



# HISTORY OF LAW AND OTHER HUMANITIES

Edited by  
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and  
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The Figuerola Institute  
Programme: Legal History

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HISTORY OF LAW AND OTHER HUMANITIES:  
VIEWS OF THE LEGAL WORLD ACROSS THE TIME

*Edited by*  
Virginia Amorosi  
*and*  
Valerio Massimo Minale

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## **Chapter VI**

### **Literary Environments for Criminal Law**

BETWEEN LAW AND LITERATURE.  
VIOLATIONS OF LEGAL RULE IN THE *DECAMERON*

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*Alma Mater Studiorum. Università di Bologna*

1. *Boccaccio's cultural formation: neither a merchant nor a jurist*

Boccaccio considers law and poetry in various writings. His critical view of jurisprudence may have an autobiographical explanation: according to a report about himself in the *Genealogie deorum gentilium*, Boccaccio studied canon law approximately for six years because of his father's wishes and considered the legal training a mere waste of time<sup>1</sup>. The socio-political rele-

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1 Boccaccio was born into a Florentine family of merchants in 1313, probably in the town of Certaldo. After spending his childhood in Florence, he moved to Naples with his father Boccaccino, a stockbroker for the Bardi family. Boccaccino soon saw, with great disappointment, that his son was not at home in the offices of money changers; on the contrary, he preferred to devote himself to literary studies. Therefore, after trying to distract him from these interests, which were completely alien to the market, he enrolled his son in law at the University of Naples, where he could acquire much familiarity with that dialectical method, which has been an integral part of legal education since the XIII century with the advent of the school of Commentators. At the *Studium* he could avail himself of the *magisterium* under the poet and jurist Cino da Pistoia (in fact Cino taught in Naples for one or perhaps two academic years, from 1330 to 1332: a circumstance that is believed to have allowed Giovanni Boccaccio to know him personally. Support for the two-year duration of Cino's teaching in Naples can be found in BRANCA (1977), p. 31; an argument for only one academic year can be found in DE BLASIS (1886). On the question of the probable contact between Boccaccio and Cino da Pistoia, see: BRANCA (1977); BRANCA, RICCI (1969); RICCI (1965); RICCI (1971); BATTAGLIA RICCI (2007); BATTAGLIA RICCI (2013). On aspects of culture in Naples at the beginning of the XIV century, and on the relations between the juridical production of the *Studium* and the politics of the sovereigns, see MONTI (1924); SABATINI (1975); KELLY (2003), pp. 26-31. In any case, the irremediable contrast between paternal ambitions and poetic vocation clearly emerge from an autobiographical page of the *Genealogie deorum gentilium*, in which mercantile and juridical activity are decidedly rejected because of an *affectio* towards poetry: «Verum ad quoscunque actus natura produxerit alios, me quidem, experientia teste, ad poeticas meditationes dispositum ex utero matris eduxit et meo iudicio in hoc natus sum. Satis enim memini apposuisse patrem meum a pueritia mea conatus omnes, ut negotiator efficerer, meque, adolescentiam non dum intransentem, arismetrica instructum maximo mercatori dedit discipulum,

vance of academic law in the late Middle Ages was nonetheless significant as a personal motivation of the poet. Within the ever-more differentiated fields of knowledge – medicine, law, theology, philosophy and poetry – the growing influence of jurisprudence prevailed. The emergence of a legal system that was structured according to scientific bases and founded on a rediscovery of the *Corpus Iuris Civilis*, along with the advent of training for professional jurists in the XII century led to profound social and cultural changes<sup>2</sup>. The jurists exercised their influence on all political and ecclesiastical levels and held important positions in both the Church and State. The link between literature and law in the Italian and European Middle Ages was therefore quite strong, not only from the material perspective that, as we have seen, refers to the fact that lawyers were often holders of power and culture, but also from a theoretical perspective<sup>3</sup>. The problem of interpretation, like that of language and *auctoritates* to be utilised, is, in fact, a fundamental aspect of legal science. It is no coincidence that medieval glossators and commentators openly turned to literary texts where there was no *auctoritas* of reference<sup>4</sup>. Litera-

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quem penes sex annis nil aliud egi, quam non recuperabile tempus in vacuum terere. Hinc quoniam visum est, aliquibus ostendentibus indiciis, me aptiorem fore licterarum studiis, iussit genitor idem, ut pontificum sanctiones, dives exinde futurus, auditurus intrarem, et sub preceptore clarissimo fere tantundem temporis in cassum etiam laboravi. Fastidiebat hec animus adeo, ut in neutrum horum officiorum, aut preceptoris doctrina, aut genitoris autoritate, qua novis mandatis angebar continue, aut amicorum precibus seu obiurgationibus inclinari posset, in tantum illum ad poeticam traebat affection (...). Factum est ut nec negociator sim, nec evaderem canonista» in Boccaccio, *Genealogie deorum gentilium*, XV, 10, 6-8. On this text see, for instance, the work of DI FRANZA (2015). In the *Sacrae famis*, wherein Boccaccio's aversion to the study of canon law is explicitly declared, the author justifies the loan request of the *Thebaid* by citing his urgent need to find books that could offer relief from the tedium of the *Decretales* (Boccaccio, *Epistole e lettere, Epistola IV Sacrae famis*, p. 538).

2 In these times a legal education was less technical, more humanistic, as much a preparation for the world of practical affairs as for the court itself and it was compatible with a literary avocation as any other training might have been. For most of its early history the study of law was closely connected with that of rethoric. Writers and lawyers both live by words, and pleading a case of drafting a judicial decision requires no less art than writing a narrative poem.

3 For England, see ALFORD (1977); CLANCHY (1979). For France, see BLOCH (1977); DI FONZO (2016), pp. 21-22.

4 Exemplary, in this regard, was Alberto Gandino who admitted to the possibility that the truth of law was reached through the use of extra-legal *auctoritates*, when these did



ture became an authoritative source of law and the law sometimes played a literary role<sup>5</sup>.

In this context, Boccaccio addresses the issue from a new and different perspective, which is the result of his unconventional education and clearly emerges in his writings. In fact, the unique interweaving of such heterogeneous experiences and professional skills gave Giovanni the opportunity to experiment with highly innovative forms and models of writing<sup>6</sup>. The mer-

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not adequately help with the doctrine or ruling for a specific case. In this sense, appealing to the literary authorities did not have, for the jurist of Crema, a merely exhortative purpose, but that of a true integration of a legal order that was open and intended to resolve issues of justice with the support of auxiliary knowledge. On this point, see QUAGLIONI (1999) e QUAGLIONI (1999), pp. 147-152.

5 It occurred, for example, that a song by Dante became an authoritative basis for dealing with the thorny issue of *dignitas* and *dignitates* from a purely legal perspective. The *repetitio* by Bartolo da Sassoferrato to *l. Si ut proponitis* (comm. ad C. 12.1.1, in *Commentaria in Tres Codicis, doctissimi viri Do. Petri Pauli Parisij Cardinalis admodum reverendi non paucis additionibus nuper illustrata, accurateque castigata*, n. 46, f. 55rb) was nothing more than a commentary on the song *Le dolci rime d'amor ch'io solia*, which was included in the *Convivio* (Tract. IV, third song, pp. 124-128). On this question see DI FONZO (2016), pp. 21-22. What's more, one thinks of Jacobus de Teramo (1349-1417) who wrote the *Liber Belial* (or *Consolatio peccatorum*), having been subjected to a trial brought by the devil against Jesus. In this, the author, whilst engaging theological issues and enduring the political events of the time (the Western Schism was underway), revealed his forensic knowledge by offering the reader a clear explanation of the civil process in all its stages. Precisely because of its legal content, which renders it a genuine manual of medieval procedural law, the book titled *Processus Luciferi contra Jesum coram Judice Solomon* was to become one of the most widely translated and printed books in Europe in the XV and XVI centuries, before being banned by the Council of Trent and included in the first edition of *Index of Prohibited Books* published in 1559. On this point, see QUAGLIONI (2005), p. 50, nt. 32; MASTROBERTI (2012a), pp. 1-6 and MASTROBERTI, VINCI, PEPE (2012b).

6 The study of canon law seems to have left an impression on Boccaccio's cultural baggage when it came to terms and techniques, as clearly emerges in *Genealogie* (for the text, *supra*, nt. 1). It is sufficient to look at the expressions that the author adopts to define the paternal choice to start with such activity: in fact the terminology used could in fact be found in the university, where auditing often had the meaning of 'attending a lesson or a course' and was usually accompanied by an object complement that specifies the type of teaching. Since the object of «*auditurus*» in the text is the «*pontificum sanctiones*», which by synecdoche indicates canon law, the expression in question must mean, in a specific or technical sense, «that I began to attend the courses (the course) of canon law»; WEIJERS (1987), pp. 283-284 and TEEUWEN (2003), p. 224.

cantile aspect remains preponderant in his work, especially in the *Decameron* so much so that Vittore Branca was led to define the collection of short stories as «an epic of merchants»<sup>7</sup>; nonetheless, a legal substratum appears more discreetly «in the fantastic baggage of Boccaccio», disseminated here and there in various works. In any case, while the legal chapters of works such as the *De casibus virorum illustrium* and the *Genealogie deorum gentilium* see Boccaccio resort to and develop the common *topoi* of satire and criticism towards jurists, denouncing their *avaritia* in particular<sup>8</sup>, a more nuanced differentiation between representatives and institutions – as well as between forms of thought and legal reasoning – can be observed in the *Decameron*<sup>9</sup>.

The aim of this article is to investigate a particular aspect of the relationship between law and literature in the *Decameron* and in particular the essential relation between the natural law and positive law. The first one has an

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7 BRANCA (1990); BRANCA (1992), p. xlii, but also BATTAGLIA RICCI (2013), p. 41.

8 It is quite evident that Boccaccio had given considerable thought to the question of possible boundaries between law and poetry, as seen in the lengthy fourth chapter of book XIV of *Genealogie deorum gentilium*. In the apology for poetry in the *Genealogie deorum gentilium* books XIV and XV, Boccaccio cited these same fields. He addressed a polemic against the law by resorting to arguments similar to those of Petrarch in *Invective contra medicum*. Born for poetry, Boccaccio established a stark opposition between jurists and poets. The lawyers «have no business with poets, nor poets with them. Poets sing their songs in retirement; lawyers wrangle noisily in the courts amid the crowd and bustle of the market. Poets long for glory and high fame; jurists for gold (...). Poets are friends of peace; lawyers of cases and trials» in OSGOOD (1956), p. 32. Boccaccio then critiques the legal profession in the *Genealogie deorum gentilium*, discussing lawyers' greed as well as the law's (inferior) relationship to poetry. Yet it is evident from Boccaccio's personal correspondence that he used his legal training well into later life. In a letter to Mainardo Cavalcanti, Boccaccio refers to advice given to his friend, who at the time of the letter had just married a distant relative. Consanguinity was a serious impediment to marriage according to canon law, but on Boccaccio's counsel, Mainardo married quickly and secretly, receiving a papal dispensation to sanction the marriage only after it had taken place. Finally, also in *De casibus virorum illustrium*, the author levels a ferocious attack against lawyers, decrying their «feigned gravitas, tongues of honey, teeth of iron, and insatiable hunger for gold». In other passage, he insists: «They (the jurists) are like jackasses in robes. The problems they do not understand they ignore. Shamefully they try, if they can, to corrupt the law and they apply all their efforts to deprive it of its simplicity and sanctity so that they can spread an unwelcome discord among people (...)», in Boccaccio, *De Casibus Virorum Illustrium: The Fates of Illustrious Men*, pp. 95-96.

9 MAZZOTTA (1986); CHIAPPELLI (1988) (which is the source of the quotation); CHERCHI (1983) pp. 89-99; BATTAGLIA RICCI (2002); SHERBERG (2011), pp. 59-106; CONETTI (2015-2016).

important role in the *cornice* of the *Decameron*; some novels instead question the ability of the established law and its representatives to regulate and apply justice. In this article I will try to examine this dichotomy. After the analysis of the frame concerning its foundation in natural law, there will be two particular cases – that of Martellino and of Madonna Filippa – in which the legal order does not stand because it can be circumvented by the cunning who mock the laws and their application. The main objective will be to observe how Boccaccio transforms his critical vision of the very funny novella law and how it contrasts jurisprudence and poetry.

## 2. Law and Order in the *Decameron*

The main events of the *cento novelle*, as described in the prologue of the first day, take place in Florence<sup>10</sup>, during the plague of 1348, when every law – whether religious, civil or moral – has ceased to be valid:

«In this extremity of our city's suffering and tribulation the venerable authority of laws, human and divine, was abased and all but totally dissolved, for lack of those who should have administered and enforced them, most of whom, like the rest of the citizens, were either dead or sick, or so hard bested for servants that they were unable to execute any office; whereby every man was free to do what was right in his own eyes»<sup>11</sup>.

«The lack of those who should have administered and enforced them» (laws) has caused both legal and moral consequences; even the exiles for crimes have returned to the city, because the members of judicial organs are «dead or sick». Even religious laws – Pampinea, the most resourceful and oldest of the seven women's group in the *Decameron*<sup>12</sup>, calls them «divine» –

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10 «Egredia città (...) oltre a ogn'altra italica bellissima» in Boccaccio, *Decameron*, *Introduzione*, § 8, p. 12.

11 «E in tanta afflizione e miseria della nostra città era la reverenda auctorità delle leggi, così divine come umane, quasi caduta e dissoluta tutta per li ministri e essecutori di quelle, li quali, sì come gli altri uomini, erano tutti o morti o infermi o sì di famiglie rimasi stremi, che ufficio alcuno non potean fare; per la qual cosa era a ciascun licito quanto a grado gli era d'adoperare» (Ivi, § 23, p. 15).

12 A group of seven young women and three young men flee from plague-ridden Florence to a deserted villa in the countryside of Fiesole for two weeks. To pass the evenings, every member of the party tells a story each night, except for one day per week for chores, and the holy days during which they do no work at all, resulting in ten nights of storytelling over the course of two weeks. Each of the ten characters is charged as King or Queen of the



are not observed: substantially, because of the pestilence, not only social and family relations have disappeared, but also the precepts of law according to the Roman tradition have not been respected<sup>13</sup>.

Considering that positive law has lost its value<sup>14</sup>, Pampinea proposes to her companions to retreat to the countryside and states that seeking shelter and protection is legitimized by «natural reason».

«Dear ladies mine, often have I heard it said, and you doubtless as well as I, that wrong is done to none by whoso but honestly uses his reason. And to fortify, preserve, and defend his life to the utmost of his power is the dictate of natural reason in everyone that is born. Which right is accorded in such measure that in defence thereof men have been held blameless in taking life. And if this be allowed by the laws, albeit on their stringency depends the well-being of every mortal, how much more exempt from censure should we, and all other honest folk, be in taking such means as we may for the preservation of our life?»<sup>15</sup>.

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company for one of the ten days in turn. This charge extends to choosing the theme of the stories for that day, and all but two days have topics assigned. Only Dioneo, who usually tells the tenth tale each day, has the right to tell a tale on any topic he wishes, due to his wit. For the specific privilege of Dioneo, which is justified as an infraction authorized by the whole group, see BATTAGLIA RICCI (2007); WILKINSON (2014); CAPPELLETTI (2017).

13 «L'uno cittadino l'altro schifasse, e quasi niuno vicino avesse dell'altro cura, e i parenti insieme rade volte o non mai si visitassero (...) l'un fratello l'altro abbandonava, e il zio il nipote (...) e, che maggior cosa è e quasi non credibile, li padri e le madri i figliuoli, quasi loro non fossero, di visitare e di servire schifavano», but also «assai n'erano di quelli che di questa vita senza testimonio trapassavano» (ivi, § 27 and § 34, pp. 48-50). On this paragraph, BARBERI SQUAROTTI (1970), spec. p. 111.

14 The temporary absence of the laws is also reiterated in the *Conclusion* of the sixth day, when Dioneo tells his companions not to be bribed by the negative examples generated by the plague: «Or non sapete voi che, per la perversità di questa stagione, li giudici hanno lasciati i tribunali? Le leggi, così le divine come le umane, tacciono? E ampia licenzia per conservar la vita è conceduta a ciascuno?» in Boccaccio, *Decameron, Conclusion*, VI, § 9, p. 550.

15 «Donne mie care, voi potete, così come io, molte volte avere udito che a niuna persona fa ingiuria chi onestamente usa la sua ragione. Natural ragione è, di ciascuno che ci nasce, la sua vita quanto può aiutare e conservare e difendere: e concedesi questo tanto, che alcuna volta è già addivenuto che, per guardar quella, senza colpa alcuna si sono uccisi degli uomini. E se questo concedono le leggi, nelle sollecitudini delle quali è il ben vivere d'ogni mortale, quanto maggiormente, senza offesa d'alcuno, è a noi e a qualunque altro onesto alla conservazione della nostra vita prendere quegli rimedii che noi possiamo?», ivi, § 53, pp. 21-22.

Two questions arise immediately: Why does Pampinea mention «natural reason» as the motivation for escaping from the city? Why exhorts his listeners to use «ragione onestamente»? In a note accompanying the text, Branca emphasizes the repetition of the word «honest», a word continuously varied as it becomes the cipher of the human temperament of the storytellers in the introduction<sup>16</sup> and conclusion. But the semantic area represented by honesty also involves other aspects of the discourse, the «natural reason», that appears at the beginning of Pampinea's speech. Honesty is a self-discipline, modesty, sense of limitation and decorum, but also a social value, virtuous behaviour, as Dante defines it in the *Convivio*<sup>17</sup>. Furthermore, Pampinea's speech can be considered the core of the *Decameron's* action and it establishes the ethical conditions of the flight of the storytellers from Florence and prides them with reasonable ideological motivation. This speech aims at demonstrating that escaping from the city is not at odds with moral classical antiquity. Paolo Cherchi maintains that, in order to understand the meaning of honesty, we need to refer first to Cicero's *De officiis* because this work clearly illustrates the principle of self-preservation that underlines the ethical system of Stoicism<sup>18</sup>. But, as Giuseppe Mazzotta correctly noted, this mention evokes the so-called *ius naturalis* that is inherent in man, and imposed by nature upon all people<sup>19</sup>. The use of natural reason is the means to create order in the *Decameron*. This is the motive because of all of Pampinea's speech is formulated upon legal foundations: besides the connection with jurisprudence and canon law – she cites the definition of natural law given by Isidore of Seville in the *Etymologiae* and canonized in the *Decretum Gratiani*<sup>20</sup>–, the theory of *lex naturalis*

16 I. 52, 53, 54, 55, 61, 65, 72, 82, 84, 91; X. 4-5 and 6-8.

17 «Cortesia e onestade è tutt'uno» in Dante, *Convivio*, tract. II, chap. 10, p. 57.

18 «Principio generi animantium omni est a natura tributum, ut se, vitam corpusque tueatur, declinet ea, quae nocitura videantur, omniaque, quae sint ad viendum necessaria anquirat et paret (...). Commune item animantium omnium est coniunctionis appetitus procreandi causa et cura quaedam eorum, quae procreata sint», in Cicero, *De officiis*, I, 11; on this point, see CHERCHI (2004). On the definition of *honestum* as the Ciceronian translation of the Greek *kalòn*, see also POHLENZ (1970), pp. 35 ss. The parallel with ciceronian stoicism thought are fundamental to explaining all the variants of honesty in the *Decameron*.

19 MAZZOTTA (1970), pp. 221-222; ANDREI (2017), p. 185.

20 *Decretum Gratiani*, I, D. I, c. 7, col. 2: «Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae, non constitutione aliqua habetur, ut viri et feminae coniunctio, liberorum successio et educatio, communis omnium possessio et omnium una libertas, acquisitio eorum, quae celo, terra marique capiuntur; item depositae rei uel

is also part of a larger pattern of medieval thought, whose major proponent is Thomas Aquinas. According to Aquinas, there are true directives of human action that arises from the very structure of human agency and that anyone may easily formulate for himself. Natural law is also the peculiarity human way of participating in *lex aeterna* whereby God governs the universe<sup>21</sup>. Since everything we are inclined to do according to our own nature belongs to natural law, the inclination of the human being is to act according to reason. That is why Boccaccio uses the term «reason» instead of «law».

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commendatae pecuniae restitutio, uiolentiae per uim repulsio. §. 1. Nam hoc, aut si quid huic simile est, numquam iniustum, sed naturale equumque habetur». See also in *Corpus Iuris Civilis*: D. 1.1.3. Gratianus repeatedly reflects on natural law. The starting point is the observation that mankind is governed by natural law, which is immutable, and customs, which are instead linked to times and places; then he specifies the concept and highlights its fundamental theological character: «Ius natural est quod in Lege et Evangelio continetur». On this point, see PARINI VINCENTI (2016), spec. p. 633, nt. 23.

21 The classic exposition is that of Thomas Aquinas, still very influential in the early Renaissance. In its simplest form the theory holds that there are three main divisions of law: divine, natural and positive. The definition of divine or eternal is almost taken from St. Augustine: «The eternal law is the divine order or will of God, which requires the preservation of natural order, and forbids the breach of it», in Augustine of Hippo, *Contra Faustum Manichaeum*, XXII, 27, trans. in *The Writings Against the Manichaeans and Against the Donatists, I, The Manichaeans*, p. 311). This law is not directive in the sense of human law but is rather the principle or essence of law, without which all particular laws would be meaningless. St. Augustine emphasizes that the temporal ruler, if he is good and wise, consults the eternal rule, for «nothing is fair and legitimate in temporal law which men have not drawn for themselves from the eternal law», and John of Salisbury echoes the idea when he declares in the *Polycraticus* that «Law is null and void that does not bear the image of divine law», in Augustine of Hippo, *De libero arbitrio*, I, 6, quoted by Thomas Aquinas in *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, qu. 90-97, q. 93, art. 3, p. 59 and John of Salisbury, *Polycraticus of the frivolities of Courtiers and the Footprints of Philosophers*, IV, 6, p. 41, cited also by T. Gilby, p. 59). But how can the ruler know what the eternal law is? Man as a rational creature is a participant in the eternal law. The natural law is precisely the participation of the eternal law in the rational individual. The third type of law is the *lex humana*, necessary to regulate the concrete and historical situations that arise in society, in application of the principles of natural law; but, for Thomas, the supernatural end to which man is ordered makes the reference to natural law insufficient; it's necessary a higher guide constituted by the precepts of the *lex divina*. Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, q. 90, art. 1 and q. 91, artt. 1-5. See, among others: PIZZORNI (1999), pp. 27-28; PIZZORNI (2003), pp. 291-293; DI BLASI (2017); MAGLIO (2014), pp. 131-135. On the concept of law and order in the Middle Ages, see the fundamental study by GROSSI (2011), *passim*.

If Pampinea's natural reason is the natural law theorized by Aquinas<sup>22</sup>, the meaning of «honest» must be appropriately attributed to Thomistic ethics. All the particular aspects of the natural law are contained in a more universal first principle: «bonum est faciendum et prosequendum, et malum vitandum»<sup>23</sup>, namely «good is to be done and to be pursued, evil is to be avoided». From the general principle of seeking the good and fleeing from the opposite, the first commandment arises to preserve one's life. In fact, Thomas maintains that the first inclination of man is the preservation of existence, and whatever is useful to preserve human life belongs to natural law.

As a second deduction, Thomas takes up the definition of the natural law of the *Corpus Juris Civilis*, according to which «ius naturale est, quod natura omnia animalia docuit (...) idest maris atque feminae coniunctio, quam nos matrimonium appellamus, hinc liberorum procreatio»<sup>24</sup>. The fact that natural law does not amount to human instincts is reflected in the third deduction: this fact also regulates the search for knowledge of God and life in the community, according to the Aristotelian definition of man as a political animal<sup>25</sup>.

Applying these thoughts on natural law to the Florentine situation, Pampinea's speech aims at demonstrating that escaping from the city is appropriate («honest») for everyone and is not at odds with moral values or civil laws. This passage clearly illustrates the principle of self-preservation, guided by reason and oriented around the *bonum*<sup>26</sup>. For Thomas, in fact, in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature; and by reason of this inclination, whatever is a means of preserving human life and warding off

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22 *Lex naturalis* is «Quasi lumen rationis naturalis, quo discernimus quid sit bonum et malum», in Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, q. 91, art. 2. On the problem of natural law, for an updated bibliography, see MAGLIO (2014), pp. 138-141, nt. 65

23 Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, q. 94, art. 2, p. 80.

24 D. 1.1.1.

25 Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, q. 94, art. 2, p. 80. It should be noted that Boccaccio possessed a copy of the Nicomachean Ethics in the Latin translation of William of Moerbeke, with the comments of Thomas Aquinas, executed in 1260. The Aristotelian text was probably available to him, but there is no doubt that Boccaccio possessed the commentary by Thomas Aquinas. It is the ms. Ambrosiano 204 inf., belonging to Boccaccio's private library. For the code date as well as discussion on the part of Boccaccio see BARSELLA (2006).

26 Thomas Aquinas, *Summa Theologiae*, I<sup>a</sup>-II<sup>ae</sup>, qu. 18-21, q. 19, art. 7, ad. 3, p. 70.



its obstacles, belongs to the natural law. For this reason, after the ten young people left Florence and arrived in the villa, the urgency is to begin to rebuild the order that the plague, without the laws and those who administer them, has irreparably distorted. In fact, «as no anarchy can long endure» Pampinea proposes that there be one among them in chief authority, honoured and obeyed by us as superior, whose exclusive care it shall be to devise how we may pass their time blithely<sup>27</sup>. To avoid discrimination, she suggests that «the weight and honour be borne by each one for a day; and let the first to bear sway be chosen by all them and let each holder of the signory be, for the time, sole arbiter of the place and manner in which they are to pass their time»<sup>28</sup>.

One last point must be dealt. Unlike positive law, natural law does not require the mediation of jurists: it is universal and immediately comprehensible to human reason. Therefore, the female figures of the *Decameron* often refer to natural law<sup>29</sup>. In the frame, Pampinea resorts to *ragione naturale* because the plague renders positive law null and the city of Florence finds itself in an exceptional situation; but also in the novellas, daughters and wives appeal to natural law to react against and defend themselves from the patriarchal ideology in place at the time.

In the *novelle*, natural law – which is so important to the constitution of the *brigata* at the frame level – is opposed to positive law<sup>30</sup>, which is in

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27 Boccaccio, *Decameron*, *Introduzione*, § 95, p. 28.

28 Ivi, § 96, p. 28.

29 This is the conclusion reached by SHERBERG (2011), pp. 40-41, who, however, suggests that the natural law corresponds to a patriarchal order and that Pampinea uses it to imitate a masculine principle: «Pampinea thus reveals herself versed in natural law theory; her own ideas extend from and capitalize on it as she envisions a new society for her friends. In assigning this role to a woman, Boccaccio executes a careful coup. The world of the brigata does not reject the predicates of the world of men; rather it affirms them. It is in her understanding of law and of the theory that subtends it that Pampinea realizes the full force of her leadership and becomes such a compelling figure. She does not lead the group outside of male structures; rather, she shows how they can now deploy previously established structures and principles to their own profit». I would add to Sherberg's argument that natural law from a medieval perspective not only provides a means of confirming existing structures, but also a non-institutional control measure against tyranny.

30 Boccaccio, *Decameron*, IV, 1, pp. 337-348. An example of this is the argument presented by the young widow Ghismonda (IV, 1). Once her jealous father, Tancredi, discovers her love for Guiscardo, he imprisons the young man, has him killed and gives orders that his heart be torn from his chest and handed over to his daughter. In a defense speech structured according to the legal model, Ghismonda tries to assert her own reasons: her

force in a given political/territorial context and space of time. Indeed, this is demonstrated by the short stories analyzed in this article: there is the case of the unfortunate Martellino (II, 1), who ends up on trial before the judge of the podestà, and whose friends have to resort to the will of an influential lord as the only way to remedy a proceeding that is just as illegitimate as the judge himself; and then there is the story of Madonna Filippa (VI, 7), which shows how her *bone eloquence* is enough to let her go unpunished, in a trial that should have found her guilty.

If Boccaccio's stories can conclude in this way, it is precisely because law and order is collapsing, even in ordinary situations where no catastrophic general conditions are seen.

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solitude forced her to follow the laws of nature in the only way that she could, by forming a secret relationship. Indeed, her natural desire to be a wife – and to once again experience the joys that being a wife implies – could not be satisfied legitimately because of her father's reluctance to find her a new husband. Ghismonda's defense is less provocative than that of Madonna Filippa in terms of the arguments used, but it is no less incisive in terms of oratory, and it clearly highlights these aspects: «Egli è il vero che io ho amato e amo Guiscardo, (...) ma a questo non m'indusse tanto la mia femminile fragilità, quanto la tua poca sollecitudine del maritarmi e la virtù di lui. Esser ti dovè, Tancredi, manifesto, essendo tu di carne, aver generata figliuola di carne e non di pietra o di ferro; e ricordar ti dovevi e dei, quantunque tu ora sie vecchio, chenti e quali e con che forza vengano le *leggi della giovinezza* (...). Sono adunque, sì come da te generata, di carne, e sì poco vivuta, che ancor son giovane, e per l'una cosa e per l'altra piena di concupiscibile disidero, al quale maravigliosissime forze hanno date l'aver già, per essere stato maritata, conosciuto qual piacer sia a così fatto disidero dar compimento. Alle quali forze non potendo io resistere, a seguir quello a che elle mi tiravano, sì come giovane e femina, mi disposi e innamorami» (IV, 1, pp. 34-35). Moreover, Tancredi's daughter uses similar naturalistic arguments to counter the paternal accusations of having chosen, in her 'great madness', a 'young person of very poor condition'. According to her, all men are born equal, and only virtue can distinguish some of them and allow them to bear the title of 'nobles'; but practice subsequently overtook 'this law', making nobility a question related to descent and not to the value of an individual. The words of the young woman echoes the poetics of the *stilnovo*: nobility is of the soul and not of race, contrary to what can be deduced from *De amore* by Andrea Cappellano. Therefore, paternal law does not correspond to the law of nature and can therefore be rejected as illegitimate, as an expression of tyranny. ALMANZI (1974). For the self-defense of Ghismonda on the basis of natural law and Tancredi's reaction, see WEHLE (1993), spec. p. 236. For the standard opposition between *ingegno* and *natura*, which is embodied in the conflict between Tancredi and Ghismonda, see LEVENSTEIN (1996), spec. pp. 322 ss.

### 3. *Boccaccio in the dock. Justice and process in Decameron*

In the *Decameron* one can identify three orders of law, which perfectly reflects the tripartition at the base of medieval philosophy: divine law<sup>31</sup>, human law and natural law.

As far as human law is concerned, it should immediately be stated that, with the exception of the *casus* of Madonna Filippa, in no other novella does the subject of the laws and their application play a central role.

Though it is summarily and sparsely treated, the subject of the trial does appear in the first novella of the second day. It concerns Martellino<sup>32</sup>, a buffoon, who, with two other professional actors, Stecchi and Marchese, earns a living making the rounds of the various courts and entertaining audiences with impersonations. They arrive in Treviso on a day when a German, Arri-go, had died in odor of sanctity and all the sick people were crowding in the church in the hope of being cured by contact with the saint's body<sup>33</sup>. Being entire strangers to the place, and seeing everybody running to and from, they were quite astonished and curious to go see what was to be seen. They pretend to be crippled through the use of disguises in order to pilgrimage with the faithful and thus stage a fake healing at the end of the journey. The strategy works, and once inside, Martellino touches the body and makes it seem as if he has received the saint's miraculous healing; however, he is quickly exposed by a fellow Florentine. Fearing for Martellino's safety, his two friends contrive to have some law officers remove him from the clutches of the mob and haul him to the magistrate's place with the charge of stealing their purse. After torturing Martellino illegitimately<sup>34</sup>, the podestà's deputy decides to

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31 I cannot delve into divine law for reasons of space. However, there are relatively few references to the divine laws in the *Decameron*: see, e.g., I, 2, pp. 47-51; I, 3, pp. 52-55; II, 3, pp. 104-113; II, 7, pp. 151-175.

32 Boccaccio, *Decameron*, II, 1, pp. 90-95. On this *novella* see for instance: MAZZOTTA (1986), pp. 234-237; CONETTI (2015-2016), pp. 112-115; CAPPELLETTI (2017). Martellino also appears in the *novella* CXLIV of Franco Sacchetti's *Trecentonovelle*, pp. 379-386.

33 Thaumaturgy, from Greek θαῦμα, meaning 'miracle' and ἔργον, meaning 'work', is the capability of a magician or a saint to work magic or miracles: see CASTELLI, GERUZZI, SERRA (eds.) (2008). For the practice of the ritual in England and France, see BLOCH (1973).

34 The methods of application of torture are set carefully: its use was governed not only by *tractati* (see in this case: Alberto da Gandino, *Tractatus de maleficiis*, § *De quaestionibus et tormentis*, n. 2, p. 157; Guillaume Durand, *Speculum iuris*), but also by statutes: VALLERANI (2012), pp. 61 ss. The practice of torment has been the subject of many

call witnesses, on the suggestion of Martellino himself. The very same people who were beating him come to testify, and their testimony should surely be denied, as they are not trustworthy. Indeed, as Guillaume Durand recalls in *Speculum iudiciale*: «Quod est inimicus» is the first reason to reject a witness<sup>35</sup>. But there is more. These witnesses offer contrasting accounts about when the alleged crimes occurred, that is, the timeline they provide is inconsistent with their testimony. Despite this, the judge wants to convict Martellino only because he hates Florentines<sup>36</sup>. It is clear that we are faced with a case in which the abuse of the court's *arbitrium* reaches the highest level<sup>37</sup>, but it is ultimately subjugated to an even higher form of will: that of the lord of the place. Indeed, Marchese and Stecchi ask Sandro Agolanti for help, and he brings their plight to the attention of the lord. The lord then intercedes with the judge in favor of Martellino and saves him.

The legal process here is carried out much differently than in the case of Madonna Filippa, becoming not a moment of law enforcement, but rather an opportunity to distort the law and the principles of justice itself. The trial is summary, the evidence against the accused almost non-existent and the use of torture does not lead to a confession: nevertheless, the judge is still inclined to condemn Martellino and satisfy the angry mob.

This case provides a clear example of a concept that is repeated numerous times throughout the frame story: yes, laws are necessary, but it is also necessary to have people that enforce them judiciously<sup>38</sup>.

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in-depth studies in recent decades they highlighted the importance and the centrality of this instrument in the ancient process system regime. The bibliography on the subject is very wide. Without pretension of completeness, see SALVIOLI (1927), pp. 476-486; FIORELLI (1953-1954), *passim*; SBRICCOLI (2009); STORTI STORCHI (2002). For the Modern Age, see DEZZA (2001); MECCARELLI (2002); MASSETTO (2003); GARLATI (2011); CHIODI (2013); CHIODI (2014).

35 Guillaume Durand, *Speculum iuris*, 1.4 *De teste*, § 2, f. 285. On this point, see BASSANI (2017).

36 But, actually, see C.2.4.19.25: «Sciunt cuncti accusatores eam se rem deferre debere in publicam notionem, quae munita sit testibus idoneis vel instructa apertissimis documentis vel indiciis ad probationem indubitatis et luce clarioribus expedita». For bibliography see ALESSI PALAZZOLO (1979), pp. 3-5; DEZZA (1989); DEZZA (2013), pp. 1-3.

37 For the *arbitrium iudicis in criminalibus*, see MECCARELLI (1998), pp. 195-254.

38 The crucial role played by those who hold the power to administer laws and justice is also reflected upon by Tedeldo degli Elisei (III, 7), who, returning to Florence, learns that his family believes he died at the hands of Aldobrandino Palermini, husband of his lover. In fact, he discovers that the corpse of a stranger was mistakenly believed to be

A different discussion on legislative and customary norms is offered by the seventh novella of the sixth day, whose heading summarizes the action, the process and its outcome as follows: «Madonna Filippa, being found by her husband with her lover, is cited before the court<sup>39</sup>, and by a ready and jocular answer acquits herself, and brings about an alteration of the statute»<sup>40</sup>. Even before introducing the characters, the narrator Filostrato polemically presents and criticizes the norm at the center of this case of adultery involving Madonna Filippa<sup>41</sup>. Indeed, Prato had a statute which dictated that any woman who was caught in the act of adultery should be burned alive, but her admission of guilt to the *podestà* was required<sup>42</sup>.

This was a harsh law for the 14<sup>th</sup> century. Although the penalties for adultery were generally severe in early medieval law, by the time in which Boccaccio was writing most legal systems did not require death for an adulteress<sup>43</sup>. The statutes varied considerably with regard to the choice of sanctions: an

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his own and, following a thorough investigation, the judges imprisoned and condemned Aldobrandino: «Per falsa suspizione accusato e con testimoni non veri averlo condotto a dover morire, e oltre a ciò la cieca severità delle leggi e de' rettori, li quali assai volte, quasi solleciti investigatori delli errori, incrudelendo fanno il falso provare, e sé ministri dicono della giustizia e di Dio, dove sono della iniquità e del diavolo esecutori», in Boccaccio, *Decameron*, III, 7, § 16, p. 278.

39 As also highlighted by GIANNETTO (2004), the *novella* repropose the exact dynamics of a real legal action. It should also be remembered that Giannetto demonstrates how the novella follows the pattern of a Senecian controversy, including in the order in which the characters speak: indeed, the *declamatio*, which is the real moment of the controversy, required «l'enunciazione della legge (*inscriptio legi*) e il *thema*, abbiamo dunque l'*accusa*, la *difesa dell'imputata*, l'*intervento di un testimone* (un accusatore-testimone che si trasforma in testimone a favore), il *giudizio* (quest'ultimo non sempre presente nelle controversie)» (pp. 96-97).

40 BESOMI (2004); BATTAGLIA RICCI (2007), pp. 76-77 and 80-83; BARSELLA (2009); KORNEEVA (2012); DÖERING (2014). For a contribution which is less focused on the legal implications of the novella, see MOROSINI (2000).

41 «Nella terra di Prato fu già uno statuto, nel ver non men biasimevole che aspro, il quale, senza niuna distinzione fare, comandava che così fosse arsa quella donna che dal marito fosse con alcun suo amante trovata in adulterio, come quella che per denari con qualunque altro uomo stata trovata fosse» in Boccaccio, *Decameron*, VI, 7, § 4, p. 530.

42 One cannot say whether such a law really existed because the statutes of Prato survived in a very fragmentary way. See LEE (1909), p. 179; PENNINGTON (1977), p. 902; KANNOVSKI (2008).

43 MARONGIU (1958).



adulteress ran the risk of death (in Milan, for example, by beheading), but usually lesser punishments were applied, including entry into a convent, the loss of her dowry or the payment of a fine<sup>44</sup>.

Filostrato criticizes the statutes of Prato, not only for their cruelty, but also for the fact that there is no distinction between adultery and prostitution<sup>45</sup>. The motivation of the action is ignored, with no difference being made between love – as in the case of Filippa – or the procurement of money.

Once the norm has been presented, Boccaccio proceeds to describe the case up until the accusation: Rinaldo de' Pugliesi discovers his wife in the arms of a lover, Lazzarino de' Guazzagliotri. Medieval law would have allowed Rinaldo to kill the lover and his wife if he acted immediately, but Boccaccio tells us that Rinaldo feared the consequences of precipitate action; why Rinaldo chose caution is not explained<sup>46</sup>. The next morning, though, he fearlessly obtains a summons which requires Madonna Filippa to answer the charge of

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44 It should be noted that similar provisions were provided for by various other municipal statutes: e.g. the statutes of Genoa (*Statuta et decreta communis Genuae*, f. 9<sup>r</sup>) and Ferrara (*Statuta urbis Ferrariae* 3.102, f. 153<sup>v</sup>). In secular law, the penalty for adultery was generally a monetary fine. See the Bolognese statutes of 1335 in TROMBETTI BUDRIESI (2008), VIII, 68, p. 694; DI RENZO VILLATA (1996). For a review of statutory legislation in the Middle Ages, see without pretension of completeness: STORTI STORCHI (2007), *passim*; STORTI STORCHI (2012); STORTI STORCHI (2009); finally, for an analysis of adultery with reference to *transactio* and *paces privatae*, see the pioneering work of PADOA SCHIOPPA (1976) and PADOA SCHIOPPA (1980); SBRICCOLI (1998); VALLERANI (1999); BELLABARBA (2001); again SBRICCOLI (2004); finally for an historiographical excursus during the early Middle Ages see LOSCHIAVO (2008).

45 Boccaccio, *Decameron*, VI, 7, § 4, p. 530.

46 The desire to kill his wife dates back to the Roman law from the Republican period according to which the husband could kill his wife if she was caught in the act of adultery. The *Lex Iulia de adulteriis coercendis* of Emperor Augustus made the killing of the adulterers dependent on different conditions: if the father caught his daughter in an adulterous act, he could kill her along with the lover, whatever his lineage or public office. The husband could only kill the lover and only in at the moment of adultery, while the father was not allowed to kill the lover without killing his daughter at the same time. The possibility of private revenge then entered into particular law and penitential literature. Canon law, on the other hand, prohibited taking justice into one's own hands: according to the *Corpus Iuris Canonici*, the husband who killed his adulterous wife was guilty of murder. See *Pauli sententiae, de adullteriis*, 2.26.14; Svetonio, *Vite dei Cesari*, Lib. II, *Augusto*, 67, 2; Tacito, *Annales*, 3, 24, 2; C. 9.9.29; I. 4.18.4. See BENNECKE (1884), p. 71; METTE-DITTMANN (1991), pp. 34-36 and 61-73; FAYER (2005), pp. 337-373.

adultery before the podestà<sup>47</sup>. Her family and relatives urge her to ignore the summons and to go into exile, but she refuses<sup>48</sup>.

The *podestà* is sympathetic to Madonna Filippa's plight. Boccaccio tells us that he is so impressed with her beauty and charm that he all but urges her to perjure herself. He carefully instructs her that if she does not confess, then he could not condemn her to death. However, she confesses her guilt unabashedly<sup>49</sup> and presents two arguments to the court which, surprisingly, result in an acquittal<sup>50</sup>.

She declares that the law could not apply to her because women in the past had not consented to this law, and they were not consulted when the

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47 «La qual cosa Rinaldo vedendo, turbato forte, appena dal correr loro addosso e di uccidergli si ritenne, e se non fosse che di sé medesimo dubitava, seguitando l'impeto della sua ira, l'avrebbe fatto. Ratterperatosi adunque da questo, non si poté temperare da voler quello dello statuto pratese, che a lui non era licito di fare, cioè la morte della sua donna. E per ciò, avendo al fallo della donna provare assai convenevole testimonianza, come il dì fu venuto, senza altro consiglio prendere, accusata la donna, la fece richiedere» in Boccaccio, *Decameron*, VI, 7, § 6-8, pp. 530-531.

48 In the *Gesta Romanorum* – VON OESTERLEY (1872), pp. 276-277 – under the title *Justum iudicium*, we read a 'short story' wherein the contours of Madonna Filippa's story are not hard to see: «Quidam imperator regnavit, qui statuit pro lege, quod si mulier sub viro adulterata esset, sine misericordia de alto monte precipitaretur. Accidit casus, quod quaedam mulier sub viro suo erat adulterata, statim secundum legem de alto monte fuit precipitata. Sed de monte tam suaviter descendit, quod in nullo lesa erat. Ducta est ad iudicium. Iudex videns, quod mortua non esset, sententiam dedit, iterum [de-beret] precipitari et mori. Ait mulier: Domine, si sic feceritis, contra legem agistis. Lex vult, quod nullus debet bis puniri pro uno delicto. Ego eram precipitata quia semel adulterata, et deus me miraculose salvavit, ergo iterato non debeo precipitari. Ait iudex: Satis prudenter respondisti. Vade in pace! Et salvata est mulier».

49 Filippa confesses to the adultery and justifies it by saying that it happened «for good and perfect love» which she felt for her lover. Such a concept from the lyrical tradition was opposed to the law of marriage. See the comment by Branca, which explains that «per buono e per perfetto amore» is to be read as an «[e]spressione della tradizione lirica e cavalleresca già ricorsa nel *Decameron* (III, 5, 21) e cui danno rilievo i quattro endecasillabi di seguito che avviano l'inizio baldanzoso della parlata di madonna Filippa (La donna [...] notte)».

50 BATTAGLIA RICCI (2007), pp. 81-82, underlines that Filippa uses arguments from the legal field: «Gli argomenti che madonna Filippa adduce per convincere il suo giudice, e dimostrare la legittimità dell'adulterio, non derivano infatti [...] dai manuali di quell'amore cortese che non pare del tutto estraneo al "buono e perfetto amore" (§ 3) che stringe la "gentil e bella e oltre a ogni altra innamorata" (§ 5) madonna Filippa al "gentile uomo che più che sé la ama" (§ 17) [...], ma derivano dalla tradizione del dibattito forense».

statute was first made<sup>51</sup>. Consequently, it was bad law. Laws, she said, must have the consent of those who are affected by them. She tells the *podestà* that her argument would be familiar to him, and, indeed, it should have been. Although Madonna Filippa's situation is outlandish, her argument is a common staple of medieval thought. She uses a legal clause of canon law that Boniface VIII had recorded as *regula iuris* general in the *Liber Sextus* in 1298: «Quod omnes tangit debet ab omnibus approbari»<sup>52</sup>. Filippa claims that the statute mentioned by her husband and by the *podestà* is not legally stipulated and therefore is not valid. The law should be called «bad law» because no woman has ever been called to give her consent<sup>53</sup>.

However, Madonna Filippa was not satisfied to let the matter stand with only one argument. She next asks her husband whether she had ever denied him her body, and he admits that she has been a compliant wife. She then retorts: «What am I to do with the surplus? Throw it to the dogs?»<sup>54</sup> Far

51 The implicit quote of Madonna Filippa returns to a famous text of Roman Law, that it contains the definition of Papinian's legal norm: «Lex est commune praeceptum, virorum prudentium consultum, delictorum quae sponte vel ignorantia contrahuntur coercitio, communis rei publicae sponsio» (D.1.3.1).

52 Bonifacius VIII, *Liber VI*, tit. *De regulis iuris*, *Regula XXIX*, col. 1122. *Contra Conetti, Il collasso dell'ordine giuridico medievale e il diritto naturale nel Decameron*, p. 117. For a brief discussion of the maxim and its origins and importance in medieval thought, see KANNOVSKI (2008), p. 53; PENNINGTON (1970); HALL (1972), spec. pp. 131-132; once again, PENNINGTON (1977), pp. 903-904.

53 In the Middle Ages it was very difficult, if not impossible at all, to argue that women were members at all the effects of the municipality and therefore that their consent was necessary to confer to the municipal law the *status* of legal norm. With regard to this thought, Madonna Filippa also comes into conflict with Cino da Pistoia, who, commenting on D.1.3.1, states that «Argue etiam ex hoc, quod dicit, videtur quod in lege condenda non debent adhiberi mulieres: quia hoc dicit, virorum prudentium. Et ex hoc inducitur, quod consensus mulierum non inducit consuetudinem, quod est ius». Cino denies that women's participation in the legislative phase is admissible. It also denies that women's behavior can be implemented a customary norm, and therefore, with implicit specularity, that they can induce to the desuetudine. Cynus Pistoriensis, *In codicem et aliquot titulos primi pandectorum tomi, id est, digesti veteris doctissima commentaria*, II, comm. ad D.1.3.1, f. 7<sup>r</sup>.

54 The allusion to Matthew 7.6 underlined the relationship of Boccaccio's alimential and sexual-excess metaphor and gave Madonna Filippa's second argument a paradoxical justification; Boccaccio may have even known that 'sacrum' was sometimes a euphemism for a woman's body. The story, then, derives its humor from Boccaccio's parody of a legal maxim and of a biblical quotation, and these two subtle allusions give substance to a tale which might otherwise appear to be a shallow piece of wit.

better, she continues, to bestow it on her lover than to let it spoil or go to waste<sup>55</sup>.

Filippa is therefore able to turn the plaintiff into his own witness. Furthermore, her question reveals how the law considers marriage: as a contract involving the body and sexuality of the husband<sup>56</sup>. If a marriage is reduced to satisfying sexual obligations, Filippa has respected her part of the contract.

Madonna Filippa's very pointed speech meets the approval of the citizens of Prato. That they change the law on the spot is a stroke of good fortune for the accused, but it also highlights the arbitrary nature of the statutes<sup>57</sup>, which are nothing more than social conventions negotiable through skillful rhetoric. The outcome of the judgment is clearly unfair and paradoxical both on the formal and on the substantive level. On a formal level, a rule that could have been avoided was to be applied immediately; on a substantive level, an adulteress caught in the act, and therefore subject to some sort of punishment – if not under statutory law than at least under common Roman law – was absolved of her crime. Boccaccio presents the amused reaction of the people: everyone laughs because the law has been mocked. By attacking the logical elements of the legal system in her proceedings, Madonna Filippa manages to be in the right: she succeeds in mocking the system from within. Thus, the relativity of law is on full display: it is enough to be witty and specious like Filippa for those in the wrong to be found in the right.

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55 «Che voi mio marito domandiate se io ogni volta, e quante volte a lui piaceva, senza dir mai di no, io di me stessa gli concedeva intera copia o no [...] domando io, messer podestà, se egli ha sempre di me preso quello che gli è bisognato e piaciuto, io che doveva fare o debbo di quel che gli avanza? Debbolo io gittare ai cani? Non è egli molto meglio servirne un gentile uomo che più che sé m'ama, che lasciarlo perdere o guastare?» in Boccaccio, *Decameron*, VI, 7, p. 532.

56 BARSELLA (2009), p. 19 also highlights the contractual logic of the statute: «La domanda (di Filippa) fa deviare il dibattito su un piano che mette a nudo la logica ultima che regge lo statuto, una logica che – come ha rilevato Giuseppe Mazzotta – considera non solo il corpo ma l'astratto campo della sessualità alla stregua di una merce su cui si può imporre un diritto di proprietà o di possesso, e che al pari di ogni merce sottostà alle leggi della quantificazione, dell'utile e del consumo».

57 Such is the conclusion of MAZZOTTA (1986), p. 231: «Filippa, in short, manages to turn her trial into a judgment of the law that should have judged her and forces its revision. The change her argument causes implies that laws are arbitrary conventions and that there is no necessary and immutable relation between *nomos* and *phusis*». Moreover, the novella even alludes to the flexibility of the statutes. See CHITTOLINI (1997). See also the essays published in the volume of KELLER-BUSCH (1991).

#### 4. Conclusion

The analysis of these novellas makes it possible to draw the first conclusions on the relationship between law and literature in Boccaccio's masterpiece. First of all, it can be seen that from the reading of the *Decameron* does not emerge a sort of analytic overview of the principles and operations of the law that punctuate the fourth book of John of Salisbury's *Policraticus*<sup>58</sup>, where the provisions of the *Corpus Iuris Civilis* and those of *Deuteronomy* are combined with the aim of producing an elaborate theory of statecraft, nor can we expect something like Dante's iconography of justice<sup>59</sup>. Boccaccio goes to the core of legal thought, to the source of legal and moral authority, which both canonists and theologians posit as *Lex naturae*. He even dramatizes tensions in the concept of the law, which simultaneously appears as both ethical and rhetorical issue.

Furthermore, the examination serves to highlight what is probably a narrative device employed by Boccaccio; just as the disappearance of law and order is fully revealed in a catastrophe such as that of the plague, so too is it present, albeit under the surface, in everyday life. To the readers of the *Decameron*, the daily breakdowns in the legal order seem to be hidden within the progress of the story, wherein they actually play a positive role overall. These dysfunctions show the contradictions and fragility of the legal system, which emerges as soon as we compare the narratives with contemporary contexts, with legal practice, with statutes, with procedural law and with science law. Likewise, for brigata, an exceptional situation such as the plague was needed to understand how the legal order was in fact constantly being circumvented.

The captivating rhythm of the narrative and the sympathy aroused in the reader by the protagonists of the stories should not obscure the objective

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58 See i.e. GRELLARD, LACHAUD (2014), 1-30 and SASSIER (2014), pp. 235-257.

59 Dante's work and thought clearly operated within a legal framework. The centrality of law is seen above all in the *Divine Comedy*: Dante imagines the afterlife as a highly regulated administrative structure, endowed with a complex network of local laws, hierarchical jurisdictions, well-calculated punishments and rewards. More than the citations of legal texts, which are however present in the work, are these forms of the right to express the poet's position towards the law and justice. On Dante and justice see the works of GILBERT (1925); CASSELL (1984); MAZZOTTA (1993); DI FONZO (2007); FERRARA (2012); GROSSVOGEL (2012); STEINBERG (2013). For Dante's interventions in the legal conflicts between the Church and the Empire, see MACCARRONE (1951); TILL DAVIS (1957).



message that the narration itself conveys. There are stories that today would be labeled, in common language, as 'judicial errors'. If the law worked, Martellino - accused by false witnesses and subject to the illegitimate persecution of the court - would be acquitted without any need of help from high-ranking people. It is evident in *novella* II, 1 (but also in others) that law and order disappeared silently from everyday reality<sup>60</sup>.

Nonetheless, more than any other novella, it is *novella* VI, 7 which best represents Boccaccio's knowledge of law and his critical eye towards legal issues.

Contrary to natural law, which is immutable and directly visible to reason, positive law requires creation, interpretation and application. In this novella, the weaknesses of positive law are made visible in a playful and entertaining way. With Madonna Filippa, Boccaccio creates a transgressive character (historically quite improbable) who has a provocative attitude towards law from a position outside the legal system. As a woman, she is excluded from the legislative procedure, but thanks to her courtly virtues, her exceptional capacity for feeling and her *bone eloquence*, she belongs to a literary space from which she can question the rules of positive law. With the final success of Madonna Filippa, poetic order prevails over legal order. In its reading of a legal *casus*, the *novella* does nothing but reiterate the importance of laws in the *Decameron*. Although there are no other short stories that, like this one, reveal Boccaccio's interests in legal matters, their infractions and, consequently, the judicial risks resulting from them, it is undeniable that the role of laws is fundamental both in relation to the corpus of the novellas and – perhaps even more so – as regards the frame story.

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60 If one compares what is described in the novellas with the treaties or the statutes of the penal law, it is clear that the historical reality was different. See STEINBERG (2017).

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