk 16, 2. ⁶ ch. 17, *Decretals*, V 1 (Fr 2, 738–739).

against them in three ways: namely, by accusation, denunciation and inquest. Let careful precaution nevertheless be taken in all cases lest serious loss is incurred for the sake of a small gain¹. Thus, just as a charge in lawful form ought to precede the accusation, so a charitable warning ought to precede the denunciation, and the publication of the charge ought to precede the inquest, with the principle always being observed that the form of the sentence shall accord with the rules of legal procedure. We do not think, however, that this order needs to be observed in all respects as regards regulars, who can be more easily and freely removed from their offices by their own superiors, when the case requires it.²

18. On sentences involving either the shedding of blood or a duel being forbidden to clerics

No cleric may decree or pronounce a sentence involving the shedding of blood, or carry out a punishment involving the same, or be present when such punishment is carried out. If anyone, however, under cover of this statute, dares to inflict injury on churches or ecclesiastical persons, let him be restrained by ecclesiastical censure. A cleric may not write or dictate letters which require punishments involving the shedding of blood; in the courts of princes this responsibility should be entrusted to laymen and not to clerics. Moreover no cleric may be put in command of mercenaries or crossbowmen or suchlike men of blood; nor may a subdeacon, deacon or priest practise the art of surgery, which involves cauterizing and making incisions; nor may anyone confer a rite of blessing or consecration on a purgation by ordeal of boiling or cold water or of the red-hot iron, saving nevertheless the previously promulgated prohibitions¹ regarding single combats and duels.²

21. *On confession being made, and not revealed by the priest, and on communicating at least at Easter*

All the faithful of either sex, after they have reached the age of discernment, should individually confess all their sins in a faithful manner to their own priest at least once a year¹, and let them take care to do what they can to perform the penance imposed on them. Let them reverently receive the sacrament of the eucharist at least at Easter unless they think, for a good reason and on the advice of their own priest, that they should abstain from receiving it for a time. Otherwise they shall be barred from entering a church during their lifetime and they shall be denied a christian burial at death. Let this salutary decree be frequently published in churches, so that nobody may find the pretence of an excuse in the blindness of ignorance. If any persons wish, for good reasons, to confess their sins to another priest let them first ask and obtain the permission of their own priest; for otherwise the other priest will not have the power to absolve or to bind them². The priest shall be discerning and prudent, so that like a skilled doctor he may pour wine and oil³ over the wounds of the injured one. Let him carefully inquire about the circumstances of both the sinner and the sin, so that he may prudently discern what sort of advice he ought to give and what remedy to apply, using various means to heal the sick person. Let him take the utmost care, however, not to betray the sinner at all by word or sign or in any other way. If the priest needs wise advice, let him seek it cautiously without any mention of the person concerned. For if anyone presumes to reveal a sin disclosed to him in confession, we decree that he is not only to be deposed from his priestly office but also to be confined to a strict monastery to do perpetual penance.⁴

42. *On secular justice*

Just as we desire lay people not to usurp the rights of clerics, so we ought to wish clerics not to lay claim to the rights of the laity. We therefore forbid every cleric henceforth to extend his jurisdiction, under pretext of ecclesiastical freedom, to the prejudice of secular justice. Rather, let him be satisfied with the written constitutions and customs hitherto approved, so that *the things of Caesar* may be rendered *unto Caesar*, and *the things of God* may be rendered *unto God*⁶ by a right distribution.

68. That Jews should be distinguished from Christians in their dress

A difference of dress distinguishes Jews or Saracens from Christians in some provinces, but in others a certain confusion has developed so that they are indistinguishable. Whence it sometimes happens that by mistake Christians join with Jewish or Saracen women, and Jews or Saracens with christian women. In order that the offence of such a damnable mixing may not spread further, under the excuse of a mistake of this kind, we decree that such persons of either sex, in every christian province and at all times, are to be distinguished in public from other people by the character of their dress — seeing moreover that this was enjoined upon them by Moses himself, as we read². They shall not appear in public at all on the days of lamentation and on passion Sunday; because some of them on such days, as we have heard, do not blush to parade in very ornate dress and are not afraid to mock Christians who are presenting a memorial of the most sacred passion and are displaying signs of grief. What we most strictly forbid, however, is that they dare in any way to break out in derision of the Redeemer. We order secular princes to restrain with condign punishment those who do so presume, lest they dare to blaspheme in any way him who was crucified for us, since we ought not to ignore insults against him who blotted out our wrongdoings.³

APPENDIX 2

PRINCIPAL REPRESENTATIONS OF THE LAST JUDGMENT C. 1250-1400 IN NORTHERN ITALY

Criteria for inclusion: the Appendix includes principal representations of the Last Judgment known to me, from c. 1250-1400, in the region of northern Italy addressed in the thesis. It therefore excludes monumental representations of the Last Judgment from the Papal States and Southern Italy. It also excludes non-monumental representations, such as those in illuminated manuscripts.

c. 1200-1300

Bergamo, Lombardy

Location: Santa Maria Maggiore (?)

Date: Late 1200s

Artist/sculptor:

Patron:

Description: fresco; left transept

Ferrara, Emilia Romagna

Location: Cathedral

Date: 1200s

Artist/sculptor:

Patron:

Description: (damaged) fresco of the Last Judgment in apse; relief sculptures depicting Last Judgment on second story of the porch above portal

Fidenza, Emilia-Romagna

Location: Duomo

Date: 1200s

Artist/sculptor:

Patron:

Description: (damaged) fresco of the Last Judgment in apse; no details of Hell remain

Florence, Tuscany

Location: Baptistery di San Giovanni

Date: 1200s (latter half); precise dating is uncertain

Artist/sculptor: Coppo di Marcovaldo is generally accepted as having had some input; many other artists have also been suggested, including Meliore and Cimabue

Patron: Church and Arte di Calimala

Description: mosaic

Fornovo di Taro, Emilia-Romagna

Location: church of St. Biagio, Talignana

Date: c. 1200

Artist/sculptor:

Patron: parish church annexed to Cistercian monastery

Description: sculpted bas-relief on facade portal – weighing of souls

Grosseto, Tuscany

Location: originally in church dedicated to San Leonardo. Now in Museo Diocesano, Grosseto

Date: 1200s (latter half)

Artist/sculptor: attributed to Guido da Siena

Patron:

Description: panel

Pistoia, Tuscany

Location: church of S. Andrea

Date: begun c. 1298 and finished in 1301

Artist/sculptor: Giovanni Pisano

Patron:

Description: marble, sculpted pulpit relief.

Pisa, Tuscany

Location: Baptistery

Date: 1260

Artist/sculptor: Nicola Pisano

Patron: Federico Visconti, Archbishop of Pisa (*reg* 1254–77).

Description: marble, sculpted pulpit relief.

Siena, Tuscany

Location: Duomo

Date: 1265–8.

Artist/sculptor: Nicola Pisano, assisted by Giovanni (his son) and by Arnolfo di Cambio

Patron: the contract still exists for the pulpit in Siena Cathedral, drawn up in Pisa on 29 September 1265 between Nicola Pisano and the Cistercian Fra Melano, Master of the Cathedral Works of Siena

Description: marble, sculpted pulpit relief

Sommacampagna, northern Italy (near Verona)

Location: church of Sant'Andrea

Date: early 1200s

Artist/sculptor: attributed to Italian School, Veronese (Frick Art Reference Library: 1st Feb. 1940)

Patron:

Description: fresco, counter-façade

Verona, Veneto

Location: church of San Zeno

Date: Late 1200s

Artist/sculptor:

Patron:

Description: (votive fresco?)

c. 1300-1400

Bolzano

Location: church of Monte Maria at Burgiso, near Bolzano (Benedictine monastery)

Date:

Artist/sculptor:

Patron:

Description: fresco, covering entrance wall of central nave

Campione d'Italia, Lombardy (near Lake Lugano on the border with Switzerland)

Location: church of Santa Maria dei Ghirli

Date: c. 1400?

Artist: Lanfranco de Veris da Milano and his son Filippolo de Veris da Milano

Patron: An inscription on the *Last Judgment* fresco (now illegible), stated that in 1400 the students of S Maria dei Ghirli and other individuals from Campione, with alms raised by the church, commissioned the two painters to execute the work, which was completed on 23 June that year

Description: fresco on an exterior wall of the church

Florence, Tuscany

Location: Magdalene chapel (Cappella del Podesta), Bargello

Date: 1332-7

Artist:

Patron: Florentine commune

Description: frescoes (much damaged); images of Heaven and Hell

Florence, Tuscany

Location: church of Santa Croce, Bardi di Vernio Chapel

Date: c. 1335 (the Bardi arms feature in the frescoes as they were before being modified in 1335)

Artist: Maso di Banco

Patron: Bardi family

Description: fresco, above marble tomb in Bardi di Vernio Chapel; it is not clear whether what is being depicted in the fresco is a Last Judgment or a Particular Judgment

Florence, Tuscany

Location: church of Santa Croce; now in the museum (in the former refectory of the Franciscan monastery attached to the church of Santa Croce in Florence)

Date: exact date unknown; mid-Trecento

Artist: Vasari's attribution of the frescoes to Andrea di Cione (Orcagna) is now generally accepted

Patron: Franciscan basilica

Description: fresco cycle (fragments)

Florence, Tuscany

Location: church of Santa Maria Novella

Date: c. 1354-7

Artist: Nardo di Cione
Patron: Strozzi family
Description: fresco

Genoa, Liguria

Location: Duomo of S Lorenzo
Date: c. 1310
Artist: unknown; working in Byzantine style
Patron: ecclesiastical authorities of San Lorenzo
Description: fresco; wall behind the tympanum, over the main door (areas of loss mean no detail survives of the torments of the damned)

Padua

Location: Arena Chapel
Date: c.1304-10
Artist: Giotto
Patron: Enrico Scrovegni
Description: fresco; entrance wall

Padua

Location: Eremitani (church of Augustinian Hermits)
Date: 1350/60s?
Artist/sculptor: Guariento (active Padua by 1338–died 1368/70)
Patron:
Description: fresco cycle in presbytery and main apse; partially destroyed in 1944

Piacenza, Emilia-Romagna

Location: church of San Lorenzo
Date: c. 1333
Artist/sculptor:
Patron: Augustinian church
Description: fresco, presbytery.

Pisa, Tuscany

Location: Duomo
Date: 1302 and 1310
Artist/sculptor: Giovanni Pisano
Patron: Dominicans of S Caterina. Probably commissioned (to replace an earlier pulpit) by Burgundio di Tadio, Operaio of the Cathedral Works.
Description: sculpted pulpit relief

Pisa, Tuscany

Location: Camposanto
Date: uncertain; most likely mid-1330s
Artist/sculptor: unknown; variously attributed to Traini and Buonamico Buffalmaccio
Patron: Archbishop Saltarelli (?). Iconographic program possibly associated with the Dominican order in Pisa

Description: fresco. *Last Judgment* appeared on the south wall; severely damaged during World War II, the frescoes have since been moved

Pomposa, Codigoro (near Ferrara)

Location: Abbey

Date: fourteenth century; possibly 1350s?

Artist/sculptor: unknown; possibly in the style of Bolognese, Vitale da Bologna?

Patron:

Description: fresco; entrance (west) wall of the church of the Benedictine abbey

San Gimignano, Tuscany

Location: Collegiate Church

Date: 1393

Artist/sculptor: Taddeo di Bartolo

Patron:

Description: fresco; interior wall of façade

Spoletto, Umbria (Papal State from 1354)

Location: Duomo

Date: 1370s

Artist/sculptor:

Patron: commissioned by Bishop Gallardus (1372-8)

Description: fresco; fragments uncovered during restoration of the Duomo

Verona, Veneto

Location: church of S. Anastasia

Date: mid-late 1300s

Artist/sculptor: Turone? (active c.1360), Verona

Patron:

Description: fresco; chancel area of S. Anastasia

Verona, Veneto

Location: original location unknown; now in Museo Castelvecchio, Verona (No. 362)

Date: c. 1350

Artist/sculptor: Turone? (active c.1360), Verona

Patron:

Description: panel showing 30 Biblical scenes, including Trials of Christ

Viboldone (near Milan)

Location: S Pietro abbey

Date: third quarter of 14th century?

Artist/sculptor: often attributed to Giusto de' Menabuoi

Patron:

Description: fresco.

APPENDIX 3

STATUTES OF THE 'CONGREGAZIONE DELLA VERGINE DI AREZZO', 1262

Extracted from Gilles Gérard Meersseman, *Ordo fraternitatis. Confraternite e pieta dei laici nel medioevo*, vol II (Rome: Herder Editrice e Libreria, 1977), pp. 1015-1029.

17

1262 giugno. Nuovo statuto della congregazione della Vergine di Arezzo.

Arezzo, Biblioteca-Archivio della Fraternita dei Laici.¹

In nomine Dei eterni. Amen. Anno Domini Iesu Christi annuntiationis millesimo CC^o LXII^o, incipiunt hec consuetudines et ordinationa fraternitatis Sancte Marie de Misericordia, facta et firmata et approbata per homines sapientes et discretos dicte fraternitatis, qui ipsam inceperunt de mense iunii, quarum tenor est in capitulis sequentibus:

Cap. I. De institutione fraternitatis et approbatione eiusdem.

Misericors et miserator Dominus, cuius miserationes sunt super omnia opera eius, cuius etiam misericordia plena est terra, neminem volens perire, set omnes ad viam veritatis reducere, lege sua vangelica

1. Il testo primitivo si legge in un diploma del vescovo Guglielmo che approva il nuovo statuto (doc. 18). Poiché la pergamena è molto rovinata dall'umidità, siamo stati costretti a completarne il testo con una copia della fine del XIII secolo, conservata nella Biblioteca della fraternita dei laici di Arezzo, cod. 74, f. 1-10, nella quale si trovano pure i doc. 10, 17, 18. Sono stati editi da GAMURRINI, *Gli statuti della pia Fraternita...*, 19-39 (doc. 17), 31 (doc. 18), e 32 (doc. 10). Il manoscritto divide il testo dello statuto in capitoli: i loro titoli mancano nel diploma originale. Poiché questi titoli sono molto lunghi, ci siamo permessi di renderli più sintetici, tanto più che non appartengono al diploma originale. Il testo che riproduciamo si scosta da quello del manoscritto e dall'edizione del Gamurrini ogni volta che la lezione del diploma originale è migliore. Una traduzione assai difettosa dello statuto si legge alla fine dello « Statuto organico » de la « Fraternita dei laici di Arezzo », stampato ad Arezzo nel 1939 con l'approvazione del governo italiano (19 maggio 1939), 21-46.

pie decrevit et inviolabiliter stabilivit, quod volentes consequi in presenti et in futuro eius gloriosam misericordiam, oporteat in hoc tempore, ad salutem hominum ab ipso concesso, sequentes exemplum eius secretissimum erga misericordiam, et diligere misericordiam, et misericordie, operibus intendere studiose. Ipse enim in evangelio ad misericordiam exemplo patris sacrosancto, nos admonet dicens: « Estote misericordes, sicut et pater vester celestis misericors est ». Ipse ad misericordiam per misericordie fructum pretiosum nos allicit dicens: « Beati misericordes, quoniam ipsi misericordiam consequentur ». Unde in extremo iudicio misericordes ineffabiliter letificabit largissime remunerando, quando dicet: « Venite benedicti patris mei, percipite regnum quod vobis paratum est a constitutione mundi. Esurivi enim, et dedistis mihi manducare » et reliqua. Ipse nihilominus misericordiam contempnentibus seu etiam negligentibus, per apostolum suum Iacobum terribiliter comminatur dicens: « Iudicium sine misericordia ei, qui non fecerit misericordiam », eosdemque per se ipsum horribiliter fulminabit in iudicio extremo, quando dicet: « Descendite a me maledicti in ignem eternum, qui paratus est diabolo et angelis eius. Esurivi enim, et non dedistis mihi manducare » et reliqua. Considerando igitur tam gloriosum exemplum misericordie et tantum lucrum et fructum ex observantia operum misericordie, et ex opposito tantum dampnum et periculum ex contemptu et negligentia eorundem, convenientibus nobis quibusdam civibus Aretinis in ecclesia Sancti Dominici fratrum predicatorum, per inspirationem divine gratie et de consilio et hortamentis quorundam discretorum fratrum eiusdem ordinis, cum assensu et beneplacito et favore venerabilis patris nostri domini Guillelmi episcopi Aretini,¹ placuit fraternitatem aliquam instituere, ex nobis licet indignis et aliis quorum in posterum tetigerit Deus corda, et < qui > sponte ad ipsam fraternitatem se obtulerint ad divinam misericordiam per opera misericordie impetrandam, ad pauperum verecundorum precipue et viduarum et orphanorum necessitatem multiplicem relevandam, ad subveniendum etiam in opportunitatibus ingruentibus locis religiosis, monasteriis pauperibus, hospitalibus et incarceratis, ad procurationem caritatis et amoris et concordie ad invicem, ad vinculum et firmamentum pacis et ad fomentum bonorum omnium, cohoperante Salvatoris nostri gratia et intervenientibus misericordissime matris sue et pretiosi martiris Donati episcopi, et beati Dominici confessoris et omnium sanctorum patrociniis gloriosis.

1. Guillelmus de Pazzis, episcopus Aretinus 1248-1289 (EUBEL, I, 104).

Cap. II. De congrua denominatione fraternitatis.

Hanc igitur congregationem nostram institutam ad opera misericordie facienda, ut per ipsam divinam consequamur misericordiam in presenti seculo et in futuro, dignum duximus appellandam fraternitatem Sancte Marie de Misericordia, tum quia misericordie operibus habet intendere, tum quia Regine Misericordie recommendata est, per cuius regimen et ducatum ipsam fraternitatem sustentari, promoveri et ad cuncta prospera et salutaria dirigi ex sua misericordia credimus et speramus.

Cap. III. De laudibus huius fraternitatis.

Fraternitatem autem seu spiritualem et corporalem interdum congregationem fidelium ad honorem Dei et utilitatem proximorum Deo fore acceptabilem, ipse Salvator in evangelio protestatur dicens: « Ubi sunt duo vel tres congregati in nomine meo, ibi sum in medio eorum ». In nomine quippe Salvatoris congregantur, qui ad implendum eius beneplacitum et preceptum de misericordia determinatis temporibus simul conveniunt, et propter idipsum sub eisdem capitulis salubribus voluntarie et unanimiter se astringunt. Hanc, inquam, fraternitatem misericordie, precipue quantum ad colligendum elimosinam per aliquam diem ebdomade, a patriarcha nostro doctore gentium, Paulo scilicet apostolo, legibus habuisse institutionem et robur, sicut ipse scribens Corinthiis declarat dicens: « De collectis autem, que fiunt in sanctos, sicut ordinavi in ecclesiis Galathie, ita et vos facite per unam sabbati ». Hanc etiam princeps apostolorum diligenter ammonet per epistolam suam nobis dicens: « Estote compatiens, fraternitatis amatores ». Hanc Salomon in Proverbiis magnifice laudat dicens: « Frater, qui adiuvatur a fratre, quasi civitas firma ». Huius etiam fraternitatis opera misericordie dominus per Moysen in veteri lege exprimit et mandat dicens: « Si unus ex fratribus tuis ad paupertatem venerit, non obdurabis cor tuum nec contrahes manum tuam », et subiungit: « Precipio tibi, ut aperias manum tuam egeno et pauperi ». O quam gloriosa et acceptabilis fraternitas, tot illustrata documentis, talibus decorata exemplis! O quam splendida et ab omni cupiditatis suspitione immunem ipsam reddit personarum honestarum et sufficienter divitum, pro communi utilitate tum pro denariis tum pro pane personaliter mendicantium per singulas ebdomadas, quattuor scilicet rectorum fraternitatis per menses ternos alternatim sibi succedentium hedificatoria humilitas et sollicitudo laboriosa, dum sepe propria negotia deserunt et mendicando pudorem et laborem inexpertum libenter suscipiunt pro fraterne negotiis caritatis!

Cap. IV. De electione prioris fraternitatis.

Quia vero omnis congregatio, ad sui conservationem et promotionem, regimine et ducatu alicuius boni et discreti viri indigere cognoscitur, de communi voluntate et beneplacito, previa Dei gratia, fratrem D. de ordine fratrum predicatorum, de capitulo fratrum Sancti Dominici, elegimus in priorem fraternitatis nostre, eidemque in hiis, que ad predictam fraternitatem pertinent, obedientiam seu observantiam promisimus, suisque successoribus, secundum tenorem capitulorum infrascriptorum, et que per ipsum vel alium successorem, qui erit pro tempore, una cum rectoribus et consiliariis fraternitatis de cetero statuentur, non intendentes per omissionem vel negligentiam huiusmodi capitulorum, ex humana fragilitate seu negligentia proveniente, nostrarum posse periculum incurrere animarum, nec ex ipsis ad culpe vinculum obligari,¹ sicut dictus prior nobis tunc et sepius declaravit. Decrevimus etiam imposterum observandum, ut de predicto capitulo fratrum Sancti Dominici, sive etiam de quocumque alio capitulo, ecclesia sive loco, aliquem sacerdotem discretum et fraternitatis amatorem ad ipsius fraternitatis regimen habeamus in priorem, secundum quod discretio omnium rectorum et consiliariorum, qui tempore prioratus prioris, qui nunc est, vel illius qui erit pro tempore, officium seu ministerium in fraternitate habuerint in ecclesia Sancti Dominici, ubi fraternitas originem habuit, dignum duxerit eligendum, ita sane quod intra XV dies ante exitum prioratus presentis prioris, vel illius qui erit pro tempore, eligatur et coram altari, quando quatuor rectoribus videbitur, presente electo, ipse electus in priorem fraternitatis novum per priorem illius temporis de libello presentium capitulorum investiat, et suscepto officio altare cum reverentia obsculetur.

Cap. V. De offitio prioris fraternitatis.

Ad priorem autem fraternitatis pertinebit diligenter intendere, providere, consulere et tractare cum rectoribus fraternitatis et consiliariis, qui erunt pro tempore, ea que ad bonum statum et profectum fraternitatis viderit expedire, et precipue in recipiendo ad consortium huius fraternitatis clericos et laicos, tam viros quam mulieres de civitate et de toto episcopatu Aretii vel aliunde, cum decenti solempnitate infrascripta, semel singulis mensibus in die congregationis vel alia die, sive communiter sive singillatim volentes pro salute propria vel etiam pro salutari suffragio patris vel matris eorum seu aliorum carorum defunctorum, huius fraternitatis observantias et capitula custodire; in convocando etiam fraternitatem semel sin-

1. Sulla legge puramente penale cfr. p. 1290-1314.

gulis mensibus, vel alias, quando oportebit, ad predicationem, admonitionem et correptionem, si aliqua erga fraternitatem viderit emendanda; in ordinando simul cum rectoribus et consiliariis de elemosina postulanda et dispensanda per ipsos rectores, et de ratione reddenda a rectoribus coram consiliariis, eo presente vel absente, semel in mense, vel prout ipsis videbitur expedire; in dispensando cum illis de fraternitate, vel indulgendo super omissis observantiis vel neglectis, et generaliter in omnibus pertractandis, que utilia fraternitati perspexerit, cohoperante gratia Salvatoris.

Cap. VI. De offitio rectorum fraternitatis.

Eligimus etiam quatuor viros de quatuor quarteriis seu portis civitatis nostre, probitate et fidelitate ydoneos, in rectores nostre fraternitatis, tamquam operarios et columpnas fraternitatis, honora eius supportantes, ad recipiendum illa, que fraternitati misericorditer tribuuntur vel in testamento legantur; ad mendicandum pro fraternitatis offitio, idest ut miseria pauperum aliquatenus relevetur, semel in septimana pro pane per seipsos vel per alios et semel pro denariis mendicando; ad largiendum et provide dispensandum bona fide miserabilibus personis per seipsos vel alias personas ydoneas; ad subveniendum etiam in necessitatibus urgentibus, quando facultas suppeteret, locis religiosis monasteriis pauperibus et Deo famulantibus, reclusis et incarceratis, et, ut in summa dictum sit, ad omnem sanctam sollicitudinem pro consolatione pauperum, quam inspirabit eis gratia Spiritus Sancti.

Cap. VII. De offitio consiliariorum fraternitatis.

Ad stabilimentum autem nostre fraternitatis et robur, dignum duximus eligendos quatuor alios viros de quatuor portis seu quarteriis civitatis¹ in consiliarios fraternitatis, ad audiendum rationem reddendam a quatuor rectoribus per singulos menses semel, quam omnino reddi volumus ad famam bonam officialium predictorum conservandam, et etiam totius fraternitatis, et omnem suspitionem temerariam excludendam. Horum etiam consiliariorum intererit utilia et expedientia fraternitati simul cum rectoribus et priore providere, consulere et tractare.

Cap. VIII. De duratione offitii prioris et rectorum et consiliariorum.

Quia vero honora fraternitatis partienda sunt et in plures dividenda, ordinamus, quod quicumque in priorem fraternitatis secundum

1. de quatuor quarteriis civitatis, *cfr.* p. 638, § 3.

supradictam forman fuerit electus, offitium prioratus spatio sex mensium per se ipsum, quando presens erit in civitate et commode poterit, vel per alium ydoneum, si abesset vel impedimentum legitimum haberet, debeat exercere. Offitium autem rectorum et consiliariorum trium mensium spatio volumus terminari, ita quod rectores et consilarii unius temporis XV diebus ante terminationem offitii ipsorum, in ecclesia Sancti Dominici vel alibi, secundum provisionem rectorum et consiliariorum, simul convenientes, quatuor alios viros ydoneos eligent in rectores et alios quatuor in consilarios, quos prior fraternitatis approbans advocabit, et in remissionem peccatorum suorum et intuitu divine misericordie et fraterne caritatis et pro mercede eterne salutis predicta offitia monebit eos suscipere, ortando sine compulsione tamen vel astrictione, que sibi scandalum generaret; qui coram altari Beate Marie Dei genitricis, ad honorem ipsius, altare et librum osculabuntur, suscipientes singuli pro redemptione animarum suarum sibi impositum offitium salutare.

Cap. IX. Qualiter rectores veteres ad novos debent reddere rationem, et per singulos menses suis consiliariis.

Quia secundum Apostolum « omnia honeste et secundum ordinem fieri debent in nobis », volumus et presenti capitulo ordinamus, quod infra viij dies ad introitu novorum rectorum in offitium rectorie fraternitatis, rectores precedentis temporis ipsis novis rectoribus coram consiliariis utriusque temporis, precedetis scilicet et subsequen- tis, reddere debeant rationem, presente priore fraternitatis, saltem in summa, de bonis acceptis sive per questum sive ex testamentis vel alio modo donatis fraternitati nostre, et de expensis sive distributionibus et dispensationibus factis per singulos menses offitii eorundem. Et nihilominus volumus, quod semel in quolibet mense, sicut supradictum est in capitulo de consiliariis eligendis, rectores teneantur suis consiliariis de bonis perceptis et dispensatis plenius reddere rationem, presente priore fraternitatis, si voluerit, vel absente. Volumus etiam quod infra idem spatium octo dierum novis rectoribus teneantur rectores precedentis temporis omnes denarios et scripturas et iura vel alias res exhibere pacifice, et debita, si haberent, exponere, et successores predicti teneantur ipsa debita solvere ipso iure. Volumus tamen, quod rectores fraternitatis debita non possint contrahere, nisi forte parva, sine conscientia et consilio consiliariorum et prioris fraternitatis, ut bona fama fraternitatis per cautelam debitam conservetur.

Cap. X. Qualiter aliquis ingreditur hanc fraternitatem.

Ordinavimus quod si quis voluerit ingredi consortium huius fraternitatis Sancte Marie de Misericordia, per priorem fraternitatis moneatur Deum timere, ecclesiam et omnes personas clericales honorare, familiam suam bene ordinare et gubernare, pacem et concordiam et omnem bonum statum civitatis sue diligere, promoverè et conservare. Et exponentur ei capitula fraternitatis, si necesse fuerit. Et si ad observandum se offerat pro salute sua et pro salute suorum vivorum et mortuorum, dicet prior: « Dominus qui dedit tibi - vel vobis - velle bonum, det et perficere, meritis beatissime Virginis, que dux est fraternitatis istius, et faciat te participem omnium bonorum, que causa huius fraternitatis fieri donaverit per illos de fraternitate et per recipientes beneficia huius fraternitatis, auctor bonorum omnium Dei filius Iesus Christus ». Et sic, priusquam responderit: « Amen », librum apertum cum devotione et reverentia osculetur. Volumus tamen, quod cuilibet presenti capitulo declaretur, quod secundum primariam institutionem huius fraternitatis et nostram intentionem cum voluntate expressa primi prioris huius fraternitatis supradicti, concurrente etiam beneplacito et assensu venerabilis prefati domini Guillelmi episcopi nostri, capitula seu ordinationes huius fraternitatis ad culpam seu preiudicium anmarum nostrarum nos non obligent, si in aliquo vel in aliquibus capitulis ex oblivione vel ex impotentia vel ex aliquo impedimento legitimo vel etiam ex negligentia prevaricari contingat.¹ Sed si potest fieri recompensatio in simili facto, fiat, et ipso iure pro satisfactione habeatur. Si autem vel non potest, vel potest quidem, set difficile alicui videtur, per priorem fraternitatis misericorditer poterit dispensari, vel in aliquo recompensando vel simpliciter absolvendo, sive singulis eorum seorsum, sive omnibus in communi, ita sane ut quilibet de fraternitate, sive clericus sive laycus, sive vir sive mulier, semel in anno ad minus transgressiones suas circa capitula fraternitatis priori exponat et absolutionem humiliter postulet, quam prior benigne eidem exhibebit, pro satisfactionis signo aliquid ad salutem quasi penitentialiter imponendo.

Cap. XI. De clericis ad fraternitatem recipiendis et honorandis.

Quoniam secundum divinum mandatum personas ecclesiasticas sive clericales propter honorem Domini, cui ministrant, plurimum convenit honorari, volumus quod clerici, qui ad consortium huius

1. Cfr. p. 1290-1314.

fraternitatis venire voluerint, tamquam patres secundum gradum ipsorum recipiantur, et in reverentia habeantur, et in quaterno cum aliis conscribantur, et ad solas orationes et congregationem semel singulis mensibus, nisi propter dignitatem persone vel aliam causam rationabilem ex prioris beneplacito eximantur. Ab aliis vero fraternitatis honeribus contra eorum beneplacitum non graventur.

Cap. XII. De mulieribus recipiendis ad fraternitatem.

Quia vero ad salutis opera perficienda apud Deum viri sive mulieris non est distinctio seu differentia constituta, volumus quod tam viri quam mulieres ad huius fraternitatis consortium salutare recipiantur, ita tamen, quod mulieres ad orationes cotidianas tam pro vivis quam pro mortuis, sive in ecclesia sive in domo faciendas et ad suffragia defunctorum de fraternitate exhibenda, ut infrascriptum est in capitulo proprio de suffragiis defunctorum, et ad conveniendum in aliqua dominica cuislibet mensis, et in quattuor festivitibus gloriose virginis Dei genitricis Marie, atque in festivitate omnium sanctorum, in hora et loco secundum discretionem prioris et rectorum, determinando et denuntiando sive per preconem sive alio modo, nisi <adsit> impedimentum persone vel occupationis familiaris, sicut viri, ita et ipse similiter teneantur. Ad elimosinas autem largiendas sive panis sive denariorum, nisi forte de beneplacito earum procederet, et ad omnia alia capitula et ordinationes fraternitatis iam factas et suprascriptas, sive ad alias ordinationes, que fient in posterum, nisi de ipsis specialiter fieret mentio, nullatenus teneantur.

Cap. XIII. Qualiter recipi possunt etiam habitantes in Aretino episcopatu.

Ordinavimus insuper, quod si quis clericus vel laycus, sive vir sive mulier, de nostro episcopatu extra civitatem prope vel a longe commorans, de consortio nostre fraternitatis esse voluerit, et omnium bonorum, que per illos de fraternitate et recipientes elemosinam a fraternitate <fiunt> voluerit habere participationem, licet non possit convenire ad fraternitatem et omnia capitula fraternitatis observare, ad fraternitatem nihilominus recipiatur, et in quaterno cum aliis scribatur, si capitula de orationibus faciendis in ecclesia vel in alio loco, et de elemosinis exhibendis rectoribus fraternitatis pro pauperibus sive divisim sive simul, et de suffragiis mortuorum, qui ad eius notitiam pervenerint, voluerit observare, ita tamen quod ad minus semel in anno, sive in aliqua quattuor festivitatum beatissime Marie virginis, sive in festivitate omnium sanctorum, congregationi nostre debeat, si commode poterit, interesse, ut rectoribus satisficiat de elemosinis debitis. Et a priore fraternitatis de hiis, que ad fraterni-

tatem pertinent, requirat, et maxime de numero defunctorum de fraternitate nostra in anno illo, et ut de omissionibus et negligentis suis circa capitula fraternitatis indulgentiam postulet, et secundum eius iudicium recompenset. Unde hoc ipsum ad fraternitatis stabilimentum a quolibet etiam de civitate, sive clerico sive layco, sive viro sive muliere, ad minus semel in anno idem volumus observari, ne observationes capitulorum supradictorum per negligentiam evanescant.

Cap. XIV. Qualiter recipi possunt etiam in aliena diocesi commorantes.

Quoniam donum Dei loco non determinatur vel patria, sed in omni gente, qui timet Deum, acceptus est illi, ut apostolica tradit auctoritas, dignum est, ut institutum fraternitatis, que gratia Dei servit, localibus terminis non artetur. Volumus igitur, quod ad consortium huius fraternitatis omnes persone cuiuscumque conditionis, etiam extra Aretinam diocesim a longe commorantes, si ex devotione annumerari nostre congregationi petierint, ascribantur eidem, in vita eorum et post mortem sicut et ceteri fraternitatis suffragia habituri. Nec volumus eos teneri nisi ad orationes cotidianas et ad elemosinas largiendas secundum debitam computationem annuatim fiendam, et ad mortuorum suffragia in orationibus et denariis, ut supradictum est, postquam obitus alicuius vel aliquorum saltem semel in anno eis relatione vel licteris innotuerit. Unde et ipsorum obitum per eorum superstites seu caros priori seu rectoribus fraternitatis volumus nuntiari, ut in quaterno de anniversariis scribantur, et fiant debita suffragia pro eisdem.

Cap. XV. De observantia cotidiana in ecclesia et oratione tam pro vivis quam pro mortuis.

Ordinavimus quod quilibet de fraternitate ad reverentiam Dei et gloriose matris eius et advocate nostre cotidie aliqua hora diei ad ecclesiam suam accedat vel ad aliam, si magis aptam invenerit negotiis suis, memorans, si voluerit, Salvatorem nostrum olim per nos venisse in mundum propter nostram redemptionem, memorans etiam eundem venturum ad iudicandum mundum, et redditurum unicuique secundum opera sua; memorans etiam pietatis advocate nostre beatissime sancte Marie Dei genitricis, que apud filium suum pro nobis intercedat, et bonum statum civitatis nostre in bono promoveat et conservet. Item qualibet die, sive in civitate presens extiterit, sive in alia provincia in aliqua ecclesia sive extra ecclesiam, duas ad minus orationes faciat: unam pro se et omnibus cristianis viventibus, dicendo unum Pater noster et Ave Maria, et « In manus tuas

Domine commendo spiritum meum », sive licteraliter sive vulgariter; aliam vero orationem faciat pro caris suis defunctis et omnibus aliis, dicendo similiter Pater noster et Ave Maria, et « Requiem eternam dona eis Domine ».

Cap. XVI. De elemosina danda per singulas ebdomadas.

Ordinavimus quod quilibet de fraternitate in qualibet septimana in die iovis vel alio die, det alicui de rectoribus unum denarium ad subventionem pauperum, sive requisitus sive irrequisitus, et si non dat in una ebdomada, in alia recompenset. Quam recompensationem tam in orationibus predictis cotidianis quam in denariis singularum ebdomadarum sive ab existentibus in civitate sive alibi decernimus observandam.

Cap. XVII. De congregatione semelin singulis mensibus.

Ordinavimus quod in aliqua dominica cuislibet mensis omnes illi, qui sunt de fraternitate, conveniant post tertiam tempore yemali, vel post nonam tempore estivo, in ecclesia Sancti Dominici, unde et ubi fraternitas habuit originem et promotionem, vel in alia ecclesia sive loco, ubi priori fraternitatis cum rectoribus et consiliariis eiusdem fraternitatis interdum videbitur expedire, ad audiendum verbum salutis et admonitiones per priorem fraternitatis vel alium secundum eius beneplacitum et rectorum fraternitatis fiendas ad bonum statum fraternitatis, ubi recitabuntur nomina defunctorum, si aliquis vel aliqui de fraternitate precedenti mense migrassent. Recitabuntur etiam quolibet anno in eodem mense, secundum quod in aliis ecclesiis per septimanas in die dominica anniversaria defunctorum consueverunt recitari pro orationum suffragiis impetrandis. Item eadem hora pro anima defuncti in precedenti mense unum denarium rectoribus quilibet exhibebit, qui eosdem denarios distribuent pro missis defunctorum, sicut ipsis videbitur expedire. Item eadem hora, postquam recitata erunt nomina defunctorum, fiet communis oratio ab omnibus, qui erunt presentes, dicentibus Pater noster et Ave Maria et Requiem eternam etc. Et per priorem fraternitatis pro anima illius specialiter et pro animabus omnium fidelium generaliter oratio ecclesiastica subiungetur, sine cantu, dicendo intelligibiliter: « Dominus vobiscum. Oremus. Deus indulgentiarum Domine, da animabus famulorum famularumque tuarum, quorum anniversarioum depositionis diem commemoramus, refrigerii sedem, quietis beatitudinem et luminis claritatem per Christum Dominum nostrum Amen ».

Cap. XVIII. De congregatione in quattuor festivitibus gloriose virginis Marie.

Ordinavimus, quod ad reverentiam gloriose virginis Marie advocate nostre omnes de fraternitate post tertiam vel post nonam, pro temporis congruitate, convenient in quattuor festivitibus eiusdem, ubi priori et rectoribus placuerit, in festivitate scilicet annuntiationis et assumptionis et nativitatis ipsius et purificationis eiusdem, que vulgo dicitur festum sancte Marie candellarie, ad recommendandam ei fraternitatem et bonum statum civitatis nostre. Et ad suam reverentiam quilibet de fraternitate dabit rectoribus duos denarios, ex quibus ementur cerei, et secundum discretionem rectorum dispensabuntur de loco vel locis, ubi misse de beata Virgine pro fraternitate et bono statu civitatis debeant celebrari.

Cap. XIX. De congregatione in festivitate omnium sanctorum.

Ordinavimus, quod in festivitate omnium sanctorum omnes de fraternitate convenient post tertiam vel post nonam in ecclesia vel loco, qui eis prenuntiabitur secundum discretionem prioris et rectorum; et pro reverentia et patrocinio tot et tantorum advocatorum, et pro remedio et salute animarum vivorum et defunctorum quilibet dabit rectoribus secundum quod Deus inspirabit pro vestimentis pauperum saltem xij denarios vel viij vel vi, vel pro posse et velle ipsius, ut sanctorum precibus intervenientibus vestiri a Deo immortalitatis gloria mereatur.

Cap. XX. De suffragio pro anima cuiuslibet defuncti de fraternitate.

Ordinavimus quod quilibet de fraternitate pro defuncto quolibet de ipsa fraternitate, postquam ad eius notitiam pervenerit, dicat tria Pater noster cum Ave Maria et « Requiem eternam dona eis Domine ». Item pro anima eiusdem det rectoribus, ut dictum est supra, unum denarium pro missis dicendis pro eius anima et animabus omnium fidelium defunctorum.

Cap. XXI. De anniversariis illorum, qui fuerunt de fraternitate.

Ordinavimus quod, mortuo aliquo de fraternitate, rector ille, in cuius porta morabatur defunctus, eadem die vel quam citius poterit, veniat ad priorem fraternitatis, et annuntiet ei nomen defuncti et diem obitus sui, ut ipse in quaterno, in quo est kalendarium de anniversario defunctorum, scribat nomen eius et diem mortis, et per

ipsum recitabitur in prima congregatione fraternitatis, ut pro eo debito modo quilibet satisfaciat per suffragia supradicta. Recitabuntur nihilominus per singulos annos nominatim anniversaria defunctorum de nostra fraternitate cuiuslibet mensis, scilicet in prima congregatione fraternitatis, sicut in ecclesiis de anniversariis defunctorum infra ebdomadam fieri consuevit, ad divinam misericordiam pro ipsorum requie humiliter implorandum.

Cap. XXII. De perpetuitate huius fraternitatis.

Quia vero ad promovendum et conservandum ea, que digna sunt laude, debemus omni studio et favore, quo possumus, efficaciter intendere, fraternitatem istam cum suis ordinationibus seu capitulis supradictis, et que deinceps divina gratia tribuerit ordinare, tamquam Deo acceptabilem, et ab ipso nobis inspiratam, et gloriose sue matri recomendatam, nobis et communi statui civitatis nostre salutariferam, absque termini finalis determinatione, nos cum supradicti fratris et prioris nostri consilio, et prefati venerabilis patris episcopi nostri domini Guillielmi beneplacito et assensu, volumus et unanimiter stabilimus, divina favente misericordia, tam in nobis quam in posteris et successoribus nostris in ipsa receptis et recipiendis, in perpetuum permansuram, quam voluntatem in nobis et posteris nostris usque in finem conservet benignitas redemptoris nostri, meritis et precibus beatissime matris sue. Amen.

Cap. XXIII. Qualiter ista ordinamenta non obligant nos in periculum animarum nostrarum.

Quia que pro communi utilitate et singulorum salute per nos instituta sunt corde simplici et fidei, non convenit ad nostrum periculum militare, et que pro misericordia ad proximum exhibenda ordinata sunt, non decet quod contra nos occasionabiliter provocent iram Dei, volumus et declaramus nos rectores una cum priore nostro predicto, presentium capitulorum ordinatore, requisita et comperta communiter voluntate et consilio omnium de fraternitate nostra, et venerabilis patris nostri domini Guillelmi Aretini episcopi assensu, beneplacito et favore, quod tam ordinationes facte quam deinceps fiende, per oblivionem vel infirmitatem vel impedimentum legitimum seu etiam per negligentiam omisse, ad culpam nos non obligent, set vel ad recompensationem in alio bono opere pro hoc specialiter facto, vel ad indulgentiam impetrandam a priore fraternitatis, sive seorsum sive singillatim, sive publice et communiter, ad indulgentiam ab ipso vel eius vicario largiendam.¹

1. Cfr. p. 1290-1314.

Cap. XXIV. Qualiter non sunt mutande ordinationes huius fraternitatis nisi cum multa deliberatione.

Quia vero mutabilitas indeliberata afferre consuevit impedimenta etiam salutaribus institutis, volumus et ordinamus, quod nulli priori vel alicui vel aliquibus de rectoribus vel consiliariis fraternitatis nostre, vel cuilibet alii seu aliis liceat predictis capitulis alia nova addere, vel suprascripta mutare vel delere in toto vel parte, nisi per priorem fraternitatis et rectores omnes atque consiliarios illius anni simul in ecclesia Sancti Dominici, ubi originem habuit, convenientes, fuerit approbatum. Communiter autem intelligi volumus, quod maiori parti videbitur expedire, et sic in prima congregatione fraternitatis ipsa mutatio vel addito poterit omnibus publicari.

Cap. XXV. De congregatione digna in hoc mundo et gloriosa in celo.

Has autem ordinationes, que pro salute nostra institute sunt, et ad pauperum precipue verecundorum consolationem et ad bonum statum et pacificum civitatis nostre, mentibus nostris inserat virtus Spiritus Sancti, et fraternitatem nostram in longevum conservet et promoveat, intervenientibus patrociniis gloriosissime virginis Marie, que dux est et caput fraternitatis nostre, ut ad supernam congregationem celestium civium mereamur ex sua benignitate misericorditer pervenire, cui soli est honor et gloria et imperium per infinita secula seculorum. Amen.

18

Arezzo, 1263 aprile 2. Approvazione dello statuto e indulgenze per l'assistenza alle adunanze accordate da Guglielmo, vescovo della città, alla confraternita della Vergine di Arezzo.

Arezzo, Biblioteca-Archivio della Fraternita dei laici.¹

In nomine Dei eterni. Amen. Hec sunt constitutiones et ordinationes hominum et personarum fraternitatis Beate Marie virginis de civitate Aretii de Misericordia tam eorum qui dictam fraternitatem ingressi sunt quam qui ingredientur in posterum, quarum tenor talis est: Misericors et miserator *etc. ut supra n. 17.*

1. Vedi nota 1 alla p. 1145. Riproduciamo il testo del diploma originale. Nel manuale manoscritto, l'approvazione vescovile è preceduta da questa rubrica: «Hoc est exemplar cuiusdam publici instrumenti quod est apud ecclesiam Sancti Dominici, confirmationis omnium capitulorum fraternitatis et indulgentie facte et concesse per dominum Guillelmum venerabilem patrem nostrum episcopum aretinum».

Ad hec autem omnia supradicta, nos Guilielmus, Dei gratia episcopus Aretinus, cum ex officio nobis incumbat salubribus semper favere institutis, diligenter perlectis singulis capitulis suprascriptis, grato animo et affectuoso, hanc fraternitatem sancte Marie de Misericordia in omnibus et singulis ipsius capitulis et ordinationibus laudamus et approbamus, atque ex auctoritate Dei et nostra, in quantum valemus, robur firmitatis eidem dignum duximus impertiri. Omnes et singulos clericos et laicos, viros et mulieres de civitate Aretii et de tota nostra diocesi proxima vel remota, pie et studiose exhortantes ad huius fraternitatis venire consortium, et eius observantias custodire pro posse, ut participes esse merantur in vita et post mortem omnium honorum, que per illos de hac fraternitate et recipientes elemosinas ex eadem fieri donaverit per suam gratiam auctor bonorum omnium, Dei filius, Iesus Christus.

Volentes igitur tam laudabili fraternitati efficaciter favere, et tam priores, rectores et consiliarios eiusdem, qui erunt pro tempore, quam ceteros, qui de corpore sunt huius fraternitatis, ac alios quoque benefactores ipsius obsequii sui seu beneficii prestiti digna gaudere mercede, omnibus prioribus et consiliariis pro singulis mensibus sui officii, et omnibus rectoribus pro singulis diebus mendicationis eorum pro societate sive pro panibus sive pro denariis, et omnibus fraternitatem promittentibus tam pro die promissionis, quam pro diebus congregationis ad audiendum verbum Dei singulis mensibus semel fiende, et in quibuscumque festivitibus supradictis, xxx dies, et omnibus aliis ad idem convenientibus xx dies, atque omnibus fraternitati sive in pane sive denariis elemosinam prebentibus x dies, vere penitentibus et confessis de iniuncta sibi penitentia, de divina confisi misericordia, misericorditer in Domino relaxamus.

Nulli ergo liceat huic sacre fraternitati, a nobis approbate et confirmate, usu temerario ullatenus se opponere vel eius irritationem attemptare, alioquin indignationem Dei et beati Donati et nostram se noverit incursum.

Data Aretii in palatio canonice Aretine sub annis Domini millesimo ducentesimo sexagesimo tertio, indictione sexta, domino Urbano papa sedente, nemine ut dicitur imperante, die luna, secunda die mensis aprilis intrantis, presentibus domino Ranerio plebano plebis Biblene, magistro Aiuto plebano plebis Sancti Martiri, domino Gratia de Foiano iudice, domino Bonaguida iuris canonici doctore, domino Guidone Stephani de Aretio et aliis pluribus testibus ad hec adhibitis et vocatis. In cuius rei testimonium dictus Dominus episcopus predicta omnia manu publica scribi iussit et sui pendentis sigilli munimine roborari.

Ego Uguicione, filius Bonaventure Villani, imperiali auctoritate notarius, et nunc dicti episcopi scriba publicus, predictae confirma-

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