The consequences of emotions undergird the languages and institutions of society. The physical and mental capacity to have emotions is universal, but the way these are expressed depends on the personal tendencies and cultural norms shared within the social community where they are manifested. Lucien Febvre wrote in 1941 that emotions are constructed, shaped and shared by the societies from which they arise and have an essential weight in the culture they themselves have generated, so that “emotional life [is] always ready to overflow the intellectual life”. More recently, Barbara H. Rosenwein has maintained that ‘emotions depend on language, cultural practices, expectations, and moral beliefs. This means that every culture has its rules for feelings and behavior; every culture thus exerts certain restraints while favoring certain forms of expressivity [...] they are created by each society, each culture, each community’. “People lived – and live – in [...] ‘emotional communities’. These are precisely the same as social communities – families, neighborhoods, parliaments, guilds, monasteries, parish church memberships – but the researcher looking at them seeks above all to uncover systems of feeling: what these communities (and the individuals within them) define and assess as valuable or harmful to them; the evaluations that they make about others’ emotions; the nature of the affective bonds between people that they recognize; and the modes of emotional expression that they expect, encourage, tolerate, and deplore”.

The language of justice adopted in the political trials that took place in urban society during the age of the communes is one of the starting points for reading the process of disciplining set in motion, beginning in this period, all over the western world. The strongly emotional language found in the sources is aimed at creating consent by repressing dissent. The numerous public trials celebrated in communal Italy, and the exemplary sentences meted out, reveal the necessity of those in power to legitimate themselves in the eyes of all of society. The trials and sentences appear as symbolic acts whose purpose is the control of a city-state in the grip of violent emotions, with a strong impact on the strategies of the political alliances, undermining their stability at its very base.

Political exclusion plays a central role in the study of the language of justice in the age of the communes. For some years now, scholars have paid increasing attention to the different forms in which this practice of justice has been expressed. Numerous studies have brought out how political exclusion became an instrument of justice usually utilized at the end of street conflicts between individuals or whole families. The emotional impact determined by sentences handed down by the city courts has the effect of exile, about which historians of law debate whether it should be considered a move on the part of an individual to escape a specific punishment or a real penal sanction. The force and power of exile are very clear even in classical antiquity if we remember that in Roman law, which would influence greatly the constitutions of the cities in Italy during the age of the communes, this juridical practice was an option offered to a citizen to escape punishment by running away. The praxis was thus considered in antiquity to

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1 L. Febvre, “La sensibilité et l'histoire: Comment reconstituer la vie affective d'autrefois?”, *Annales d'histoire sociale*, 3 (1941), pp. 5-20.
be a refuge granted to someone sent *extra solum*, in other words one forced to live outside the bounds of his home community.\(^5\)

The communal society that developed in northern and central Italy in the late Middle Ages complicates the methods of this political praxis, thus exclusion practiced by the public authorities – even though it always resulted in the denial of community privileges – began to be imposed by means of the ban, a monetary fine usually so high that it was practically impossible to pay, which implied an indirect and sophisticated form of exclusion. Around the turn of the fourteenth century the holders of political power found themselves in the condition of judging political opponents using the formula of the political trial in which were handed down exemplary sentences aimed at repressing dissent by way of messages directed towards the watching citizenry. Florence, for example, experienced during this period at the end of the thirteenth and the early years of the fourteenth centuries a transition from an aristocratic-type government to one based on popular support, from a phase of consul/podestà rule in which the old landed aristocracy, now living in the city, were in charge of its government, to a phase in which the people, thus the guilds, held the levers of power. While in the first phase it was the Guelphs and Ghibellines (both factions made up of the nobility) who wrested political power back and forth from each other, handing out, when they were on the winning side, bans and exile to their defeated enemies, in the second phase the government of the guilds used these political tools, systematically excluding a nobility no longer in fashion and associated with violence and political dissidence.\(^6\)

When a sentence of ban was issued, it was not so much a sanction inherited from long-standing customs as it was a safeguard adopted by authorities against the failure to execute an order. The etymological root of ban comes from the German *binden* (to bind), because the sovereign binds the community to himself by means of a command, punishing those who transgress against it. The necessity to punish internal enemies takes concrete form in variable procedures that can be connected with the different images of them taking shape in the various political, economic, cultural, and social situations of the Italian communes. If initially, especially in its perpetual version, the ban was a highly versatile tool which could be used against political opponents, murderers and counterfeitters indiscriminately, in the course of the thirteenth century it began to be utilized also for those who committed petty crimes. Considered in the same category as ordinary criminals, political enemies became guilty of having made an attempt on the juridical functions of the commune and its property and putting the city’s institutions and prosperity at risk, thus threatening the life of the community. During the fourteenth century it evolved further; on one hand we see a criminalization of political offenses, and on the other a politicization of common crime, both of them viewed as criminal events that undermine public authority. The sanctions against those who committed these crimes had to be severe; therefore, perpetual exile became the inevitable punishment. This phenomenon was the result of the progressive centralization of power in the hands of the highest echelons of the city, who were busy imposing a public character on any behavior deviating from government decisions. Thus political ban was used as a tool for acquiring and preserving power.\(^7\)

In the language adopted by the judiciary system in the age of the communes, the citation ordered by the judge usually indicates the names of the presiding judge and the defendant, and the reason for coming to trial. In Florence, for example, the statutes of the podestà of 1325 call for the citation to be read aloud in the streets of the city by the town crier on horseback, after

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trumpet-calls, in front of the defendant’s house and in the most frequented places of the six city districts. It also called for the six town criers, one for each district, to present a written report that the proclamations had been effected in the most important places in the city. Once the citations had been carried out, the magistrate proceeded to “find out the reason for the facts” (rerum cognoscere causas) and to acquire judiciary evidence of the crime, either from witnesses or a confession or on the strength of legal presumption resulting from the absence or flight of the defendant. The judge then fixed a date by which the criminal had to appear and handed down a punishment – usually a fine – in the case of a defendant being declared guilty in absentia. If the defendant was present at the trial, the judge obligated him to swear to the truth and then questioned him concerning the accusation against him. The questioning took place in a public hearing, with the answers being transcribed by a notary. If the defendant did not confess, the Statute of the People and Commune of Florence stated that the judge should authorize the practice of torture, granting the defendant one day’s time to respond before the torture was enacted. After twenty-hours had passed, the judge could proceed with torture, in the presence of a notary whose task was to record confessions in writing.

In cases in which the criminal was prosecuted “because of public knowledge”, two witnesses were sufficient to affirm the truth of the charge against him. If the defendant was a magnate and his offense was against a commoner, one witness was enough. If the defendant did not appear at the trial, and his absence could not be explained by any of his relatives, he was considered to be in absentia, and his absence was viewed as confession of the crime with which he was charged. In cases when the defendant did show up as directed, he was put on trial, and if his innocence was evident then the judge could proceed with acquittal. The Florentine statutes confirm that if the judge’s sentence called for corporal punishment, this had to be carried out immediately; if the punishment was pecuniary in nature (ban), the convicted person had to be given time to gather together the financial resources necessary to pay his fine to the commune. In cases in which the convicted person let the time established by the judge run out, and thus did not pay the amount decreed by the court, the judge had the authority to hand down a second sentence to convert the fine into physical punishment. By assigning to the judge the ability to investigate, put on trial, condemn, ban exile, and subject to torture, the statutes gave this magistrate unlimited power of judgment, leaving defendants his honesty as their only guarantee of justice. The podestà, assisted by judges (who advised him in handing down sentences) and notaries (who acted as clerks of the court), administered justice in civil and criminal matters. The judges in his court were assigned areas of competence based on the type of crime to be adjudicated.

Paul R. Hyams has shown that in Norman England, even though the monarchy offered increasing judiciary instruments and the church a system of values for making peace, men and women continued for a long time to prefer vendettas and feuds as ways of redressing wrongs; compared to a desire for reconciliation, these afforded full satisfaction to emotional rancor.

Studying the judicial documents of Marseilles from mid-thirteenth century to the beginning of the fifteenth, Daniel Lord Smail brought out that the contenders used the arena of court trials not so much as a place for rational confrontation as rather a stage on which to express their emotions.

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10 Ibidem, I, 2, p. 18 (De officio iudicum collaterulium Potestatis) and I, 3, pp. 18-19 (De officio sex indicum Potestatis).

rancor, and insults publicly, and in this way to take revenge on their enemies in front of a community of onlookers with whom to negotiate social sanctions.\textsuperscript{12}

Kiril Petkov has devoted a study to the rite of reconciliation with a kiss exchanged by the two parties as a sign of peace in various late medieval societies, stressing the “emotional economy” of this ritual, examining the motives of the two sides, the effects of gestures, and the mnemonic use of the body as tools for constructing a value system consistent with morality and the social order.\textsuperscript{13} Investigating the emotions of revenge in the early Middle Ages, Barbara H. Rosenwein highlighted how each “emotional community”, each social group that expresses its evaluations and emotional expressions in a specific way perceived the emotions of revenge differently, as a family duty to be carried out without anger, as a state of envy, or as an expression of cruelty.\textsuperscript{14}

The hostility rife in Italian cities during the age of the communes fits in the channel of these analyses. In the course of the thirteenth century, the cities were torn apart by the struggle between Guelphs and Ghibellines, and in the closing years of the century by the division of the Guelph party into White and Black Guelphs. These divisions gave rise to alliances, clienteles, and protections, but also the capacity to attract followers and to become the head of a coalition that could lead, for a more or less long time and thanks to the distancing of all opponents, the entire structure of the city. Dante’s lines help us understand the situation in one of the most important city-states of central and northern Italy, Florence, seen by the poet as a restless patient who tosses and turns in bed in search of a position that will ease her agitation (“like that sick woman / who finds no rest upon her feather-bed, / but, turning, tossing, tries to ease her pain”),\textsuperscript{15} controlled by a complex judiciary system that helps make it impossible for one person or group to be definitively dominant. Referring to the late thirteenth-century confrontations between White and Black Guelphs, Dante wrote: “After long controversy / they’ll come to blood; the party of the woods / will chase the other out with much offense. / But then, within three suns, they too must fall; / at which the other party will prevail, / using the power of one who tacks his sails”.\textsuperscript{16} Here the poet gives us once again an image of a city in the throes of a continually shifting political balance, condemned to be the stage for the clash between opposing factions constantly fighting each other for power.\textsuperscript{17}

The political power intrinsic in each community as a mystic body must not be imperiled. The social body is sacred, just as the space that encompasses it is sacred. Anyone who places himself outside this axiom contravenes against a set of shared rules that find their foundation in communal society. Anyone who attacks the bonum commune cannot remain a part of the civic consortium because he is a source of disturbance. He must be put outside. The dichotomy between center and periphery, inside and outside, is pronounced in the communal cities, and it is


\textsuperscript{15} “[…] a quella inferma / che non può trovar posa in su le piume, / ma con dar volta suo dolore scherma”: Dante Alighieri, \textit{La Divina Commedia}, ed. by F. Chiappelli, Milan 1965, \textit{Purgatorio}, VI, 148-151 (online translation: http://www.worldofdante.org/comedy/dante/purgatory.xml/2.6).

\textsuperscript{16} “Dopo lunga tencione / verranno al sangue, e la parte selvaggia / caccerà l’altra con molta offensione. / Poi appresso convien che questa caglia / infrà tre soli, e che l’altra sormonti / con la forza di tal che testè piaggia”: Dante, \textit{La Divina Commedia, Inferno}, VI, 64-69 (online translation: http://www.worldofdante.org/comedy/dante/inferno.xml/1.6).

precisely through this image of spatial differentiation – as an integral element of the organization of society – that the repression of murderers, thieves, homosexuals, heretics, and political dissidents can be legitimated. All those who transgress against the shared laws, those who threaten the ethical norms, those who work to overturn the customs and models on which the principles universally recognized by society rest are included in the sphere of “differentness” that leads to repression. Anyone who threatens the public good endangers the unity of the community and automatically legitimates the community’s right to repress him. The threat to the community’s unity must be prevented, and the violent repression against the dissident, as a countermeasure, becomes a sacred act because, as René Girard points out, “the foundational unanimity transforms bad violence into stability and fecundity”.18

The widespread perception among the citizenry of the sacredness of the space inside the city authorizes repression of dissent by public authorities. The degree of ceremonial effectiveness of judicial executions is directly proportional to the ability to make punishment public. Expiation of the punishment each time renews the social bond between communitas and citizens and becomes a political tool to be used to gain consent. The sites of public life, such as the town hall, the church steps, and the main squares are the places where corporal punishments are carried out as a function of the crime committed and in keeping with the social rank of the convicted person. The town square, where traditionally the stocks, pillories, cages, and columns were set up, becomes the place where justice makes an example of public executions, ever more solemn and formal, ever more imbued with codified ritual.19

The statutory laws, as we have seen, called for the sentence to be read aloud in the city streets so that the words declaimed by the town crier would resonate beyond the interested parties to become a clear and obvious warning for the entire community. The town square was the place par excellence to expose the guilty to public scorn, and the column placed in its center served as a brake on an increase in crime. The Dominican friar Thomas Aquinas wrote in his Summa Theologica that public renown is a result of a person’s good reputation and thus is the only way possible for man to achieve eternity. Infamy is the fate of a condemned felon because this act damages, and thus destroys, his political reputation forever. Communal society legitimated the repressive forms of its judiciary system and welcomed Thomas’s words, considering repute to be an essential element of the justice handed down by the courts through ban, exile, and capital punishment.20

Good and evil became increasingly well-defined social categories among those who were inside or outside the sacred precinct of the city community. The walls of the town hall, the city gates, and the façades facing onto the main square became the canvases for a new kind of painting aimed at degrading the dignity of those who had lost their social standing. The punishment of displaying a picture of betrayers of the social order in the places having the greatest social importance fell to anyone who was found guilty of betrayal, falsification, bankruptcy, or arson. The face of authority was no longer revealed only in the rites of Christian


pardon, because now it took concrete form in the repression of dissent and the violence of
punishment of offenders against the good government of the community. This type of painting,
widespread in Italian cities during the fourteenth century, aimed at stigmatizing a person’s image,
irreparably damaging, through an appeal to a strong emotional reaction, his name, respect, and
honor.21 The portrayal of capital executions became a well-established subject in the figurative
arts. And precisely its spread as a genre helps us grasp better than other forms of witness the
degree of reception achieved by this propagandistic expression.22 The lists of executed prisoners
include habitual felons, members of marginalized social groups, vagabonds, offenders against
shared norms, violators of the rules in effect inside the sacred space, petty criminals, and
powerful figures like Walter of Brienne, the Duke of Athens who was not only expelled from
Florence but also “painted to spite and shame him”.23

The widespread pedagogy of terror was intended to offer the crowd the sight of the
physical mutilation imposed by those in power, whose aim was to wipe out any memory of the
enemy in the collective imagination of the entire society. City chronicles describe executions and
other scenes of justice, stressing their value as examples. It is not the number of occasions on
which these pictures could be displayed or seen that gave a political value to such acts, but rather
the symbolic value that rooted them in the collective memory. They are a form of
communication that, through images, marks off the passage of time, as shown in Bologna, where
a young citizen, after being tortured by the public authorities, confessed to having attempted to
detach the fresco defaming his father in the city’s town hall.24

In 1292 in Florence, the regime of the people initiated a repression against the magnates
by publicizing their bad behavior; the painter Fino da Tedaldo was given by the Commune the
commission to paint in the Palazzo del Bargello a defamatory picture of people plundering the
state coffers. This was a grotesque allegory whose purpose was not to narrate individual episodes
but to stigmatize the greed typical of the magnates and of all who wanted to appropriate the city-
state’s resources for themselves.25 In Venice in 1310 the infamy of the memory of the Tiepolo
family, who had tried to take power in the city, was stigmatized with an inscription memorializing
this attempt at insurrection by placing on a column of the ruined family home an epigraph which
read “This land was Bajamonte’s and now, due to his iniquitous betrayal, it is confiscated because
he made an attempt on the common good, in order to show everyone how right-minded citizens
behave”.26

In the course of the first decade of the fourteenth century, in Siena the councils of the
commune discussed this topic assiduously, “in council [...] what to do about the falsifiers painted
in the palace and houses of the commune of Siena, if these paintings should be erased or not”.27
The council put this same topic on the agenda in 1330, when Simone Martini was given the
commission to paint in the Sala dei Nove the upside-down image of Marco Regoli, a rebel against

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21 F. Ricciardelli, “La distruzione della memoria politica a Firenze nel Rinascimento”, in I luoghi del sacro. Il sacro
22 F. Migliorino, Fama e infamia. Problemi della società medievale nel pensiero giuridico nei secoli XII e XIII, Catania
1985, pp. 73-83.
378.
24 Lansing, Passion and Order, p. 181.
see M. Sbriccoli, “La benda della Giustizia: iconografia, diritto e leggi penali dal Medioevo all’Età moderna”, in Ordo
turis: storia e forme dell’esperienza giuridica, ed. by M. Sbriccoli, P. Costa, and M. Fioravanti, Milan 2003, pp. 41-95. See
26 “De Bajamonte fo questo terreno, e mo per lo so iniquo tradimento, posto in comun et per l’altrui
spavento, e per mostrar a tutti sempre senno”: quoted in A. Zorzi, “Rituali di violenza, cerimoniali penali,
 rappresentazioni della giustizia nelle città italiane centro-settentrionali (secoli XIII-XV)”, in Le forme della propaganda
27 “In consello [...] che sia da fare de’ falsatori dipinti nel palazo et case del comune di Siena, se esse
dipurrence sieno da spegnere o no”: Il Costituto del comune di Siena volgarizzato nel MCCCCIX-MCCCCX, ed. by A. Lisini,
Siena 1903, II, pp. 271-272.
the commune who had been sentenced to die by hanging. The Florentine statutes of the Captain of the People of 1322-1325 point out that punishment in effigy inevitably involved the whole community of workers belonging to the miscreant’s guild because of the stain that spread from the individual to affect the guild itself, and emphasize that if a merchant who had gone bankrupt managed to flee, the podestà and Captain of the People were obliged “to have his likeness painted on the walls of the palace of the Podestà so that it can be seen openly and publicly.”

Documentation of the age of the communes continually and repeatedly makes evident an atmosphere of civil war with which people had to live constantly and shows us that the social humiliation produced by the condemnations handed out by the judiciary system was never erased by a simple swipe of the sponge. From these conflicts emerge heavy pecuniary sanctions like the destruction of property, hanging, decapitation, burning at the stake, and being dragged through the city tied to the tail of a mule. The emotions aroused by these punishments in the people suffering them and those seeing them enacted give us the measure of the atmosphere of violence in which people were forced to live. Even if the city governments continued to be torn apart by struggles between factions and devastated by street fighting, the common good became an ideological projection of reality. In opposition to this situation of constant conflict, the necessity arose to promote harmony in the city, which could be guaranteed only by a shared recourse to justice. The judiciary system took upon itself the right to place on the margins, exclude, or deprive of life, and assumed the role of guarantor of peaceful civic coexistence, becoming in this way the supreme manifestation of divine sovereignty. The Biblical maxim “Diligite iustitiam qui judicatis terram” (Love justice, you who judge the earth) spread rapidly throughout communal society and took center stage in the language of political propaganda. The emotional language of justice now had to be handled virtuously and became able to reward the good, punish the bad, placate factional conflict, control violence, and ward off tyranny.