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More than an Eye for an Eye: Dante's Sovereign Justice

Justin Steinberg

The manner in which the souls are punished in the *Commedia* seems to indicate a symbolic relationship between transgression and punishment.¹ More often than not, the punishment assumes the form of a brutal literalisation of the respective sin, so that the damned are tormented by manifestations of their own externalised psychological states. In life, the adulterous Paolo and Francesca were figuratively blown to and fro by the 'storm' of their uncontrolled passions; in Hell, a literal storm now blows them round without end.

It has become a commonplace in the field of Dante Studies to describe this 'alignment' of punishment and sin as the *contrapasso* – a neologism in Italian and the final word of *Inferno* XXVIII.² Yet critics' deployment of the term *contrapasso* as a descriptive category is of relatively recent vintage. When early commentators gloss this rare Latinism, a *hapax legomenon* in Dante's text, they do not extend its purview beyond canto XXVIII.³ For example, Guido da Pisa limits the function of *contrapasso* (defined as 'sicut fecit, ita recepit' [as the person did, so he or she receives]) to Bertran de Born's punishment, since dividing persons joined through the bonds of friendship or family was by law a capital offence ('capite puniendus' [punishable by execution]).⁴ For Guido this correspondence between punishment and crime was part of the text's literal meaning. Similarly, Pietro Alighieri distinguishes the 'fittingness' of the punishments in *Inferno* XXVIII – the fact that the 'pena sit conformis delicto' [the punishment conforms with the wrongdoing] – from other infernal punishments, which he interprets 'per allegoriam' [allegorically].⁵

We have to wait until the nineteenth century for commentators gradually to universalise this instance of the term *contrapasso* into a general 'law' of the poem by applying it to all the punishments of *Inferno*

(and eventually to those of *Purgatorio* as well). Yet in recent decades scholars have begun to re-examine the one-size-fits-all model of the *contrapasso*, critiquing the ‘allegorismo a oltranza’ [extreme allegorism] necessary to make Dante’s poetics of punishment conform to any given scheme.⁶ Several critics have even called into question the identification of the *contrapasso* with Dante’s conception of justice or with divine justice *tout court*. These scholars demonstrate that the *contrapasso* was commonly associated in contemporary scholastic thought with the *lex talionis* and the ‘eye-for-an-eye’ justice of the Old Testament.⁷ As a consequence, they argue, Dante intends readers to interpret the *contrapasso* critically. It reflects the fallen, ‘rigida giustizia’ [rigid justice] (*Inf.*, XXX. 70) of the infernal city of Dis, a legalistic dystopia utterly lacking in mercy.

I would like to add my voice to this swell of critical reappraisals of the *contrapasso*, but with an important distinction. While previous scholarship has contrasted infernal punishment with divine mercy, I will focus on the tensions that arise in *Inferno* XXVIII between public and private conceptions of justice. As I hope to make clear, the problem for Dante is not that the *contrapasso* is too harsh but that, for the most extreme crimes, it is not harsh enough. Its tit-for-tat justice fails to take into account the sacrilege committed against God’s public majesty. For transgressing the divine sovereign’s commandments – irrespective of the damages owed private individuals – the damned must pay back more than measure for measure.

In this essay I will argue that we should be wary of referring a-critically to Dante’s art of justice as the *contrapasso* for the following reasons: 1) In Dante’s sources, the *contrapassum* always denotes a limited, overly narrow conception of justice; it is the imperfect justice of the Other (the justice of the Pythagoreans for Aristotle, the justice of the Jews for Albertus Magnus and Thomas Aquinas). 2) The limits of justice based on simple ‘reciprocation’ reside in its inherently private nature; the *contrapassum* fails to encompass public crimes, crimes against the sovereign and the body politic. 3) Consequently, when Bertran describes his punishment as a ‘contrapasso’, he fails to recognise the public nature of his sin and those of the other sowers of discord. 4) The *contrapasso* should not be considered the ‘law’ of Dante’s justice since he evokes it precisely to demonstrate its limits.

I do not want to deny, of course, that some mechanism of poetic justice operates throughout the *Inferno*. Clearly, it does. I simply want to reconsider the prevailing belief that Dante waits until *Inferno* XXVIII to reveal that ‘the punishment should fit the crime’ – especially since he has already provided readers with ample illustrations of this principle earlier in the poem. Rather than merely offering a definition, Dante introduces the *contrapasso* at this point in order to probe the elusive nature of the

‘fittingness’ involved in his poetics of punishment. Above all, Dante makes a case here for a savvy and judicious deployment of discretion rather than the application of a prescribed rule. The sowers of discord are crucial to his case – not because they are exemplars of the *contrapasso*, but because they demonstrate the need to go beyond it.

The exceptional punishment of Dante’s sowers of discord

Inferno XXVIII describes the punishments of the eighth sub-circle or *bolgia* of Malebolge, the eighth circle of Hell in which the sins of fraud are punished. The damned in this particular valley of Malebolge are condemned as ‘sowers of scandal and schism’ (*Inf.*, XXVIII. 35) for their instigation of civil and religious strife. In one of the most violent episodes of the poem, a sword-wielding demon ritually mutilates these naked sinners, making a series of purposeful and geometric cuts each time they pass by. Just as they split the corporate bodies of church and state, so their own bodies are now cleaved.

While in the other circles of Hell Dante often leaves the correspondence between sin and punishment to the reader’s imagination, in this circle he explains it twice. First, at the beginning of the canto, a horribly mutilated Mohammed pronounces the general rule: “E tutti li altri che tu vedi qui, | seminador di scandolo e di scisma | fuor vivi, e però son fessi così” [‘and all the others you see here were sowers of scandal and schism while they were alive, and therefore are they cloven in this way’] (*Inf.*, XXVIII. 34–6). Then, at the end of the canto, the troubadour poet Bertran de Born presents his punishment as an exemplary case. For having divided the young prince from his father, Henry II of England – the *head* of the kingdom – Bertran is condemned to carry his own severed head in his hands. Bertran’s trunk raises his head up toward Dante and Virgil, concluding the canto with an epigraphic description of his infernal sentence:

‘Perch’ io parti’ così giunte persone,
partito porto il mio cerebro, lasso!
dal suo principio ch’è in questo troncone.
Così s’osserva in me lo contrapasso’.

(*Inf.*, XXVIII. 140–2)

[‘Because I divided persons so joined, I carry my brain divided, alas, from its origin which is in this trunk. | Thus you observe in me the counter-suffering’.]

The relationship between the sin and punishments in this canto is thus expressed with perfect clarity. It is underlined logically by the causal conjunctions 'però' and 'perché' and grammatically by the correspondence between the passive 'partito' to the active 'parti'.

Dante thus appears to have chosen the clearest possible examples to illustrate the *contrapasso*. Indeed, although readers have long admired Dante's artistry in creating real, fleshed-out characters, the sowers of discord are almost pure personifications, animated emblems. Marched before the eyes of readers, these sinners beckon for their punishments to be read; the constant refrain of the canto is 'vedi' [behold]. When Bertran closes the canto with 'Così s'osserva in me lo contrapasso', the use of the impersonal passive construction 's'osserva' underscores the idea that legibility is the defining characteristic of the countersuffering.

Yet at the very moment that Dante-the-poet appears to define his art of poetic justice, an interpretive breakdown occurs between his character and the desecrated bodies that are paraded before him. Instead of 'reading' the sins as they are literalised on the sinners' bodies, he merely gapes at their wounds, stupefied by the novelty of God's justice. His eyes become 'drunk' with the vision of violence in the canto (*Inf.*, XXIX. 2), and Virgil reprimands him as he continues to stare at the mutilated bodies: "Che pur guate?" (*Inf.*, XXIX. 4–6). Dante is literally blocked ('impedito', *Inf.*, XXIX. 28) by the imagery of the sowers of discord, just as the damned are momentarily frozen in awe when they discover that he is still alive.

The punishments of canto XXVIII are in some way exceptional. Dante's character struggles to fit them into the system he has experienced so far, and Virgil notes that Dante has not been mesmerised in this manner by any of the other punishments. Most of all, Bertran himself notes that his case is unprecedented: "Or vedi," he says, "vedi s'alcuna è grande come questa" ['now see, [...] see if any is as great as this'] (*Inf.*, XXVIII. 130–2). Ironically echoing the personification of weeping Jerusalem in Lamentations, he insists that the punishment is without parallel for its magnitude. It is enormous, literally outside of the norm.

Further, at the beginning of the canto Dante claims that the violent imagery we are about to witness has never been represented before in literature. Drawing on a long tradition of epic violence, he asks readers to perform a gruesome thought experiment: to imagine all the maimed and perforated bodies ever strewn across the battlefield in Apulian territory, from the time of the Trojan colonisers to more recent battles between the forces representing church and empire. If these perforated and maimed bodies, gathered together, were all to display their wounds simultaneously, the surreal montage would not equal, 'aequar', the manner of this

sub-circle of *Inferno* (*Inf.*, XXVIII. 20, 21). In this failed ekphrasis, Dante signals that what he is about to encounter as a character, and represent as a poet, is entirely new.

Why does Dante insist on the singularity of imagery in this canto if it is meant to illustrate the poetics of the poem as a whole? Why choose the unprecedented case of Bertran de Born to exemplify the 'law' of the *contrapasso*? These contradictions are difficult to resolve if we insist on identifying the countersuffering with God's justice. But what if Bertran were wrong about, or at least not aware of, the full significance of his punishment? What if he were using the wrong word?

The *contrapasso* in the thirteenth-century Aristotelian tradition

It is unlikely that we would have extended the *contrapasso* to include all the punishments of *Inferno* if critics had considered its original context in Aristotle's *Nicomachean Ethics* more diligently. Dante's coinage of the *contrapasso* derives from the Latin *contrapassum*, a term that would have been familiar to him from the Latin translation of Aristotle's *Nicomachean Ethics*, where the *contrapassum* denotes a reciprocal suffering or 'passion' that responds to any illicit action: 'If a man should suffer that which he did, right justice would be done.'⁸

Bertran's formula for the *contrapasso* is strikingly similar to this sentence, supposedly uttered by the mythic judge Rhadamanthus. Yet it is almost never mentioned in the secondary literature that Aristotle himself disparages the primitiveness of countersuffering justice; instead he ascribes it to others (namely, the Pythagoreans) and distinguishes it from his more encompassing and flexible conception of rectificatory justice:

Some think that the *contrapassum* is without qualification just, as the Pythagoreans said; for they defined justice without qualification as *contrapassum*. Now *contrapassum* fits neither distributive nor rectificatory justice – yet people want even the justice of Rhadamanthus to mean this: 'If a man should suffer that which he did, right justice would be done'. For in many cases *contrapassum* and rectificatory justice are not in accord. For example, if a man who holds sovereign power has struck someone, he should not be struck back; and if someone has struck the sovereign, he should not only be struck back but also punished. Moreover, there is quite a difference between voluntary and involuntary actions.⁹

Aristotle specifies here two crucial instances where the *contrapassum* falls short. First, it does not take into consideration what would happen if one of the parties involved in a dispute were a public official. Second, it does not distinguish between voluntary and involuntary actions. These brief remarks on retaliatory justice serve as a transition between the more fleshed-out discussions of distributive and rectificatory justice, and the ensuing section on economic justice.

In distributive justice (*iustitia distributiva*), common goods (such as honour and wealth) are allotted by a central authority to recipients as rewards for their service. Distributive justice is calculated proportionately, according to a ratio guaranteeing that greater service receives greater reward. In rectificatory justice – sometimes also called corrective or directive justice (*iustitia directiva*) – a judge restores the former equality between two parties before it was upset by force or fraud. To ‘correct’ or ‘rectify’ the situation, the amount of damages owed is calculated arithmetically, rather than proportionately, and this sum is subtracted from the offending party and added to the injured one. Rather than negotiating the aftermath of a transgression, economic or reciprocal justice deals instead with commodity exchange (equalising goods, not people). Economic justice determines, for example, how many shoes a shoemaker must give a builder in exchange for one house. In an economic context, *contrapassum* – understood now as proportionate reciprocation rather than arithmetic retaliation – plays a critical role in consolidating the social ties among citizens.

In contrast to the extended discussion of the proportionate application of the *contrapassum* in economic exchanges,¹⁰ Aristotle’s treatment of the retributive aspects of the countersuffering is little more than an aside. Modern commentators’ tendency to pass over it is thus understandable. Medieval commentators, on the other hand, greatly expanded upon the Greek philosopher’s brief remarks – no doubt in large part because they finally touch upon questions of intentionality, guilt and public order otherwise absent from his discussion of particular justice. Aristotle’s critique of *contrapassum* justice was crucial for these scholars (and subsequently, I will argue, for Dante), because in a treatise dedicated almost entirely to private forms of reparation – the justice of lawsuits and compensation – it is the only place where Aristotle hints at the necessity of a public penal order, the only place he speaks of *punishing* a subject rather than of *rectifying* a situation.

In his first commentary on the *Nicomachean Ethics*, Albertus Magnus’s concise gloss on the discussion of the *contrapassum* introduces several issues that will remain fundamental for all future interpretations of Aristotle’s text. First, he categorically denies the notion that the *contrapassum* is synonymous with justice without qualification.¹¹ Second, he

associates the *contrapassum* with the 'eye for an eye' justice of the Old Testament as expressed in Exodus. Most importantly for our purposes, Albertus claims that, in the case of the citizen striking the sovereign, damage is done not only to the ruler as a private individual, but also to the impersonal political authority that he embodies:

If the sovereign (*princeps*) strikes someone, it is not necessary for justice that he be struck back, because the striking of one and the other is not of equal weight. For in the case of the sovereign, it derogates his authority, which he holds over the state (*rem publicam*). Similarly, if someone strikes the sovereign, it is not right that he is only struck back, but he must additionally be punished by death.¹²

Although Albertus might seem to be simply paraphrasing the original text at this point, Aristotle never explicitly invokes the state's authority, nor does he make any mention of the death penalty.

In his second, more expansive commentary on the *Ethics*, Albertus uses his discussion of countersuffering to provide a primer on legitimate and illegitimate violence. Because a ruler possesses the general legal authority to use violence against his subjects, he may strike without being struck back. Moreover, regardless of the legality of his actions, if he were to be punished in kind it would do great damage to the common good as it would 'enervate' his authority, an authority that malefactors need to fear if it is to be an effective deterrent.¹³

In the case where a citizen strikes the sovereign, Albertus appeals directly to the Roman law of treason, the *crimen laesae majestatis*.

Moreover, if the sovereign should be struck, one incurs the crime of *laesae majestatis* on account of the harm caused to the common good, which the legislator meant to protect more than [to protect] the sovereign himself. If, therefore, whoever has struck the sovereign receives a countersuffering (*contrapatiatur*) of the same kind and quality that he inflicted on the sovereign, the crime of *laesae majestatis* is not compensated, only that against a private person. And this is not just.¹⁴

Striking the sovereign violates the majesty of his 'second', sublime body, and it is for this offence against the public good that the culprit must be punished 'forte multo plus' [much more strongly] than the mere 'tantum quantum' of the private countersuffering. Albertus further specifies that that those who have violated the corporate body of the state should be

decapitated and dismembered ('capitis vel membri detruncatione') – the very punishment inflicted on the schismatics in *Inferno* XXVIII.

In his commentary on the *Nicomachean Ethics*, Aquinas for the most part follows the arguments of his teacher and joins him in refuting the 'false' and 'erroneous' opinion that the *contrapassum* equates to justice in all cases.¹⁵ However, in anticipating a potential objection to Aristotle's text, he introduces a crucial distinction between property damage and personal injury. Aquinas asks how are we to reconcile Aristotle's treatment of the magistrate striking the private citizen, and vice versa, with his earlier statement that, in matters of corrective justice, all are equal before the law? Why does the Philosopher reintroduce personal status into his discussion at this point? Aquinas explains that the question of rank remains relevant only in assessing the objective amount of damage incurred. With regard to external things, such as money, the status of the parties does not matter. But clearly worse damage is done and greater compensation needs to be paid when someone strikes the ruler, since 'that injury is done not only to the person of the ruler, but also to the whole commonweal (*totam rempublicam*)'.¹⁶

In Aquinas's oft-cited (and oft-misunderstood) discussion of the *contrapassum* in *Summa Theologiae*, he further elaborates on the potential limitations of countersuffering justice, if narrowly conceived (i.e., arithmetically rather than proportionately).¹⁷ As in his previous discussions of personal injury, he correlates the *contrapassum* with the *lex talionis*, citing Exodus 21. 23–4, 'He shall render life for life, eye for eye'. He also argues, as before, that whoever strikes a ruler needs to be punished much more severely ('multo gravius') than when the victim is an ordinary citizen.¹⁸

But then Aquinas revises his earlier comments about property damages, claiming that the *contrapassum* is an inadequate measure for assessing these as well. If a thief is punished according to reciprocal justice and pays back exactly what he took, the state will not receive its due as co-victim:

In like manner when a man despoils another of his property against the latter's will, the action surpasses the passion if he be merely deprived of that thing, because the man who caused another's loss himself would lose nothing, and so he is punished by making restitution many times over (*multiplicius restituat*) because not only did he injure a private person, but also the common weal, the security of whose protection he has infringed (*quia etiam non solum damificavit personam privatam, sed rempublicam, eius tutelae securitatem infringendo*).¹⁹

The strict reversal of passion for action fails to account for the damage done to the common good; a residual needs to be paid for the transgression itself. This supplementary punishment is owed in extreme crimes which directly target the state's symbolic power, such as when someone strikes the sovereign. Even in lesser crimes such as theft, the *res publica* possesses a claim that it may extract in the form of punishment 'many times over'. In this final formulation, Aquinas echoes the jurists of his time, who were beginning to recognise that even interpersonal crimes threatened the state's authority.

Bertran de Born's mistake: the *contrapasso* as limited justice

As I hope now should be clear, the sowers of discord are punished for exactly the type of crime that the *contrapassum* fails to encompass. They have harmed not only private individuals but the public good – namely the sanctified bodies of church, republic, city and kingdom. For such acts of sacrilege, their punishment exceeds the tit-for-tat justice of the *lex talionis* and they pay an extra 'debt' owed to the state in the currency of their body parts. In short, the sinners in this canto need to lose *more* than an eye for an eye.

Since the public crimes of the schismatics so clearly exemplify the type of case for which the countersuffering was insufficient, why then does Dante have Bertran classify his punishment as a *contrapasso*? One response might be that the definition is ironic: that Bertran remains unaware of the full implications of his sin even in the afterlife. He takes responsibility for pitting Henry II against the young prince as private 'persone' (*Inf.*, XXVIII. 139), but not for the damage this feud caused the body politic.

In fact, the sowers of discord engage in a *realpolitik* that belies their scepticism about abstract corporations. They do not believe any reality lies behind the metaphor of the body politic. Only brute actions have a head: 'Capo ha cosa fatta' (*Inf.*, XXVIII. 107). As an ironic punishment for such nominalism, the demon cuts their bodies into parts which remain nevertheless formally whole (and thus capable of perpetually healing and being reinjured). Indeed, what is uncanny about Bertran's punishment is not so much that he has lost his head, but that his detached parts still function as an organic unit.

Of course, when Aristotle and the scholastics criticise the limits of the countersuffering, they are talking about human justice, not divine justice. Bertran is punished in canto XXVIII because he broke not human laws, but God's commandments. He did not merely harm the Crown; he disobeyed

the Divine Sovereign. It is only by analogy that we can compare Bertran's mortal sin against God's order to a public crime against the state's majesty. That said, the analogy possesses an ancient theological pedigree and was often evoked to justify the everlasting torments of the damned.²⁰

In the *City of God*, for example, Augustine responds to the apparent excessiveness of eternal damnation by evoking the analogous earthly punishments of slavery, exile and capital punishment. In contrast with lesser penalties, these punishments last a lifetime (the earthly equivalent of eternity) because they definitively sever the culprit from the human community:

As for the criminal who suffers capital punishment for some grave offence, do the laws estimate his punishment according to the time that it takes to kill him, which is very short, and ignore the fact that he is removed forever from the company of the living? Thus the removal of men from this mortal community by the punishment of the first death corresponds to the removal from the Immortal City by punishment of the second death. For just as the laws of the former city have no power to recall to that community one who has been put to death, so, when a man has been condemned to the second death, the laws of that other City cannot call him back to life eternal.²¹

In the *Summa Contra Gentiles*, Aquinas similarly compares the eternal exile of the damned with the physical and social deaths incurred for treasonous crimes against the state:

Natural equity seems to demand that each person be deprived of the good against which he acts, for by this action he renders himself unworthy of such a good. So it is that, according to civil justice, he who offends against the state is deprived completely of association with the state, either by death or by perpetual exile. Nor is any attention paid to the extent of time involved in his wrongdoing, but only to what he sinned against.²²

For both Augustine and Aquinas, crimes that threaten the very foundation of the secular order must be punished extraordinarily. This form of discretionary punishment reserved for the *crimen exceptum* serves as a model, in turn, for comprehending divine justice against the damned: whoever violates the immensity of divine majesty earns a punishment that is similarly beyond measure.

In this respect it is not only Bertran who deserves to be punished in excess of the *contrapasso*, but all of the sinners in Hell. Bertran's case is

nevertheless especially illustrative. Since he simultaneously betrayed both the earthly and divine monarch, his endlessly repeated capital punishment exemplifies the sovereign justice that rules the entire otherworld. This must be what Guido da Pisa and Pietro Alighieri mean when they categorise the punishments of the schismatics as ‘literal’ in contrast to the ‘allegorical’ punishments of the other cantos. The capital punishment of Bertran for his capital crime serves as a focal case for the discretionary punishments that all the damned – as traitors to the divine state – incur.

In conclusion, when we describe the manner in which punishments fit sins in the *Commedia* indiscriminately as a *contrapasso*, we reproduce Bertran’s mistake. For Dante and his contemporaries, countersuffering justice was always limited justice – a form of justice particularly ill-equipped to respond to the enormous crime of violating God’s majesty.²³ In this light, Dante evokes the *contrapasso* perhaps less to describe the relationship between sin and punishment and more to warn against an overly mechanistic interpretation of this dynamic. That is, critics are right to identify *Inferno* XXVIII as a highly self-reflexive moment in the poem, just not one in which Dante announces the ‘law’ of his imagined otherworld. On the contrary, Dante makes a case in this valley of Hell for the indispensability of *judgement* when challenged with the unforeseen. Unlike the robotic bureaucrat Minos, both judge and artist must be willing to use their discretion.

Dante realises, of course, that this freedom can easily exceed ethical bounds, just as the Pilgrim’s fascination with injured bodies spills over into the next canto. Viewed in the darkest light, the broken bodies of the schismatics display the effects of a kind of judicial activism. In exercising his right to go beyond the limits of the *contrapasso*, Dante thus daringly associates his innovative art with the art of discretionary punishments.²⁴ For more than we perhaps care to admit, the poet’s celebrated originality owes an unspoken debt to the boundless ‘creativity’ of the modern penal order.

Notes

1. The introduction to this essay is borrowed from my earlier discussion of the *contrapasso* in ‘Dante’s Justice? A reappraisal of the *contrapasso*’, *L’Alighieri* 44 (2014): 59–74.
2. Text and translations from the *Commedia* are based on *The Divine Comedy of Dante Alighieri*, ed. and trans. Robert Durling (New York–Oxford: Oxford University Press, 1996–2011).
3. For a survey of the commentators’ glosses on *contrapasso*, see Peter Armour, ‘Dante’s *Contrapasso*: Contexts and Texts’, *Italian Studies* 55.1 (2000): 1–20, and Victoria Kirkham, ‘*Contrapasso*: The Long Wait to *Inferno* 28’, *Modern Language Notes* 127.1 (2012): S1–S12.
4. ‘Qui separat alios, seu amicitia seu parentela coniunctos, caput a corpore portat divisum, quia secundum leges talis est capite puniendus. Et sic observatur in eo contrapassus, quia debet recipere id quod fecit’ [He who separates others who are joined by either friendship or kinship

carries his head divided from his body, because according to the law such a crime is punishable by execution. And thus the *contrapasso* is observed here, for as the person did, so he or she receives]: Guido da Pisa, *Expositiones et Glose: Declaratio super Comediam Dantis*, from ‘Dartmouth Dante Project’ (DDP), at: <https://dante.dartmouth.edu/>.

5. ‘Post hec auctor intelligendus est loqui de dictis vulnerationibus harum animarum potius per hanc rationem, quod pena sit conformis delicto, quam per allegoriam’ [Hence the author is understood to be speaking about these souls’ aforementioned wounds for this reason – that the punishment conforms with the wrongdoing – rather than allegorically]: Pietro Alighieri, *Commentarium* (second redaction), *ad Inf.*, XXVIII. 139–42 (DDP).
6. See Valerio Lucchesi, ‘Giustizia divina e linguaggio umano. Metafore e polisemie del contrapasso dantesco’, *Studi danteschi* 63 (1991): 53–126, in particular 55. For a variety of perspectives, but in a similarly critical vein, see also Richard Abrams, ‘Against the *Contrapasso*: Dante’s Heretics, Schismatics and Others’, *Italian Quarterly* 27 (1986): 5–19; Peter Armour, ‘Dante’s *Contrapasso*’, Davide Bolognesi, ‘Il contrapasso come chiasma. Appunti su *Inferno* XXVIII’, *L’Alighieri* 36 (2010): 5–20; and Kenneth Gross, ‘Infernal Metamorphoses: An Interpretation of Dante’s “Counterpass”’, *Modern Language Notes* 100 (1985): 42–69.
7. See especially Anthony Kimber Cassell, *Dante’s Fearful Art of Justice* (Toronto: University of Toronto Press, 1984); Daniela Castelli, ‘L’errore rigorista e la “fisica dell’anima” in una *Commedia* senza *lex talionis*’, *Studi danteschi* 78 (2013): 154–95; Giuseppe Mazzotta, ‘Metaphor and Justice (*Inferno* XXVIII)’, in *Dante’s Vision and the Circle of Knowledge* (Princeton: Princeton University Press, 1993), 75–95; and Lino Pertile, ‘Canto XXIX: Such Outlandish Wounds’, in *Lectura Dantis: ‘Inferno’*, ed. Allen Mandelbaum et al. (Berkeley: University of California Press, 1998), 387–91.
8. This is rendered in Latin as ‘Si paciatur qui fecit, vindicta recte fit’, in Aristotle, ‘Ethica Nicomachea: Translatio Roberti Grosseteste Lincolniensis sive “Liber Ethicorum” B. Recensio Recognita’, in *Aristoteles Latinus*, vol. XXVI, parts 1–3, fasc. 4, ed. R. A. Gauthier (Leiden: Brill; Brussels: Desclée de Brouwer, 1972–4), 462.
9. ‘*Videbitur* autem aliquibus et *contrapassum* esse simpliciter iustum, ut Pythagorici dixerunt. Determinabant enim simpliciter iustum *contrapassum* alii. *Contrapassum* autem non congruit, neque in distributivum iustum, neque in directivum, quamvis *voluerit* hoc dicere. Et Radamantis iustum. Si paciatur que fecit, vindicta recte fit. Multis enim in locis dissonat; puta si in principatum habens percussit, non oportet reperiatur; et si principem percussit, non percute solum oportet, set et puniri. Adhuc involuntarium et voluntarium differt multum’: Aristotle, ‘Ethica Nicomachea’, 462.
10. Both Armour and Bolognesi make much of Aristotle’s economic discussion. Although these treatments are suggestive in their own right, I ultimately feel their emphasis on economic exchange is misplaced given the clearly punitive aspects of the canto. As Aquinas makes clear in *Summa Theologiae*, IIa–IIae, q. 61, a. 4 co., the *contrapassum* most properly applies to personal injury and in a secondary, analogous sense to property damages. Only thirdly is its meaning transferred to voluntary economic exchanges (commutations).
11. ‘[E]rgo cum ipsi voluerunt, quod iustum universaliter sit *contrapassum*, sententia eorum falsa fuit’: Albertus Magnus, ‘Super Ethica Commentum et Quaestiones’, V, I; VII, 402, ed. Wilhelm Kübel, in *Opera Omnia*, XIV. I (Münster: Aschendorff, 1968–72), 343.
12. ‘Si princeps aliquem percute, non oportet per iustitiam, ut reperiatur, quia percussio huius et illius non sunt aequi ponderis, quia in illo derogatur auctoritati, quam princeps habet super rem publicam; et ideo etiam, si aliquis percuteat principem, non oportet, quod tantum percuteatur, sed insuper plectitur capite’: Albertus Magnus, ‘Super Ethica’, p. 342.
13. ‘Princeps enim percuteus ex auctoritate habet quod percute: peccat autem in hoc quod non secundum legem percute: et ideo non tota percussio iniusta est: propter quod ad tantum et tale non contrapateatur. Adhuc autem auctoritas est in principe, quam oportet timori esse propter malos quia aliter commune bonum non salvatur enervata auctoritate continentis. In magnum ergo damnum cederet urbanitatis, si princeps contrapateretur’: Albert the Great, *Ethica*, V, tr. II, 8, in *Opera Omnia*, ed. Auguste Borgnet, 38 vols (Paris: Vives, 1891), VII, 354b.
14. ‘Adhuc si princeps percuteatur, crimen laesae maiestatis incurritur: quod fit ex laesione communis boni, quod magis intendit salvare legislator quam proprium. Si ergo qui percussit principem, non nisi tantum e tale contrapateatur, quale et quantum intulit principi, crimen laesae maiestatis non corrigitur, sed tantum privatae personae injuria: hoc autem iustum non est’: Albert the Great, *Ethica*, 354b–355a.

15. For the 'falsam sententiam' and 'sententiam erroneam' that the *contrapassum* should be unqualifiedly equated with justice, see Thomas Aquinas, 'Sententia libri Ethicorum', in *Opera Omnia*, vol. XLVII (Rome: Editio Leonina, 1882), 5.8.1.1. See also Aquinas's gloss on Aristotle's example of the magistrate striking and being struck by a private person: 'Circa quarum primam dicit quod in multis locis talis vindicta invenitur dissonare verae iustitiae, ut si aliquis in principatu constitutus percusserit aliquam privatam personam, non requirit hoc iustitia quod princeps reperiatur, et similiter, si aliquis percutiat principem, oportet quod non solum percutiatur, sed quod etiam gravius puniatur' [With regard to the first reason, he says that in many situations such vengeance is found to be at odds with true justice, so that if the appointed ruler strikes a private person, justice does not require that the ruler be struck in return; and similarly, if anyone strikes the ruler, it is necessary that such a person not only be struck but also punished more severely] : Aquinas, 'Sententia Ethic.', 5.1.8.4, 290a–b.
16. 'Videtur autem hoc esse contra id quod philosophus supra dixerat, quod in iustitia commutativa non attenditur diversa conditio personarum, sed lex utitur omnibus quasi aequalibus. Sed attendendum est quod ibidem philosophus dixit quod in commutativa iustitia lex attendit solum ad differentiam nocimenti. Manifestum est autem quod quando nocumentum attenditur circa subtractionem rei exterioris, puta pecuniae, non variatur quantitas nocimenti secundum diversam conditionem personae, sed quando est nocumentum personale, tunc necesse est quod quantitas nocimenti diversificetur secundum conditionem personae. Manifestum est enim quod maius est nocumentum cum aliquis percutit principem, per quod non solum personam ipsius sed totam rempublicam laedit, quam cum percutit aliquam privatam personam. Et ideo non competit iustitiae in talibus simpliciter contrapassum' [However, this seems to contradict what the Philosopher said earlier, that in commutative justice the differing rank of individuals is not taken into account; instead the law treats all as if equals. But it should be noted that what the Philosopher said there was that in commutative justice, the law considers only the nature of the damage. It is obvious, though, that when one considers damage resulting from the taking of property, such as money, the amount of damage does not differ according to a person's rank, but when the injury is personal, then it is inevitable that the amount of injury differs according to a person's rank. For it is obvious that there is greater injury when someone strikes a ruler, than when someone strikes a private person, for the reason that injury is done not only to the person of the ruler, but also to the whole commonweal. Therefore *contrapassum* alone is not adequate for justice in such matters]: Aquinas, 'Sententia Ethic.', 5.1.8.5, 290b.
17. Although Dante may not have been familiar with Aquinas's discussion of the *contrapassum* in the *Summa Theologiae*, I have included it here because it provides the most lucid contemporary treatment of the distinction between compensatory and punitive damages, which I am arguing is at the heart of Dante's depiction of the punishments in *Inferno* XXVIII. In addition, it has become standard practice to cite these passages in modern commentaries on canto XXVIII, often out of context and without consideration as to whether Aquinas is proposing a solution or merely raising an objection.
18. 'Et ideo ille qui percutit principem non solum reperiatur, sed multo gravius punitur.' Latin and English texts from Thomas Aquinas, *The Summa Theologiae of Saint Thomas Aquinas: Latin-English*, trans. the Fathers of the English Dominican Province (Scotts Valley: NovAntiqua, 2010), II.II, q. 61, a. 4, co.
19. 'Similiter etiam cum quis aliquem involuntarium in re sua damnificat, maior est actio quam esset passio si sibi sola res illa auferretur, quia ipse qui damnificavit alium, in re sua nihil damnificaretur. Et ideo punitur in hoc quod multiplicius restituat, quia etiam non solum damnificavit personam privatam, sed rempublicam, eius tutelae securitatem infringendo.' Aquinas, *Summa Theologiae*, II.II, q. 61, a. 4, co.
20. In the other direction, justifying harsh treatment for suspects of heresy and treason as rebels against God's order, see Jacques Chiffolleau, *La Chiesa, il segreto e l'obbedienza* (Bologna: Mulino, 2010), 127–48.
21. Augustine, *City of God*, trans. Henry Bettenson, ed. Gillian R. Evans (London: Penguin, 2003), XXI.11.2.
22. 'Naturalis aequitas hoc habere videtur, quod unusquisque privetur bono contra quod agit: ex hoc enim reddit se tali bono indignum. Et inde est quod secundum civilem iustitiam, qui contra rempublicam peccat, societate republicae privatur omnino, vel per mortem vel per exilium perpetuum: nec attenditur quanta fuerit mora temporis in peccando, sed quid sit contra quod peccavit': Thomas Aquinas, *Summa Contra Gentiles* (Rome: Editio Leonina Manualis, 1934), 3.144.4, 402b.

23. See Julien Théry, “‘Atrocitas/enormitas’”. Per una storia della categoria di “crimen enorme” nel basso Medioevo (XII–XV secolo), trans. Benedetto Borello *Quaderni storici* 44, 131.2 (2009): 329–75. See also these general studies: Jacques Chiffolleau, ‘Le crime de majesté, la politique et l’extraordinaire. Note sur les collections érudites de procès de lèse majesté du XVII^e siècle et leurs exemples médiévaux’, in *Le procès politique (XIV^e–XVII^e siècles): Actes du colloque de Rome (20–22 janvier 2003)*, ed. Yves-Marie Bercé (Rome: Collection de l’École française de Rome, 2007), 577–662; and Edward Peters, ‘*Crimen exceptum*: The History of an Idea’, in *Proceedings of the Tenth International Congress of Medieval Canon Law: Syracuse, New York, 13–18 August 1996*, ed. Kenneth Pennington, Stanley Chodorow and Keith H. Kendal (Vatican City: Biblioteca Apostolica Vaticana, 2001), 137–94.
24. For a more extended discussion of the connection between judicial discretion and poetic licence, see Justin Steinberg, *Dante and the Limits of the Law* (Chicago: University of Chicago Press, 2013), 40–52.