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Criminal Law and Politics in Medieval Bologna

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Historians have begun to appreciate more fully the value of integrating legal history, especially criminal law, with the study of the economic, social, and political bonds of societies. The thirteenth century Italian communes experienced tremendous demographic and economic growth and subsequently extensive development of government and political ideology. Their crime and systems of justice can be studied as a crucial indicator of cultural change and controversy. Crime was one of the major concerns of the communes, one that deeply aroused popular discontent and governmental fears. Criminal law enforcement became a crucial political issue as parties and factions divided over appropriate responses to the problem. New policies, indicative of a new mentality that emphasized deterrence, were developed to cope with the challenge of criminality and to answer the need for public security and stability; but the harshness of the new attitudes conflicted with traditional cultural assumptions such as the vendetta, and they became controversial political issues. Criminality and law enforcement can therefore be used as a key to the maze of political entanglements and controversies of thirteenth century communes and can help us to analyze the relationships between political ambitions and political reforms, between politics and ideology.

Scholarly investigation of medieval Italian criminal law and patterns of criminality is not a new phenomenon. The roots of current interests lead back to the anecdotal collections of nineteenth century *eruditi* such as Mazzoni-Toselli and the magisterial multivolume compilations of legal historians such as Antonio Pertile. Both these genres, however, were produced in a vacuum: either the romantic crimes of Italian nobles lifted out of their historical context and viewed as self-sufficient entities, or the study of the vast statute collections of the late medieval and early Renaissance cen-





turies as a timeless, static body of material with little concern for the political and social environment out of which these laws emerged.¹

Work was also begun in the late nineteenth century that continues to-day: the study of patterns of criminality, both impressionistic and statistical, and of developing systems of criminal justice. This scholarship, however, divided into two traditions that seldom overlapped. On the one hand, Arturo Palmieri studied the Bolognese criminal justice system in the thirteenth century through statutes and notarial formulae, but did not systematically investigate court cases. Ettore Verga, on the other hand, analyzed sentencing in Milanese court cases but did not set his work within the larger framework of the evolving criminal law. Those few studies that did attempt to link criminality and developments in criminal justice, such as Umberto Dorini's study of fourteenth century Florence, only tangentially related those subjects to their political-social context.²

An encouraging aspect of the recent revival of interest in medieval Italian criminality is its strong tendency to overcome the bifurcated nature of earlier investigations. Marvin Becker, Guido Ruggiero, and Stanley Chojnacki in particular have approached their material with a keen interest in the relationship between politics and criminal justice. The implicit premise underpinning this new perspective is the recognition of the importance of criminal justice for state building, and appreciation for the analysis of criminality and criminal justice as a vehicle for insight into the collective mentality of the late medieval and early Renaissance city-states. Ruggiero has illuminated their distinctive treatment of crimes against property and persons; he postulates that attitudes on crime and punishment were based on moderation and restraint, and on a careful balance of rationality (the state as bureaucracy) and ritual severity (the state as church). Ruggiero sees this equilibrium as a deliberate creation of the ruling merchant-banker elite in fourteenth century Venice. Becker also links penology to a political framework; he sees alternating models of a "gentle" and "stern" *paideia* behind the fluctuating patterns of leniency and severity in the enforcement of fourteenth century Florentine criminal law. Chojnacki has explored the relationship between politics and criminal justice and has found the key to fourteenth century Venetian political stability and civil concord in the "just application of the law . . . the firm and fair dispensation of justice." He attempts to show that in response to new tensions stemming from industrial growth and an increased foreign presence, the Venetians developed a new conception of the Renaissance state as one with a sense of responsibility for providing justice for all society and with a more efficient administrative machinery to implement that responsibility.³

This new wave of studies in politics, criminal justice, and criminality has so far focused chiefly upon the two major city republics of late medieval Italy, Florence and Venice, and has concentrated primarily upon the fourteenth century. Important as these two cities were, it was Bologna, not Venice or Florence, that was the center of medieval legal studies and the birthplace of contemporary treatises on criminality. It is there that one finds the most sophisticated patterns of change and innovation in late medieval criminal justice. Moreover, Bologna, unlike Florence or Venice, is especially rich in documentation for the thirteenth century, a period that witnessed the formation of much of the criminal justice system that would endure for centuries. The fortunate survival of Bolognese records for the thirteenth century makes possible the study of late medieval and early Renaissance criminal justice and its relationship to its political milieu during one of its most volatile and significant periods.

This essay investigates the pattern of transformations in the criminal law system of thirteenth century Bologna and suggests possible relationships between those changes and developments in the political life of the commune, specifically in party and factional struggles. The archival collections include statutes, council minutes (*riformagioni* and *provvigioni*), and hundreds of criminal court registers, such as Books of Accusation, Banishment, and Condemnation, which enable one to explore the perceptions and prosecution of crime both in theory and practice.⁴

The criminal justice system in Bologna in the first half of the thirteenth century was one in which the communal government had assumed the jurisdiction over crime from kinship groups, but still retained many of the assumptions of the kinship system. The vendetta, linchpin of the kinship system, continued to be recognized as a valid institution. It was modified, however, so that under communal law, vengeance could be pursued only against the offender and not against his relatives.⁵ The interests of the community in crime and punishment were viewed as indirect and as stemming not from the injury itself but from the possibility that the unbridled pursuit of a vendetta would inflame the community and destroy its stability. A sense of abstract justice, of offense to the entire community, was lacking except for a very limited range of cases.

Crimes perceived as directly offensive to community morality or safety can be identified as those that fall into one or more of three categories: 1) crimes against which the government assumed direct responsibility for detection and prosecution, such as carrying weapons or gambling;⁶ 2) crimes punishable by corporal penalties: e.g., arson, which carried a penalty of decapitation, or giving false testimony, for which the penalty was

amputation of the right hand;⁷ and 3) crimes committed by criminals or by undesirable people who were to be eliminated from the community: prostitutes, sodomites, adulterers, fortune-tellers, heretics, hired assassins, and ruffians.⁸ Crimes in these three categories were perceived as offenses against community morality, interests, and safety. Most major crimes, such as murder, assault, theft, and rape, were viewed as personal offenses, injuries against particular individuals and not against the community.⁹

The role of the government in most major crimes was to reconcile accuser and accused, criminal and victim; the system of punishment was based upon that assumption. The penalties for all crimes of violence—murder, theft, assault, rape—were monetary, with payment of the fine proportionate to the nature of the offense, the status of the victim and of the criminal, and the setting of the crime.¹⁰ If the culprit could not pay the fine, he or she would be banished from the community and could not return until the fine had been paid. Moreover, since the crime was viewed as a personal offense, the offender could not return unless the formal consent of the victim or the victim's family was obtained by means of a *pax* or *concordia*: a formal peace agreement solemnized by notarial documentation. Even premeditated murder was treated merely as a personal offense between individuals and their families, an offense which could be expiated by a fine and a *pax* as substitutes for the vendetta. The banishment records of 1234-1235 show that these norms were actually enforced. The register of that year includes thirteen murder cases with specified fines, and in three of these cases there are notarial marginalia indicating that the fines were paid, the accused had obtained a *pax*, and the banishment was consequently lifted.¹¹

This personalized, modified vendetta system of criminal justice was subjected to severe pressures throughout the thirteenth century, pressures that pulled and shaped the system in conflicting directions. One set of impulses emphasized continuity and retained the sense of unrestrained personality, pushing criminal justice toward an even more relaxed and lenient system. The other tendency called for a system that was more depersonalized and abstract in its concept of justice and harsher in its penalties. This pattern of fluctuating periods of strict and lenient law enforcement is very similar to Becker's model of the "stern" and "gentle" *paideia* in fourteenth century Florence. However, the system of penology differed between the two cities, with Bologna reaching, on the theoretical level, a greater degree of impersonality and severity.

One can specify periods and years in which these conflicting attitudes alternated as the dominant premises of the ruling classes. In 1235-1245

new legislation made it easier to annul banishment decrees by drastically reducing the level of monetary penalties. Murder, which had carried penalties of 200 to 1,000 pounds in the 1234-1235 Book of Banishments, was fixed at lower amounts according to the rank of the offender.¹² In 1257 a new law made it possible to have bans lifted without payment of fine if the accused obtained a *pax*; again, one knows from notarial notations in the court records that the law was carried out.¹³ In 1263 another law reduced monetary penalties even further.¹⁴ In the period from the mid-1230s through the 1260s, the impulse toward leniency was thus expressed in lighter fines, or even the annulment of banishments without any payment of penalties. By the 1280s, however, bans were perpetual and could no longer be cancelled, in theory or practice, by means of the *pax*.

Attempts to return to a more lenient system consequently concentrated not upon the amount of the fine but upon the necessity to reinstate the efficacy of the *pax* as an ameliorative instrument. In 1287, for example, the key goal of a major conspiracy was to make it possible for exiled criminals of the ruling faction to have their bans cancelled if they could obtain a *pax* from their victims.¹⁵ In 1292 a general pardon was issued to both political and criminal exiles who had been banished up to that date. Furthermore, persons banished in the future, for homicide, *pace rupta* (the breaking of a formal peace agreement), highway robbery, arson, falsification, kidnapping, *famoso latrone* (notorious thief), or hired assault, would no longer face perpetual exile if contumacious, as originally required in the *popolo* ordinances of 1282 and 1284. The new, more lenient laws of May 1292 substituted a minimum ten-year banishment period for those crimes. After that period, fines once again could be paid and bans annulled if the accused obtained a *pax* from the victim.¹⁶

In 1296 the lenient attitude of earlier years again prevailed. In that year, those banned for crimes to whom a *beneficium* had been conceded had their bans lifted if they paid the sums specified in the special provisions granting the *beneficium*, and those who had obtained a *pax* needed only to pay a *gabella* or tax of twenty *soldi*. If the banishment had been imposed for homicide, the accused needed only to pay twenty pounds if a *pax* were obtained.¹⁷ Thus, between 1235 and 1296 the impulse toward a lenient, personalized system of justice had continued vitality and, as we shall see, prevailed in practice as well as in theory for most of that period except for the decade of the 1280s.

What were the pressures behind this persistent trend? Contemporary documents point to the commune's need for manpower and money in times of war. The commune needed the manpower of political and criminal ex-

iles, and it wanted the special taxes that would be paid by returning exiles as the condition for annulling their banishments. Behind the criminal justice legislation of 1234-1245 loomed the war against Frederick II and his son, King Enzo, which ended in the Bolognese triumph over Modena and the capture of Enzo in 1248.¹⁸ In the 1290s it was the war with Ferrara, which is specifically cited in the documents as the reason for the annulment of banishments.¹⁹ Support for a lenient system of criminal justice, however, was dependent upon internal as well as external pressures. Only part of the community and only one faction of the ruling elite supported a harsher, more impersonal system of criminal justice. It is therefore necessary to study the development of the new system and identify its supporters and opponents in order to establish why the older, more lenient system still had such vitality at the end of the thirteenth century.

The new attitude that challenged the older, vendetta-based system is distinguished by its emphasis upon a more abstract concept of justice. Crime was viewed not merely as a personal offense and an issue between individuals, but as an injury that outraged the community and required permanent expulsion of the offender. One of the earliest examples of this attitude is the case of Alberto Lambertazzi, who was accused in 1234 of murder. Alberto fled after the crime and was subsequently declared to be contumacious and banished from the commune. His banishment decree is included, along with thirteen other bans for murder, in the 1234-1235 Book of Banishments, but is unique among those decrees.²⁰ All others accused of murder were sentenced, as we have seen, to banishments that could be rescinded if the accuser paid a specified fine and obtained a *pax* with the victim's family. Alberto, however, was given a sentence of "perpetual" banishment, and the decree specified that his ban could never be cancelled, neither by payment of fine nor by a *pax*. Moreover, his banishment decree was incorporated into the communal statutes, with additional provisions that established heavy penalties—fines of 1,000 pounds—against anyone who ever sought to have Alberto's ban lifted, and 500 pounds against anyone who allowed him to live within the city or *contado* of Bologna.²¹

Alberto's crime was clearly viewed as extraordinary, one that had to be treated as more than an infliction of personal injury. Contemporaries perceived his crime as a danger to the community; the fear expressed in the banishment decree was that it would lead to a *scandalum* that would throw the city into a *malum statum*. An individual crime, then, if sufficiently outrageous, could endanger the community and had to be treated within a communal, not merely a personal, framework of punishment. But why was Alberto's crime so outrageous? If not because of the nature of the crime

itself, murder, the answer might lie in the status of accused and victim. Alberto's family clan, the Lambertazzi, was one of the most powerful and wealthy of the great Bolognese families and leader of one of the two major factions in Bolognese politics.²² Alberto's victim was a certain Gabriele, son of the tailor Andrea de Amabili, a *popolano*. If the accused and the victim had ties with opposing factions, it is possible that the government reacted strongly to this crime because it feared that it might ignite a renewed outbreak of factional struggles among the family clans. According to this interpretation, the commune then would still be acting as a conciliator and would be operating within a vendetta-based framework.

Given the wide difference in status of the accused and the victim—one a great magnate, the other a *popolano*—one can suggest, however, that the explosive potential of the crime was twofold. The crime outraged *popolo* sensibilities as much as it threatened factional vendettas. The danger may have been to vertical alignments—magnate versus *popolano*—as well as to horizontal cleavages of family clan rivalries. It was precisely this kind of crime, the mighty against the weak and humble, the “wolves” against the “lambs” in the language of the period, that one finds as the trigger of criminal justice reform in the second half of the thirteenth century.²³ The case against Alberto Lambertazzi is a forerunner and microcosm of the kind of behavior and the response of communal sensibilities that spurred a new reform ideology. The types of punishment inflicted upon him were exactly the kinds of punishment called for in the later reform movement. Attitudes that in 1234 were reserved for particular cases and individuals such as Alberto Lambertazzi became, by mid-century, the norms applied to all offenders.

The major exponent of the new criminal justice system was an increasingly powerful political configuration, the *popolo* or popular party. The “coming of the *popolo*” and its conflict with the *magnati* has been a major historiographical subject since the late nineteenth century. Key points of conflict between *popolani* and *magnati*, such as tax and grain policies, *contado* jurisdictions, communal offices, church privileges, and law and order have been identified and their significance thoroughly debated.²⁴ In the area of “law and order,” however, the “class conflict” framework of most historians who have investigated *popolo* policies has prevented them from realizing the full ramifications of the *popolo*'s role in influencing communal legal traditions and perceptions of crime and justice. For example, J. C. Koenig, one of the most recent historians of the *popolo*, sees law and order as part of the *popolo* program in the northern and central communes; but he sees the *popolo* only as shaping the “impartiality” of law enforcement

toward *popolano* and magnate and also, paradoxically, as seeking special protection for the *popolo* by means of heavier fines against magnates and by the privilege of secret accusation against magnates that was conceded to *popolani*.²⁵ What Koenig and other historians have failed to discern is that the *popolo* program of law and order was a powerful influence in building new impersonal and public conceptions of crime and justice.

The fullest expressions of the new mentality are found in the surviving *popolo* ordinances of 1248, 1282, and 1284. In each of these legislative programs, crime deterrence is one of the major concerns.²⁶ The basic premise is that the government's role is not merely to seek a reconciliation between the accused and the victim, but to punish criminals in order to discourage future crimes. The new goal of deterrence meant, first of all, harsher penalties. Potential criminals were to be restrained by the knowledge that their acts could not be expiated by mere monetary penalties and concords with victims.

Homicide, which had been punishable merely by monetary penalty (even in the case of premeditated murder), became a capital crime. The homicide rubric in the *popolo* statutes of 1248, which were confirmed and included in the communal statutes of 1250, is the earliest statutory evidence from Bologna of capital punishment for murder. Murderers were to be punished by decapitation within three days or, if not in custody, forced into perpetual banishment, a ban that was not to be annulled under any circumstances. The accused, if ever captured, were to be decapitated as if they had confessed to the crime.²⁷

There is no homicide law as such in the communal statutes of 1250, apart from this *popolo* rubric; but in the 1288 compilation of statutes the *popolo* rubric is included among the communal statutes of Book IV, and not among the *popolo* statutes of Book V.²⁸ The introduction of capital punishment for murder can thus be traced directly to the 1248 *popolo* program. It should be stressed that the *popolo* program changed the criminal law in its application to individuals of both juridical groups, *popolani* as well as *magnati*. In other communes, such as Florence and Lucca, the death penalty for murder introduced later in the century came from the *popolo*, but applied only to a magnate who killed a *popolano*, to hired assassins, and to recidivists.²⁹ The transition from fine to capital punishment for murder was also partial in Perugia throughout the late thirteenth and early fourteenth century. Decapitation was the penalty incurred for murder in certain places only—the cathedral and the market place—and for certain individuals, such as recidivists, foreigners, and vagabonds.³⁰

Increasing harshness in the penalties for crimes is another aspect of change in the Bolognese criminal justice system that stemmed from the *popolo* program and the *popolo*-magnate conflict. For example, in 1260 a new *popolo* law designated mutilation—the amputation of a hand or foot—for those captured while under banishment for other major crimes, even if the statutes specified only monetary penalties.³¹ By the 1280s bodily punishments for accused who could not pay their fines were the prevalent norm.³² For example, those captured in exile for a *gravi maleficio* who could not pay the fines within one month had a foot amputated.³³ This policy contrasts with the communal policy earlier in the century, when those who were unable to pay the penalties and who could establish poverty as the cause for nonpayment had their penalties mitigated.³⁴

The riot law of the mid-thirteenth century provides another example of brutalization and the link between increasing penal harshness and party legislation. The punishment for a *miles* (knight, or cavalryman) going to a house to participate in a *rixa* or riot was a 400-pound fine, and for a *pedes* (foot soldier), 200 pounds. However, if the accused were unable to pay, they were subject to the loss of a foot or to perpetual ban, with the houses, towers and trees on their properties destroyed and the lands themselves confiscated by the commune.³⁵ Additions to this rubric specify that anyone from the *contado* (*de comitatu bon. vel forastanus miles vel nobilis pedes aut clericus*) going to a magnate's house to participate in a *rumor* (tumult, or riot) was to be dragged through the streets by the tail of a horse and then decapitated.³⁶ This punishment should be compared with the earlier version in the *popolo* fragment published by Augusto Gaudenzi, where the penalty is only banishment.³⁷

The new harshness in penology, however, did not affect all of society equally. A sampling of the Books of Sentences, the *Condanne* records of 1286, reveals that more than half of those upon whom corporal punishments were actually inflicted were professional criminals: notorious thieves, hired assassins, recidivists, outcasts of society. Capital crimes committed by established members of the community were more likely to end in suspended cases, settlement out of court, or with the accused becoming contumacious. The marginal groups dominating the *Condanne* records in 1286 were the same groups that had suffered capital punishment according to the statutes of 1250. Theoretically, the increasing brutalization should have affected all social groups, but in reality the criminal justice system continued to be highly selective in its choice of victims: the marginals continued to be the people who were hanged and decapitated or had their limbs severed.³⁸

In addition to capital and bodily punishments, a third major feature of the reform program centered on the *pax* or concord, which had enabled the accused to have their bans annulled. Appearing first in the 1248 program, and then repeated in each of the extant *popolo* statutes, a crucial law denied the ameliorative value of a *pax* and decreed perpetual banishments for all major crimes. Major crimes defined in this law included not only crimes viewed as committed against the state, such as treason, false testimony, counterfeiting, and sodomy, but also murder, poisoning, kidnapping, highway robbery, *pace rupta*, *famoso latrone*, arson, and hired assault.³⁹ The personal relationship between accused and victim and the ability of the victim to determine the fate of the offender or the length of exile were to be eradicated.⁴⁰

A fourth feature of *popolo* reform legislation was an attempt to prevent crime by requiring groups or individuals perceived as dangerous to post security guaranteeing their future good behavior. For example, individuals who hired armed guards were required to post security guarantees that their guards were not persons with infamous, that is, criminal reputations.⁴¹ The major group perceived as dangerous was the *magnati*, which included some of the most powerful and wealthy noble families of Bologna. Not the poor, but the wealthy, were singled out in the thirteenth century as a potentially criminal social group! Members of *magnati* families were required to post security of 1,000 pounds guaranteeing their good behavior. The penalties for not doing so were perpetual banishment and communal confiscation of all properties.⁴²

Magnate criminality, or criminal potential, was the perception and the fear that motivated the *popolo* criminal justice reforms. It was the threat of crimes such as Alberto Lambertazzi's murder of a *popolano* in 1234 that helped shape the new mentality of harshness and deterrence. In 1284 we can trace the unfolding of events leading to the promulgation of the most radical of the *popolo* reform programs, that of the ordinances of 1284, and we can detect in this sequence of events the role of magnate criminality. The spur to renewed legislation in that year was the outcry against a magnate, the noble Faldo dei Baruffaldi di Vego. The escape of Faldo from custody, with the apparent connivance of his custodians, triggered the convocation of a special commission headed by the famous notary Rolandino Passaggeri. The commission, charged with the responsibility of upholding the ordinances of 1282, succeeded in reaffirming and, as we shall see, in actually enforcing them.⁴³ The reaction of the community to magnate crime, and the insensitivity of the ruling classes to that reaction, were major motivating forces behind the emergence of a harsher, depersonalized attitude toward criminality and criminal justice.⁴⁴