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Ius mercatorum and statutes of Florence during the 14th and 15th centuries: The case of bankruptcy*

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Abstract
During the Middle Ages, bankruptcy law developed within the ius mercatorum to respond to the specific trade needs of merchants. Although, the municipal statutes of Florence, between 1322 and 1415, regulated bankruptcy. Why did they intervene on a subject that should have been disciplined by special commercial laws, like the Mercanzia's or the Arts' statutes? The answer could lay on the mark of shame that hit bankrupts and the on great impact that a bankruptcy used to have on the life of the entire civitas. Indeed, in the public opinion, a bankruptcy appeared as a strongly antisocial phenomenon and legislators qualified it as gravely anti-juridical, ordering a particularly repressive discipline, also for all members of the cessans' family. Furthermore, the dissatisfaction of foreign creditors could provoke harmful consequences also for the citizens of the bankrupt's town who lived in the country of origin of the same creditor, if this latter decides to use reprisals. A bankruptcy, therefore, was likely to cause damages to such an extent that it was a city's authority concern to discipline its consequences. From this perspective, in this article, we will proceed to analyze the rules about bankruptcy of the Statutes of the city of Florence, trying to compare the regulations of the different compilations of 1322, 1355 (still not published), and 1415.

Keywords
Bankruptcy, statutes, Florence, Middle Ages, merchants

In his monography about the Italian history of bankruptcy of the Middle Ages, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia,* Umberto Santarelli highlighted the autonomous origin of the most ancient Italian statute laws: the medieval legislator forged the municipal laws in order to satisfy contemporary needs, without any reference to the previous tradition of Roman law.

Since bankruptcy law built up within this new legal framework, it grew as a medieval novelty and scholars started to study and analyse it renouncing to refer to any Roman law approach[1].

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[1] Santarelli, U., *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia,* Cedam-Casa Editrice, Padova, 1964, pp. 24-25.

Like Santarelli, other authors supported this theory about the medieval origins of bankruptcy, as Jean Hilaire, in his *Introduction historique au droit commercial*, who referred about the originality of this medieval institution: bankruptcy was born to meet the demands of trading and it was stricltly connected to the role of the merchant[2].

Although among Italian scholars there are into two different schools of thought about the historical origins of bankruptcy law, counterposing the Roman law roots and the medieval statutory law ones, we can say that Roman law did not elaborate systematically bankruptcy law. There are only a few elements, like the *missio in possessionem*, the *bonorum distractio* or the seizure, which can be taken into consideration as a reference for the medieval legislators, which the Middle Ages recovered in order to create a bankruptcy law[3]. Law texts from the Ulpiano and Papiniano Digest, for example, which revealed that the Roman law regulated the banker's insolvency[4], beside many legal instruments as the *cessio bonorum* or the *bonorum venditio*, were only isolated legal institutes, far from represent a full system of rules.

Therefore, during the Middle Ages, bankruptcy was an innovative legal institution, compared to the well-known branches of Roman law, which regulated insolvency without making any distinction between individuals and personal partnerships or corporations, merchants and non-merchants. Later, to respond to the new needs of society, bankruptcy acquired its own identity, in a time of greater growth and development of trading, production and wide-ranging exchange, in Florence, as in other cities of the north of Italy.

Between the XIIIth and the XVIth century, indeed, the Florentine Constitution had a corporative structure: the city's political system used to lay on the *Arti*, the Florentine guilds, that represented the political bodies in which economic forces were settled. They reached a strong economic power in Florence and a correspondent position of preeminence also in terms of political power. Nonetheless, in the hierarchy of legal sources, which was still not systemantic at that time, the *Arti*'s statutes could never breach the municipal ones[5].

Within this political-institutional frame, marked by the hegemony of the merchant class and the autonomy of guilds, the *ius mercatorum* found the conditions for a development, in order to create new legal frameworks and institutions. Such as the *compagnie*, family associations where a joint and unlimited liability lay on the element of trust, later evolving into the current general partnership; or the *commenda*, another partnership which probably came from the Middle East[6].

[2] Hilaire, J., *Introduction historique au droit commercial*, Paris, Presses universitares de France, 1986, p. 311.

[3] Panzani, L., Il fallimento e le altre procedure concorsuali, Vol. I, UTET Giuridica, 2012. p.32.

[4] Nardi, P., Studi sul banchiere nel pensiero dei glossatori, A. Giuffrè Editore, 1979.

[5] Doren, A., Le Arti fiorentine, Firenze, Le Monnier Editore, MCMXXXX-XVIII, vol. II, p.220.

[6] Amend-Traut, A., "Legal Structure of Early Enterprises-from Commenda-like Arrangements to Chartered Joint-Stock Companies (Early Modern Period), *The Company in Law and Practice: Did Size Matter? (Middle Ages-Nineteenth Century),* (Dave De ruysscher, Albrecht Cordes, Serge Dauchy & Heikki Pihlajamäki eds.), Leiden, Brill, 2017. See also Pryor, J.H., "The origins of the commenda contract", *Speculum, Vol. 52, No. 1 (1977), pp. 5-37.*

This latter differed from the *compagnia* in terms of limited liability of the 'capitalist' members and represented the original form of today's limited partnership company[7].

Italian merchants started to use partnerships to share risks, especially in seaside towns, after the conquest of Pisa (1406) and after the great bankruptcies of the late XIVth century, which demonstrated how a devastating crush could always occur, regardless of *fortuna maris*.
Besides, bankruptcy regulations necessarily developed, and it was the more indispensable the greater the development of commercial relations of the merchant class, both within the municipal area and abroad.

It was then, during the early years of the XIV century, probably in 1308, that five of the so-called *Arti Maggiori* of Florence gave birth to a new court, a commercial jurisdiction, called *Mercanzia*.

Originally in charge for reprisals' cases against the city of Florence and its citizens, its statute from 1312 enlarged its competence to the entire regulation of economic relationsips between Florentine merchants and foreigner ones, including bankruptcy cases too.
Over the years, it rapidly became the supreme body for regulation and control of local and international trade[8], overcoming the role of a simple commercial court.

However, in this article, I will consider only bankruptcy law as regulated within the Statutes of Florence between 1322 and 1415, without taking into account all the other *iura propria*, as the *Arti*'s or *Mercanzia'*s statutes,

In particular, I will study the *Statuto del Capitano del Popolo* and the *Statuto del Podestà* of 1322-25 (*Statuti della repubblica fiorentina*, edited by R.CAGGESE, in the new edition by G.PINTO, F.SALVESTRINI, A.ZORZI, of 1999), which are the earliest surviving statutes. The vernacular version copies of the *Statuto del Capitano del Popolo* and of the *Statuto del Podestà* from 1355 preserved at the *Archivio di Stato di Firenze*, and the *Statuta populi et communis Florentiae publica auctoritate collecta castigata et praeposita anno salutis MCCCCXV. Friburgi* [i. e. Firenze], *apud Michaelem Kluch* [i. e. Stamperia Bonducciana], [1777] - *1781* [i.e. 1783]. 3v, in 4°.

In a multicentric legal framework as the one Italian cities were embedded in, during the Middle Ages, the first problem was to figure out the place of Municipal Statutes within the hierarchy of laws, in order to understand, on one hand, how the different sources were related to each other, and, on the other hand, the hierarchical relationship which governed political authorities which issued them: the Municipality and guilds.

Statutes norms about bankruptcy, for example, did not refer to the *Universitas Mercatorum* until 1415, despite the fact that this court existed and had an intense activity since the first decade of the fourteenth century (1308). That happened because the municipal legal framework was not systematically structured and issues were fragmented among multiple sources. As a substitute of

[7] See Sapori, A., *Compagnie e mercanti di Firenze antica*, Firenze, Giunti-Barbera Editore, 1978. See also Sapori, *La crisi delle compagnie mercantili dei Bardi e dei Peruzzi*, Firenze, L.S.Olschki Editore, 1926 and Sapori, *Studi di Storia Economica*, Biblioteca Storica Sansoni, 1967.

[8] Astorri, A., *La Mercanzia a Firenze nella prima metà del trecento, Il potere dei grandi mercanti*, pp.13-14.

a central political power, there was a multiplicity of competing political poles and non-coordinated legal entities[9]. Nevertheless, despite the fact that actors involved in bankruptcy proceedings were members of different legal bodies, each of them with its own laws, it seems that the *Arti*'s statutes lost their validity *ipso iure* in case of conflict with a municipal law. This rule let us suppose that a first form of hierarchy of the sources of law already existed[10].

However, it raises a question about the reason why the municipal statutes regulated bankruptcy. This latter was a legal instrument created to respond to specific trade needs of merchants, usually regulated by the *Ius mercatorum*. Why did the municipal statutes ruled in a field that could have been disciplined by special commercial laws, like the *Mercanzia*'s or the *Arti*'s statutes? The answer could lay, on one hand, on the mark of shame that hit bankrupts and, on the other hand, on the strong impact that a bankruptcy could have on the entire *civitas*. Since trade, trust and credit represented the three elements on which the dynamics of the merchant society rested, a failure, thwarting credit and trust, contradicted the root foundations of that society[11].

In the court of public opinion, bankruptcies appeared as strongly antisocial phenomenons and legislators labelled them as gravely anti-juridical, ordering very harsh sanctions. The consequences of an insolvency, which could ruin creditors, could therefore consist of serious punishments, not only for the bankrupt himself, but also for all his family's members. Furthermore, the dissatisfaction of foreign creditors could provoke harmful consequences also for the entire city, in case they decided to use the instrument of reprisal.

Therefore, a bankruptcy was likely to cause damages to such an extent that it was a municipal authority's concern to discipline its consequences, particularly considering that one of the main functions of the two foreign officers of Florence, the *Capitano del Popolo* and the *Podestà*, was the maintenance of public order and peace. The *Capitano del Popolo* was *Conservator Pacis* and, after 1283, he became also *Defensor Artium et Artificum*, that is the maintaining of peace and order within the city.

Then I will proceed analyzing the municipal statutes' bankruptcy regulation, trying to compare, one by one, the single norms of the three different compilations of 1322-25, of 1355 (still not published), and of 1415. As regards the substance, there are differences between the three compilations which are not essential, especially between the *Statuto del Capitano* of 1322-25 and the one of 1355. As regards the form, on the contrary, the compilation from1415 differs from the previous two ones. It was drafted as a revision of the statute of 1409 (which never entered into force) and combined the two volumes of the *Statuto del Capitano del Popolo* and the *Statuto del Podestà* in a single normative text.

I will also consider that bankruptcies triggered further consequences beside the financial ones. The cases of merchants' insolvencies, indeed, used to imply criminal punishments too. Since bankruptcy was considered as a crime itself, the distinction between fraudulent bankruptcy and simple bankruptcy did not have any relevance on the nature and extent of punishment. Therefore,

[9] Astorri, *La Mercanzia a Firenze nella prima metà del trecento, Il potere dei grandi mercanti*, *Ibid*., p.63

[10] Doren, A., *Le Arti fiorentine*, Firenze, Le Monnier Editore, MCMXXXX-XVIII, vol. II, p.220.

[11] Santarelli, A., *Mercanti e società tra mercanti – Lezioni di storia del diritto*, Torino, Giappichelli Editore, 1987.

all bankrupts were subject to criminal sanctions, such as the ban, beside any of the many *capitis deminutiones* that insolvency used to imply.

Then, I will focus on reprisals, as disciplined by the Statutes of the *Podestà*, which allows us to cast a glance on the dense exchange activity undertaken by Florentine merchants with foreign countries, and on the engagement of municipal authorities in protecting the safety and continuity of international trade. Whilst the main purpose of reprisals was to protect the merchant-creditors, at the same time, the municipality's policy was to decrease or to inhibit the clash, since it was not worth to cause an irreparable damage to the city's trade vitality in order to shield a single citizen.

1. The Statutes of Florence between 1322 and 1415

During the XIIIth century, the sources of law of central-northern Italian cities were multiple. Among the various *iura propria*, the municipal statutes played a very important role. Unlike other neighbouring countries' legislation, as the French one, they arose from municipal powers, rather than from external authorities (like the count, the prince or the bishop). Indeed, its autonomy and political power pushed the municipality to start an intense process of legislative production, independent from foreign laws and able to assimilate pre-existing elements[12].

At the beginning of the XIIth century, in central and northern Italy the statutory legislation developed around the Breve Consulum, which, according to Biscione, was a solemn oath that the supreme magistrates, citizens or foreigners, of the municipality took before the assembly of the community promising to respect the rules concerning the public and private relationships they had settled[13]. Therefore, the *Breve* certified the oath before a notary.

Unfortunately, we have only a few surviving documents about the first statutes of the city of Florence. Municipal authorities issued at that time different kinds of legislation. Beside the municipal statutes, there were *Ordinamenti*, *Provvisioni*, and *Bandi*. These three types of laws were all temporary. Indeed, the *Ordinamenti*, regulating non-legal issues, whose settings were not precisely defined, necessarily had a limited validity over time. The *Provvisioni*, created as resolutions by the *Priorato*, obtaining the value of a rule of law through the Councils' approval, were also temporary, considering that they had to turn into statute's laws; as far as for the *Bandi*, that were in force as long as the officer who issued them. Differently, the municipal statutes had a long-term validity: to stop being effective, an express abrogation was necessary[14].

[12] Chittolini, G., *Statuti e autonomie urbane*, Introduzione a *Statuti città territori in Italia e Germania tra Medioevo ed Età moderna*, Bologna, Società editrice Il Mulino, 1989, pp.13-14, *"[…]l'autonomia e la forza politica consentirono al comune urbano di avviare un intenso processo di produzione legislativa, indipendente da normazioni estranee e capace di assorbire elementi preesistenti"*[12].

[13] Biscione, G., Inventario del Fondo *STATUTI DEL COMUNE DI FIRENZE*, conservato presso l'Archivio di Stato di Firenze, 16 Novembre 2001, p.3, reperibile sul sito internet: http://www.archiviodistato.firenze.it/inventari/statuti/statuti_init.html *"una sorta di formula di giuramento col quale i supremi magistrati, cittadini o forestieri, del reggimento comunale promettevano solennemente davanti all'assemblea del popolo riunito di osservare le norme concernenti i rapporti pubblici e privati, che lo stesso popolo si era dato."*.

[14] Guidi, G., *Il governo della città-repubblica di Firenze del primo quattrocento*, vol.I *Politica e diritto pubblico*, Firenze, L.S.Olschki Editore, 1981, pp.51-52.

Previously, municipalities used to issue isoleted autonomous legislative acts, without any kind of order. It has been from the end of the XIIth century that lawyers and notaries, flanked by a city commission, started to collect them in small files and registers. We could then find three types of documents: investigations relating to the census and recovery of municipal property; the *libri iurium*, a sort of inventories of the municipality rights, including inter-city agreements; and the first statutes, which collected the city's normative production[15].

From around 1230, municipal authorities started to systematise statutes into thematic books, each related to a specific topic. Beside regulating relationships between individuals and public authorities, such as fiscal, administrative and judicial law, they also regulated private law issues.

Unfortunately, however, it has not always been simple to identify what charateristics made a legislative text a municipal statute. It was hard to identifying what a *"statuto"* is in the midst of a large variety of norms produced by the city councils, like ordinary legislation, exceptional regulations, *capitoli* (public acts) with other cities, *libri iurium*. The authority that issued them was not relevant to qualify a statute, considering the peculiar pluralism of legal sources during the Middle Ages. Statutes could be issued by guilds, ecclesiastical bodies as well as *societates:* a statute was only exceptionally the expression of a rational and premeditated plan. On the contrary, it was made of norms stratified during cities' lifetime, without any structural difference from other laws or diplomatic agreements[16].

Although we are not able to date the first statutes of Florence, certainly the city had already its own rules since the mid-twelfth century[17]. These were collections of pre-existing norms, binding for the city and its citizens. Presumably, the first important collection of laws was a *Constitutum* of 1214, unfortunately lost, while the first *Statuti del Podestà* and *del Capitano*, also lost, date back respectively to the years between 1272 and 1280 and to 1282. Therefore, we are missing all records concerning the statutory *corpus* of the XIIth and part of the XIIIth century.

The first complete surviving compilation is represented by the *Statuto del Capitano del Popolo* and *Statuto del Podestà* from 1322 and 1324-25, which turned out to be the latest elaborations of the oldest statutes that we have. Since 1322, the statutes of Florence consisted of two books: the *Statuto del Capitano* and the *Statuto del Podestà*. Both the *Capitano* and the *Podestà* were foreign officers, in charge of tasks mainly related to the administration of justice and the maintenance of the public order.

The city of Florence chose a foreign officer in order to solve the paralyzing fights between the political factions of the city, which made it impossible to implementing a fair administration of justice. Appointing someone not involved with the opposing factions' interests seemed to be the only possible solution.

[15] Milani, G., *I comuni italiani*, Bari, Editori Laterza, 2005, pp.76.

[16] Raveggi, L. e Tanzini, L., a cura di, *Bibliografia delle edizioni di Statuti toscani, Introduzione*, Firenze, L.S.Olschki Editore, p.XII, *"Lo statuto medievale non è che in casi straordinari espressione di un disegno preordinato e razionale, che definisca sistematicamente tutte le materie interessate, ma è al contrario la composizione di materiale accumulatosi in maniera alluvionale nella vita delle città, per cui non presenta caratteri di strutturale diversità da altre realtà normative, quali appunto i testi legislativi correnti, rivolti magari a materie assai particolari, o gli accordi diplomatici."*

[17] http://www.archiviodistato.firenze.it/inventari/s/statuti/

In 1283, the *Capitano*, who already had the charge of *Defensor pacis*, became also *Defensor Artium et Artificum* and, since 1284, the *Podestà* had been appointed of the financial and administrative management of political bodies.

According to Guidi, we do not have enough informations in order to understand what ruled the division between the *Statuto del Podestà* and the *Statuto del Capitano*. We can only take it as given that the first one regulated what we nowadays would call private law, criminal law and, later, tax law, while the *Statuto del Capitano del Popolo* regulated public law, and other subjects, like citizenship and the election of public offices[18].

Also the statutes from 1355 were made of two books, while the 1409 *Statuta Populi et Communis Florentiae* (named after the citizens of Florence) was a single body of norms, but it never entered into force. A reworking of this first version from 1409 led to the drafting of the 1415 statute, which retained its original name and the new united structure.

As regards content, the oldest statutes paid a greater attention to public law topics rather than civil law ones. This was coherent with the application of the Baldus' rule *ubi cessat statutum habet locum ius civile*: in case of legal vacuum, it was still possible to resort to Roman law. Consequently, municipal authorities felt more urgent to create a public law legislation rather than a civil law one.

However, the three statutes also disciplined criminal law and procedure, civil law and procedure, as well as administrative law, tax law and what is today considered private international law. These rules had a position of pre-eminence within the hierarchy of the sources of law.
Presumably, as I said above, municipal statutes prevailed over the *Arti*'s regulations. Therefore, the *Arti*'s statutes, as well as the statutes of *Mercanzia*, must always comply with municipal law, and with the municipal regulation about bankruptcy[19].

The Florentine statutes preserved their frame of effectiveness for ages, even during the XVth and XVIth centuries, after the establishment of the regional states, setting up a relationship of complementarity with the prince's decrees, and until the last years of the *ancient régime*, symbolizing the peculiar strength of municipal Italian statutes during the Middle Ages [20].

2. Bankruptcy law in the statutes of Florence (1322-1415)

Bankruptcy was a special institution, created for traders and bankers (that were often the same person: the merchant-banker) which developed within the *ius mercatorum*, as it emerges from different statutory sources[21]. Although the merchant-bankers were members of guilds, provided with their own statutes, which already ruled trading for their affiliates, the Municipality of Florence devoted part of its regulation to bankruptcy law.

[18] See Guidi, *Il Governo della Città, Ibid*., vol. I, p.57.
[19] Doren, *Le Arti fiorentine*, vol. II, p.220.
[20] Chittolini, *Statuti e autonomie urbane*, pp.7-8.
[21] Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*, *Ibid.*, p.83.

As we said, the reason of such an involvement of municipal authorities in this institution's regulation can be explained considering the impact that such an event as a bankruptcy could have on public order within a city-state, especially in a city like Florence, whose economy entirely lay on trade. As the *Capitano del Popolo*, in his quality of *conservator pacis*, should guarantee the respect and the maintenance of the public peace, choerently, bankruptcy law, whose function was to unravel a situation that attempted to this peace, should be part of the statute of this magistrate, according to bankruptcy a "public" relevance.

Even though all sources stated that, in the event of an insolvency, creditors must be protected from damages[22], they could not proceed autonomously against the fugitive. The importance of creditors' protection emerged as a principle that underlaid the entire discipline of bankruptcy, starting from the essential assumption that the public interest aligned with the single creditor's one. As we will see, reprisals were the only exception.

To analyse the statutes' legislation about bankruptcy, we will take into consideration the following sources: the second Book of the *Statuto del Capitano del Popolo* of 1322-25, which, according to Santarelli, represents the most conspicuous example of bankruptcy legislation of all Italy of the Middle Ages[23], and, about reprisals, the *Statuto del Podestà* of 1325, both published by Romolo Caggese, re-published in 1999 by G.Pinto, F.Salvestrini, A.Zorzi. Then, I will analyse the second book of section 13, *Statuto del Capitano del Popolo*, 1355 and the second and fourth books of the section 19, *Statuto del Podestà*, 1355, preserved in the fonds *"Statuti del Comune di Firenze"*, at the Archives of Florence. The fonds is made by 34 pieces. Among those, 4 copies of the *Statuto del Capitano* of 1355, of which one in vernacular (nos. 10-13), two other copies containing only the first book or fragments of this latter (n. 14 and 15). Four copies of the *Statuto del Podestà* of 1355, of which one in vernacular (nos. 16-19), and two other pieces containing only the third book and another one of fragments and drafts of 1355 (nos. 20 and 22). We decided to refer to the version of the *Statuto del Podestà* turned into vernacular by Andrea Lancia, since there is no longer the original statutes'version in latin: the three fonds' pieces in latin, indeed, are copies of little after 1355[24]. Therefore, we referred to the vernacular version of the *Statuto del Capitano del Popolo* too. Both pieces are still unpublished. Lastly, we took into account the *Tractatus de Cessantinbus et fugitivis* of the first tome of the *Statuta populi et communis Florentiae* of 1415 and, regarding the reprisals legislation, we also took into account some sections of the third book of the first tome and of the fourth of the second tome. I will then compare the three different municipal laws, which regulated bankruptcy in Florence during the years 1323-1415.

2.1. Cessantes et fugitivi

The first rule that compilers indicated as relating to bankrupts, *cessantes et fugitivi*, was identical in the *Statuto del Capitano del Popolo* of 1322-25, in the one of 1355 and in the *Statuta Populi et Communis Florentiae* of 1415. It stated that the *Podestà* or the *Capitano* could arrest and torture

[22] ARCHIVIO DI STATO DI FIRENZE, G.BISCIONE, inventario del fondo *STATUTI DEL COMUNE DI* FIRENZE, *Ibid*., p.3-4.

[23] U.Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*, *Ibid.*, p.33-34, *"il più cospicuo esempio di legislazione fallimentare di tutta l'Italia dell'età intermedia"*.

[24] Bambi, F., *Andrea lancia volgarizzatore di statuti*, in *Studi di lessicografia italiana*, Vol. XVI, Firenze, Le Lettere, MCMIC.

all merchants who fled or simply left the city with others' money or goods, in order to find the aforementioned creditors' goods and money:

XXV DE ARBITRIO DOMINI POTESTATIS ET CAPITANEI CONTRA FUGIENTES CUM REBUS ALIENIS DE PONENDO AD TORMENTA
Statutum et ordinatum est [...] quod Potestas et Capitaneus Florentie [...] habeat plenum arbitrium [...] et teneantur cogere et ad tormenta ponere et omni alia via [...] investigare quoscunque mercatores [...] et omnes alios qui pro eorum ministeriis publicis consueverunt recipere pecuniam vel mercantiam ad scripturam libri aufugientes et se absentantes [...] cum pecunia vel rebus aliquorum [...], ad requisitionem suorum creditorum, ut possint invenire et investigare et habere [...] libros predictorum creditorum et alias res mobiles et immobiles eorundem et cuiuslibet eorum [...].[25]
*"*It is proclaimed and ordered […] that the Podestà and the Capitano of Florence […] have full power […] and are allowed to hold and torture and investigate with any other mean […] any merchant […] and all other people who because of their public appointment are used to receive money or merchandise listed in fugitives'account books and who fleed […] with money or goods of other people […], on demand of their creditors, in order to find and investigate and get […] the books of the above mentioned creditors and the other movable and immovable goods of these latter and any of them […]."

LVIIII "De l'arbitrio di messere la podestà e capitano contra quelli che fuggono cho le cose altrui e di porreli essi a tormenti"
"La podestà e il capitano di Firençe [...] abbia pieno arbitrio [...] e sieno tenuti di costrignere e porre a' tormenti e per ogni via di tormenti [...] di trovare qualunche mercatanti [...] e tutti gli altri i quali per mestiere loro sono usa(ti) di ricevere pecunia o vero mercatantia scritta ne' libri di fuggienti e che si dallunga [...] cum pecunia o vero cose d'alcuni [...] a richiesta di suoi creditori acciò che essi possano trovare e investigare e avere [...] libri di predetti debitori e l'altre cose mobili e immobili loro e di ciascuno di loro [...]."[26]
*"*The Podestà and the Capitano of Florence […] have full power […] and are allowed to force and torture and with any kind of tirture […] to find any merchant […] and all other people who because of their profession are used to receive money or merchandise listed in fugitives'account books and who fleed […] with money or goods of somebody […] on demand of his creditors, so that they can find and investigate and get […] the books of the above mentioned debtors and the other movable and immovable goods of these latter and any of them […]."

The same regulation was also in the last part of the 1415 statute, which includes a *Tractatus de Cessantibus et fugitivis*:

RUBRICA I De poenis cessantium, & fugitivorum cum rebus, & pecunia alienis
Quicumque mercator [...] publice per se, vel alium sicut magister, vel sotius exercens in civitate, comitatu, vel districtu Florentiae, [...] publice consuevit accipere pecuniam, vel mercantiam, qui [...] cessabit, vel aufugiet cum rebus, & pecunia alienis, seu sibi creditis, seu qui declaratus, aut pronuntiatus fuerit per dominum Potestatem, aut capitaneum, [...] cessans, & fugitivus, […] poenis subiaceat infrascriptis. [...][27]
*"*Any merchant […] who openly […] practices [his profession] on his own, or as schoolmaster, or as associate in the city, municipality, or district of Florence, […] who is openly used to get money, or merchandise, who […] is an insolvent debtor, or fleed with goods, and money of others, or listed in fugitives' account books and who fleed […] with money or goods of other people, or with his own credits, or who is declared, or proclaimed by the authority of the *Podestà* or the *Capitano,* […] insolvent and fugitive, […] must be subjected to the following punishments […]."

[25] *STATUTO DEL CAPITANO DEL POPOLO DEGLI ANNI 1322-25*, in *STATUTI DELLA REPUBBLICA FIORENTINA* editi a cura di Romolo Caggese, Nuova stampa dell'edizione del 1919, a cura di G.PINTO, F.SALVESTRINI, A.ZORZI, Firenze, L.S.Olschki editore, 1999, Libro II, Rubr.XXV, p.97.

[26] ARCHIVIO DI STATO DI FIRENZE, *STATUTI DEL COMUNE DI FIRENZE*, 13, *STATUTO DEL CAPITANO DEL POPOLO DI FIRENZE*, membr., volg., *1355*, Libro II, Rubr. LVIIII, c. 122v-123 r.

[27] *STATUTA POPULI ET COMMUNIS FLORENTIAE, ANNO SALUTIS 1415*, Friburgi [i.e. Firenze], [1777] - 1781 [i.e. 1783], 3 v., in 4°, Tom.I, *Tractatus de cessantibus et fugitivis*, Rubr.I, p.517.

Therefore, according to the first statute, those who left the city or district of Florence, with money or others'goods, were considered *cessanti et fugitivi*, especially when their financial situation was critical. These were the precondition of a bankruptcy, the elements that revealed the debtor's state of *decoctio*. There must be a causal connection between the debtor's economic situation and his escape. In a first moment, the debtor's flight was a condition required *stricto sensu*. Over the years, this term, *fugitivus*, began to acquire a broader meaning: a *fugiens* was a debtor unable to pay his debts, regardless to an effective flight. As we can see, all the three statutes, with some little differences about formal aspects, stated the same rule. This same discipline also applied to members, disciples and factors of the bankrupt, in case of involvement in the fraud[28].

Since many statutes stated the enforceability of bankruptcy law only against merchant-bankers, our legal historiography excluded that this institute could be applicable also to non-merchants.
Once established that the status of *mercator* was one of the preconditions for bankruptcy, we need to understand what this status meant. What conditions allowed such a qualification? Was it necessary to be member of an *Art*e? Alternatively, was the mere practicing of trade sufficient? The three statutes seems to support the first hypothesis, indeed the *petens* creditor was required to declare what guild the *cessans* was member of[29].

Nevertheless, the *Arte* enrolment, rather than an essential element, was required as evidence: to prove the debtor being a professional trader. Indeed, according to the first section of the 1415 statute, carrying out *de facto* a trade activity was enough to be eligible to apply for bankruptcy regulation [30].

The aforementioned sections confirmed this interpretation. Indeed, they say that the Consuls of the *Arte* should garantee for the debtor's enrolment to a guild and that he did practice trade. Practicing trading was a necessary and sufficient condition to be able to apply. However, the Consuls testimony was crucial, as a preliminary ruling[31].

The 1322-25 statute, still in the first important rule of the Section XXV, stated that creditors, when damaged by the flight, could proceed against the debtor by a summons, whether they were partners of the same *compagnia*, *magistri* or third parties without any particular connection to the bankrupt. This latter was assigned a deadline to account for his financial situation and to make a suitable deposit. In case of non-appearance before the court, the judge condemned the debtor to pay his debts, otherwise all his assets would be given to creditors, and he would be convicted to pay a fine to the city[32].

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[28] *STATUTO DEL CAPITANO 1322-25 Ibid.*, Rubr.XXV, p.97; *STATUTO DEL CAPITANO 1355 Ibid*., Rubr.LVIIII, c. 123r.; *STATUTO 1415 Ibid*., Rubr.I, p.517.

[29] *CAPITANO 1322-25 Ibid.*, Rubr.LVI. p.116; *CAPITANO 1355 Ibid*, Rubr.LXXXVIIII, c. 131r.; STATUTO *1415 Ibid*, Rubr.III, p.522.

[30] *STATUTO* 1415 *Ibid.*, Rubr.I. p.517.

[31] *CAPITANO 1322-25 Ibid*., Rubr. LVI, p.116: *Et si ipsi consules [...] iuramento dixerunt vel eorum credulitate asseruerint illum vel illos, contra quem vel quos ipsa petitio porrecta fuerit, esse de arte vel publicos mercatores in arte in petitione contenta, tunc super ipsa [...] petitione procedatur [...]. Si autem ipsi consules vel rectores dixerint ipsum vel ipsos non esse de arte predicta vel non esse publicos mercatores in ipsa arte, tunc super ipsa petizione [...] ulterius non procedatur [...]. ; CAPITANO 1355 Ibid.*, Rubr.LXXXVIIII, 131r *; STATUTO 1415 Ibid.*, Rubr.III, p.522.

[32] *CAPITANO 1322-25 Ibid*., Rubr. XXV, pp.97-98.

The same rule was also in the 1355 statute[33] and according to Santarelli it had two functions: a precautionary and a satisfactory one. The first consisted with the request for the financial statement and the bail, which were instruments to protect associates, *magistri* and creditors, in case of bankrupt's flight.

The satisfactory aspect consisted with the possibility to verify briefly the amount of debts, through an oath given by creditors *(in quantitatem [...] quam iuraverint [...]*[34]), and, later to obtain a summary satisfaction of claims[35].

The same law allowed the *Capitano* and the *Podestà* to torture debtors, during the investigations carried out in order to find the hidden goods. Indeed, it seems thatin case of bankruptcy this instrument was very often used. The Florentine legislation assigned to torture a strictly coercive function, allowing it exclusively to persuade the bankrupt to pay his debts[36].

All statutes established an exception for any children younger than fifteen, but within a different regulation: the first two oldest compilations allowed torture against children only when this did not lead to death, while the statute of 1415 strictly banned the use of torture at all.

In order to start the opening of bankruptcy and bankruptcy proceedings, it was not necessary a judicial decision. The statutes of 1322-25 and of 1355 generically referred to a statement and not to a formal provision. Conversely, the statute of 1415, clearly prescribed that the person who was *de facto* insolvent, was considered a bankrupt, regardless of a court's statement. Therefore, any judicial pronouncement would not have essential value[37].

Objections to the opening of bankruptcy were admitted, in order to verify its legitimacy. Bankrupts' wives, conversely, could not oppose the proceedings *pro iure dotis*[38], unless they provide a suitable *satisdatio*[39].

The 1415 statute precised that objections could never cause any delay to bankruptcy proceedings. Once the debtor's shortfall was declared, a property inventory and verification of debts started.
The first procedure took place in a number of successive phases. Firstly establishing what were the bankrupt's goods and credits and how to seize them. The main rule was to protect creditors as much as possible. This led necessarily to subject all bankrupt's goods to foreclosure. Therefore, all goods possessed by the bankrupt, and also those held by third parties, were seized by the municipal

[33] *CAPITANO 1355 Ibid*., Rubr. LVIIII, cc.123rv.
[34] *CAPITANO 1322 Ibid*., Rubr. XXV.
[35] Santarelli, *Per la storia del fallimento, Ibid.,* p.37.
[36] *CAPITANO 1322 Ibid*., Rubr. XXXIIII, p.104; *CAPITANO 1355 Ibid.*, Rubr.LXVIII, c.126r; *STATUTO 1415 Ibid*., Rubr V, p.525.
[37] *STATUTO 1415, Ibid*., Rubr.I, p.517.
[38] *CAPITANO 1322-25 Ibid*., Rubr.XXXV, p.104; *CAPITANO 1355 Ibid*., Rubr.LXVIIII, c.126r; *STATUTO 1415 Ibid*., Rubr.X, p.535.
[39] *CAPITANO 1322-25 Ibid*., Rubr. LVII, pp.116-117 *QUOD QUIS NON AUDIANTUR AD DEFENSIONEM BONORUM FUGITIVORUM NISI FECERIT DEPOSITUM Item provisum et ordinatum est quod […] si qui comparerent volentes […] debitorem fugitivum et cessantem […] vel eius bona et res cum mandato vel sine mandato defendere, non audiantur […] nisi prius […] cum bonis fideiussoribus ydonee satisdederint […].; CAPITANO 1355 Ibid*., Rubr.LXXXX, c.131 v; *STATUTO 1415 Ibid.*, Rubr.III, p.523.

authorities. When a property inventory was done, third parties were required to transfer to the officers in charge of the closure all the bankrupt's assets they possessed, within a period of three or eight days (depending on whether they were in town or at the countryside)[40].

Insolvent's credits too were part of his assets. As a bankrupt, the debtor lost the legal capacity to dispose of his assets, and, consequently, his creditors acquired *ipso iure* the right to collect his credits at his place, without any need for a deed. This rule was the same in all three statutes[41].

The 1355 and 1415 statutes stated also a special rule in case the municipality was the bankrupt's debtor. In this case, the trustees could transfer the credits to whoever they consider suitable[42].

The three statutes also disciplined the institute of revocatory, which allowed foreclosing all the goods eventually sold by the insolvent during the time prior to the bankruptcy. The statutes of 1325 and 1355 stated that *quod venditiones infra tres menses a die cessationis vel fuge retro facte sint casse,* considering all transactions made in that time invalid. The statute of Mercanzia of 1585, as well, stated the invalidity *ipso iure* of all sales and any kind of immovable property transfer[43].

All the transactions made within a given period were *ipso iure* invalid, regardless of whether they were or not a damage for creditors. This term could vary depending on the type of assets: movable or immovable. In this second case, the length of the "suspect period" was longer[44].

With regard to movable goods, a different rule established that all transactions made with a cuncurrent *constitutum possessorium* were invalid[45], therefore the *Podestà* was allowed to seize those goods.

The revocatory institution allowed the authority to presume that the all debtor's transactions were invalidated by a fraudulent will. Once verified the property inventory, it was necessary to state liabilities, to verify the creditor's rights. This part of the procedure was summary, interlocutory and rules of evidence were a few, in order to achieve the purpose of the entire bankruptcy discipline: the full satisfaction of creditors[46].

Creditors needed to build an argument to prove their claims were true, however, it seemed that the rules of evidence were not strict. Beside the accounting books for bankers (there was a reference

[40] *CAPITANO 1322-25 Ibid*., Rubr.XXVI, p.100; *CAPITANO 1355 Ibid*., Rubr.LX, cc.124rv; *STATUTO 1415 ibid*., Rubr.V, p.525.

[41] *CAPITANO 1322-25 Ibid*., Rubr.XLIIII, p.108; *CAPITANO 1355 Ibid*., Rubr.LXXVII, 127v; *STATUTO 1415 Ibid*., Rubr.X, p.536.

[42] *CAPITANO 1355 Ibid*., Rubr.C, c.136v; *STATUTO 1415 Ibid*., Rubr.VII, p.527.

[43] *Firenze Mercanti 1585*, Lib.III, Rubr.II, in U. Santarelli, *Per la storia Ibid*., p.203, *"vendite et qualunque sorte di alienazioni di beni immobili"*.

[44] *CAPITANO 1322-25 Ibid*., Rubr.LVIII, p.117; *CAPITANO 1355 Ibid*., Rubr.LXXXXI, c.131v; *STATUTO 1415 Ibid*., Rubr.XI, p.537.

[45] *CAPITANO 1322-25 Ibid*., Rubr.XXXVIII, p.102; *CAPITANO 1355 Ibid*., rubr.LXII, c.125r; *STATUTO 1415 Ibid*., RubrXI, p.537.

[46] Santarelli, *Per la storia del fallimento, Ibid.*, p.215.

in the statute of the *Arte del Cambio*[47]), the *Capitano del Popolo*'s statutes set up various means of proof, even the oath, in case others means were lacking[48].
When the credit was secured by a guarantee (*fideiussione*), the statute's law allowed creditors to ask the debtor's guarantor the full payment[49].
It could happen that creditors tried to take advantage of the situation, claiming non-existing credits, submitting a false proof of debt. The filing of false claims was a crime punished by the statutes, which provided a double sanction for those creditors: beside the punishments described by the *Statuto del Capitano* and the one of the *Podestà*, he must also pay a sum of money equal to the one unduly requested[50].

2.2. The enforcement: the par condicio creditorum

Once the trial was over, the bankrupt's assets were subject to enforcement, to satisfy creditors. The common rule of all the statutes of the Italian municipalities was the *solutio per soldum et libram, pro rata creditorum*: all creditors would be satisfied proportionally on the debtor's assets, according to the rule of *par condicio creditorum*, without the applicability of any preferential treatment.

Since the assets of the bankrupt were insufficient to satisfy all creditors entirely, each one would obtain a *pro rata* payment.

The principle of *solutio per soldum et libram* was enshrined in all the statutes, with a further clarification in section IX of the one of 1415, which said that this *solutio* would be carried out only in case there was no different agreement[51]. The statute of 1415 clearly stated the rule of *par condicio creditorum*:

RUBRICA X
Unicuique creditori talium cessantium satisfiat per soldum, & libram, tam de bonis dictorum cessantium, quam de pretio redacto ex venditione ipsorum bonorum, nec alter alteri praeferatur ratione alicuius ipothecae tacitae, vel expressae, nec ratione pignoris, aut privilegio [...]. Sed omnes sint equales quibuscumque privilegiis, vel prerogativis temporis vel actionis non obstantibus.[52]

"Each creditor of those insolvents must be paid *per soldum, et libram*, both with the above-mentioned insolvents' goods, and with the proceeds from the sell of those goods, neither another creditor could be preferred because

[47] *Firenze Cambio* 1299, Rubr.XXXIIII, in Santarelli, *Per la storia del fallimento*, *Ibid*., p.225.
[48] *CAPITANO 1332-25 Ibid*., Rubr.XXVIII, pp.101-102; *CAPITANO 1355 Ibid.*, RubrLXXII, c.125r; *STATUTO 1415 Ibid*., Rubr.IV, p.524.
[49] *CAPITANO 1322-25* cit., Rubr.XXXI, *p.103: QUOD SATISFIAT CREDITORIBUS TALIUM DEBITORUM PER SOLIDOS ET LIBRAM [...]. Salvo iure contra fideiussores, ut, si quis est ex dictis creditoribus haberet fideiussores [...] ab ipsis fideiussoribus possit exigere totum id quod habere debet [...] tales vero fideiussores, facta solutione, habeant iura sicut alii creditores talium debitorum. [...]*; *CAPITANO 1355 Ibid*., Rubr.LXV, cc.125v-126r; *STATUTO 1415 Ibid*., Rubr.X, p.535.
[50] *CAPITANO 1322-25 Ibid*., Rubr.XXX, p.103; LI, p.111; LVIIII, p.118; *CAPITANO 1355 Ibid*., Rubr.LXIIII, c.125v; LXXXXII, c.134r; *STATUTO 1415 Ibid*., Rubr.V, p.526.
[51] *CAPITANO 1322-25 Ibid*., Rubr.XXXI, p.103; *CAPITANO 1355 Ibid*, Rubr.LXV, c.125v; *STATUTO 1415 Ibid*., Rubr.IX, p.523
[52] *STATUTO 1415 Ibid*., Rubr.X, p.535.

of a tacit mortgage, or explicit, neither because of a pledge, or a preemption […]. However all [creditors] are equal and no preemption, or priority in time or action could prevent it."

However, the dotal right of bankrupts' wives represented an exception to the principle of the *solutio per soldum et libram*[53]. In Roman Law, the dowry should be returned in case of marriage dissolution[54]: to secure this right, a sort of mortgage was made up on the husband's assets. This principle was still effective during the Middle Ages but, in case of bankruptcy, a wife would loose her pledge, as consequence of the divestment of the debtor's goods, since bankruptcy proceedings entailed the loss of the insolvent's powers of management over his assets. In order to ensure the rights of wives whose husbands were approaching insolvency, the medieval legislator decided to rule out the dowry regulation and to grant bankrupts' wives a pre-emptive right before all other creditors, to satisfy their credits[55], exceptionally exempting them from the *par condicio creditorum* rule.

2.3. The joint and several liability

Concerning the winding-up proceedings, the 1322-25 and 1355 statutes specified in two different sections that the sale of the bankrupt's assets based its validity on the *auctoritas* of the Municipality of Florence[56]. Since the assets of the *cessans* were not enough to satisfy creditors fully, these latter had the right to obtain the entire payment ("*usque ad integram satisfactionem"*) once the bankrupt was financially restored[57].

All financial consequences arising from a bankruptcy (as well as the criminal effects that we will see later) also extended to the bankrupt's family members, due to their family ties. Once again, the purpose was to enlarge as much as possible the number of persons obliged to share the debt with the bankrupt, to protect creditors properly. However, a law from 1287, later merged into the municipal statutes, placed a limit to the ascendants joint liability: it was established that they were not bounded whether they solemnly declared that they did not want to be responsible for their descendants' debts[58].

The same above-mentioned sections also regulated the joint and several liability between brothers. They stated a liability of the *fratres carnales* who had lived together with the insolvent even after their father's death, practicing together the father's profession (*Arte*). This rule came from the

[53] *CAPITANO 1322-25 Ibid*., Rubr.XXXV, p.104, *CAPITANO 1355 Ibid*., Rubr.LXVIIII, c.126r; *STATUTO 1415 Ibid.*, Rubr.X, p.535.

[54] Cantarella, E., Marotta, V., Santalucia, B., Schiavone, A., Stolfi, E., Vincenti, U., *Diritto privato romano, Un profilo storico*, a cura di A. SCHIAVONE, Piccola Biblioteca Einaudi, p.201-202.

[55] Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*, p.243. See also Bellomo, M., *Ricerche sui rapporti patrimoniali tra coniugi: contributo alla storia della famiglia medievale,* Giuffé, 1961. See also Kirshner, J., *Marriage, Dowry, and Citizenship in Late Medieval and Renaissance Italy*, University of Toronto Press, 2015, p. 131..

[56] *CAPITANO 1322-25 Ibid.*, Rubr.XXVII, p.101; *CAPITANO 1355 Ibid.*, Rubr.LXI, c.124v; *CAPITANO 1322-25 Ibid*., Rubr.LII, p.112; *CAPITANO 1355 Ibid*., Rubr.LXXXIIII, c.129r.

[57] *CAPITANO 1322-25 Ibid*., Rubr.LII, p.114; *CAPITANO 1355 Ibid*., Rubr.LXXXIIII, c.130r; *STATUTO 1415 Ibid*., Rubr.XII, p.538.

[58] *CAPITANO 1322-25 Ibid.*, Rubr.XXXVIIII, pp.105-106; *CAPITANO 1355 Ibid*., Rubr.LXXIII, cc.126v-127r; *STATUTO 1415 Ibid*., RubrII, p.521.

ancient institute of the *fraterna compagnia*, survived through the *ius mercatorum*, which stated that even after the death of their father, his sons would continue working together in community of property[59].

The *Compagnia,* a trading company, was created within the typical family framework of the late medieval era, when all family members used to live together under the *potestas* of a *pater* who had the power to decide about people and goods which were part of his *patrimonium*. In this context, in a *Compagnia,* all members cooperated to realize an income for the entire community, through their work. Santarelli called *"compagno"* someone who shared the bread with others (*"colui che ha il pane (pani) in comune (com)"*)[60]. Trust among the *Compagnia* members was an essential element for an association characterized by unlimited joint and several liability, laying the foundations of the general partnership[61].

As regards to descendands, creditors could ask for payments only from those bankrupt's sons who were *in potestate* of their father at the time of the bankruptcy or when the obligation arised. The Statute from 1415 excluded any liabilities for bankrupt's daughters.

Conversely, the bankrupt's sons who were *mancipati* at the time of bankruptcy were held jointly and severally responsible with their father only in case they possessed any bankrupt's goods[62]. Beside the family members, the law stated about bankrupt's agents and disciples, who had the obligation to report on their own management to the authorities in charge of the bankruptcy procedure[63].

There are no rules extending bankruptcy to the bankrupt's associates, despite the number and extent of bankruptcies that occurred in Florence during the XIV century. That was probably due to the fact that the *socii*'s liability was not considered precisely a case of extension of responsibility: the *Compagnia* did not have legal personality and all the associates responded personally and unlimitedly to the extent that they had participated in bankruptcy management[64]. Consequently, all the members of a *Compagnia* were bankrupt as well as the *fugiens*.

Furthermore, the statutes of 1322-25 and 1355 harshly punished as a crime also the aiding, hosting or helping the bankrupt in any possible way[65].

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[59] *CAPITANO 1322-25 Ibid*., Rubr.XXXVIIII, p.106; *CAPITANO 1355 Ibid*., Rubr.LXXIII, c.127r; *STATUTO 1415 Ibid*., Rubr.II, p.521.

[60] Santarelli, *Mercanti e società tra mercanti-Lezioni di storia del diritto, Ibid.*, p.116.

[61] See Renouard, Y., "Le compagnie commerciali fiorentine del Trecento (Dai documenti dell'Archivio Vaticàno)", *Archivio Storico Italiano*, Vol. 96, No. 1, 1938, pp. 41-68. See also Tognetti, S., "Le compagnie mercantili-bancarie toscane e i mercati finanziari europei tra metà XIII e metà XVI secolo", *Archivio Storico Italiano*, Vol. 645, 2015, pp.717. See also Sapori, *La crisi delle compagnie mercantili* and Sapori, *Studi di storia economica*, pp. 121-133.

[62] *CAPITANO 1322-25 Ibid*., Rubr.XXXVIIII, pp.105-106; *CAPITANO 1355 Ibid*., Rubr.LXXIII, cc.126v-127r; *STATUTO 1415 Ibid*., Rubr.II, pp.120-121.

[63] *CAPITANO 1322-25 Ibid*, Rubr.LII, p.113; *STATUTO 1415 Ibid*., rubr.LXXXIIII, c.129v; *STATUTO 1415 Ibid*., RubrXIV, p.540.

[64] Santarelli, *Per la storia del fallimento, Ibid.*, p.187, *"[..] dalla piena corresponsabilità in ordine al verificarsi della decoctio deriva[va] la sottoposizione di tutti alle conseguenze del fallimento".*

[65] *CAPITANO 1322-25 Ibid*., Rubr.XXVI, p.100; *CAPITANO 1355 Ibid*., Rubr.LX, c.124v;

2.4. The "concordato"

Rather than applying the statutes's discipline described above, creditors and debtors could also found an agreement, the *concordato*, that enabled debtors to avoid the harsh consequences of a bankruptcy procedure. Even though bankruptcies were a "public affair", a private agreement between creditors was possible since the implied economic interests still pertained to private law. Therefore, public authorities allowed merchants to dispose of them[66].

Statutes's legislation did not require respecting specific procedural formalities by contracting parts for their debt agreements. The only binding rule stated that, in case the bankrupt did not respect his obligations, he should pay his creditors entirely, once restored financially, regardless to the agreement, which, in this case, would loose any validity. Besides, the bankrupt and all his male descendants could not anymore be members of a guild of the city of Florence[67].

The statute of 1415 listed the persons entitled to stipulate and approve it[68], highlighting that the *concordato* permitted to attenuate the personal consequences of bankruptcy.

The creditors meeting, a decision-making body, which had important functions in winding-up proceedings, should reach any decision by a majority, proportional to the credits size, so as to benefit the creditors of the greatest sums[69].

Since, very often, criminal and personal consequences precluded negotiations between the bankrupt and creditors (let us only think about of the consequences of a ban, or any other measure which limited personal freedom), there was a legal instrument, the safe-conduct (*salvocondotto*), which had the effect of postponing these consequences, in order to facilitate the reaching of an agreement between parties. A law from 1285 put in place the safe-conduct in Florence. It gave to the *Capitano del Popolo* the power to allow the *fugitivi* to come back in town, to defend theirselves from the creditors' claims, despite the effects of a ban[70]. This law, however, disappeared in the later statutes and there were no other references to this institute before 1582.

3. *Podestà* and *Capitano del Popolo* in the bankruptcy proceedings

The Florentine statutes settled that the *Capitano*, the *Podestà* and other municipal authorities were entitled to manage and control bankruptcy proceedings. When they referred to different entities, appointed of the enforcement, they always precised that their powers lay on the municipal authority.

Thus, they confirmed that the Municipality of Florence was responsible for monitoring commercial law cases like bankruptcy.

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[66] Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*, *Ibid.*, p.276.

[67] *CAPITANO 1322-25 Ibid*., Rubr.XLVII, p.109; *CAPITANO 1355 Ibid*., Rubr.LXXX, c.128r.

[68] *STATUTO 1415 Ibid*., Rubr.VI, p.528.

[69] *CAPITANO 1322-25* Ibid., Rubr.XXXVIII, p.105; Rubr.XLVIIII, p.111; *CAPITANO 1355 Ibid*., rubr. LXXII, c.126v; Rubr.LXXXII, c.128v; *STATUTO 1415 Ibid.*, Rubr.VI, p.528; Rubr.IX, p.533.

[70] Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia*, *Ibid.*, p.288.

Something changed with the statute of 1415, which established that the *Sex Consiliarii Mercantiae* should integrate the other magistrates, supervising bankruptcy cases.

The Capitano and the Podestà used to nominate specific bodies in charge of the enforcement on bankrupt assets. The 1415 statute appointed the trustees to extend the winding-up proceedings to other persons, with the power to verify claims and the debtor's credits. It was possible to contest their decisons only before the *Sei di Mercanzia*, whose council was integrated by two merchants from each of the *Arti Maggiori*. Those norms proved that those bodies were also in charge of judicial tasks beside their typycal admnistrative ones[71].

Originally, the trustees served for a term of one year. The statute of 1415 reduced this term: after six months all the auditors' activities used to loose any validity[72].

It is interesting to note that the bodies in charge of the winding-up proceedings were also allowed to sell a part of the bankrupt's assets preliminarily, to be able to set up a fund to bear the proceedings costs[73].

4. The personal and criminal consequences

Beside the financial consequences afore-mentioned, a bankruptcy involved a series of further effects, criminal punishments, *capitis deminutiones* and others, which could also involve third persons, beside the debtor.

The Florentine legislation, as we said, labeled bankruptcy as a crime in itself, regardless to the bankrupt behaviour and to circumstances that led a debtor to insolvency.

The three statutes used to compare a bankrupt to a thief. They did not make any difference between intentional fault, misconduct, and force majeure or unforeseeable circumstances. Insolvency in itself, which, moreover, did not require a judicial statement, led to punish the debtor with criminal sanctions. Arrest, imprisonment, banishment, disqualification from public offices were typical punishments in case of bankruptcy.

The statutes of 1322-25 and 1355 referred to the bankrupt as to a thief and they applied the same criminal sanctions to both[74]. According to the three statutes, the capture and arrest of the fugitives was the first action [75] to be carried out in case of flight of the insolvent, and this latter was detained or executed according to what the *Capitano* or the *Podestà* deemed the most appropriate[76]. The

[71] *CAPITANO 1322-25 Ibid*., Rubr.XXVII, p.101; *CAPITANO 1355 Ibid*., Rubr.LXI, cc.124v-125r; Rubr.CI, c.137r; *STATUTO 1415 Ibid*., Rubr.VI, pp.526-529.

[72] *STATUTO 1415 Ibid*., Rubr.VII, pp.527-529.

[73] *CAPITANO 1322-25 Ibid*., Rubr.XXXVI, p.104; *CAPITANO 1355 Ibid*., Rubr.LXX, c.126v; *STATUTO 1415 Ibid*., Rubr.X, p.536.

[74] *CAPITANO 1322-25 Ibid*., Rubr. XLVIII, p.110; *CAPITANO 1355 Ibid*., Rubr.LXXXI, c.128v.

[75] *CAPITANO1322-25 Ibid*., Rubr.XXV; *CAPITANO1355*, *Ibid.*, Rubr.LVIIII; *STATUTO 1415*, *Ibid*., Rubr.I.

[76] *CAPITANO 1322-25 Ibid*., Rubr.XXXIIII, p.104; *CAPITANO 1355 Ibid.*, Rubr.LXVIII, c.126r; *STATUTO 1415 Ibid*., Rubr.I, p.518.

authorities in charge could also decide to torture them[77] and there was a reward for any cooperation leading to the conviction of the *cessans*[78]. However, the typical sanction of bankruptcy was the ban, a measure established for the most serious crimes.

Bartolo da Sassoferrato, both in his *Tractatus bannitorum* and in his *Tractatus exbannitorum*, identified the ban with the *eiectio a civitate*, which, however, was only part of the punishment. Beside the expulsion from the city, in fact, the ban brought other serious consequences that concerned the bankrupt's civil rights, as the deprivation of the citizenship and of the right of defence, the right to apply to court and to be assisted by a lawyer. The punishment in its most severe form, the *bannum perpetuum*, involved the perpetual exclusion from the *societas civium*. Considering the dangerous consequences of a bankruptcy, which could entail a financial reversal to the merchant community of the city, not only through a domino effect of insolvencies but also thhrough the risk of foreign creditors reprisals, the ban looked the most appropriate mean to remove the damage. The bankrupt represented an obstacle to the peaceful cohabitation of the community, and his expulsion was considered suitable in order to ensure the public peace[79].

Similarly, the Florentine statutes described the *eiectio a civitatis* essentially as both as expulsion from the city and as loss of the right of citizenship. The statutes' sections about bankruptcy also referred to a *capitis deminutio* that consisted in the deprivation of the right to vote and to stand for election, through the interdiction from the *officia*[80].

A specific law stated that, after a ban, the bankrupt would also loose the right of defense and permitted others offending him with impunity, but in any case did it ever allowed immunity to his killer[81].

Besides, the deprivation of the right to appear before a court, to sue or to respond to pleadings, and the prohibition to be assisted by a lawyer, which were a form of denial of justice, were two other consequences of a ban[82].

Among other personal consequences that arose from the bankruptcy, the ban on trading also led to the expulsion of the bankrupt from the *Arte* he used to be member of[83]. It was even possible to forbid the bankrupt from working as a partner or disciple[84].

[77] *CAPITANO 1322-25 Ibid*., Rubr.XXXIIII; *CAPITANO 1355*, *Ibid*., Rubr.LXVIII; *STATUTO 1415*, *Ibid*., Rubr.V.

[78] *CAPITANO 1322-25 Ibid*., Rubr.XXXVII, p.105; *CAPITANO 1355 Ibid*., Rubr.LXXI, c.126v.

[79] *CAPITANO 1322-25 Ibid*., Rubr.XXXIII, p.104; *CAPITANO1355 Ibid*., Rubr.LXVII, c.126r.; *STATUTO 1415 Ibid.*, Rubr.I.

[80] *CAPITANO 1322-25 Ibid*., Rubr.XLVIII, pp.109-110; *CAPITANO 1355 Ibid*., Rubr.LXXXI, cc.128rv; *STATUTO 1415 Ibid.*, Rubr.I, pp.518-519.

[81] *CAPITANO 1322-25 Ibid*., Rubr.LV, p.115; *STATUTO 1355 Ibid*., Rubr.LXXXVIII, c.131r.

[82] *CAPITANO 1322-25 Ibid*., Rubr.XLI, p.106; *CAPITANO1355 Ibid*., Rubr.LXXV, c.127r; *STATUTO 1415 Ibid.*, Rubr.I, p.519; *CAPITANO 1322-25 Ibid*, Rubr.LIII, p.115; *CAPITANO 1355 Ibid*., Rubr.LXXXVI, c.130v.

[83] *CAPITANO 1322-25 Ibid*.., Rubr.LII, pp.113-114; *CAPITANO 1355 Ibid*., Rubr.LXXXIIII, c.130r; *STATUTO 1415 Ibid*., Rubr.I, p.519.

[84] *CAPITANO 1322-25 Ibid*., Rubr.XLII, p.107; *CAPITANO 1355 Ibid*., Rubr.LXXVI, c.127v.

Another typical *capitis deminutio* was the shameful painting (*pittura infamante*), wich, as Masi said, labeled the bankruptcy as an infamy.[85] The banned person had to face the shame of being portrayed on the facades and interiors of the city hall, or of other headquarters of public offices, like the guilds' ones or the *Condotta* and *Mercanzia* buildings[86].

As a precursor of the book of the bankrupts, it had also a practical use: frescoing the portrait of the *cessans* in a public place permitted to create a sort of illustrated register, which allowed everyone, especially the illiterate ones, to become aware of the financial conditions of the people portrayed[87].

The Florentine legislation extended the imprisonment and the banishment regulations to bankrupts' wifes and children too, just because of their family ties[88], regardless of their conduct. Similarly, the bankrupt's sons too had to suffer the expulsion from their father's *Arte* as a consequence of his insolvency[89].

5. Reprisals within the statutes of Florence

Besides these harsh sanctions, reprisals were another consequence of insolvency, which involved the entire community in the personal fall of a merchant. When the trading network of *Arti*'s climbed over the borders of Florence and the condition of insolvency of a Florentine merchant damaged foreign creditors, these latter were entitled to ask for satisfaction through a reprisal against the city of Florence. When this happened, the city of origin of creditors could decide to interrupt trading with Florentine merchants as retaliation, in order to push the debtor (and the municipal authorities) to repay his debt.

Conversely, when a foreign merchant went bankrupt, damaging a Florentine creditor, this latter was entitled to ask for a reprisal against the debtor's city. Considering the intense trading activity that took place between merchants-bankers from Florence and foreign merchants (as for the Arte di *Calimala*, dedicated to the clothes trading with France and Flanders, or the *Arte del Cambio* that used to trade everywhere in Europe), reprisals could be demanded in several circumstances, as also sources reported.

[85] On the matter, see Masferrer, A., *La pena de infamia en el Derecho histórico español. Contribución al estudio de la tradición penal europea en el marco del ius commune*, Madrid, Dykinson, 2001, particularly pp. 213-216.

[86] Masi, G., "*La pittura infamante nella legislazione e nella vita del Comune fiorentino (secc.XIII-XIV)", Studi di diritto commerciale in onore di Cesare Vivante*, Roma, Società editrice del foro italiano, 1931, vol.II, p. 630, "[…] *e l'infamia era una delle tante conseguenze del bando. Il bandito, privo del diritto di agire e di ricever giustizia, veniva lasciato alla mercè del destino, se transfuga; se arrestato subiva le pene corporali, ed anche, in certi casi, capitali. Oltre a questo soggiaceva alla vergogna di essere effigiato sulle facciate e negli interni dei palazzi del Comune, o della Condotta, della Mercanzia, delle corporazioni […]".*

[87] Santarelli, *Per la storia del fallimento nelle legislazioni italiane dell'età intermedia, Ibid.*, p.133. *CAPITANO 1322-25 Ibid.*, Rubr.LII, p.114; Rubr.LIIII, p.115; *CAPITANO 1355 Ibid*., Rubr.LXXXIIII, c.130r; Rubr.LXXXVII, c.131r; *STATUTO 1415 Ibid*., Rubr.I, p.519.

[88] *CAPITANO 1322-25 Ibid*., Rubr.LII, p.112; XXXII, p.104; XXXVIII, p.105; XL, p.106; *CAPITANO 1355 Ibid.*, Rubr.LXXXIIII, c.129r; LXVII, c.126r; LXXII, c.126v; LXXIIII, c.127r; *STATUTO 1415 Ibid*., Rubr.I, p.519.

[89] *CAPITANO 1322-25 Ibid*., Rubr.LII, pp.113-114; *CAPITANO 1355 Ibid*., Rubr.LXXXIIII, c.130r; *STATUTO 1415 Ibid*., Rubr.I, p.519.

A government could grant the right to retaliation to its citizens, to arrest foreign merchants and seize up to a certain amount their assets when they came from the city where the creditor had not been able to obtain justice[90]. Therefore, exchange and finance trading were hindered, economic relations between two countries could be interrupted and the debtor's fellow citizens on the international market were exposed to the risk of seizure of assets and personal imprisonment.
For this reason, law regulated the reprisals use, in order to avoid bigger damages than those the retaliation itself wanted to fight. The Municipality fixed the rules which established the conditions to ask for a reprisal, the persons entitled to apply for it and to obtain it, the magistrate appointed of decisions, and persons and assets that could be subject of a retaliation[91].

The archive sources of the *Mercanzia* court showed us that the Municipality policy was to limit as much as possible the use of reprisals[92]. When the *Universitas mercatorum* Council used to vote on it, there was always a strong opposition: authorisations were never unanimous. This was due to the enormous disproportion between the benefit that a single creditor could reach and damages that the entire community could suffer because of it. In order to avoid a continuous explication of countermeasures, the municipal authorities established limitations such as exemptions, restrictions of the enforcement of reprisals to a limited number of itineraries and specific periods of the year, or even general long-term suspensions.

As we said, the original main task of the *Mercanzia* was to protect from reprisals the Florentine merchants who travelled abroad. The *Rettore* was responsible for prosecuting those responsible for a reprisal against the Municipality of Florence and its citizens abroad. Before the creation of the *Mercanzia*, the *Podestà* was the competent magistrate, which is the reason why the *Statuto del Podestà* regulated this institute. After 1308, the *Universitas mercatorum* became the competent magistrate for international trade cases, and all the related functions. The protection from passive reprisals represented the first set of powers of the Court, which later extended them[93].

Nevertheless, the *Statuto del Podestà* of 1322-25 and 1355 still maintened all the provisions about this subject, without taking in any consideration the *Universitas mercatorum* (there are no references to the *Mercanzia*). That could be interpreted as one of the typical contradictions of the medieval municipal legislation, due to the vacancy of a central power and the consequent lack of a systematic organization of legislative norms, which led to the development of concomitant and non-coordinated judicial centers[94].

The most ancient law about reprisals is part of a compilation prior to 1280, held in a reprisal paper of that year. The reprisal paper was a document, which proved the granting of the related right. It seems very likely that it represented a considerable evolution in the story of this institution,

[90] Del Vecchio, A., Casanova, E., *Le rappresaglie nei comuni medioevali e specialmente in Firenze*, Bologna, Forni Editore, 1974, p.1

[91] Del Vecchio, Casanova, *Ibid*., p.5.

[92] Astorri, *La mercanzia, Ibid*., p.189.

[93] "*MERCANZIA 1*, Statuto del 1312, rub.XXVI, cc.17r-19r", Astorri, *La mercanzia, Ibid*., p.37.

[94] Astorri, *La Mercanzia a Firenze, Ibid.*, pp.62-63, *"[…] una delle contraddizioni in cui incorre la legislazione cittadina a causa dell'evolvere gli uni accanto agli altri di poli giurisdizionali concorrenti e non coordinati tra di loro."*

considering that its release required the fulfillment of specific formalities, thus slowing down the exercise of the right[95]. The above-mentioned law contained a complete discipline of the institution.

Among the diverse legal provisions, it is interesting to note that creditor's protection was always subordinated to the protection of the Florentine trade activity. The trade routes were divided into three groups, and the reprisals could happen in rotation, for a time no longer than four months, in order to keep at least the the other two groups of streets open to foreigners. This provision demonstrates how important the role of the *Arti* about reprisals was[96].

In the second book of the statute of the *Podestà* of 1322-25, there is a section specifically dedicated to reprisals, which showed when they were admitted. For example, in case of non-satisfaction of credits *usque ad valutam rerum et extimationem debite quantitates*[97]. The 1355 statute retained this same discipline[98]. Conversely, the 1415 statute introduced a change. The *Podestà* was not anymore the competent authority for reprisals, but, rather, the new law appointed the *Consigli opportuni* of the city of Florence, stating, at the same time, the invalidity of any other legal source, including the *Universitas mercatorum* one, and establishing the overcoming of the competence of both the *Podestà* and the *Mercanzia*[99].

The three statutes also specified that in case of reprisals against the citizens of the city of Florence, these latter should not suffer any damage by foreign creditors because of the debts of a Florentine merchant[100].

Therefore, when a foreign creditor asked for a reprisal against the city Florence, the Municipality had to strive to push the debtor to pay, in order to avoid or limit damages as possible. Although the Municipality could respond with other retaliations, before setting off a chain reaction, the first try was always to limit the effective reprisal implementation, trying to find an amicable settlement.

When the *Mercanzia* of Florence was in charge to decide about it, its strategy was to offer a proper legal protection to foreign creditors, providing them a speed court proceeding to recover their credits.[101]

In this context, the ban could also be a suitable punishment for foreign creditors' debtors, in order to limit the damages that a retaliation could bring to the public order and peace of Florence. For this reason, the expulsion of the "dangerous" citizen, who could cause such inconveniences, seemed once again the safest solution.

[95]Del Vecchio, Casanova, *Le rappresaglie nei comuni medioevali e specialmente in Firenze*, *Ibid*., p.71.

[96]Del Vecchio, Casanova, *Ibid*., p.78.

[97] *STATUTO DEL PODESTA' 1322-25*, a cura di R.CAGGESE, Nuova edizione a cura di G.PINTO, F.SALVESTRINI, A.ZORZI, Firenze, L.S.Olschki Editore, 1999, Libro II, Rubrica LXVI, p.124-125.

[98] ARCHIVIO DI STATO DI FIRENZE, Fondo-STATUTI DEL COMUNE DI FIRENZE, *STATUTI DEL PODESTA' DI FIRENZE*, membr., volg., 1355, pz.19, Libro II, Rubrica LXXI, c.96r.

[99] *STATUTO 1415*, Tomo I, Libro IV, Rubr.XXIV, p.179.

[100] *PODESTA'1322-25*, *Ibid*., LibroV, Rubr.XXXbis, pp.350-351; *PODESTA'1355 Ibid*., LibroIIII, Rubr.LXVI, cc.235v-236r; *STATUTO 1415 Ibid*.,Tom.I, LibroIII, Rubr.LXXXV, p.301.

[101] *PODESTA'1322-25 Ibid.*, LibroV, Rubr.XXX, pp.349-350; *PODESTA'1355 Ibid*., LibroIIII, Rubr.LXV, c.235v.

7. Conclusion

Between 1322 and 1415, the municipal statutes of Florence disciplined bankruptcy. This regulation was still not systematic and, even after the foundation of a special commercial jurisdiction, like the *Mercanzia*, the municipal bankruptcy law retained its full and preminent validity. Those statutes maintened its role and authority on this branch of commercial law: a bankruptcy could cause such serious damages to the entire community that it was necessarily a municipal authorities' concern to discipline it, especially considering that one of the main functions of the two foreign officers of the city, the *Capitano del Popolo* and the *Podestà*, was precisely the maintenance of public order and peace. Especially in case of reprisals, consequences could be particularly harmful for Florence's trade, in town as for the Florentine merchants settled or passing in the creditor's city.

That was the reason why a bankruptcy exposed the *cessans* to serious financial, criminal and personal punishments, involving not only the bankrupt himself, but also his entire family. Therefore, it was not possible to confine the bankruptcy regulation within the *Arti*'s statutes, as well as the *Mercanzia* could not manage alone those proceedings. Indeed, as important municipal concern, the statutes of Florence, between 1322 and 1355, established a bankruptcy regulation in order to discipline this phenomenon, and to limit its ruinous consequences, remaining in force for the entire duration of the stautes' validity. Studying and analyzing the sections concerned, I compared the sigle norms of the three compilations and, through this comparative work, I can conclude that, regarding the content, there were no substantial differences between the three norms of 1322-25, 1355, and 1415.

Between the statutes of 1322-25 and that of 1355, there are not even formal differences: they established the same rules, in the same order, with the same titles. Only their numbering is different. The only substantive difference is in the last part of the *Statuto del Capitano* of 1355: there are some additional titles in the last seven sections (from the LXXXXVII to the CIII) of the *corpus* of norms about bankruptcy, which don't change the essence of the whole regulation.

Some of these provisions are also in the statute of 1415, which, compared to the previous ones, had different section numbers, order and size: as already mentioned above, this compilation, which arose from the review of the 1409 statute project that never entered into force, abandoned the traditional bipartition of the *Statuto del Podestà* and *Statuto del Capitano* in two different books, shifting to a single volume, entitled to Citizens and the Municipality of Florence (*Statuta Populi et Communis Florentiae*). However, the bankruptcy regulation is approximately identical and it did not present any great difference compared to the previous compilations.

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